

## CHAPTER 10

### MISCELLANEOUS TAXES

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#### **Table of Contents** **Page**

<b>Chapter 10 – Miscellaneous Taxes .....</b>	<b>10-1</b>
¶ 1001 Business Registration Tax.....	2
¶ 1002 Corporate Tax on Excess Acreage.....	5
¶ 1003 Corporate License Tax .....	5
¶ 1004 Motor Carrier Road Tax.....	6
¶ 1005 Motor Fuel Excise Tax.....	6
¶ 1006 Telecommunications Tax.....	8
¶ 1007 Business and Occupation Tax - Tax on Utilities .....	8
¶ 1008 Business and Occupation Tax - Tax on Natural Gas Storage .....	9
¶ 1009 Business and Occupation Tax – Electricity.....	10
¶ 1010 Tobacco Products Excise Taxes .....	11
¶ 1011 Soft Drinks Excise Tax .....	13
¶ 1012 Excise Tax on Transfer of Real Property.....	15
¶ 1013 Health Care Provider Taxes .....	17
¶ 1014 Severance and Business Privilege Tax – Behavioral Health Service Providers	21
¶ 1015 Unemployment Compensation Tax .....	21

¶ 1016 Municipal Taxes .....	22
¶ 1016.1. Hotel occupancy tax .....	22
¶ 1016.2. Property taxes .....	23
¶ 1016.3. Municipal license taxes.....	24
¶ 1016.4. Business and occupation or privilege taxes.....	24
¶ 1016.5. Public utilities tax.....	26
¶ 1016.6. Amusement taxes.....	27
¶ 1016.7. Tax on purchases of intoxicating liquors and private club fees.....	27
¶ 1016.8. License tax on horse and dog racing.....	27
¶ 1016.9. Motor vehicle operator’s tax .....	27
¶ 1016.10. Domestic animal tax .....	27
¶ 1016.11. User fees .....	28
¶ 1016.12. Pension relief municipal occupation tax.....	28
¶ 1016.13. Pension relief municipal sales and use tax.....	29
¶ 1016.14. Alternative municipal sales and use tax.....	29
¶ 1016.15. Pilot program to increase home rule powers of municipalities .....	30
¶ 1017. Consumer Fireworks .....	31
¶ 1018. Medical Cannabis.....	31
¶ 1019. Industrial Hemp-derived Cannabinoid Regulation Act.....	32
¶ 1020. Select Plant-Derived Product Regulation Act .....	32
¶ 1021. Economic Opportunity Development District Excise Tax.....	32
Index – Chapter 10 -- Miscellaneous Taxes.....	34

**¶ 1001 Business Registration Tax**

*Law: W. Va. Code § 11-12-1 et seq.*

*Taxpayers subject to tax:* Every person engaging in or prosecuting any business activity in the State of West Virginia must first obtain a Business Registration Certificate from the State Tax Commissioner and pay the Business Registration Tax.

A certificate must be obtained for each fixed location from which property or services are offered for sale or lease to the public or at which customer accounts may be opened, closed, or serviced. A separate certificate is required for each location from which coin-operated machines are available to the public, but not for each machine. A business which sells tangible personal property or services from vehicles needs a certificate for each fixed location and must carry a copy of the certificate in each vehicle.

A transient vendor must carry and publicly display the certificate when doing business in this State and must post a \$500 bond with the Tax Commissioner to ensure payment of taxes.

Contractors must keep a copy of the business registration certificate available at every construction site in this State until the work at such site is completed.

*Exemptions from registration and payment of tax:* Persons engaging in business activities in this State who are not required to collect or withhold a tax administered under the Tax Procedures and Administration Act, who do not claim an exemption from the sales or use tax, and whose gross income is \$4,000 or less during the tax year preceding the year of registration are exempt from registration. Additionally, organizations which qualify for exemption from federal income taxes under IRC § 501, political subdivisions of this State, the United States and its agencies, persons engaged in agriculture and farming, and foreign retailers who are not engaging in business in this State, are exempt from payment of the tax. However, businesses exempt from payment of the tax must still register and obtain a registration certificate if doing business in this State.

*Registration certificates:* Upon receipt of an application, registration certificates are issued for a period of up to twenty-four months beginning with the first day of July of the fiscal year of the State during which the certificate is issued. However, a business registration certificate issued on or after July 1, 2010, will be valid until the business ceases doing business or the certificate is suspended, revoked, or canceled by the State Tax Commissioner. The Commissioner may cancel or refuse to issue a new business registration certificate for failure to comply with State tax laws, including failure to pay local property taxes on business tangible personal property. Certificates must be posted in a conspicuous position in the place of business. Contractors must post a copy of the certificate at every construction site in this State.

Changes in the name of the person or change of location, or address, or changes in ownership of the business or changes in real parties of interest are considered a cessation of the business and require a new certificate. Changes of partners or members of firms or officers of a corporation do not require a new certificate.

Persons selling cigarettes, other tobacco products or cigarette wrappers at wholesale or retail, must additionally obtain a license to sell cigarettes or other tobacco products or cigarette wrappers.

Transient vendors, collection agencies, employment agencies and persons selling drug paraphernalia must comply with their respective registration provision before beginning business in this State and these businesses must obtain a separate business registration certificate for any other business operation conducted on site.

*Rate of tax and due date:* The business registration tax is \$30 per certificate. The certificate issued to a business is permanent unless the business changes its location or changes its name or until it is suspended, revoked, or cancelled by the Tax Commissioner. The tax is payable with the initial registration. New businesses are required to obtain a business registration certificate before commencing business.

An initial “Sparkler and Novelty Registration Fee” of \$15 is charged all businesses selling sparklers and novelties. If a business sells sparklers and novelties from multiple locations, each location must be registered, and a \$15 registration fee paid for each location.

Municipalities now have two options for issuing business licenses. A municipality may require a municipal license for business activities in the municipality and may impose a reasonable tax that cannot exceed the amount of the State license tax. Alternatively, the municipality may enact an ordinance creating an annual General Municipal Business license for municipal purposes and assess a tax that may not exceed \$20 per license, except where a business license tax or fee is established elsewhere in the West Virginia Code.

*Penalties:* If a person engages in or prosecutes any business activity in this State before applying for a business registration certificate or continues doing business in this State without timely renewing the certificate, the person is subject to a money penalty equal to \$50 per month for each month, or fraction thereof, the failure continues, except that when the failure is to renew a certificate, the penalty may not exceed \$50. (W. Va. Code § 11-12-9). This penalty is in addition to interest or other additions to tax discussed in chapter 9.

*Cancellation or suspension of certificate:* The State Tax Commissioner may cancel or suspend a business registration certificate if a registrant files a false or fraudulent application, willfully refuses or neglects to file a tax return, willfully refuse or neglects to pay any tax, additions to tax, penalties or interest, when due, neglects to pay over any tax withheld from any person or held in trust for the State, abuses an exemption from sales or use tax, fails to pay use tax on taxable purchases for use in business, or fails to either pay the tax or give a properly executed exemption certificate to a vendor, or fails to pay in full delinquent personal property taxes owed for the calendar year. The State Tax Commissioner may revoke, cancel, or suspend a business registration certificate when informed by a county sheriff that personal property taxes owed by the business are delinquent. Additionally, the Tax Commissioner may revoke, suspend, or refuse to issue or renew a business registration certificate for any business determined to be an alter ego, nominee, or instrumentality of a business whose business registration certificate has been revoked or suspended. Rules have been established for such determinations. (W. Va. Code § 11-12-5.)

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

## **¶ 1002 Corporate Tax on Excess Acreage**

*Law: W. Va. Code § 11-12-75*

*Taxpayers subject to tax:* Corporations authorized to hold or holding more than 10,000 acres of land in this State are required to pay the corporate tax on excess acreage. The Attorney General has given an opinion that leasehold interests are not included within the meaning of land for purposes of the statute. (46 Op.Atty.Gen. 413 (1956)). A corporation created under West Virginia law is required to state in its agreement for incorporation and a foreign corporation applying for authority to transact business in this State is required state in its agreement or application the number of acres it desires to hold. Thereafter, if the corporation desires to hold additional acres it must apply to the Secretary of State for authorization to hold the additional acres.

*Rate of tax:* The tax is 5 cents per acre owned over 10,000 acres. The tax is paid to the Secretary of State when the agreement for incorporation or application for authority to do business is filed with the Secretary of State. Thereafter, the tax is paid with an application by the corporation to hold additional acreage. The application must be signed by the President, attested by the Secretary and under the corporate seal of the corporation. The Secretary of State then issues a certificate to the corporation showing the acreage the corporation is authorized to hold.

