

**STATE OF WEST VIRGINIA**

**FULL PERFORMANCE EVALUATION OF THE  
DEPARTMENT OF TAX AND REVENUE**

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Exchange of Tax Information  
Would Enhance the Collection  
of Local Tax Revenue

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**OFFICE OF LEGISLATIVE AUDITOR  
Performance Evaluation and Research Division  
Building 1, Room W-314  
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305  
(304) 347-4890**

**April 2000**

**PE00-03-161**

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Antonio E. Jones, Ph.D.  
Director

April 17, 2000

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable Vicki Douglas  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Department of Tax and Revenue*, which will be reported to the Joint Committee on Government Operations on Monday, April 17, 2000. The issue covered herein is "*Exchange of Tax Information Would Enhance the Collection of Local Tax Revenue.*"

The issue was discussed and provided to the Department on April 10, 2000.

Should you have any questions, let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Antonio E. Jones".

Antonio E. Jones

AEJ/aml



**ISSUE AREA 1: An Exchange of State Tax Information by the Tax Department to Local Governments Would Enhance the Collection of Local Tax Revenue.**

Currently, the West Virginia Tax Department does not provide local governments with state-level tax information on businesses that operate within local government jurisdictions. It would be beneficial to local governments that impose the Business and Occupation (B&O) tax to receive state-level tax information on its local businesses to ensure the maximum amount of revenue is being collected at the local level. For example, a list of all businesses registered with the State Tax Department could be used to cross-reference against local registration lists to ensure that the local government is collecting the B&O tax from every business within its jurisdiction. Also, any information resulting from the Tax Department’s audits of local companies may change the company’s local B&O tax liability. Without an exchange of state-level tax information from the Tax Department, local governments are without a valuable resource that will enhance the recovery of local tax revenue.

The Chief Inspector Division of the State Auditor’s Office estimated municipalities will collect \$124,200,079 in FY 2000 from local B&O taxes shown in Table 1 below. The ability to share information with local governments would help enhance the recovery of revenue. A one percent increase in collections would generate an additional \$1,240,000 in revenue, and a five percent increase in collections would generate an additional \$6,200,000 in revenue for municipalities.

**Table 1  
Estimated B&O Collections for FY 2000**

Class I & II Municipalities*	\$94,164,595
Class III Municipalities	\$22,901,967
Class IV Municipalities	\$7,133,517
<b>Total</b>	<b>\$124,200,079</b>
<i>* Classes I &amp; II Municipalities were combined in report from Auditor’s Office</i>	

The Legislative Auditor received a list of companies that are registered with the Tax Department for the city of Huntington. A list of companies that are registered with Huntington was also obtained from the city. The Tax Department’s list was generated based on Huntington zip codes. The difference between the two lists is 15,856 (see Table 2). The difference may be explained by the fact that companies on the Tax Department list includes more than one location for the same business, while for the city list the company is counted once. Also, some companies on

the Tax Department’s list may be exempt from Huntington’s B&O tax, or some companies with a Huntington zip code are not strictly located in Huntington and therefore are not liable for the B&O tax. A review of the two lists did show many companies were on both lists, however, there were companies on the Tax Department’s list that are not on the city’s list, and companies on the city’s list are not on the Tax Department’s list. It is conceivable that there are companies liable for Huntington’s B&O tax that are not paying because Huntington does not have them on its list. This would be determined by an exchange of tax information. The obvious implication is a loss of revenue to the city.

**Table 2**  
**Number of Registered Businesses in Huntington**

City of Huntington List	State Tax Department’s List
5,019	20,875

The reason the Tax Department does not share taxpayer information with local governments is because local governments do not have as stringent of penalties for breaching the confidentiality of tax information as those of the Tax Department. The penalty for violating these confidentiality and disclosure restrictions for the Tax Department are stated in West Virginia Code §11-10-5d:

*Any officer or employee (or former officer or employee) of this state who violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with costs of prosecution.*

By law (WVC §8-11-1), municipalities have authority to impose penalties for violations, however, any penalty that involves confinement in a county or regional jail cannot exceed 30 days. This restriction prevents municipalities from imposing a penalty that is equal to the penalties for state employees of the Tax Department. The Tax Department is willing to exchange tax information with local governments only if the penalty for breaching confidential tax information is the same for local government workers as it is for employees of the Tax Department.

