STATE OF WEST VIRGINIA
Department of Revenue
State Tax Department

COPY

Joe Manchin III
Governor

Christopher G. Morris
State Tax Commissioner

December 30, 2009

The Honorable Joe Manchin III
Governor
State of West Virginia
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Governor Manchin:

At your direction earlier this year, I reformed the West Virginia Tax Modernization Project (the "Project"). The Project is composed of several officials from the Department of Revenue and State Tax Department, including myself and Secretary of Revenue Virgil T. Helton; experts from the Center for Business and Economic Research at Marshall University and the Bureau of Business and Economic Research at West Virginia University; Steve Roberts, president of the West Virginia Chamber of Commerce; and Kenny Perdue, president of the West Virginia AFL-CIO.

As you are aware, the initial iteration of the Project in 2006 resulted in a comprehensive report that detailed modernization reforms needed for virtually every tax in West Virginia. Through your efforts and the efforts of the legislature, a great number of the recommendations contained in the 2006 Report have been implemented, resulting in an improved business climate, tax reductions for individuals, and other changes that have simplified West Virginia's tax structure. Since the reformation of the Project, we have met on several occasions in order to fulfill your charge to the reformed workgroup: to identify additional tax areas in need of improvement, with a short term goal of developing legislation for the 2010 Regular Legislative Session. The conclusion of this work has resulted in a list of recommendations to implement during the 2010 legislative session, which is enclosed for your review and consideration. Project members, in a collaborative effort, pooled their knowledge and experience in order to craft these recommendations, and also sought and received valuable input from the public during the review process.

As then Secretary Musgrave noted to you in 2006, the 2006 Report was, "in many respects, a starting point for beginning action, but also to inspire continued and informed discourse concerning our system of taxation." As such, the Project envisions that it will continue to meet following the 2010 Legislative Session, in order to continue to revisit ideas included in the 2006 Report that have yet to be implemented, and also to continue to identify other areas of taxation that are in need of further study and analysis.

TAX COMMISSIONER'S OFFICE
1001 LEE STREET, EAST, P.O. BOX 11771, CHARLESTON, WV 25339-1771
TELEPHONE (304) 558-0751
FAX (304) 558-8999

I hope that the attached Recommendations will meet with your approval and I think that I speak for all members of the project when I say that we look forward to continuing the tax modernization efforts for the great State of West Virginia.

Sincerely,

Christopher G. Morris
State Tax Commissioner

West Virginia Tax Modernization Project Workgroup's Recommendations to Governor

- Recommend a study resolution to examine the telecommunications tax.
  - The current telecommunications tax is a 4% gross receipts tax imposed on telecommunications services that are not subject to competition. Services that are subject to competition as determined annually by the Public Service Commission are exempt from tax. Therefore, the current tax yield is roughly $0. Legislation creating a study commission is recommended to study how best to modernize the taxation of the telecommunication industry. This is a similar method used by the states of Virginia, New York, and Florida. Conversations have occurred with both state representatives and industry representatives in these states and both are satisfied with the process used and the outcome. The Workgroup recognized that any proposed legislation would have to ensure funding for counties for emergency services, to the extent that the method by which counties currently collect emergency 911 fees is altered.
- Recommend proposing a constitutional amendment to allow the Legislature flexibility and discretion in the imposition of property tax on commercial and industrial tangible personal property, while also considering the impact the amendment would have on local governments.
  - One of the primary economic development impediments in West Virginia, according to business and industry leaders, is the imposition of the personal property tax on commercial and industrial tangible personal property. Since tangible personal property is, by its nature, movable, the solution employed by many companies is to relocate their operations and, in turn, their property, to states that do not impose such a tax. This resolution would provide the Legislature with more flexibility to ensure that companies are not relocating to surrounding states in search of a more attractive local tax structure.
- Recommend that the West Virginia business registration tax code be clarified to provide that the exemptions and exceptions applicable prior to enactment of the "one time no renewal" configuration, continue to apply, including the exemptions and exceptions for governmental agencies, non-profits, farmers, and foreign retailers.
  - The requirement to biennially renew business registration certificates will disappear in 2011. This recommendation will result in clear statutory language to ensure that exemptions and exceptions to the

requirement to pay a fee in order to initially register a business carry forward.

- Recommend that taxpayers who pay more than $10,000 in any tax for a single year must file all returns and pay all taxes electronically. The current threshold is $100,000.
    - This provision recognizes the efficiencies that can be gained through the electronic filing of tax returns. The Tax Department can administer electronically filed returns at roughly 1/10th the cost of paper returns. Electronic returns also reduce the risk of human error when the returns are processed by the Tax Department. The growing trend for companies, especially larger companies, is to electronically file. This recommendation reflects that trend.
- Recommend that companies with 50 or more employees must electronically file withholding tax returns. The current threshold is 250 or more employees.
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- Recommend mandating that tax professionals that prepare 25 or more personal income tax returns file those returns electronically. The current threshold is 100 returns.
    - This provision recognizes the efficiencies that can be gained through the electronic filing of tax returns. The Tax Department can administer electronically filed returns at roughly 1/10th the cost of paper returns. Electronic returns also reduce the risk of human error when the returns are processed by the Tax Department and, to the extent a refund is due the taxpayer, the refunds can be processed much quicker than paper return refunds. If a tax professional prepares 25 or more personal income tax returns, it is likely that the preparer already files most of his or her prepared returns electronically.