*Assignment of authority to hold excess acreage:* A corporation that paid this tax may assign, without further payment by the assignee of the tax, its license or authority to hold lands in excess of 10,000 acres provided the assignee is a corporation organized solely to conduct the same general business and with the same stock ownership as the original licensee and the assignment is accompanied by a conveyance and transfer to the assignee corporation of all the lands and other assets of the original licensee. The assignment must be filed with the Secretary of State who, upon being satisfied that the assignee corporation has conformed to the preceding requirements, will issue a certificate authorizing the assignee corporation to hold the same number of acres the original licensee was authorized to hold.

*Penalties:* A corporation which fails to pay the tax is liable for a fine of from \$25 to \$500, and a penalty of 10% of the amount of the tax due.

## **¶ 1003 Corporate License Tax**

*Law: W. Va. Code § 11-12C-1 et seq.*

The corporate license tax was repealed for license years beginning on and after July 1, 2008.

## ¶ 1004 Motor Carrier Road Tax

*Law: W. Va. Code § 11-14A-1 et seq.*

*Introduction:* The Motor Carrier Road Tax is closely related to the Motor Fuel Excise Tax.

*Taxpayers subject to tax:* The Motor Carrier Road Tax is imposed on motor carriers, which are defined as any vehicle having two axles and a gross vehicle weight exceeding 26,000 pounds, or having 3 or more axles regardless of weight, except recreational vehicles. The tax is paid on each gallon of motor fuel used in motor carrier operations in the State.

*Rate and basis of tax:* The tax is the same rate as the Motor Fuel Excise Tax discussed at ¶ 1005.

*Exemptions:* Motor carriers operated by any agency of the federal and state governments, or political subdivisions, and school buses.

*Registration fee:* Non-International Fuel Tax Agreement vehicles pay a registration fee of \$5. A West Virginia identification marker is required on each vehicle.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

## ¶ 1005 Motor Fuel Excise Tax

*Law: W. Va. Code § 11-14C-1 et seq.*

*Introduction:* The Motor Fuel Excise Tax replaced the Gasoline and Special Fuels Excise Tax, effective January 1, 2004.

*Taxpayers subject to tax:* Persons importing motor fuel into the State.

*Rate and basis of tax:* The Motor Fuel Excise Tax is a combination of a flat rate of 20.5 cents per gallon, plus a variable rate equal to 5% of the average per gallon price of motor fuel. The variable component is based on the average wholesale price of gasoline and special fuel as determined by the State Tax Commissioner on or before the first day of December each year. Beginning July 1, 2017, the variable component of the tax may not be less than 15.2 cents per gallon of motor fuel. The aggregate motor fuel excise tax rate on conventional motor fuels, e.g., gasoline and diesel fuel is:

January 1, 2024 – December 31, 2024	35.70 cents per gallon
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The tax also applies to compressed natural gas (CNG), liquefied natural gas (LNG) and liquefied petroleum gas (propane). The aggregate motor fuel excise tax on these products:

January 1, 2024 to January 31, 2024:

Compressed natural gas (CNG)	\$1.954 per 1,000 cubic feet
CNG – GGE Measure	\$0.248 per 126.67 cubic feet
Liquefied natural gas (LNG)	\$0.159 per gallon
Liquefied petroleum gas (propane)	\$0.195 per gallon
Field gas	Exempt per W. Va. Code § 11-14C-9a

WV State Tax Department Administrative Notice 2023-08.

The tax is imposed at the time motor fuel is imported into the State, other than by bulk transfer, and is measured by invoiced gallons received outside the State at a refinery, terminal, or bulk plant for delivery into West Virginia. The tax does not apply to motor fuel imported into the State in the fuel tank of a motor vehicle, but the Motor Carrier Road Tax may still apply.

Transporters, importers, and exporters of motor fuel are required to use the FuelTrac System to register fuel diversions and imports involving West Virginia. Failure to register and keep adequate records may result in civil penalties. Information for using the FuelTrac System can be obtained at <http://www.fueltrac.us/fueltrac.us>.

The motor fuel excise tax applies to alternative fuels, such as natural gas and hydrogen (except electricity), at rates equivalent to the gasoline tax and with a variable rate equal to 5% of the average wholesale price of the alternative fuel, all to be set by the Tax Commissioner. Alternative fuel bulk end users, providers and retailers must obtain the appropriate license from the Tax Commissioner.

*Exemptions:* The following sales of motor fuel are exempt from the flat rate component of the tax: motor fuel exported to another state, aviation fuel, dyed special fuel, and propane. Refundable exemptions from the flat rate component are available for the following purchasers: the U.S. Government, any county or municipal governmental agency, county boards of education, urban mass transportation authorities, civil defense or emergency service programs, volunteer fire departments and nonprofit ambulance or emergency rescue services. Refunds are permitted for taxes paid on motor fuel: exported to another state or nation; consumed in stationary off-highway turbine engines, used for heating, used in boilers, used as a dry cleaning solvent or commercial or industrial solvent, used as lubricants, ingredients or components of any manufactured product or compound; used in commercial watercraft or locomotives; purchased in quantities of 25 gallons or more and used in engines not operated on State highways, used to power a power take-off unit on a cement mixer, garbage, or fuel delivery truck, or used by a person

regularly operating a vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons. Motor fuel exported from the State to another state or nation is exempt per se from the flat rate and variable component of the tax, provided that the destination nation or state tax is collected and remitted by the supplier. Refundable exemptions from the variable rate component are available for the following purchasers: the U.S. Government, the State of West Virginia and its institutions, any county or municipal governmental agency, county boards of education, urban mass transportation authorities, civil defense or emergency service programs, volunteer fire departments and nonprofit ambulance or emergency rescue services, licensed exporters that are exported from West Virginia to any other state or nation provided the other nation or state's tax is paid, and, beginning January 1, 2018, all gallons of motor fuel sold for use or consumed in railroad diesel locomotives, with a statewide cap of \$4.3 million of refunds allowed per year for all railroad diesel locomotive operators operating in the state.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

*Claims for Refund:* Claims for refund of lost fuel generally must be filed within three years of the month of the loss, or three years after the year of loss for evaporation loss. Refund claims for otherwise exempt sales must be made within one year from the end of the calendar year of the loss. Dealers and bulk plants are entitled to an annual refund of all taxes for invoiced gallons lost through evaporation.

#### **¶ 1006 Telecommunications Tax**

*Law:* W. Va. Code § 11-13B-1 *et seq.*

The telecommunications tax was repealed effective March 7, 2012.

#### **¶ 1007 Business and Occupation Tax - Tax on Utilities**

*Law:* W. Va. Code §§ 11-13-2d and 11-13-2e.

*Taxpayers subject to tax:* The business and occupation tax on utilities (W. Va. Code § 11-13-2d) is levied as an annual privilege tax on taxpayers engaged in public service or utility businesses, except railroad, express, pipeline, telephone and telegraph companies, water carriers, motor carriers. Taxpayers engaged in the business of generating or producing electric power are taxed under W. Va. Code § 11-13-2o. The business of rendering gas storage services is subject to subject to tax (W. Va. Code § 11-13-2e). Gas includes natural and artificial gas.

*Rates of tax on utility gross receipts:*

- (1) Street and interurban and electric railways are taxed at 1.4%. (Exempt beginning January 1, 2017.)

- (2) Water companies are taxed at 4.4%, except for municipally owned water plants.
- (3) Natural gas companies are taxed at 4.29%, except that the sale of natural gas is exempt to the extent that the natural gas is separately metered and is gas from which the purchaser derives hydrogen and carbon monoxide for use in the manufacture of chemicals in the State and the benefit of the exemption is passed on to the purchaser of the natural gas.
- (4) Toll bridges are taxed at 4.29%.
- (5) All other public service or utility businesses are taxed at 2.86%.

The “all other public service” business classification does not apply to electric power generation, transmission, or distribution businesses, which are taxed under W. Va. Code § 11-13-2o, or cable television companies (W. Va. Code § 24D-1-27).

*Basis of tax for utilities:* The measure of the tax does not include gross income derived from commerce between West Virginia and other states or between West Virginia and other countries. The gross income of the taxpayer from any other activity is taxed under the appropriate section of the West Virginia Code, so only income from business as a utility is subject to the business and occupation tax.

*Returns and payment of tax:* For taxpayers whose monthly estimated tax liability exceeds \$1,000, the business and occupation tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrues, except that the May installment is due June 15. A monthly estimated return is filed along with the tax payment. For tax liabilities of less than \$1,000 or per month, the tax is payable in quarterly installments on or before the last day of the fourth, seventh, and tenth months of the taxable year. Where the tax does not exceed \$200 per year, annual returns and payment within one month of the year-end are required.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

## **¶ 1008 Business and Occupation Tax - Tax on Natural Gas Storage**

*Law:* W. Va. Code § 11-13-2e.

*Taxpayers subject to tax:* Every taxpayer engaged in storing natural gas in reservoirs which are first used for storage after March 1, 1989, is subject to the business and occupation tax on natural gas storage.