The Tax Department proposed legislation this year to allow local, municipal, and government subdivisions to be covered under the same confidentiality restrictions and penalties as the Tax Department (See Appendix A for draft legislation). The proposed legislation would have modified West Virginia Code §11-10-5d(*Criminal Penalty section listed below*):

*Any officer or employee (or former officer or employee) of this state **or of any county, municipality or government subdivision** who violates this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with*



*costs of prosecution.*

If local governments had the same penalties as the Tax Department for breaching confidential tax information, the Tax Department has stated it would exchange important tax information to local governments. Consequently, local governments would probably collect additional revenue legally owed to them.

**Recommendation 1:**

*The Legislature should consider a statutory change to impose the same penalty on state and local government employees for breaching confidential tax information.*



## **APPENDIX A**

### **Draft Legislation to Allow an Exchange of Tax Information Between State Tax Department and Municipalities**



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Bill No. \

(By )

\_\_\_\_\_

[Introduced ; referred to the Committee] by

\_\_\_\_\_

11 A Bill to amend and reenact section five-d, article ten, chapter eleven of the West Virginia code  
12 specifying that tax returns and return information obtained from the tax commissioner  
13 pursuant to an exchange of information agreement or otherwise pursuant to the  
14 provisions of subsections (d) through (n) of the said section five-d, which is in the  
15 possession of any officer, employee, contract employee or representative of any local  
16 or municipal governmental entity or other governmental subdivision is subject to the  
17 confidentiality and disclosure restrictions set forth in the said article ten, chapter  
18 eleven, and specifying that unlawful disclosure of such information by any officer,  
19 employee or contract employee of any local, municipal or governmental subdivision  
20 is subject to the sanctions set forth in the said article ten, chapter eleven.

21 *Be it enacted by the Legislature of West Virginia:*

22 That section five-d, article ten, chapter eleven of the code of West Virginia, one thousand

1 nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

2 **ARTICLE 10.**

3 **11-10-5d. Confidentiality and disclosure of returns and return information.**

4 (a) **General rule.** Except when required in an official investigation by the tax commissioner  
5 into the amount of tax due under any article administered under this article or in any proceeding  
6 in which the tax commissioner is a party before a court of competent jurisdiction to collect or  
7 ascertain the amount of such tax and except as provided in subsections (d) through (n) of this  
8 section, it shall be unlawful for any officer or employee of this state or of any county,  
9 municipality or governmental subdivision to divulge or make known in any manner the tax return,  
10 or any part thereof, of any person or disclose information concerning the personal affairs of any  
11 individual or the business of any single firm or corporation, or disclose the amount of income, or  
12 any particulars set forth or disclosed in any report, declaration or return required to be filed with  
13 the tax commissioner by any article of this chapter imposing any tax administered under this  
14 article or by any rule or regulation of the tax commissioner issued thereunder, or disclosed in any  
15 audit or investigation conducted under this article. For purposes of this article, tax returns and  
16 return information obtained from the tax commissioner pursuant to an exchange of information  
17 agreement or otherwise pursuant to the provisions of subsections (d) through (n) of this section  
18 which is in the possession of any officer, employee, contract employee or representative of any  
19 local or municipal governmental entity or other governmental subdivision is subject to the  
20 confidentiality and disclosure restrictions set forth in this article: Provided That such officers,  
21 employees or contractors may disclose such information in an official investigation, by a local or  
22 municipal governmental authority or agency charged with the duty and responsibility to

1 administer the tax laws of the jurisdiction, into the amount of tax due under any lawful local or  
2 municipal tax administered by that authority or agency, or in any proceeding in which the local  
3 or municipal governmental subdivision, authority or agency is a party before a court of  
4 competent jurisdiction to collect or ascertain the amount of such tax. Unlawful disclosure of such  
5 information by any officer, employee or contract employee of any local, municipal or  
6 governmental subdivision is subject to the sanctions set forth in this article.

