

**Joint Select Committee on Tax Reform
Tax Reform Subcommittee A**

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**History of Taxation on Business Personal
Property**

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A. West Virginia Constitution

1. Constitutional Debates

2. Article VIII, Constitution of 1863

“1. Taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property from which a tax may be collected, shall be taxed higher than any other species of property of equal value; but property used for educational, literary, scientific, religious or charitable purposes, and public property, may, by law be exempt from taxation.”

3. 1932 Tax Limitation Amendment

- Amended Article X, § 1 of Constitution
- Established four classifications of property
- Capped the levy rates that could be imposed on each class
- Authorized excess levies for 3 years, upon a 60% favorable vote of the people and capped the excess levy rate at 50% of the regular levy rate.

4. 1958 Amendment

- Added § 1a to Article X, exempting bank deposits and household goods and personal effects, if such goods and personal effects are not held out or used for profit.

5. 1982 Amendment

- Amended § 1b of Article X, to, among other things, require that all property be assessed at 60% of its value.
- By super majority vote, the Legislature may increase this percentage.
- This amendment also required a statewide reappraisal of real and personal property.

6. 1984 Amendment

- Amended § 1a of Article X, exempting notes, bonds and accounts receivable, stocks and other intangible personal property from taxation once the statewide reappraisal was completed.

7. 1986 Amendment

- Added § 1c to Article X, exempting from ad valorem taxation inventory and warehouse goods in the stream of Interstate Commerce.
- This exemption was phased-in over period of five years.

B. What is tangible personal property?

“Personal property” is defined in W. Va. Code § 11-5-3 and means “all fixtures attached to land, if not included in the valuation of such land entered in the proper landbook; all things of value, moveable and tangible, which are the subjects of ownership; all chattels real and personal[.]”

1. Chattels real and personal

- Assessed as tangible personal property. W. Va. Code § 11-3-7a.
- Examples
 - Oil and gas leases and lease of other natural resources are taxable chattels real.
 - A lease of a building for below market rent is a taxable chattel real.

2. Buildings under construction

- No new building, mobile home used for residential purposes permanently affixed to the land and owned by the owner of the land, addition or improvement may be assessed until it is so far finished as to be fit for use, but the **material in the same shall be entered in the personal property books** and assessed as such. W. Va. Code § 11-4-11.

3. Fixtures and machinery

- Fixtures and machinery may be assessed and included in the value of the building shown in the landbook, W. Va. Code § 11-3-7, or may be assessed as personal property, W. Va. Code § 11-5-1
- If machinery becomes exempt from property taxes, or is subject to a lower assessment rate, the Legislature may want to clarify when fixtures and machinery are assessed as real property.

C. What tangible personal property is exempt from property tax?

1. Farm personal property. W. Va. Code § 11-3-9(a)(28) (2008).
2. Bank deposits and money. W. Va. Code § 11-3-9(a)(22).
3. Freeport warehouse exemption. W. Va. Code § 11-5-13 (1987) and § 11-5-13a (1997).

4. Exempt use property

a. Real and personal property used for educational, literary, scientific, religious or charitable purposes, all cemeteries, and public property may by general law be exempt from ad valorem property taxation. W. Va. Const. Art. X, § 1.

(1) This exemption is implemented in W. Va. Code § 11-3-9 and by various other sections of the West Virginia Code.

(2) Tangible personal property that is exempt from tax is not entered in the personal property book. W. Va. Code § 11-5-1.

4. Exempt use property (cont'd)

b. Exempt use property includes, but is not limited to, real and tangible personal property:

(1) Owned by the West Virginia Economic Development Authority (WVEDA) and certain other public corporations established by the Legislature are exempt from property tax. *See, e.g.,* W. Va. Code § 31-15-17. Today, private sector economic development projects may include land, buildings, machinery or equipment owned by the WVEDA and leased to a private sector business. This property is generally exempt from taxation.

4. Exempt use property (cont'd)

(2) Owned by county economic development authorities or county building commissions are exempt from property tax under W. Va. Code § 11-3-9(a)(3).

(3) Used for area economic development purposes by nonprofit corporations when the property is not leased out for profit is exempt from property tax under W. Va. Code § 11-3-9(a)(14).

D. What tangible personal property is subject to a special method of valuation?

1. Motor vehicles. W. Va. Code § 11-1C-5(a)(2)(A) (1990), previously codified in W. Va. Code § 17A-3-3a (1957).
2. Air and water pollution control equipment. W. Va. Code § 11-6A-3 (1973).
3. Coal waste disposal power projects. W. Va. Code § 11-6A-5 (1995).

