

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 20

By Senator Woodrum

[Introduced January 11, 2023; referred
to the Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §7-28-1 and §7-28-2; and to amend and reenact §11-10-11c of said code, all
 3 relating generally to the authorization and administration of county sales and use taxes;
 4 setting forth legislative intent; providing counties with authority to impose a county sales
 5 and use tax of up to one percent under certain circumstances; clarifying that a county sales
 6 and use tax does not apply to incorporated areas of the county; requiring counties
 7 imposing a county sales tax to use the services of the Tax Commissioner to administer the
 8 tax; and setting forth administrative procedures for the collection and administration of the
 9 tax.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 28. COUNTY SALES AND USE TAX.

§7-28-1. Legislative intent; authority to impose county sales and use tax; applicability; administration.

1 (a) Legislative intent. -- The Legislature hereby finds and declares that county
 2 commissions today face numerous challenges managing their budgets and other resources and
 3 that it is in the public's best interest to provide counties with the local control, flexibility, and
 4 accountability to address the financial demands that increasing regional jail bills, infrastructure
 5 repairs, and other expenses place on our county government, while also ensuring that counties
 6 remain good stewards of taxpayer funds. Therefore, it is the intent of the Legislature in enacting
 7 this article to provide counties with the local control and monetary flexibility necessary to meet their
 8 financial needs and plan for unexpected events in the future.

9 (b) Authority to impose county sales tax. -- On and after July 1, 2022, any county may
 10 impose and collect, by a majority vote of its county commission, a county sales and use tax of up to
 11 one percent: *Provided*, That a county commission must conduct a public hearing prior to any

12 consideration of the proposed sales and use tax. Notice of the public hearing shall be given at
13 least seven days before the date of the hearing by the publication of a notice in at least one paper
14 of general circulation in county.

15 (c) *Applicability.* -- In no event shall the county sales and use tax authorized by this
16 section be applicable to an incorporated area within the county. The sales and use tax authorized
17 by this section may not apply to the sale of motor fuel or motor vehicles.

§7-28-2. State administration of county sales and use taxes.

1 (a) *Administration.* -- Any county that imposes a county sales tax pursuant to §7-28-1 of
2 this code shall use the services of the Tax Commissioner to administer, enforce, and collect the tax
3 in the same manner as the state consumer sales and service tax and use tax under the provisions
4 of §11-15-1 et seq., §11-15A-1 et seq., and §11-15B-1 et seq. of this code.

5 (b) *Notification to Tax Commissioner.* -- Any county that imposes a sales and use tax
6 pursuant to §7-28-1 of this code, or otherwise changes the rate of the taxes, shall notify the Tax
7 Commissioner at least 180 days before the effective date of the imposition of the taxes or the
8 change in the rate of the taxes.

9 (c) *Application of state sales tax law.* -- The state consumers sales and service tax law, as
10 set forth in §11-15-1 et seq. of this code shall apply to a county sales and use tax imposed
11 pursuant to §7-28-1 of this code to the extent applicable.

12 (d) *Application of state use tax law.* -- The state use tax law, set forth in §11-15A-1 et seq. of
13 this code shall apply to a county sales and use tax imposed pursuant to §7-28-1 of this code to the
14 extent applicable.

15 (e) *Definitions incorporated.* -- Any term used in this article or in an ordinance adopted
16 pursuant to this article that is defined in the provisions of §11-15-1 et seq., §11-15A-1 et seq.,
17 and §11-15B-1 et seq. of this code, as amended, shall have the same meaning when used in this
18 article or in an ordinance adopted pursuant to this article, unless the context in which the term is
19 used clearly requires a different result.

20 (f) Automatic updating. -- Any amendments to §11-9-1 *et seq.*, §11-10-1 *et seq.*, §11-15-
 21 1 *et seq.*, §11-15A-1 *et seq.*, and §11-15B-1 *et seq.* of this code shall automatically apply to a
 22 sales or use tax imposed pursuant to this article, to the extent applicable.

23 (g) Fee for services. -- The Tax Commissioner may retain from collections of any tax
 24 imposed pursuant to this article, a fee not to exceed the lesser of the cost of the service provided or
 25 one percent of the amount of taxes imposed pursuant to this article that are collected by the Tax
 26 Commissioner during any fiscal year. Any fees collected shall be deposited in the Local Sales Tax
 27 and Excise Tax Administration Fund pursuant to §11-10-11c of this code.