7 **(h) Definitions.** For purposes of this section:

8 (1) Background file document. The term "background file document", with respect to a  
9 written determination, includes the request for that written determination, any written material  
10 submitted in support of the request and any communication (written or otherwise) between the  
11 state tax department [state tax division of the department of tax and revenue] and any person  
12 outside the state tax department in connection with the written determination received before  
13 issuance of the written determination.

14 (2) Disclosure. The term "disclosure" means the making known to any person in any manner  
15 whatsoever a return or return information.

16 (3) Inspection. The terms "inspection" and "inspected" mean any examination of a return or  
17 return information.

18 (4) Return. The term "return" means any tax or information return or report, declaration of  
19 estimated tax, claim or petition for refund or credit or petition for reassessment that is required  
20 by, or provided for, or permitted under the provisions of this article (or any article of this chapter  
21 administered under this article) which is filed with the tax commissioner by, on behalf of, or with  
22 respect to any person, and any amendment or supplement thereto, including supporting

1 schedules, attachments or lists which are supplemental to, or part of, the return so filed.

2 (5) Return information. The term "return information" means:

3 (A) A taxpayer's identity; the nature, source or amount of his income, payments, receipts,  
4 deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld,  
5 deficiencies, overassessments or tax payments, whether the taxpayer's return was, is being, or  
6 will be examined or subject to other investigation or processing, or any other data received by,  
7 recorded by, prepared by, furnished to or collected by the tax commissioner with respect to a  
8 return or with respect to the determination of the existence, or possible existence, of liability (or  
9 the amount thereof) or by any person under the provisions of this article (or any article of this  
10 chapter administered under this article) for any tax, additions to tax, penalty, interest, fine,  
11 forfeiture or other imposition or offense; and

12 (B) Any part of any written determination or any background file document relating to such  
13 written determination. "Return information" does not include, however, data in a form which  
14 cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.  
15 Nothing in the preceding sentence, or in any other provision of this code, shall be construed to  
16 require the disclosure of standards used or to be used for the selection of returns for examination  
17 or data used or to be used for determining such standards.

18 (6) Tax administration. The term "tax administration" means:

19 (A) The administration, management, conduct, direction and supervision of the execution and  
20 application of the tax laws or related statutes of this state and the development and formulation of  
21 state tax policy relating to existing or proposed state tax laws, and related statutes of this state;  
22 and



1 (B) Includes assessment, collection, enforcement, litigation, publication and statistical  
2 gathering functions under the laws of this state.

3 (7) Taxpayer identity. The term "taxpayer identity" means the name of a person with respect  
4 to whom a return is filed, his mailing address, his taxpayer identifying number or a combination  
5 thereof.

6 (8) Taxpayer return information. The term "taxpayer return information" means return  
7 information as defined in subdivision (5) of this subsection which is filed with, or furnished to,  
8 the tax commissioner by or on behalf of the taxpayer to whom such return information relates.

9 (9) Written determination. The term "written determination" means a ruling, determination  
10 letter, technical advice memorandum or letter or administrative decision issued by the tax  
11 commissioner.

12 (c) **Criminal penalty.** Any officer or employee (or former officer or employee) of this state  
13 or of any county, municipality or governmental subdivision who violates this section shall be  
14 guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand  
15 dollars or imprisoned for not more than one year, or both, together with costs of prosecution.

16 (d) **Disclosure to designee of taxpayer.** Any person protected by the provisions of this  
17 article may, in writing, waive the secrecy provisions of this section for such purpose and such  
18 period as he shall therein state. The tax commissioner may, subject to such requirements and  
19 conditions as he may prescribe, thereupon release to designated recipients such taxpayer's return  
20 or other particulars filed under the provisions of the tax articles administered under the  
21 provisions of this article, but only to the extent necessary to comply with a request for  
22 information or assistance made by the taxpayer to such other person. However, return

1 information shall not be disclosed to such person or persons if the tax commissioner determines  
2 that such disclosure would seriously impair administration of this state's tax laws.

