

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5264

By Delegate Statler

[Introduced January 29, 2024; Referred to the
Committee on Political Subdivisions then Finance

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

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSION AND OFFICERS

ARTICLE 28. LOCAL OPTIONS FOR SALES, USE, ADMISSION OR AMUSEMENT TAXES.

§7-28-1. Legislative intent; definition of terms.

1 (a) *Legislative intent.* The Legislature hereby finds and declares that county commissions
 2 today face numerous challenges managing their budgets and other resources, and that it is in the
 3 public's best interest to provide counties with the option to implement certain tax structures to
 4 address the increasing financial demands and costs of public safety services. Therefore, it is the
 5 intent of the Legislature in enacting this article to provide counties with the option to create
 6 monetary flexibility necessary to meet the public safety financial needs of the county through the
 7 implementation of either a sales and use tax or an admission or amusement tax in those areas
 8 where a municipality has not already assessed such taxes.

9 (b) *Definitions:* For purposes of this article:

10 (1) Admission or amusement tax: A county tax upon any public amusement or
11 entertainment conducted within the limits of the county for private profit or gain. State-regulated
12 lottery products are not subject to an admission or amusement tax.

13 (2) Public safety services: Fire services, emergency medical services, 911 services, school
14 resource officers, or infrastructure services.

15 (3) Sales and use tax: A county tax upon any transfer of the possession, use, or ownership
16 of tangible personal property or custom software for a consideration, including a lease or rental,
17 when the transfer or delivery is made in the ordinary course of the transferor's business and is
18 made to the transferee or his or her agent for consumption or use or any other purpose. "Sale" also
19 includes the furnishing of a service for consideration and the furnishing of a prepaid wireless
20 calling service for consideration.

21 (4) Any term used in this article or in an ordinance adopted pursuant to this article that is
22 defined in the provisions of §11-15-1 et seq., §11-1SA-1 et seq., and §11- 15B-1 et seq. of this
23 code shall have the same meaning when used in this article or in an ordinance adopted pursuant
24 to this article, unless the context in which the term is used clearly requires a different result.

§7-28-2. Optional tax mechanisms: notice and hearings: applicability.

25 (a) *Optional tax methods.* On and after July 1, 2024, any county may choose to implement
26 either a county sales and use tax or an admission or amusement tax in order to generate revenue
27 needed to meet the demands of public safety services in the county. A county is not required to
28 implement either form of such taxation. A county may only implement one of the methods of
29 taxation authorized by this article in areas where a local municipality does not have either form of
30 taxation.

31 (b) *Authority to impose county sales and use tax.* On and after July 1, 2024, any county
32 may impose and collect, by a majority vote of its county commission, a county sales and use tax of
33 one percent: *Provided*, That a county commission must conduct a public hearing prior to any
34 consideration of the proposed one percent sales and use tax. Notice of the public hearing shall be

35 given at least seven days before the date of the hearing by the publication of a notice in at least
36 one paper of general circulation in such county.

37 (1) In no event shall the county sales and use tax authorized by this article be applicable to
38 an incorporated area within the county.

39 (2) The sales and use tax authorized by this section may not apply to the sale of motor fuel
40 or motor vehicles.

41 (c) Authority to impose county admission or amusement tax. On and after July 1, 2024, any
42 county may impose and collect, by a majority vote of its county commission, a county admission or
43 amusement tax upon any public amusement or entertainment conducted within the limits of the
44 county for private profit or gain. The admission or amusement tax shall be levied upon the
45 purchaser and added to and collected by the seller with the price of admission or other charge for
46 the amusement or entertainment. The tax may not exceed two percent of the admission price or
47 charge, but a tax of one cent may be levied and collected in any case.

48 (1) Any ordinance imposing an admission or amusement tax shall contain reasonable rules
49 governing the collection of the tax by the seller, the method of payment by the seller to the county,
50 and the method of the seller's accounting therefor to the county.

51 (2) An amusement tax imposed by a county commission may not be imposed within the
52 territory of a municipal corporation that has imposed an amusement tax under §8-13-6 of this
53 code.

54 (3) An admission or amusement tax may not be levied upon state-regulated lottery
55 products.

56 (d) Referendum. In the event a county elects to implement either a sales and use tax or an
57 admission and amusement tax, and 40 percent of the qualified voters in the county present a
58 petition duly signed by them in their own handwriting seeking a public vote on the matter, the
59 county commission shall include the tax issue as a referendum on the next regularly scheduled
60 ballot.

61 (e) Revenue designated for public safety services. The revenue generated by the county
62 sales and use tax or admission and amusement tax shall be designated to fund public safety
63 services in the county.

§7-28-3. Administration of county taxes.

