

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4461

BY DELEGATES HOUSEHOLDER AND CRISS

[BY REQUEST OF THE STATE TAX DEPARTMENT]

[Introduced January 31, 2022; referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-10-27 of the Code of West Virginia, 1931, as amended, relating
2 to the consolidation of all administrative fees collected by the agency into the existing “Tax
3 Administration Services Fund”; removing the \$3 million cap on the fund; providing that
4 excess amounts in this Fund are not converted into the General Fund; consolidating the
5 balances of moneys in various funds collected as fees by, and administered for, the Tax
6 Division of the Department of Revenue reducing the amount of the fee for the state
7 administration of local sales and use taxes; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-27. Administrative fees.

1 (a) Administrative fee for the collection of money for other state departments, divisions,
2 agencies, and institutions.

3 (1) The Tax Commissioner may retain one percent of the taxes and fees, including one
4 percent of any interest, additions to tax and penalties related thereto, collected by the Tax Division
5 of the Department of Revenue that are to be deposited into any of the following special revenue
6 funds: The Special Reclamation Fund, the Special Reclamation Water Trust Fund, the Mining and
7 Reclamation Operations Fund, the Solid Waste Reclamation and Environmental Response Fund,
8 the Solid Waste Enforcement Fund, the Solid Waste Management Board Reserve Fund, the
9 Recycling Assistance Fund, the Closure Cost Assistance Fund, the Solid Waste Planning Fund,
10 the Hazardous Waste Emergency Response Fund, the Law-Enforcement Fund, the Gas Field
11 Highway Repair and Horizontal Drilling Waste Study Fund, the Waste Coal-Producing Counties
12 Fund, the Coalbed Methane Gas Distribution Fund, the Eligible Acute Care Provider
13 Enhancement Account, the West Virginia Affordable Housing Trust Fund, the special revenue
14 account in the State Treasury to be appropriated by the Legislature for the purposes of the
15 Division of Forestry and the special medical school fund in the State Treasury to be used solely
16 for the construction, maintenance and operation of a four-year school of medicine, dentistry and

17 nursing. For all taxes collected by the Tax Division of the Department of Revenue that are to be
18 deposited into any other special revenue funds, the Tax Commissioner may retain, as an
19 administrative fee, one percent of the taxes and fees, including one percent of any interest,
20 additions to tax and penalties related thereto. ~~Provided, That the Legislature has not expressly~~
21 ~~and specifically authorized a fee in a provision of this code other than this section, to be collected~~
22 ~~by, retained by or dedicated to, the Tax Commissioner for the collection, distribution or~~
23 ~~administration of a specified tax or fee~~ Notwithstanding any provision of this code to the contrary,
24 on and after July 1, 2022, any fee collected by or dedicated to the Office of the Tax Commissioner
25 for the collection, distribution, or administration of a specified tax or fee, shall be deposited into
26 the "Tax Administration Services Fund" specified in this section, and shall be used for the
27 purposes and in the manner specified in this section. The amount retained by the Tax
28 Commissioner is a fee for the services provided by the Tax Division in the administration,
29 distribution or collection, or any combination thereof, of those taxes and fees.

30 (2) (A) Notwithstanding any provision of this code to the contrary, effective July 1, 2022,
31 and thereafter, all amounts required to be deposited into the following funds prior to the
32 amendment of this section during the 2022 regular legislative session shall, in lieu thereof, be
33 deposited into the "Tax Administrative Services Fund" specified in this section and shall be used
34 for the purposes and in the manner specified in this section. All moneys currently contained in the
35 following funds, as of July 1, 2022, shall be transferred to the "Tax Administrative Service Fund":

36 (i) The "Motor Fuel General Tax Administrative Fund" created pursuant to §11-14C-47 of
37 this code;

38 (ii) The "Oil and Gas County Revenue Fund Administration Fund" created pursuant to §11-
39 13A-5a of this code;

40 (iii) The "Additional Tax Administration Fund" created pursuant to §11-13A-6 of this code;

41 (iv) The "Special Audit and Investigative Unit Fund" created pursuant to §11-9-2a of this
42 code;

43 (v) The “Medicaid State Share Administration Fund” created pursuant to §11-27-32 of this
44 code;

45 (vi) The “Cemetery Company Registration Fund” created pursuant to §35-5B-2 of this
46 code;

