



West Virginia Joint Select Committee on Tax Reform

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Perspectives on West Virginia's Tax Structure and Reform Options

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Topics Covered

- **Business tax burden in West Virginia**
- **Corporate net income tax**
- **Consumers' sales and service tax and use tax**
- **Tax administration**
- **Unclaimed property**
- **Business personal property tax**
- **Local B&O tax**



Business Tax Burden in West Virginia

- COST/EY Study for FY 2013
 - West Virginia businesses paid 50.4% of all state and local taxes (national average: 44.9%)
 - Business share of local taxes much higher: 75.1% in WV vs. 51.4% national average
 - Largest category was property tax (27.6% of business tax total), followed by severance & local gross receipts tax (21.4%), excise tax (20%), sales tax (13.6%), and corporate income tax (6.7%)
 - West Virginia business taxes amounted to 6% of gross state product (national average: 4.7%)
 - “Tax benefit ratio” for WV is \$1.4 of business tax for each \$1 of business benefit (assuming 50% of education spending benefits business) – national average ratio is 1.2



Corporate Net Income Tax

- Generally, corporate income tax the most volatile
- Concerns with complexity and uncertainty of the tax relative to the burdens of administration and compliance
- Lower corporate rate mitigates negative impact (phase-down to 6.5% rate)
- Specific concerns in West Virginia include:
 - Combined reporting
 - “Tax haven” provisions
 - Unitary group disputes on audit
 - Commissioner discretion
 - Related party expense addback
 - Sales factor “throwout”
 - Economic nexus



Sales & Use Tax

- Intended to be imposed on final consumption, not business-to-business transactions
- Deficiencies in applying tax to B2B include tax pyramiding and anti-competitiveness
- West Virginia the second-lowest (best) states in taxing business-to-business transactions
- Precision needed when reviewing “tax expenditures” to avoid taxing B2B
- Importance of Streamlined Sales Tax provisions and “best practices” in reducing compliance costs for taxpayers



Tax Administration

- State tax administration: WV “grade” of B
 - High interest rates on underpayments (9.5%)
 - Higher interest rate for underpayments than overpayments
 - Corporate return filing burden: return due date is same as federal (insufficient time to prepare state return); no definition of “final determination” triggering requirement to report a federal change, and insufficient time to report a federal change to the State
 - Transparency: no letter rulings published to Tax Department website
- Property tax administration items: no *de minimis* exclusion, unequal assessment, interest rate differential, insufficient appeal period, “clear and convincing” burden of proof, inability to escrow/defer payment of disputed tax



Unclaimed Property

- Purpose of the unclaimed property law is to reunite owners with their property, not to raise revenue
- COST recommendations on unclaimed property applicable to West Virginia:
 - Exempt business-to-business transactions
 - Provide an independent, prepayment appeals process
 - Ban contingent fee audits by private audit firms on behalf of the State
 - Exempt gift cards from escheatment



Business Personal Property Tax and Local B&O Tax

- Business personal property tax hurts state competitiveness for new investment (new and expanding facilities)
- Business personal property taxes are prevalent but increasingly being limited, decreased, or repealed
 - De minimis exceptions
 - Filing thresholds
- State-level gross receipts taxes are rare, but local gross receipts taxes remain prevalent
- Gross receipts taxes ignore ability to pay and are anticompetitive (similar impact as sales tax on business inputs)
- Administrative complexity of local gross receipts taxes creates additional barriers to investment