*Rate of tax:* The tax is five cents per dekatherm (generally 1,000 cubic feet) of natural gas injected into or removed from a storage field in West Virginia.

*Basis of tax:* The dekatherms of gas withdrawn and injected are netted monthly and the net dekatherms are subject to the tax. The Natural Gas Industry Jobs Retention Credit is available against the gas storage tax liability.

*Returns and payment of tax:* Returns are due monthly or quarterly on the 20th day of the month following the month or quarter in which the tax accrues.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

## **¶ 1009 Business and Occupation Tax – Electricity**

*Law:* W. Va. Code § 11-13-2o

*Taxpayers subject to tax:* Taxpayers who generate or produce electricity for sale, profit or commercial use, either directly or through the activity of others, or who are in the business of selling electricity to consumers, or in both businesses, are subject to the business and occupation tax on the business of generating or producing or selling electricity. A coal-fired merchant power plant, which does not receive regulated cost recovery by the Public Service Commission or any rate-making authority of any other state or the United States, is exempt from the business and occupation tax on its generating capacity. Such coal-fired merchant power plant must sell electricity only on the wholesale market, not sell electricity pursuant to one or more long-term sales contracts, and must not sell electricity to retail consumers.

*Rate of tax:* Generators or producers of electricity pay tax at the rate of \$22.78 multiplied by the taxable generating capacity of each generating unit in this State owned or leased by the taxpayer, subject to reductions for units which have installed a flue gas desulfurization system. Beginning January 1, 2021, a coal-fired generating unit in operation before January 1, 1995, pays the business and occupation tax imposed by Code 11-13-2o, except that the unit may elect to recompute the electrical generating capacity at 45% of the official capacity beginning July 1, 2021. The election is irrevocable, and the owner shall agree to keep the unit in operation until July 1, 2025. If the unit ceases to operate, a recapture tax is imposed equal to the tax savings. For taxable periods beginning on and after July 1, 2008, the taxable generating capacity of generating units utilizing a turbine primarily generated by wind is equal to 12.5% of the official capability of the unit. The taxable generating capacity of a generating unit utilizing solar photovoltaic methods (*i.e.*, array of solar cells electronically connected to provide electric generation) shall equal 8% of the official capacity of the unit.

Taxpayers who sell electricity to consumers in this State which is not generated or produced in this State are taxed at 19/100 of one cent (\$0.0019) times the kilowatt hours of electricity sold, except that the rate is 5/100 of one cent (\$0.0005) if sold to manufacturing facilities where the demand exceeds 200,000 kilowatts per year.

*Returns and payment of tax:* For taxpayers whose monthly estimated tax liability exceeds \$1,000, the business and occupation tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrues, except that the May installment is due June 15. A monthly estimated return is filed along with the tax payment. For tax liabilities of less than \$1,000 or per month, the tax is payable in quarterly installments on or before the last day of the fourth, seventh, and tenth months of the taxable year. Where the tax does not exceed \$200 per year, annual returns and payment within one month of the year-end are required.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

## ¶ 1010 Tobacco Products Excise Taxes

*Law:* W. Va. Code §§ 11-17-1 *et seq.*

*Introduction:* Cigarettes and other tobacco products are taxed under the tobacco products excise tax. The cigarette excise tax was imposed in 1947. The tax on other tobacco products took effect in 2002.

### *Cigarettes*

*Rate of tax:* Cigarettes are taxed at the rate of 55 cents on each twenty cigarettes and, on the sale of each fraction of twenty, at the same fractional part of 55 cents. Beginning July 1, 2016, the rate of tax on cigarettes increased to \$1.20 per pack of 20 cigarettes. Only one sale of the same article can be used in computing the amount of Cigarette Tax due.

*Definition of Cigarette:* The law provides a two-part definition of the term “cigarette.” One part is narrow; the other is broad. The narrow part of the definition reads “any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any ingredient, the wrapping or cover of which consists of paper or any substance or material except tobacco (is a cigarette).” The broad part of the definition reads “any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packing and labeling is likely to be offered to, or purchased by, consumers as a cigarette (is a cigarette).”

*Tax Indicia:* Revenue indicia, which are tax stamps, must be affixed to the bottom of each package of cigarettes sold and may only be purchased by (1) wholesalers who buy unstamped cigarettes directly from manufacturers, and (2) vending machine operators who, when they purchase cigarettes directly from manufacturers, are considered wholesalers even though they sell cigarettes at retail.

The stamp must be affixed to the bottom of the cellophane wrapper of every individual cigarette package or similar container before the cigarettes can be delivered for resale to other wholesalers, jobbers, or retailers. Stamps are purchased from the State Tax Commissioner or from certain West Virginia banks or trust companies that the State Tax Commissioner has authorized to sell cigarette revenue indicia. The statute authorizes a discount of 4 percent from the face value of the indicia as a commission for affixing the stamps or impressions onto cigarette packages. Prepayment of this tax is possible when wholesalers are authorized by the State Tax Commissioner to use a metering device in affixing revenue indicia. The State Tax Commissioner may authorize wholesalers who file an appropriate surety bond to make conditional credit purchases of cigarette indicia.

#### *Other Tobacco Products*

*Rate of Tax:* Tobacco products other than cigarettes are taxed at the rate of 7 percent of the wholesale price. Beginning July 1, 2016, the rate of tax on other tobacco products increased to 12% of wholesale price.

*“Wholesale Price” defined:* “Wholesale price” is the gross invoice price, including all federal excise taxes, at which the tobacco products are sold to distributors or wholesalers. “Wholesale price” excludes all trade discounts and other reductions in the manufacturer’s price.

*Method of collecting tax:* This tax does not use tax stamps or other indicia to evidence payment of the tax. Tax is collected using the inventory method of taxation. No discount is allowed for the monthly remittance of the excise tax on other tobacco products.

#### *E-cigarette liquids*

Beginning July 1, 2016, an excise tax is levied and imposed on sales of e-cigarette liquid at the rate of 7.5 cents per milliliter or fraction thereof, or if not sold, then at the same rate upon the use by the wholesaler or dealer. E-cigarette liquid mixing kits and e-cigarette liquid mixing kit components are taxed in accordance with the amount of e-cigarette liquid, in milliliters, which can be produced by or from the kit or components thereof, as determined by the Tax Commissioner.

“E-cigarette liquid” means any of the liquids or liquid mixtures used in e-cigarettes and is also known as e-juice, e-fluid, e-liquid, or e-liquid product. E-cigarette liquid includes e-cigarette liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin, nicotine from any source, or flavorings.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 applies to this tax.

## ¶ 1011 Soft Drinks Excise Tax

*Law: W. Va. Code §§11-19-1 et seq.*

*Introduction:* The soft drinks tax is an excise tax levied upon the sale, use, handling or distribution of bottled soft drinks, syrups and powder bases prepared for mixing soft drinks whether manufactured within or outside West Virginia.

The term “bottled soft drinks” includes almost any soft drink-type of beverage provided in any type of container. However, fluid milk to which no flavoring has been added and natural undiluted fruit and vegetable juices are specifically exempt, as are coffees and tea to which no flavoring or sweetener has been added. The term “soft drink syrups and powders” is also interpreted quite broadly.

*Payment of tax:* The tax is paid through purchase of tax stamps or tax crowns by manufacturers, distributors, wholesale or retail dealers or any other person who is the original consignee of such soft drinks, syrups, and powders and who brings such products into the State for the purposes described above. Crowns are tax symbols that are permanently applied by manufacturers to bottle caps, can lids, cartons or labels. The tax may be paid by invoice method in lieu of affixing stamps on certain grocery-type products, such as powders, ades, and punches, by remitting gross tax due. The tax shall not be collected more than once on any bottled soft drink, soft drinks syrup or powder manufactured, sold, or distributed in the State of West Virginia.

*Rate of tax:* The rates of the tax are as follows:

On bottled soft drinks

1 cent on each 16.9 fluid ounces of any fraction of that amount, or  
1 cent on each ½-liter or any fraction of that amount;

On soft drinks syrup

80 cents on each gallon and, on each fractional part of a gallon, the  
same

fractional part of 80 cents, or

84 cents on each 4 liters and, on any fractional part of 4 liters, the  
same

fractional part of 84 cents;

On dry mixture used for making soft drinks

1 cent on each ounce or any fraction of that amount,

1 cent on each 28.35 grams or any fraction of that amount.

*Bond:* Manufacturers and distributors of soft drinks are required to furnish an appropriate bond to insure their compliance with regulations.

*Tax stamps or crowns:* Persons who wish to buy tax stamps or crowns can do so only after authorization has been given by the State Tax Commissioner. Although the Commissioner may authorize any sheriff or any West Virginia bank or trust company to sell soft drinks tax stamps, no such authorization has been given. Consequently, the Commissioner is the only source of tax stamps.