4. Wind power projects. W. Va. Code § 11-6A-5a (2007, 2008).
5. Special Method for Appraising Dealer Vehicle Inventory. W. Va. Code § 11-6C-1 *et seq.* (1995, 1996, 2007, 20).
6. Special Method of Valuation of Certain Manufacturing Production Property. W. Va. Code § 11-6E-1 *et seq.* (1996) (2011).
7. Special Method for Appraising Qualified Capital Additions to Manufacturing Facilities. W. Va. Code § 11-6F-1 *et seq.* (1997), 2011).

8. Assessment of Interstate Public Service Corporation Motor Vehicle Businesses Registered under a Proportional Registration Agreement. W. Va. Code § 11-6G-1 *et seq.* (1998).
9. Special Method of Valuation of Special Aircraft Property. W. Va. Code § 11-6H-1 *et seq.* (2008).
10. Special Method for Valuation of Certain High-technology Property. W. Va. Code § 11-6J-1 *et seq.* (2009).

E. Options

Taxation or exemption of tangible personal property does not need to be an all or nothing proposition.

Currently all property subject to assessment is assessed at 60% of its value as required by W. Va. Const. art. X, § 1b.

1. Option -- A constitutional amendment could authorize the Legislature to (a) classify species of tangible personal property, (b) exempt some or all species of tangible personal property from taxation, and/or (3) prescribe one or more lower assessment percentages for one or more species of tangible personal property.

a. To illustrate, the enabling legislation might allow the following classifications of tangible personal property and, for each classification, specify an assessment percentage that is less than 60%:

- (1) motor vehicles,
- (2) business inventory,
- (3) industrial machinery and equipment,
- (4) natural resource production machinery and equipment,
- (5) chattels real and personal,
- (6) construction machinery and equipment, and
- (7) other commercial business equipment.

2. Option -- A constitutional amendment might exempt business inventory from tax.

a. Business inventory is exempt from property taxes in most states and the District of Columbia.

b. Business Inventory is taxed in 10 states, including West Virginia. These 10 states include:

- (1) Arkansas
- (2) Kentucky
- (3) Louisiana
- (4) Maryland – Exempt from state tax but taxed by some counties.
- (5) Mississippi
- (6) Oklahoma
- (7) Texas
- (8) Virginia – Exempt from state tax but subject to local property tax or an alternative business license tax (gross receipts tax)
- (9) Vermont
- (10) West Virginia

F. Public utility personal property

1. The operating property of public service businesses, such as railroads, electric power companies, gas companies, telephone companies, water companies, and pipelines is valued as a unit for West Virginia ad valorem property tax purposes. This unit value is then allocated among the various taxing jurisdictions in which the operating property is located. Consequently, there is:

- No separate assessed value for operating real property owned by a public service business; and
- No separate assessed value for operating tangible personal property owned by a public service business.

2. *Caveat*: A downside to assessing some tangible personal property at less than 60% of value is that the same treatment may need to be given to railroad tangible personal property, 49 U.S.C. § 11503, or commercial airline property, 49 U.S. Code § 40116.

G. Some statistics

1. County boards of education

To some extent the regular levy revenue loss to county boards of education can be made up through the state aid to education formula. However, for the 2015 property tax year and the July, 2015 – June 30, 2016 fiscal year:

- 43 County boards of education had an excess levy.
- 21 County boards of education had a levy for bonded indebtedness.

2. Summary of 2015 Statewide Assessed Values

Statewide assessed value of:

Real property	\$58,885,203,520
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Class II personal property	\$ 284,207,406
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Class III & IV personal property	<u>\$24,155,919,907</u>
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Total tangible personal property	\$24,440,127,313
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Statewide assessed value of
public utility property

\$ 9,510,726

3. Summary of 2015 Taxes Levied Against Assessed Values

Taxes levied against:

Class II real property	\$404,281,751
Class III real property	\$274,604,780
Class IV real property	\$225,461,953
Total real property	\$904,348,484
Class II personal property	\$ 3,163,728
Class III personal property	\$419,130,177
Class IV personal property	\$145,815,835
Total personal property	\$568,109,740

Total taxes levied on
public utility property

\$214,474,021

Source: Classified Assessed Valuations Taxes Levied, 2015 Tax Year, Fiscal Year Ending June 30, 2016, State Tax Department.

4. In 17 counties, the assessed value of tangible personal property is 50% or more of the assessed value of real property in the county.

These counties include:

1. Boone
2. Brooke
3. Doddridge
4. Gilmer
5. Harrison
6. Jackson
7. Lewis
8. Logan
9. Marshall
10. McDowell
11. Mingo
12. Pleasants
13. Ritchie
14. Taylor
15. Wayne
16. Wetzel
17. Wyoming

5. In four of these 17 Counties --

- Marshall
- McDowell
- Wetzel
- Wyoming

-- the assessed value of tangible personal property exceeded the assessed value of real property in the county.