- Recommend that if the state estate tax credit option is reinstituted at the federal level, West Virginia will couple with the federal changes in order to take full advantage of this federal revenue sharing arrangement.
    - It is important to note that this would not result in a tax increase for West Virginians who must file a federal estate tax return because the value of the estate exceeds the federal exemption amount. If West Virginia does not couple with the full reinstitution of the state estate tax credit option at the federal level, those monies will be paid by the decedent's estate to the Internal Revenue Service. Coupling allows West Virginia to share estate tax revenues with the IRS.
- Recommend fixing the statutory infirmities that exist for the new residential solar energy tax credit in order to make it easier for taxpayers to claim the credit and easier for the Tax Department to administer it.
    - This legislation was initially vetoed following the 2009 regular legislative session because of various technical infirmities. It was resurrected during a 2009 special legislative session, but the infirmities remained. The fixes would ensure that the Tax Department can properly administer the credit and also provide concrete guidelines for taxpayers to follow when applying for the credit.
- Recommend simplifying property tax relief programs for senior citizens.
    - Currently, senior citizens have up to four property tax relief options to choose between. Oftentimes, because of the complexity of the interplay between the various programs, the senior citizen deems it necessary to consult with a tax preparer for assistance in order to claim a credit. These credits should be simplified in order to ensure that senior citizens who so desperately need these credits can fill out the necessary documentation on their own, and not spend a portion of their credit paying a preparer. To that end, the following recommendations were made by the Workgroup:
        - Combine the "refundable homestead exemption tax credit" with the "homestead excess property tax credit," and allow taxpayers to take advantage of both credits.
            - Means test for both credits to ensure that only those seniors contemplated by legislative intent to receive the credit will qualify

        - Adopt a uniform definition of "gross income" for both credits
    - Deferment of Property Tax Increase Over $300 and Refund of Property Tax Increase over $300 Options
        - Retain the deferment of property tax increase over $300 option, but eliminate the refundable credit option
        - Means test for deferment to ensure that only those seniors contemplated by legislative intent to receive the deferment will qualify
        - Add interest to the amount of tax deferral
        - Make clear that any taxpayer that elects deferral will not be eligible for any other existing or future property tax credits or exemptions except for those in the State Constitution
        - Specify that new construction and modernization of property is barred from deferral
        - Exclude from deferral increases in value that result from the presence of mineral interests

- Recommend further study on the calculation of interest to ensure consistency and simplicity.

    - Current code language includes varying rates of interest for both tax overpayment and underpayment as well as other programs, such as interest on judgments. The Workgroup recommends evaluating whether there is some relief that might be achieved on both sides and whether the rates paid might be made consistent so that there is consistency in what rate of interest is payable. A review of surrounding state practice as well as that of the Internal Revenue Service would be included in any study.

- Recommend simplifying how insurance companies pay fees to the Insurance Commission, including a recommendation to repeal the 1% tax on annuities.

    - Currently, insurance companies pay varying fees depending upon the type of policy sold with surcharges added to fund groups such as the fire marshal, teachers' retirement, and volunteer fire departments. To modernize and simplify the process, it is suggested that a flat rate be charged – 2% on life and accident and a yet to be determined rate on all others including property and casualty. The rates would be set so that the change would be revenue neutral and would not affect the funding currently provided to those groups receiving funds.

- Recommend fixing language in the coalbed methane revenue distribution statute, in order to ensure that producing counties will receive no less than what non-producing counties receive.
    - The first distribution for coalbed methane revenues occurred in October of 2009. The current language in the statute resulted in producing counties that produced a low volume of coalbed methane receiving a much smaller distribution than the non-producing counties. The statutory language should be amended to avoid this inequity.
- Recommend further study of ways to provide increased fiscal flexibility to local governments.
    - This recommendation is an acknowledgment that local governments are severely limited in their ability to raise revenue. Because of the complexity of the issue, the Workgroup recommends further study of the issue before introducing specific legislation.
- Recommend studying the possibility of authorizing counties and cities to enact county wide sales taxes with shared revenues.
    - Currently, municipalities have the option to enact a municipal sales and use tax within municipal borders, but can only elect to do so if they also eliminate their municipal B&O tax. This option is fiscally unattractive for most municipalities in the state because the B&O tax realizes much more revenue than a sales tax would for the municipality, and may result in businesses relocating outside of municipal boundaries in order to avoid the tax. A municipal sales tax would also be difficult for the State Tax Department to administer, since the municipal borders are constantly changing and are very difficult to define. This recommendation would allow a sales tax to be imposed at the county level, without the necessity to eliminate another type of local government tax, would result in definitive boundaries for imposition of the tax while eliminating the incentive for businesses to relocate outside of municipal borders, and would be much easier for the Tax Department to administer.
- Recommend legislation to give the same priority in tax sales to liens for municipal fees.
    - Municipal governments currently take a backseat to the counties in tax sales, since property taxes are given priority over any municipal fees. This recommendation recognizes that municipal fees are a crucial revenue source at the municipal level that should receive the same treatment that county property taxes do in forced sales.

- Recommend supporting legislation to reform the property tax assessment and appeals process.
    - The Workgroup did not vote to support a specific piece of legislation. Rather, it recognized ongoing dialogues among various stakeholders identifying infirmities within the process, acknowledged the need for reform in this area, and voted to support legislative efforts to effect needed reforms.

- Recommend studying the blighted buildings/landbank issue in order to motivate property owners to improve dilapidated buildings and to give local governments more flexibility in dealing with this problem. The Workgroup recognized that this issue is unrelated to state and local taxation. However, the Workgroup recognizes that this is a significant issue for local governments. As such, the Workgroup approved the following actions:
    - Recommend authorizing local governments to require escrowing of insurance payouts on properties that have been destroyed after a fire or other natural disaster, but not demolished and cleared by the property owner.
    - Recommend authorizing local governments to make owners of foreclosed properties maintain the property.

- Recommend studying adopting more uniform definitions of "homestead" and "religious, educational, or charitable institution."
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