Soft drinks tax must be paid in advance when the stamps are bought. Stamp discounts from the face value of the stamps are as follows:

on sales under \$25, no discount;  
on sales from \$25 but less than \$50, 5%, and  
on sales of \$50 or more, 10%.

When crowns are bought, payment of tax may be made either in advance or on credit bound by the terms on appropriate surety bond. Both cash and credit buyers of tax crowns are granted a discount of 12.5 percent from the face value of the crowns. When either the stamps or crown discount is taken, no claim can be made for a tax refund because of the breakage or destruction of stamped or crowned containers, because of the spoilage of the product, or because of the loss or destruction of the tax stamps or crowns. However, if any of the tax stamps or crowns on soft drinks, soft drink powders or soft drink syrups on which a tax has been paid are destroyed by fire, lightning or flood or if any soft drinks, syrups or powders upon which the tax has been paid are exported from the State or are required to be destroyed pursuant to federal or State order, the taxpayer may file a claim for refund for an amount equal to the amount of tax actually paid for such stamps or crowns. This claim for refund must be filed within 180 days of the date the tax stamps or crowns were destroyed or the soft drink product upon which the tax was paid was destroyed or exported from the State.

Effective July 1, 2022, the soft drinks tax is no longer dedicated for the purpose of providing revenue for the construction, maintenance, and operation of a four-year school of medicine, dentistry, and nursing of West Virginia University. A portion of the insurance premium tax is now dedicated to the Health Sciences Center at West Virginia University, the School of Medicine at Marshall University, and the West Virginia School of Osteopathic Medicine.

Effective July 1, 2024, the soft drinks tax shall be repealed and no longer imposed or collected after that date.

*Procedure:* The West Virginia Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to this tax.

## ¶ 1012 Excise Tax on Transfer of Real Property

*Law:* W. Va. Code §§ 11-22-1 *et seq.* and § 8A-12-21.

*Introduction:* West Virginia imposes excise taxes on the transfer of real property. There are three taxes, which are paid to the county clerk when the deed transferring the property is recorded. The State tax is \$1.10 per \$500 of value (or fraction thereof) of the property transferred. The county tax is generally a like amount. In counties that adopted a farmland preservation plan, an additional tax of \$1.10 per \$500 of value (or fraction thereof) of the property transferred is imposed. There are limited exceptions to these taxes.

*Rate of tax:* The rate of the State tax is \$1.10 for each \$500 (or fraction thereof) of the value of the transferred property. The Legislature has also imposed an additional county excise tax on the transfer of real property. The additional county tax is \$0.55 for each \$500 (or fraction thereof) of the value of the transferred property, and, until June 30, 2017, counties had the option of increasing the additional county tax to \$1.10 for each \$500 (or fraction thereof) of the value of the transferred property. Effective July 1, 2017, each county commission may now increase the rate of the county excise tax to \$1.65 for each \$500 (or fraction thereof) of the value of the transferred property. Almost all county commissions have increased the county excise tax to the rate of \$1.10 for each \$500 (or fraction thereof) of the value of transferred property. (See W. Va. Code § 11-22-2.) Consequently, the real estate transfer tax collected by the county clerk in most counties is \$2.20 per \$500 of value, and counties now have the option of increasing the overall rate to \$2.75 per \$500 of value. Effective July 1, 2021, 10% of the state excise tax collected, and each year thereafter an additional 10% of each state excise tax collected shall be retained by the county. Effective July 1, 2030, the entire excise tax is a county tax to be used in the county wherein it is collected for county purposes.

Some counties have elected to impose an additional tax for farmland preservation. See discussion *infra*.

*Measure of tax:* "Value," which is the measure of tax, means in the case of any document not a gift, the amount of the full actual consideration for the document, paid or to be paid, including the amount of any lien or liens assumed. In the case of a gift, or any other document without consideration, value is the actual monetary value of the property conveyed or transferred. In the event any document includes real property or any interest in real property lying outside the State of West Virginia or includes personal property, value is the proportion of the consideration paid in case of the transfer for consideration, or the proportion of the true and actual value in case of a gift, which the actual value of the real property located in West Virginia bears to the total actual value of all the property, real or personal, transferred by the document. The value is required to be stated in the declaration of consideration or value provided for in section 11-22-6. See W. Va. Code § 11-22-2(8).

*When tax is due:* Tax is due when the document transferring title to real property is presented to the county clerk for recording. The grantor is primarily liable for payment of the tax. However, the grantee becomes liable for payment of the tax when it is not paid by the grantor.

*Exemptions:* The recordation of some documents transferring real property is not subject to the excise tax on the transfer of real property. See W. Va. Code § 11-22-1(4) (defining “document” and excluding from its meaning certain transfers resulting in their being exempt from tax). Transfers exempt from tax include and are limited to the following:

- (1) The transfer of ownership of real property by operation of law, e.g., real property is jointly owned by two individuals with right of survivorship. Upon the death of one of the owners, the survivor owns the interest in the property possessed by the decedent at the time of his or her death.
- (2) The document transfers ownership of real property that has a value of \$100 or less.
- (3) The document transfers ownership of real property through a testamentary or *inter vivos* trust.
- (4) The document transfers ownership of real property through a deed of partition.
- (5) The transfer of ownership of real property is by deed(s) made pursuant to mergers of corporations, limited liability companies, partnerships, or limited partnerships.
- (6) The transfer of ownership of real property is made by deeds pursuant to conversions to limited liability companies from corporations, partnerships, limited partnerships, or trusts.
- (7) The document transfers ownership of real property made by deed from a subsidiary corporation to its parent corporation for no consideration, other than the cancellation or surrender of the subsidiary’s stock.
- (8) The document is a lease of real property.
- (9) The document transfers real property between husband and wife.
- (10) The document transfers real property between parent and child or transfers between parent and child and his or her spouse, without consideration.

- (11) The document transfers real property between grandparent and grandchild or transfers between grandparent and grandchild and his or her spouse, without consideration.
- (12) The document transfers real property without consideration between a principal and straw party for any purpose.
- (13) The document is a gift of real property to or transfers real property from or between voluntary charitable or educational associations or trustees of voluntary charitable or educational associations and like nonprofit corporations having the same or similar purposes.
- (14) The document transfers real property by quitclaim or corrective deed without consideration.
- (15) The document transfers real property to or from the United States.
- (16) The document transfers real property to or from the State of West Virginia.
- (17) The document transfers real property to or from any instrumentalities, agencies or political subdivisions of the United State or the State of West Virginia when the transfer is by gift, dedication, deed, or condemnation proceeding.
- (18) The document is a mortgage or deed of trust given as security for a debt.

*Additional Tax – Farmland Preservation:* In addition to the transfer taxes imposed in W. Va. Code § 11-22-2, article 22, chapter 11 of the Code, county commissions that have created a farmland protection program are authorized in W. Va. Code § 8A-12-21 to impose an additional county excise tax on the privilege of transferring title to real property. This additional tax may not exceed \$1.10 per \$500 of value (or fraction thereof). In counties that have exercised this option, the combined taxes on the privilege of transferring title to real property may be \$3.85 per \$500 of value or fraction thereof:

- \$1.10 State tax
- .55 County regular tax
- 1.10 County additional tax
- \$1.10 County additional tax for farmland preservation

### **¶ 1013 Health Care Provider Taxes**

*Law:* W. Va. Code §§ 11-27-1 *et seq.*

*Introduction:* The health care provider taxes were originally imposed on the provision of sixteen different types of health care services in West Virginia. In 2001, legislation was enacted to phase out the tax on certain services over a 10-year period.

Today ambulatory surgical center services, inpatient and outpatient hospital services, nursing home services, independent laboratory and x-ray services and services of intermediate care facilities remain subject to a health care provider tax. Net collections of tax are deposited in the Medicaid State Share Fund and used to draw matching federal dollars.

*Measure of tax:* The health care provider taxes are measured by the application of a rate to the gross receipts received from providing the particular health care services. Gross receipts include all payments, in cash or in kind, from patients, third-party providers and others for the services rendered, including retroactive adjustments under reimbursement agreements with third-party providers. No expenses may be deducted. Gross receipts that are not related to providing health care services (*i.e.*, fees received by health care providers for providing expert testimony) and charitable donations are not subject to the health care provider taxes.

*Deductions:* The following deductions can be made from gross receipts before the calculation of the tax:

1. Accrual-based taxpayers may deduct bad debts from their gross receipts to the extent that the amount of the bad debt was included previously in gross receipts upon which the Health Care Provider Taxes were paid.

2. Accrual-based taxpayers, except nursing homes, can reduce gross receipts by the amount of their contractual allowances to the extent included in the amount of gross receipts upon which taxes were previously paid. Contractual allowances are the differences between revenue or gross receipts at established rates and the amounts realized from third-party providers under contractual agreements.