28 (h) Administrative procedures. -- The provisions of the West Virginia Tax Procedure and
 29 Administration Act set forth in §11-10-1 *et seq.* of this code apply to the taxes imposed pursuant to
 30 §7-28-1 of this code, except as otherwise expressly provided in this article.

31 (i) Criminal penalties. -- The provisions of the West Virginia Tax Crimes and Penalties Act
 32 set forth in §11-9-1 *et seq.* of this code apply to the taxes imposed pursuant to the provisions of this
 33 article.

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-11c. State administration of local sales and use taxes and excise taxes; jurisdiction and standing before the office of tax appeals; rule-making authority.

1 (a) The Tax Commissioner has exclusive responsibility for administering, collecting and
 2 enforcing all local sales and use taxes and excise taxes imposed pursuant to §7-22-1 *et seq.*, §7-
 3 28-1, §8-1-5a, §8-13C-1 *et seq.* and §8-38-1 *et seq.* of this code.

4 (b) Pursuant to, and limited by, the provisions of §11-10A-8 of this code, the Office of Tax
 5 Appeals has exclusive and original jurisdiction to hear disputes arising from any local sales and
 6 use taxes and excise taxes for which the Tax Commissioner has exclusive administration,
 7 enforcement and collection responsibility. No municipality or county has standing before the Office

8 of Tax Appeals in any dispute arising under any local sales and use tax and excise tax upon which
9 the Tax Commissioner has exclusive responsibility for administration, enforcement and collection.

10 (c) Notwithstanding any other provision of this code to the contrary, the Tax Commissioner
11 may assess a fee, to be established by legislative rule pursuant to the provisions of §29A-3-1, *et*
12 *seq.* of this code, to be retained from collections authorized by §8-1-5a of this code, and §8-13C-6
13 of this code: *Provided*, That the fee may not exceed five percent of such collections in total
14 including any fee otherwise authorized by this code or any duly enacted ordinance.

15 (d) Establishment of special revenue account.

16 (1) There is created in the State Treasury a special revenue revolving fund account known
17 as the "Local Sales Tax and Excise Tax Administration Fund". Expenditures from the fund shall be
18 for the purposes set forth in this section and are not authorized from collections but are to be made
19 only in accordance with appropriation by the Legislature and in accordance with the provisions of
20 §12-3-1, *et seq.* of this code: *Provided*, That for the fiscal year ending June 30, 2014, expenditures
21 are authorized from collections rather than pursuant to appropriation by the Legislature. The fund
22 shall consist of:

23 (A) Any funds collected pursuant to section (c) of this section; and

24 (B) Any funds received on and after July 1, 2013, from fees retained by the Tax
25 Commissioner pursuant to §8-13C-6 of this code; and

26 (C) Amounts deducted and retained by the Tax Commissioner under §11-10-11a(e) of this
27 code; and

28 (D) Any future funds appropriated by the Legislature or transferred by any public agency as
29 contemplated or permitted by applicable federal or state law; and

30 (E) Any accrued interest or other return on the moneys in the fund.

31 (2) On July 1, 2013, all moneys in the Tax Department "Municipal Sales and Use Tax
32 Operations Fund" established under §8-13C-6 of this code shall be transferred to the Local Sales
33 Tax and Excise Tax Administration Fund established in this section.

34 (3) On July 1, 2013, all moneys in the "Special District Excise Tax Administration Fund"
35 established under section eleven-b of this article of this code shall be transferred to the Local
36 Sales Tax and Excise Tax Administration Fund established in this section.

37 (4) Amounts deposited in the Local Sales Tax and Excise Tax Administration Fund may be
38 expended by the Tax Commissioner for the general administration, collection and enforcement of
39 all local sales and use taxes and excise taxes imposed pursuant to §7-22-1 *et seq.*, §7-28-1 et
40 seq. §8-1-5a, §8-13C-1 *et seq.* and §8-38-1 *et seq.* of this code.

41 (e) Notwithstanding the provisions of §11-10-11b of this code, the Tax Commissioner may
42 prescribe by rule the schedule and manner for deposits of moneys into the Local Sales Tax and
43 Excise Tax Administration Fund and any other administrative and procedural requirements as may
44 be useful or necessary for the management and handling of the fund.

45 (f) Effective Date - The provisions of this section enacted in ~~2013~~ 2023 are effective on and
46 after July 1, 2013 2023.