WEST VIRGINIA'S FAIR TAXATION PLAN AND AMENDMENT OF 2003

Based on the Report of Governor Underwood's Commission on Fair Taxation issued January, 1999, and on a Joint Resolution Introduced in the West Virginia State Senate in 2003, all as described in an appearance on May 4,2015 before the Joint Select Committee on Tax Reform by Michael E. Caryl, Vice-Chairman of the Commission.

FINDINGS

Upon applying widely recognized standards, of an ideal state and local tax structure, to West Virginia's tax system as it existed in 1997-1998, Governor Underwood's Commission on Fair Taxation found that the system:

1. Was too regressive;
2. Had too many separate and narrowly-focused taxes;
3. Had too many exemptions and exceptions;
4. Was not adaptable to the State's evolving economy ;
5. Lacked sufficient revenue-generating capacity for local governments;
6. Lacked fair and equitable tax dispute review procedures; and
7. Needed a means of funding public education which was fair, stable and accountable while providing a competitive property tax structure.

FAIRNESS

Because fairness was central to its mandate, the Commission expressly recognized the need for fairness in the context of the following relationships and a need for a balance among them:

1. Fairness <u>among</u> taxpayers.
2. Fairness <u>to all</u> taxpayers as a single class.
3. Fairness to the government as the people's institution.
4. Fairness in an overall tax structure balances the need for fairness in all three relationships.

GOALS

To address such findings and to achieve that balance of fairness, the Commission established six specific goals:

1. A simple, broad-based, low-rate tax system with fewer taxes and limited preferences (e.g. exemptions, credits, etc.).
2. A less regressive tax system.
3. A more stable tax system that responds to changes in the evolving nature of the State's economy.
4. Providing local government with more revenue-generating capacity and flexibility.
5. Providing for more independence and objectivity in the procedures for review of state and local tax disputes.
6. Providing a means of funding public education which was more fair, stable and accountable while providing a more competitive property tax structure.

PLAN AND CONSTITUTIONAL AMENDMENT

To achieve the goals and that fairness balance, a plan was adopted, and a constitutional amendment proposed, which would have implemented the following wide-ranging reforms that would have:

1. Repealed the property tax on licensed motor vehicles and phased-out that tax on all other tangible personal property.
2. Required the Legislature to fully fund the <u>regular</u> school levy (to the "thorough and efficient" constitutional standard) while preserving the real property tax base for <u>future</u> local <u>excess</u> levies.

PLAN AND CONSTITUTIONAL AMENDMENT

3. Reallocated the entire <u>regular</u> real property tax levy authority to counties and municipalities.
4. <u>Required</u> the Legislature to make counties and municipalities whole <u>if</u> necessary to avoid a revenue shortfall from the loss of the <u>current</u> personal property tax revenue.
5. Preserved the real property tax base for payment of <u>existing</u> bond levies and <u>required</u> the Legislature to underwrite any <u>actual</u> shortfall in local bond levy revenues.

PLAN AND CONSTITUTIONAL AMENDMENT

6. Repealed, phased-out or replaced all existing state taxes <u>except</u> the severance tax, the *ad valorem* tax on real and utility property, the property transfer tax, gasoline excise tax, various "sin" taxes and the estate tax.
7. Authorized the Legislature to replace the eliminated taxes with a new progressive income tax (PIT), a new business activity and profits tax (BAPT), a new general excise tax (GET), a new electric power generation tax and a new retaliatory-only insurance premiums tax.
8. Authorized the Legislature to provide exemptions from the PIT for low-income elderly and disabled persons.

PLAN AND CONSTITUTIONAL AMENDMENT

9. The BAPT base would consist of retained current profits; dividends, interest, rents and royalties paid; the compensation and benefits paid to employees and depreciation on new assets, less a deduction in the year of purchase for the full cost of depreciable capital assets. A small business exemption from the BAPT, based on either the amount of BAPT base <u>or</u> gross receipts, was allowed.

PLAN AND CONSTITUTIONAL AMENDMENT

10. <u>Required</u> exemptions from GET for only: isolated sales, sales among related businesses, employee compensation and benefits; and for purchases for resale, for direct use in manufacturing, agriculture and natural resource production, for use by government agencies and for free distribution to the public by charities; for government services and goods not competing with private businesses; and <u>allowed</u> Legislature to also exempt sales of advertising space, time and services, and of health care services, prescription medicine and appliances.

PLAN AND CONSTITUTIONAL AMENDMENT

11. <u>Required</u> that increases (or decreases) in the rate of the PIT, the GET, the BAPT or the severance tax, would be accompanied by proportional increases (or decreases) in the rates of each of those other listed taxes.
12. Preserved the remaining economic benefit of any previously earned credits, exemptions, exceptions, discounts or other tax relief provisions (if they can be finitely measured), but otherwise repealed all credits, etc. prospectively and only allowed them to be reinstated or new ones enacted upon a vote of 2/3 of the members of each house of the Legislature.

PLAN AND CONSTITUTIONAL AMENDMENT

13. Prohibited the imposition of any new government fees, measured by a percent or a rate, and only allowed new fees to be based on a fixed monetary amount.

14. Permitted the Legislature to empower counties and municipalities to impose the same taxes that the Legislature would be allowed to impose - including a "piggy back" GET.

IMPLEMENTATION STATUS

The actions taken to date toward implementation of the plan's goals may be summarized as follows:

1. Partial/piecemeal implementation of several goals: Repealed or reduced some taxes and credits; extended low-income tax relief, and instituted: (a) WVOTA for review of state tax disputes, (b) limited property tax appeals reforms and (c) limited home rule for municipalities (but not counties).
2. Goals of simplicity, consistency and fairness among taxpayers were undermined by adding new special exemptions and credits.

IMPLEMENTATION STATUS

3. The goals of a stable and efficient tax system responsive to today's and tomorrow's evolving economy, of a competitive property tax system, of broad local government flexibility and, most importantly, neutrality and greater fairness among and to taxpayers, have remained largely, or in some cases, completely, unaddressed.

FINAL THOUGHTS

1. The Commission's plan is simply "food for thought," and there is more than one way to "skin the (tax reform) cat," but it does offer a vision of a tax structure that would be simpler, more efficient, more competitive, more stable as a revenue source, more flexible for local government, disciplined by constitutional linkage of the rates of major taxes, and, most importantly, blessed as being "fair" by a vote of the people.
2. There is long-standing precedent for the BAPT in New Hampshire's BET, a state without an income tax on compensation paid to employees or (through a liberal deduction for earned income) on the owners of most pass-through businesses.
3. The Commission's plan was revenue neutral and included modeling to show its impact on various industries.

Thank You