3 **(c) Disclosure of returns and return information for use in criminal investigations.**

4 (1) In general. Except as provided in subdivision (3) of this subsection, any return or return  
5 information with respect to any specified taxable period or periods shall, pursuant to and upon  
6 the grant of an ex parte order by a federal district court judge, federal magistrate or circuit court  
7 judge of this state, under subdivision (2) of this subsection, be open (but only to the extent  
8 necessary as provided in such order) to inspection by, or disclosure to, officers and employees of  
9 any federal agency, or of any agency of this state, who personally and directly engaged in:

10 (A) Preparation for any judicial or administrative proceeding pertaining to the enforcement of  
11 a specifically designated state or federal criminal statute to which this state, the United States or  
12 such agency is or may be a party;

13 (B) Any investigation which may result in such a proceeding; or

14 (C) Any state or federal grand jury proceeding pertaining to enforcement of such a criminal  
15 statute to which this state, the United States or such agency is or may be a party.

16 Such inspection or disclosure shall be solely for the use of such officers and employees in such  
17 preparation, investigation, or grand jury proceeding.

18 (2) Application of order. Any United States attorney, any special prosecutor appointed under  
19 Section 593 of Title 28, United States Code, or any attorney in charge of a United States justice  
20 department criminal division organized crime strike force established pursuant to Section 510 of  
21 Title 28, United States Code, may authorize an application to a circuit court judge or magistrate,  
22 as appropriate, for the order referred to in subdivision (1) of this subsection. Any prosecuting

1 attorney of this state may authorize an application to a circuit court judge of this state for the  
2 order referred to in subdivision (1) of this subsection. Upon such application, such judge or  
3 magistrate may grant such order if he determines on the basis of the facts submitted by the  
4 applicant that:

5 (A) There is reasonable cause to believe, based upon information believed to be reliable, that  
6 a specific criminal act has been committed;

7 (B) There is reasonable cause to believe that the return or return information is or may be  
8 relevant to a matter relating to the commission of such act; and

9 (C) The return or return information is sought exclusively for use in a state or federal  
10 criminal investigation or proceeding concerning such act, and the information sought to be  
11 disclosed cannot reasonably be obtained, under the circumstances, from another source.

12 (3) The tax commissioner shall not disclose any return or return information under  
13 subdivision (1) of this subsection if he determines and certifies to the court that such disclosure  
14 would identify a confidential informant or seriously impair a civil or criminal tax investigation.

15 (f) **Disclosure to person having a material interest.** The tax commissioner may, pursuant  
16 to legislative regulations promulgated by him, and upon such terms as he may require, disclose a  
17 return or return information to a person having a material interest therein: Provided, That such  
18 disclosure shall only be made if the tax commissioner determines, in his discretion, that such  
19 disclosure would not seriously impair administration of this state's tax laws.

20 (g) **Statistical use.** This section shall not be construed to prohibit the publication or release  
21 of statistics so classified as to prevent the identification of particular returns and the items  
22 thereof.

1       **(h) Disclosure of amount of outstanding lien.** If notice of lien has been recorded pursuant  
2 to section twelve of this article, the amount of the outstanding obligation secured by such lien  
3 may be disclosed to any person who furnishes written evidence satisfactory to the tax  
4 commissioner that such person has a right in the property subject to such lien or intends to obtain  
5 a right in such property.

6       **(i) Reciprocal exchange.** The tax commissioner may, pursuant to written agreement, permit  
7 the proper officer of the United States, or the District of Columbia or any other state, or any  
8 political subdivision of this state, or his authorized representative, who is charged by law with  
9 responsibility for administration of a similar tax, to inspect reports, declarations or returns filed  
10 with the tax commissioner or may furnish to such officer or representative a copy of any such  
11 document, provided such other jurisdiction grants substantially similar privileges to the tax  
12 commissioner or to the attorney general of this state. Such disclosure shall be only for the  
13 purpose of, and only to the extent necessary for, the administration of tax laws. Provided, That...  
14 such information shall not be disclosed to the extent that the tax commissioner determines that  
15 such disclosure would identify a confidential informant or seriously impair any civil or criminal  
16 tax investigation.