47 (vii) The “Telemarketer Registration Fund” created pursuant to §46A-6F-303 of this code;

48 (viii) The “Local Sales Tax and Excise Tax Administration Fund” created pursuant to §11-
49 10-11c of this code;

50 (ix) The “Wine Tax Administration Fund” created pursuant to §60-8-24 of this code;

51 (x) The “Tax Offset Fee Administration Fund” created pursuant to §11-10-11 of this code;

52 (xi) The “Municipal Fines and Fees Collection Fund” created pursuant to §8-10-2b of this
53 code; and

54 (xii) The “Magistrate Fines and Fees Collection Fund” created pursuant to §50-3-2c of this
55 code.

56 (B) The amount of any statutory authorized fee listed in §11-10-27(2)(A) of this code shall
57 be the amount provided in the authorizing statute: *Provided*, That the fee authorized by §11-10-
58 11c(c) of this code shall be one percent of collections.

59 (b) Administrative fee for the collection, administration and distribution of money for local
60 or municipal government, any other governmental subdivision or other public entity or public
61 corporation, where a fee is not otherwise provided for elsewhere in this code.

62 For all taxes or fees collected by the Tax Division of the Department of Revenue on behalf
63 of any local, county or municipal government, or any other governmental subdivision or public
64 entity or public corporation, including, but not limited to, sanitary districts, water districts and solid
65 waste authorities, the Tax Commissioner may retain, as an administrative fee, one percent of the
66 taxes and fees, including one percent of any interest, additions to tax and penalties related
67 thereto: *Provided*, That the Legislature has not expressly and specifically authorized a fee in a
68 provision of this code other than this section, to be collected by, retained by or dedicated to, the

69 Tax Commissioner for the collection, distribution or administration of a specified tax or fee. For
70 purposes of this section the term “taxes and fees” includes any interest, additions to tax and
71 penalties relating to any taxes or fees.

72 (c) Transaction fees imposed by the Enterprise Resource Planning System may be
73 recovered by the Tax Division of the Department of Revenue.

74 If the Tax Division of the Department of Revenue incurs a fee imposed by the Enterprise
75 Resource Planning System, which is developed, implemented and managed by the West Virginia
76 Enterprise Resource Planning Board §12-6D-1 *et seq.* of this code, relating to a transaction of
77 any entity or person with the Tax Division of the Department of Revenue, then the Tax
78 Commissioner may charge that entity or person a fee in the amount that the Tax Division of the
79 Department of Revenue incurred or will incur relating to that transaction.

80 (d) Fees collected under this section shall be retained in a revolving fund for the use of
81 the Tax Division of the Department of Revenue.

82 Any fees collected or retained under subsections (a), (b) and (c) of this section shall be
83 held in a revolving fund for the use of the Tax Division of the Department of Revenue for general
84 tax administration, which fund is hereby created in the State Treasury and designated the “Tax
85 Administration Services Fund”. Expenditures from the fund are authorized from collections.
86 Moneys remaining in such fund on the last day of the fiscal year ~~in excess of \$3 million shall be~~
87 ~~transferred to the General Revenue Fund. The amount remaining in the fund after such transfer,~~
88 ~~if any, is retained~~ shall carry over and remain in the fund in the next succeeding fiscal year for use
89 by the Tax Division of the Department of Revenue.

90 (e) *Fee increases.* – Any state agency may increase any administrative fee that the agency
91 is authorized to impose by West Virginia statute or West Virginia rule by proposing a legislative
92 rule, for legislative approval, in accordance with the provisions of § 29A-3-1 *et seq.* of this code,
93 imposing the increase: *Provided*, That no such increase shall be made within three years of the
94 initial imposition of the fee or within three years of the most recent revision of a statute or rule that

95 increases or decreases the fee.

96 (f) *Effective date.* – The provisions of this section, as enacted in 2015, become effective
97 January 1, 2016. The provisions of this section, as enacted in 2022, become effective January 1,
98 2022.

NOTE: The purpose of this bill is to consolidate all administrative fees collected by the agency into the already created “Tax Administration Services Fund” in W. Va. Code §11-10-27 and remove the cap of \$3 million on the fund in the interests of efficient administration and relief on the general revenue fund expenditures of the agency.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.