*Rates of tax:* The following is a list of health care services and their respective tax rates:

<b><u>Service</u></b>	<b><u>Rate</u></b>
Ambulatory Surgical Centers	1.75%
Independent Laboratory or X-ray Services	5.00%
Inpatient Hospital Services	2.50%
Intermediate Care Facility for Individuals with an intellectual disability	5.50%
Nursing Homes	5.50%
Outpatient Hospital Services	2.50%

No tax is imposed on chiropractic services, dental services, emergency ambulance services, nursing services, opticians' services, optometric services, physicians services (including psychiatrists and ophthalmologists), podiatry services, psychological services, or therapists' services.

In addition to the healthcare provider tax imposed on providers of inpatient and outpatient hospital services at the rate of 2.5%, the acute care hospital tax is imposed on certain eligible acute care hospitals at the rate of 0.449%, effective October 1, 2023, on the gross receipts received or receivable by the eligible acute care hospital that provides inpatient or outpatient hospital services in the State of West Virginia through a Medicaid upper payment limit program. (W. Va. Code § 11-27-39(a); See WVSTD Adm. Notice 2023-03). See *below* for information regarding an additional contingent acute care hospital tax.

*Returns:* Taxpayers that owe more than an average of \$50 a month are required to file monthly estimated tax returns and pay in equal installments at least eleven-twelfths of the tax due for their taxable year. Monthly estimate returns and payments are due the fifteenth day of the month following the month for which the tax accrued. All taxpayers are required to file an annual return. The taxable year is the same as the taxpayer's taxable year for federal income tax purposes. Annual returns are due the last day of the month following the end of the taxable year.

*Providers of behavioral health service:* See ¶ 1014, below.

*Health Care Related Tax on Managed Care Organizations:* A health-care related tax is imposed on the privilege of holding a certificate of authority within West Virginia to establish or operate a "health maintenance organization" ("certified HMO") pursuant to W. Va. Code § 33-25A-4. A managed care organization is a certified HMO that provides health care services to Medicaid members or non-Medicaid members pursuant to an agreement with the West Virginia Department of Health and Human Resources. "Medicaid member months" means the number of Medicaid members in a taxable health plan in each month or part thereof over the course of the tax year.

*Effective date:* The tax is effective for 3 years beginning on the first day of the State's fiscal year following a 30-day period after the Secretary of DHHR has posted notice on the Department's website that approval has been received from the federal Centers for Medicare and Medicaid Services that the tax is a permissible health care related tax in accordance with Title 42, Section 433.68 C.F.R. and is eligible for federal financial participation. The tax is void if not so eligible.

*Rates:* Effective July 1, 2022, the tax is based on the following rates applied to each taxable health plan's total Medicaid member months within tiers I, II and III, and to non-Medicaid member months within tiers IV and V: as follows: (1) Tier I - \$ 35.26 for each Medicaid member month under 250,000; (2) Tier II - \$20.72 for each Medicaid member month between 250,000 and 500,000; (3) Tier III - \$1.036 for each Medicaid member month greater than 500,000; (4) Tier IV - \$0.259 for each non-Medicaid member month under 150,000; and (5) Tier V - \$0.1036 for each non-Medicaid member month of 150,000 or more. W. Va. Code § 11-27-10a. W. Va. Code § 11-27-10a. Effective July 1, 2023, and each July 1 thereafter, the tax rates for each tier will be increased by the greater of either 0.0% or the average West Virginia Medicaid Managed Care capitation rate

change from the 2 preceding fiscal years, to be calculated by the WV Bureau for Medical Services. The new rates are certified to the Tax Commissioner, who publishes them by Administrative Notice.

*Contingent Increase of Tax Rate on Certain Eligible Acute Care Hospitals:* In addition to the Health Care Provider Tax and the .75% Health Care Tax on Acute Care Hospitals, an additional tax of 0.13% is imposed on the gross receipts received or receivable by an eligible acute care hospital that provides inpatient or outpatient hospital services in West Virginia. The hospitals taxed do not include state-owned or designated facilities, critical access hospitals, licensed free-standing psychiatric or medical rehabilitation hospitals, licensed long-term acute care hospitals, and critical access hospitals. W. Va. § Code 11-27-38 and 39. Effective July 1, 2023, the tax rate shall be increased as needed to provide non-federal share funding for practitioner payments to the maximum amounts allowed by the centers for Medicare and Medicaid Services (CMS), to be calculated by the WV Bureau for Medical Services, and published by the State Tax Commissioner by Administrative Notice. This rate increase includes physicians contracted with billing and collection responsibility by an eligible acute care hospital.

*Acute Care Clearing Fund Created:* A special fund known as the Acute Care Clearing Fund is created for taxes collected from the Health Care Provider Tax and the Health Care Related Tax on Managed Care Organizations. The funds may be used only to support increasing practitioner payment fee schedules for practitioners employed by acute care hospitals.

*Effective Date:* The additional tax became effective July 1, 2019, and legislation passed in 2021 removed the June 30, 2021 expiration date, but will be suspended if Congress, the Legislature, or a court disqualifies these taxes from counting toward state Medicaid funds available to be used to determine the federal financial participation. The additional tax may not be imposed under the West Virginia Bureau for Medical Services incorporates the payment methodology into the appropriate contracts and agreements and receives the necessary approvals from the Centers for Medicare and Medicaid Services.

*Procedures:* The Tax Procedure and Administration Act discussed in chapter 9 of this Guidebook applies to these taxes.

## **¶ 1014 Severance and Business Privilege Tax – Behavioral Health Service Providers**

*Law:* W. Va. Code §§ 11-13A-2(d) and 11-13A-3(h)(1)

These services are not subject to the tax after June 30, 2016.

## **¶ 1015 Unemployment Compensation Tax**

*Law:* W. Va. Code Chapter 21

*Introduction:* The West Virginia Unemployment Compensation tax was originally enacted in 1936 and has been substantially revised throughout its legislative history. The law is administered by WorkForce West Virginia, Division of Employment Service.

*Employers subject to the tax:* Employers subject to the West Virginia Unemployment Compensation tax include any employer liable under the Federal Unemployment Tax Act; any employer who pays wages of \$1,500 or more in any calendar quarter in the current or preceding year; any employer who employed at least one individual (not necessarily the same person) for some portion of a day in each of 20 different calendar weeks, whether or not consecutive, in either the current or preceding calendar year; state and local governmental agencies; nonprofit educational institutions; or any employer of agricultural labor if wages of \$20,000 or more were paid in any calendar quarter or which employed 10 or more individuals in each of 20 different calendar weeks. There are numerous other specific provisions and exclusions applicable to particular employers. Employers not covered may elect to become covered for at least two years.

*Wages subject to tax:* “Wages” means all remuneration for personal services, commissions, and bonuses. Wages in excess of \$8,000 for each individual employee, and payments on account of retirement, sickness or accident disability, medical expenses, or death are not considered wages. Gratuities customarily received by an individual in the course of employment from persons other than the employer are treated as wages if such gratuities are at least \$20 per month and are required to be reported to the employer by the employee. Wages in excess of \$12,000 are exempt from the unemployment tax and the measure of the tax is the wages paid to the employee or \$12,000, whichever is less. When the moneys in the unemployment fund reach \$220 million on February 15 of any year, the threshold wage is thereafter reduced to \$9,000. W. Va. Code § 21A-1A-28(d).

*Rate of tax:* For the first 36 months that an employer is subject to the tax, the rate is 2.7% of the first \$8,000 of each employee’s wages paid during the calendar year, except that beginning April 11, 2009, the tax is computed on the first \$12,000 of wages until such time as the threshold automatically reduces to \$9,000. For foreign corporations or entities engaged in the construction trade, the rate is 7.5%. After 36 months the rate is adjusted, based on the experience ratings of the employer and the assets of the fund.

The agency maintains a separate account for each employer to which contributions in excess of 0.4% are credited and against which unemployment benefits paid out are debited. Employers are classified in accordance with their actual experience as of July 1 of each year. If an employer fails to file returns the rate increases to 7.5%. If benefits paid out exceed contributions by an amount in excess of 5% of their average annual payroll, employers pay at the rate of 5.5%, and if the deficit is from 5% to 10%, the rate is 6.5%, and if the deficit is over 10%, the rate is 7.5%. Once a debit balance is established, the rate applies for the entire year.

*Returns:* The tax return is due quarterly, and the tax is to be paid with the required return. Past due payments bear interest at the rate of 1% per month.

## **¶ 1016 Municipal Taxes**

*Law:* W. Va. Code §§ 7-18-1 *et seq.* and 8-13-1 *et seq.*

*Introduction:* The West Virginia Constitution gives home rule authority to all municipalities. However, the extent of a municipality's authority is limited to those powers expressly delegated to them by the Legislature and to those implied powers that are implied from the powers expressly delegated. The result is that municipalities have limited taxing authority, when compared to municipalities in other states. (W. Va. Const. Art. VI, § 39.)