17       **(j) Inspection of business and occupation tax returns by municipalities.** The tax  
18 commissioner shall, upon the written request of the mayor of any West Virginia municipality  
19 having a business and occupation tax or privilege tax, allow the duly authorized agent of such  
20 municipality to inspect and make copies of the state business and occupation tax return filed by  
21 taxpayers of such municipality. Such inspection or copying shall only be for the purposes of  
22 securing information for municipal tax purposes and shall only be allowed if such municipality

1 allows the tax commissioner the right to inspect or make copies of the municipal business and  
2 occupation tax returns of such municipality.

3 **(k) Release of administrative decisions.** The tax commissioner shall release to the public  
4 his administrative decisions, or a summary thereof: Provided, That unless the taxpayer appeals  
5 the administrative decision to circuit court or waives in writing his rights to confidentiality, any  
6 identifying characteristics or facts about the taxpayer shall be omitted or modified to such an  
7 extent so as to not disclose the name or identity of the taxpayer.

8 **(l) Release of taxpayer information.**

9 **(1)** If the tax commissioner believes that enforcement of the tax laws administered under this  
10 article will be facilitated and enhanced thereby, he shall disclose, upon request, the names and  
11 address of persons:

12 **(A)** Who have a current business registration certificate.

13 **(B)** Who are licensed employment agencies.

14 **(C)** Who are licensed collection agencies.

15 **(D)** Who are licensed to sell drug paraphernalia.

16 **(E)** Who are distributors of gasoline or special fuel.

17 **(F)** Who are contractors.

18 **(G)** Who are transient vendors.

19 **(H)** Who are authorized by law to issue a sales or use tax exemption certificate.

20 **(I)** Who are required by law to collect sales or use taxes.

21 **(J)** Who are foreign vendors authorized to collect use tax.

22 **(K)** Whose business registration certificate has been suspended or canceled or not renewed by

1 the tax commissioner.

2 (L) Against whom a tax lien has been recorded under section twelve [§ 11-10-12] of this  
3 article (including any particulars stated in the recorded lien).

4 (M) Against whom criminal warrants have been issued for a criminal violation of this state's  
5 tax laws.

6 (N) Who have been convicted of a criminal violation of this state's tax laws.

7 **(m) Disclosure of return information to child support enforcement division.**

8 (1) State return information. The tax commissioner may, upon written request, disclose to the  
9 child support enforcement division created by article two [§ 48A-2-1 et seq.], chapter  
10 forty-eight-a of this code:

11 (A) Available return information from the master files of the tax department relating to the  
12 social security account number, address, filing status, amounts and nature of income and the  
13 number of dependents reported on any return filed by, or with respect to, any individual with  
14 respect to whom child support obligations are sought to be enforced; and

15 (B) Available state return information reflected on any state return filed by, or with respect to  
16 any individual described in paragraph (A) of this subdivision, relating to the amount of such  
17 individual's gross income, but only if such information is not reasonably available from any other  
18 source.

19 (2) Restrictions on disclosure. The tax commissioner shall disclose return information under  
20 subdivision (1) of this subsection only for purposes of, and to the extent necessary in, collecting  
21 child support obligations from, and locating individuals owing such obligations.

22 **(n) Disclosure of names and addresses for purposes of jury selection.**

1 The tax commissioner shall, at the written request of a circuit court or the chief judge thereof,  
2 provide to the circuit court within thirty calendar days a list of the names and addresses of  
3 individuals residing in the county or counties comprising the circuit who have filed a state  
4 personal income tax return for the preceding tax year. The list provided shall set forth names and  
5 addresses only. The request shall be limited to counties within the jurisdiction of the requesting  
6 court.

7 The court, upon receiving the list or lists, shall direct the jury commission of the appropriate  
8 county to merge the names and addresses with other lists used in compiling a master list of  
9 residents of the county from which prospective jurors are to be chosen. Immediately after the  
10 master list is compiled, the jury commission shall cause the list provided by the tax  
11 commissioner and all copies thereof to be destroyed and shall certify to the circuit court and to  
12 the tax commissioner that the lists have been destroyed.

Note: The purpose of this bill is to extend the confidentiality and nondisclosure protections of tax information, as set forth in section 11-10-5d of the West Virginia Code, to specifically cover such information in the possession of local and municipal governments and agencies.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