64 (a) Administration. Any county that imposes a county sales and use or an admission and
65 amusement tax pursuant to §7-28-2 of this code shall use the services of the Tax Commissioner to
66 administer, enforce, and collect the tax in the same manner as the state consumers sales and
67 service tax and use tax under the provisions of §11-15-1 et seq., §11-15A-1 et seq., and §11-15B-1
68 et seq. of this code, except for any provisions therein relating to the sale of motor fuel or motor
69 vehicles.

70 (b) Notification to Tax Commissioner. Any county that imposes a sales and use tax or an
71 admission and amusement tax pursuant to §7-28-2 of this code, or otherwise changes the rate of
72 such taxes, shall notify the Tax Commissioner at least 180 days before the effective date of the
73 imposition of the taxes or the change in the rate of the taxes.

74 (c) Application of state sales tax law. The state consumers sales and service tax law, as set
75 forth in §11-15-1 et seq. of this code, the amendments to that article, and the rules of the Tax
76 Commissioner relating to the laws shall apply to a county sales and use tax and a county
77 admission and amusement tax imposed pursuant to §7-28-2 of this code to the extent the rules
78 and laws are applicable.

79 (d) Application of state use tax law. The state use tax law, set forth in §11-15A-1 et seq. of
80 this code, the amendments to that article, and the rules of the Tax Commissioner relating to the
81 laws shall apply to a county sales and use tax and a county admission and amusement tax
82 imposed pursuant to §7-28-2 of this code to the extent the rules and laws are applicable.

83 (f) Automatic updating. Any amendments to §11-9-1 et seq., §11-10-1 et seq., §11-15-1 et
84 seq., §11-15A-1 et seq., and §11-15B-1 et seq. of this code shall automatically apply to a sales or
85 use tax or admission and amusement tax imposed pursuant to §7-28-2 et seq. of this code, to the

86 extent applicable.

87 (g) Fee for services. The Tax Commissioner may retain from collections a fee not to exceed
 88 the lesser of the cost of the service provided or five percent of the amount of taxes imposed
 89 pursuant to §7-28-2 *et seq.* of this code that are collected by the Tax Commissioner during any
 90 fiscal year. Any such fees collected shall be deposited in the Local Sales Tax and Excise Tax
 91 Administration Fund pursuant to §11-10-11C of this code.

92 (h) Administrative procedures. Each and every provision of the West Virginia Tax
 93 Procedure and Administration Act set forth in §11-10-1 *et seq.* of this code applies to the taxes
 94 imposed pursuant to §7-28-2 of this code, except as otherwise expressly provided in this article,
 95 with like effect as if that act were applicable only to the taxes imposed by this article and were set
 96 forth in extenso in this article.

97 (i) Criminal penalties. Each and every provision of the West Virginia Tax Crimes and
 98 Penalties Act set forth in §11-9-1 *et seq.* of this code applies to the taxes imposed pursuant to §7-
 99 28-2 of this code with like effect as if that act were applicable only to the taxes imposed pursuant to
 100 §7-28-2 *et seq.* of this code and were set forth in extenso in §7-28-2 *et seq.* of this code.

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

11 (c) Notwithstanding any other provision of this code to the contrary, the Tax Commissioner
12 may assess a fee, to be established by legislative rule pursuant to the provisions of §29A-3-1 *et*
13 *seq.* of this code, to be retained from collections authorized by §7-28-3, §8-1-5a, and §8-13C-6 of
14 this code: *Provided*, That the fee may not exceed five percent of such collections in total including
15 any fee otherwise authorized by this code or any duly enacted ordinance.

16 (d) Establishment of special revenue account.

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

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

25 (B) Any funds received on and after July 1, 2013, from fees retained by the Tax
26 Commissioner pursuant to section six, article thirteen-c, chapter eight of this code; and

27 (C) Amounts deducted and retained by the Tax Commissioner under subsection (e),
28 section eleven-a of this article; and

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

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

32 (2) On July 1, 2013, all moneys in the Tax Department "Municipal Sales and Use Tax

33 Operations Fund" established under section six, article thirteen-c, chapter eight of this code shall
 34 be transferred to the Local Sales Tax and Excise Tax Administration Fund established in this
 35 section.

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

39 (4) Amounts deposited in the Local Sales Tax and Excise Tax Administration Fund may be
 40 expended by the Tax Commissioner for the general administration, collection and enforcement of
 41 all local sales and use taxes and excise taxes imposed pursuant to §7-22-1 *et seq.*, §7-28-1, §8-1-
 42 5a, §8-13C-1 *et seq.*, and §8-38-1 *et seq.* of this code.

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

47 (f) Effective Date - The provisions of this section enacted in ~~2013~~ 2024 are effective on and
 48 after July 1, ~~2013~~ 2024.

NOTE: The purpose of this bill is to authorize and administer optional county sales and use taxes, admission, or amusement taxes and to provide terms for said administration.

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