Municipalities have plenary power and authority to levy taxes on real and personal property and may levy special assessments or other benefit taxes, and may levy the following taxes, explained in detail.

### **¶ 1016.1. Hotel occupancy tax**

*Law:* W. Va. Code §§ 7-18-1 *et seq.*

*Imposition of tax:* Counties and municipalities may impose a privilege tax upon the occupancy of hotel rooms within the taxing jurisdiction. The tax is imposed upon the consumer and collected by the hotel operator as part of the charge for a room. Previously, the tax was not imposed upon persons who occupied a room for 30 or more consecutive days; however, this exemption was repealed effective June 6, 2016. An exemption to the tax applies to hotel rooms occupied by a government employee when the charge for the room is billed directly to a government agency employer.

*Rate of tax:* The municipality may set the rate from 3% to 6% of the consideration paid for use of the hotel room, not including the West Virginia consumer sales and service tax, charges for meals, valet service, room service, telephone service or other such charges.

“Hotel” is defined as any facility or building, whether publicly or privately owned, including a governmental owned facility, in which the public may, for a consideration, obtain sleeping accommodations. The term includes boarding houses, condominiums, hotels, motels, inns, courts, lodges, cabins and tourist homes, parks, and governmentally owned parks. Hospitals, sanitariums, extended care facilities, nursing homes, or universities or college housing units (except for sleeping accommodations for nonstudents), any facility providing fewer than three hotel rooms, and tent, trailer, or camper campsites, are not considered hotels and are not subject to the tax. The rental of a banquet room, meeting room, or other rooms not primarily used for sleeping accommodations is not considered to be rental of a hotel room and is not subject to the tax, nor are sleeping accommodations rented on a month-to-month basis for 30 days or longer or rented to employees of the hotel operator for performing duties in support of the hotel. Hotel room occupancy billed directly to the federal or state government, or state agencies, is exempt. The tax may not be imposed on complementary hotel rooms provided without charge.

Effective January 1, 2022, a marketplace facilitator (i.e., one who contracts with a hotel to facilitate sales through a physical or electronic marketplace) is subject to the hotel occupancy tax if the facilitator makes sales exceeding \$100,000 in gross sales or transacts 200 or more transactions in West Virginia per calendar year, unless the hotel otherwise agrees.

A hotel may apply to its municipality or county for an appropriation to the hotel of up to 75% of the hotel tax collected by that hotel for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications, and similar expenses, by submitting a budget setting forth the proposed uses.

## **¶ 1016.2. Property taxes**

*Law: W. Va. Code § 8-13-1*

While municipalities have plenary power and authority to levy taxes on real and personal property, W. Va. Code § 8-13-1, the actual power and authority is limited. Municipalities have no authority to determine the value of any property for property tax purposes. The assessed value of all property except public utility property is determined by the assessor of the county in which the municipality is located. Under the West Virginia Constitution, property is assessed at 60 percent of its value. The methods of valuing property are prescribed by the Legislature. The Constitution divides all property into four classes and caps the maximum property tax levy rate that may be imposed on each class of property. W. Va. Const. Art. X, § 1. These maximum rates are allocated by the Legislature among county boards of education, county commissions, municipalities, and the State. For discussion of the classes of property, the levy rates, excess levies, and general obligation bond levies, see ¶ 606, *supra*. The municipal regular levy rate on owner-occupied residential property may not exceed 25 cents per \$100 of assessed value. The municipal regular levy rate on all other tangible property may not exceed 50

cents per \$100 of assessed value. Municipalities may impose voter-approved excess levies and general obligation bond levies. However, municipal excess levies may not be greater than 50 percent of the regular levy and must be approved by at least 60 percent of those voting on the question every five years. General obligation bond levies must also be approved by at least 60 percent of those voting on the question. General obligation bonds may not be issued for more than 34 years, and the aggregate amount of general obligation bonds issued by a municipality may not exceed five percent of the value of all taxable property in the municipality. (W. Va. Const. Art. X, § 8.)

### **¶ 1016.3. Municipal license taxes**

*Law:* W. Va. Code § 8-13-4

A municipality may impose a reasonable tax on anything for which a state license is currently required. Municipalities may also impose a license tax on any activity that was subject to a state license tax imposed by W. Va. Code § 11-12-1 *et seq.* prior to their repeal, or the chain store license tax imposed by W. Va. Code § 11-13A-1 *et seq.* prior to its repeal. The rate of these license taxes may not exceed the State rate in effect on January 1, 1970. (W. Va. Code § 11-12-4.) Counties and municipalities may not require licensing, certification, or registration of any person to practice a trade, occupation, or profession within its jurisdiction.

In lieu of the myriad of license taxes that municipalities have been authorized to impose, municipalities may now impose a general municipal business license tax for multiple purposes at a rate not to exceed \$20 per year.

### **¶ 1016.4. Business and occupation or privilege taxes**

*Law:* W. Va. Code § 8-13-5

Any business or occupation on which the State imposed its business and occupation tax prior to July 1, 1987, may be subject to a similar municipal business and occupation or privilege tax if engaged in business within the corporate limits of a municipality. Approximately half of West Virginia's 234 municipalities impose a business and occupation tax.

*Measure of tax:* The measure of tax is gross proceeds of sales, gross income or gross value of production depending upon the classification of the activity being taxed.

*Tax rates:* The rates of tax may not exceed the rate formerly imposed by the State, exclusive of surtaxes, in effect on January 1, 1959. (W. Va. Code § 11-13-25.) Additionally, municipalities may impose their business and occupation tax on banks and other financial business at a rate not to exceed one percent of gross income, on the privilege of generating electricity under a tax similar to that in W. Va. Code § 11-13-2m at a rate not to exceed 0.30%, and on the privilege of providing health maintenance

organization services at a rate not to exceed 0.50% of gross income received from providing health care to Medicaid recipients, individuals covered by the Public Employees Insurance Agency and other federal programs. Additionally, beginning July 1, 2007, municipalities may tax the unrelated business income, determined under IRC § 511, of corporations and organizations otherwise exempt from business and occupation tax under the applicable classification of the municipal business and occupation tax. The maximum rates of tax are as follows:

<b>Classifications</b>	<b>Maximum Rates</b>
Production of natural resources (§11-13-2a)	
Coal	1%
Sand & gravel (not mined or quarried)	3%
Oil, blast furnace slag	3%
Natural gas in excess of \$5,000	6%
Limestone or sandstone quarried or mined	1.5%
Timber	1.5%
Other natural resource products	2%
Manufacturing (§11-13-2b)	0.30%
Business of selling tangible property (§11-13-2c)	
Retailers	0.50%
Wholesalers	0.15%
Public service or utility business (§11-13-2d)	
Electric light and power companies (sales & demand charges, domestic purposes & commercial lighting)	4%
Electric light and power companies (all other sales and demand charges)	3%
Water companies	4%
Natural gas companies	3%
Toll bridges	3%
All other taxable public service or utility business	2%
Contracting (§ 11-13-2e)	2%
Amusements (§ 11-13-2g)	0.50%
Service business or calling (§ 11-13-2h)	1%
Rentals and royalties, etc. (§ 11-13-2i)	1%
Small loan and industrial loan businesses (§11-13-2j)	1%
Banking and other financial business (§ 11-13-2k)	1%
Electric power generation (§ 11-13-2m)	0.30%
Health maintenance organizations	0.50%

*Exemptions:* A municipality may not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of W. Va. Code § 11-13-3 prior to July 1, 1987. Exemption is determined without regard to any annual or monthly exemption allowed by the municipal business and occupation tax ordinance. Exemptions are provided for certain insurance companies, nonprofit cemetery companies, fraternal organizations except for the sale of

alcoholic beverages, religious and charitable organizations, credit unions, advertising services, nonprofit homeowners' associations, and nonprofit water and sewer companies governed by the West Virginia Public Service commission. (W. Va. Code § 8-13-5(d) and § 11-13-3.) Effective July 1, 2022, a municipality may not impose its business and occupation tax or privilege tax on the sale of new automobiles, but only on the sale of used automobiles.

*Apportionment:* Whenever a business activity is carried on in two or more municipalities, the gross income taxable by each municipality is determined by regulations of the State Tax Commissioner, since the same gross income may not be taxed by two or more municipalities. Gross income from retail and wholesale sales and on service businesses not taxed by any other municipality may be taxed by a municipality from which the activity is directed or in which the principal office of the taxpayer is located.

*Tax credits:* A municipality imposing a business and occupation tax has the authority to offer tax credits against such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

Taxes collected by a municipality are considered remitted "on time" when the date they are postmarked is on or before the deadline that those taxes are due. Taxes postmarked after the deadline date are late and subject to late fees or penalties. This applies to municipal business and occupation tax, city service fees, and rates, fees and charges made in accordance with West Virginia Code Section 8-13-13.

*Procedures:* The municipal ordinance imposing a business and occupation or privilege tax must provide procedures for the assessment and collection of the tax that are similar to those procedures in State business and occupation tax law on June 30, 1978, or to those procedures in the West Virginia Tax Procedure and Administration Act, W. Va. Code § 11-10-1 *et seq.* Additionally, the ordinance must conform to provisions in those laws as they relate to waiver of penalties and additions to tax.

#### **¶ 1016.5. Public utilities tax**

*Law:* W. Va. Code § 8-13-5a.

Municipalities have the power to levy excise taxes on services and tangible personal property provided by utilities within their corporate limits. The tax rate may not exceed 2% of the gross amount of each periodic statement rendered to such purchasers or consumers by the public utility. Sales of appliances are not included in the taxable amount. Sales of telecommunication services to other telecommunication providers are not included in the tax base, nor are telecommunication relay services for the deaf and hard of hearing. The public utilities collect the tax and account to the municipalities for the taxes collected.

**¶ 1016.6. Amusement taxes**

*Law: W. Va. Code § 8-13-6*

Municipalities have the power to levy amusement or admission taxes upon any public amusement or entertainment conducted within the corporate limits for profit or gain. The maximum tax rate is 2% and is levied upon the purchaser and added to the price of admission.

**¶ 1016.7. Tax on purchases of intoxicating liquors and private club fees**

*Law: W. Va. Code § 8-13-7*

Municipalities have the power to levy a tax upon purchases of intoxicating liquors within the corporate limits from a retail liquor store licensed by the Alcohol Beverage Control Commissioner, from any person licensed to sell wine at retail and from distributors licensed to sell or distribute wine. The maximum tax rate is 5%, which is added to the purchase price. The taxes are collected by the Tax Commissioner, remitted to the State Treasurer and distributed quarterly to the municipalities. Additionally, municipalities may collect a fee from private liquor club licensees, not to exceed the state license fee.

**¶ 1016.8. License tax on horse and dog racing**

*Law: W. Va. Code § 8-13-8*

Municipalities have the power to levy a daily license tax upon the operator of a horse or dog racetrack located within the municipality. The tax may not exceed the state daily license tax. The tax is not applicable to any fair, horse show, agricultural or livestock exposition at which horse or dog racing is conducted for not more than six days. West Virginia has four tracks licensed to operate horse or dog races.

**¶ 1016.9. Motor vehicle operator's tax**

*Law: W. Va. Code § 8-13-9*

A municipality has the power to levy an annual motor vehicle operator's license tax not to exceed \$2. The tax applies only to inhabitants of the municipality.

**¶ 1016.10. Domestic animal tax**

*Law: W. Va. Code § 8-13-10*

A municipality has the power to levy an annual license tax upon the privilege of keeping domestic animals within the corporate limits.

### **¶ 1016.11. User fees**

*Law: W. Va. Code § 8-13-13*

A municipality has the power to levy a reasonable user fee for furnishing police and fire protection, street maintenance, sewerage and garbage and other city services. Several West Virginia cities impose a weekly user fee on persons employed within the municipality. The fee is withheld from wages and paid by the employer to the municipality, on a quarterly basis, with the tax return required by the municipality.

The City Huntington's user fee is \$5.00 per week.

The Cities of Charleston and Morgantown have user fees of \$3.00 per week.

The City of Parkersburg's user fee is \$2.50 per week.

The Cities of Fairmont, Weirton, Wheeling, Montgomery, and Chester have user fees of \$2.00 per week.

The City of Romney's user fee is \$1.00 per week.

### **¶ 1016.12. Pension relief municipal occupation tax**

*Law: W. Va. Code § 8-13C-3*

Each qualifying municipality has the plenary power and authority to impose, by ordinance, a pension relief municipal occupational tax on taxable employees. A "qualifying municipality" is any municipality:

(1) In which the weighted average of the percentages to which its policemen's and firemen's pension and relief funds are fully funded is three percent or less on the date of adoption of the ordinance imposing the tax; and

(2) That has satisfied the following requirements:

(a) The municipality wishing to impose the tax must present to the Legislature's Joint Committee on Government and Finance a plan to remove the unfunded liabilities of its policemen's and firemen's pension funds and the necessary changes in West Virginia law have been enacted to allow for implementation of the municipal plan; and

(b) No cost-of-living increases or other benefit increases, and no new benefits, may be granted to or received by any member or beneficiary of a policemen's and firemen's pension and relief funds of a municipality during any period that the municipality imposes a pension relief municipal occupational tax, a pension relief

municipal sales and service tax, the pension relief municipal use tax or any combination thereof authorized under this chapter.

Any pension relief municipal occupational tax imposed must meet the following requirements:

- (1) The tax must be imposed at a rate of one percent or less;
- (2) The tax must be imposed at a uniform rate; and

(3) The tax rate must be applied only to salaries, wages, commissions, and other earned income of taxable employees that would be included in federal adjusted gross income for the year. The tax rate may not be applied to other forms of income including, but not limited to, intangible income and net profit from a business.

Each employer with a taxable employee, during each pay period, must withhold from the taxable employee's salary the amount of the tax as computed by applying the appropriate tax rate to the taxable employee's salary during that pay period and remit the withholdings to the appropriate municipal taxing authority.

As of January 1, 2024, no West Virginia municipality imposes a pension relief occupation tax.

#### **¶ 1016.13. Pension relief municipal sales and use tax**

*Law: W. Va. Code §§ 8-13C-4(a) and 8-13C-5(a)*

Each qualifying municipality has the plenary power and authority to impose, by ordinance, a pension relief sales tax and a pension relief use tax. The rate of tax may not exceed one percent of the price of the good or service purchased and used within the municipality that was not subject to the municipal sales and service tax. To prevent double taxation, credit is allowed for any sales tax lawfully paid to another municipality.

Exemptions from tax must conform to the State exemptions from tax. The tax must be collected by the State Tax Commissioner on behalf of the municipality. As of January 1, 2024, no municipality imposes this tax; however, the City of Charleston dedicates .5% of its municipal sales and use tax to a pension reserve fund.

#### **¶ 1016.14. Alternative municipal sales and use tax**

*Law: W. Va. Code §§ 8-13C-4 and 8-13C-5.*

Every municipality may impose a sales and use tax provided it does not impose a business and occupation tax. The rate of tax may not exceed 1% of the sales price of the good or service purchased or used within the municipality. To prevent double taxation,

credit is allowed for any sales tax lawfully paid to another municipality. The tax bases and exemptions from tax must conform to the State tax base and the State exemptions from tax. Additionally, motor vehicles and motor fuels are excluded from the tax base. The municipal tax is collected by the State Tax Commissioner at the same time that the State tax is collected.

See the Introduction and Chapter 5 of this Guidebook for a list of municipalities that impose municipal sales taxes.

### **¶ 1016.15. Pilot program to increase home rule powers of municipalities**

Law: W. Va. Code §§ 8-1-5a

In 2007, the Legislature established the Municipal Home Rule Pilot Program for five municipalities pursuant to which municipalities participating in the program may adopt ordinances, acts, resolutions, rules, and regulations they are otherwise prohibited from adopting. For example, municipalities that impose a business and occupation tax may not impose a sales tax unless they repeal their business and occupation tax.

In 2013, the Legislature extended the Municipal Home Rule Pilot Program for another five years and allowed an additional 16 municipalities to participate in the Pilot Program. The 2013 legislation provided that municipalities participating in Phase II of the Pilot Program may impose no new taxes except that they may impose a sales tax, at a rate not to exceed 1% if they reduce their business and occupation tax. In 2015, the Legislature amended the Municipal Home Rule Pilot Program to allow up to 34 municipalities to participate in the Program. In 2019, the Legislature made Municipal Home Rule a permanent program and eliminated the cap on the number of participating municipalities, opened the program to four Class IV municipalities per year and imposed the requirement that if a municipality reinstates or raises its municipal business and occupation tax that was reduced or eliminated in conjunction with the imposition of Home Rule municipal sales and use tax to concurrently reduce or eliminated its municipal sales and use tax in an amount comparable to the revenue estimated to be generated by the reinstated or raised business and occupation tax.

As of January 1, 2024, over eighty West Virginia municipalities impose 1% sales and use taxes pursuant to either W. Va. Code § 8-1-5a or W. Va. Code § 8-13C-14 and 15. See the Introduction and Chapter 5 of this Guidebook for a list of municipalities that impose municipal sales taxes.

The West Virginia Tax Commissioner has the exclusive responsibility for administering, collecting, and enforcing local sales and use taxes and excise taxes, and the State Tax Division may assess a fee (not to exceed 5% of total collections) for its administration, collection, and enforcement of such taxes. The tax bases for state and municipal sales and use taxes must be identical except that municipal sales/use taxes may not be imposed on sales of motor fuel, motor vehicles and satellite television service.

## **¶ 1017. Consumer Fireworks**

*Law: W. Va. Code § 29-3E-1 et seq.*

A retailer that possesses a consumer fireworks certificate issued by the State Fire Marshal may sell consumer fireworks in West Virginia.

“Fireworks” is defined in the law and means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks include consumer fireworks, display fireworks and special effects. Fireworks do not include sparkling devices, novelties, toy caps or model rockets.

“Consumer fireworks” means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties, toy caps or model rockets.

The annual fee for a consumer fireworks certificate to sell fireworks is \$500 for a temporary location and \$1,000 for a fixed location. The retailer must maintain at all times public liability and product liability insurance with minimum coverage limits of \$1 million to cover losses, damages or injuries that might result from selling consumer fireworks.

In addition to state and local sales taxes, a fireworks safety fee is levied equal to 12% of the sales price of consumer fireworks sold in West Virginia. This fee is collected by the State Tax Commissioner. Seventy-five percent of the fees collected are deposited in a special account in the State treasury known as Veterans’ Facility Support Fund and 25% is deposited in the Fire Protection Fund.

## **¶ 1018. Medical Cannabis**

*Law: W. Va. Code § 16A-9-1 et seq.*

A tax is imposed on the gross receipts of a dispensary received from the sale of medical cannabis by a dispensary to a patient or caregiver, to be paid by the dispensary, at the rate of 10%. The tax shall be charged against and be paid by the dispensary and shall not be added as a separate charge or line item on any sales slip, invoice, receipt or other statement or memorandum of the price paid by a patient or caregiver. The tax shall be paid by electronic funds transfer unless prohibited by state or federal law. No deduction is allowed for the cost of property sold, cost of materials to grow, process or sell the cannabis, labor costs, taxes, royalties, interest, or discounts paid or any other expense.

A dispensary shall make quarterly payments for each calendar quarter at the 10% rate on the gross receipts for the calendar quarter. The tax shall be due and payable on the 20th day of January, April, July, and October for the preceding calendar quarter on a form prescribed by the State Tax Division.

All money received from the tax imposed under subsection (a) shall be deposited into the Medical Cannabis Fund.

Medical cannabis shall not be subject to state or municipal sales or use tax or special district excise taxes.

**¶ 1019. Industrial Hemp-derived Cannabinoid Regulation Act**

*Law: W.Va. Code § 19-12E-12.*

Hemp-derived cannabinoid is a naturally occurring, non-synthetic, and unadulterated substance containing delta-9 tetrahydrocannabinol in a concentration of 0.3 percent or less on a dry weight basis. The product may only be sold to individuals 21 years of age or older. In addition to all other applicable taxes, an additional tax of 15% of the retail sales of hemp-derived cannabinoids is imposed. The tax shall not be added by the retailer as a separate line item on the sales document. The tax is payable quarterly, due on the 20th of January, April, July, and October, for the previous quarter.

**¶ 1020. Select Plant-Derived Product Regulation Act**

*Law: W.Va. Code § 19-12F-1 et seq.*

Kratom is a psychoactive preparation composed of the dried leaves of the *mitragyna speciosa*, a yellow-flowered tropical tree containing the alkaloids mitragynine and *y*-hydroxymitragynine, including a food product, ingredient, dietary supplement, or beverage containing any part of the leaf of the plant *mitragyna speciosa*. The product may only be sold to individuals 21 years of age or older. In addition to all other applicable taxes, an additional tax of 15% of the retail sales of kratom and kratom products is imposed. The tax shall not be added by the retailer as a separate line item on the sales document. The tax is payable quarterly, due on the 20th of January, April, July, and October, for the previous quarter.

**¶ 1021. Economic Opportunity Development District Excise Tax**

*Law: W. Va. Code §§ 7-22-7, 7-22-9, 7-25-12, 8-38-9*

While County Commissions have no inherent authority to levy taxes and have only that authority expressly granted to them by the Legislature, some County Commissions have been authorized to levy special district excise taxes on sales of tangible personal

property and services made from business locations in certain economic opportunity development districts. Municipalities may do the same per W. Va. Code § 8-38-9.

Proposed economic opportunity development districts must meet several statutory requirements, including a threshold capital investment amount of more than \$75 million. The four approved economic opportunity development districts under W. Va. Code § 7-22-12 are the Fort Henry Economic Opportunity Development District, in Ohio County; the Charles Pointe Economic Development District, in Harrison County; the University Town Centre Economic Development District, in Monongalia County; and the Hill Top House Hotel Economic Opportunity District, in Jefferson County. The one approved economic opportunity development district under W. Va. Code § 8-38-9 is the South Charleston Park Place Economic Opportunity Development District. The tax base and tax rate of the special district excise tax are identical to that of the state sales and use tax.

## Index – Chapter 10 -- Miscellaneous Taxes.

- Alternative municipal sales and use taxes ¶ 1016.14
- Amusement tax ¶ 1016.6
- Business and occupation tax – electricity ¶ 1009
  - rate of tax
  - returns and payment of tax
  - procedure
  - taxpayers subject to tax
- Business and occupation or privilege taxes ¶ 1016.4
  - apportionment
  - exemptions
  - measure of tax
  - procedures
  - tax credits
  - procedures
- Business and occupation tax – tax on natural gas storage ¶ 1008
  - basis of tax
  - procedure
  - rate of tax
  - returns and payment of tax
  - taxpayers subject to tax
- Business and occupation tax – tax on utilities ¶ 1007
  - basis of tax for utilities
  - procedure
  - rates of tax on utility gross receipts
  - returns and payment of tax
  - taxpayers subject to tax
- Business registration tax ¶1001
  - cancellation or suspension of certificate
  - exemptions from registration and payment of tax
  - penalties
  - procedure
  - rate of tax and due date
  - registration certificates
  - taxpayers subject to tax
- Consumer Fireworks ¶ 1017
  - annual fee for certificate to operate a temporary retail location
  - annual fee for certificate to operate a permanent location
  - consumer fireworks certificate
  - consumer fireworks defined
  - consumer fireworks safety fee
  - fireworks defined
    - liability insurance
- Corporate license tax ¶ 1003

- additional tax - farmland preservation
  - exemptions
  - introduction
  - measure of tax
  - rate of tax
    - state tax
    - county tax
    - additional county tax
  - when tax is due
- Corporate tax on excess acreage ¶ 1002
  - assignment of authority to hold excess acreage
  - penalties
  - rate of tax
  - taxpayers subject to tax
- Economic Opportunity Development District Excise Tax ¶ 1021
  
- Domestic animal tax ¶ 1016.10
- Excise tax on transfer of real property ¶ 1012
- Health care provider taxes ¶ 1013
  - deductions
  - introduction
  - measure of tax
  - procedures
  - rates of tax
  - returns
- Health Care Related Tax on Managed Care Organizations
  - acute care fund created
  - contingent increase of tax rate on certain eligible acute care hospitals
  - effective date
  - rates
- Industrial Hemp-derived Cannabinoid Regulation Act ¶ 1019
  
- Medical Cannabis ¶ 1018
  - dedication of revenues
  - introduction
  - measure of tax
  - rate of tax
- Motor carrier road tax ¶ 1004
  - exemptions
  - introduction
  - procedure
  - rate and basis of tax
  - registration fee
  - taxpayers subject to tax
- Motor fuel excise tax ¶ 1005

- exemptions
- introduction
- procedure
- rate and basis of tax
- taxpayers subject to tax
- Municipal taxes ¶ 1016
  - introduction
- Hotel occupancy tax ¶ 1016.1
  - imposition of tax
  - rate of tax
- License tax on horse and dog racing ¶ 1016.8
- Motor vehicle operator's tax ¶ 1016.9
- Municipal license taxes ¶ 1016.3
- Pension relief municipal occupation tax ¶ 1016.12
- Pension relief municipal sales and use tax ¶ 1016.13
- Pilot program to increase home rule powers of municipalities ¶ 1016.15
- Property taxes ¶ 1016.2
- Public utilities tax ¶ 1016.5
  - Tax on purchases of intoxicating liquors and private club fees ¶ 1016.7
- Select Plant-Derived Product Regulation Act ¶ 1020
- Severance and business privilege tax - behavioral health service providers ¶ 1014
- Soft drinks excise tax ¶ 1011
  - bond
  - introduction
  - payment of tax
  - procedure
  - rate of tax
  - tax stamps or crowns
- Telecommunications tax ¶ 1006
- Tobacco products excise tax ¶ 1010
  - definition of cigarette
  - introduction
  - method of collecting tax on other tobacco products
  - procedure
  - rate of tax
    - on cigarettes
    - on other tobacco products
    - on E-cigarette liquids
  - tax indicia
  - "wholesale price" defined
- Unemployment compensation tax ¶ 1015
  - employers subject to the tax
  - introduction
  - rate of tax
  - returns

wages subject to tax  
User fees ¶ 1016.11

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