

1                                   **Senate Bill No. 1004**

2                    (By Senators Kessler (Mr. President) and M. Hall,

3                                   By Request of the Executive)

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5                                   [Introduced April 17, 2013.]

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9 A BILL to amend the Code of West Virginia, 1931, as amended, by

10       adding thereto a new section, designated §11-10-11c, relating

11       to local sales and use taxes and local excise taxes; granting

12       the Tax Commissioner exclusive responsibility for

13       administering, collecting and enforcing specified local sales

14       and use taxes and excise taxes; specifying jurisdiction and

15       standing before the Office of Tax Appeals; permitting fees for

16       collection of local sales and use taxes and excise taxes;

17       providing a special fund for deposit of fees for collection of

18       specified local sales and use taxes and excise taxes;

19       providing that notwithstanding specified provisions, the Tax

20       Commissioner may prescribe by rule the schedule and manner for

21       deposit of moneys into the special fund for deposit of fees

22       for collection of local sales and use taxes and excise taxes,

23       and such other administrative and procedural requirements as

1 may be useful or necessary for the management and handling of  
2 the fund; authorizing the Tax Commissioner to promulgate  
3 ordinary and emergency rules; declaring that such rules may  
4 provide for administration, collection and enforcement of  
5 local sales and use taxes and excise taxes, assessment of a  
6 fee for the Tax Commissioner's services, authority for  
7 resolution of disputes, the schedule and manner for deposit of  
8 fees for collection of local sales and use taxes and excise  
9 taxes, and such other purposes as the Tax Commissioner may  
10 find useful or necessary; and specifying an effective date.

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

12 That the Code of West Virginia, 1931, as amended, be amended  
13 by adding thereto a new section, designated §11-10-11c, to read as  
14 follows:

15 **ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.**

16 **§11-10-11c. State administration of local sales and use taxes and**  
17 **excise taxes; jurisdiction and standing before the**  
18 **office of tax appeals; rule-making authority;**  
19 **emergency rules.**

20 (a) The Tax Commissioner has exclusive responsibility for  
21 administering, collecting and enforcing all local sales and use  
22 taxes and excise taxes imposed pursuant to article twenty-two,  
23 chapter seven of this code, section five-a, article one, chapter

1 eight of this code, article thirteen-c, chapter eight of this code  
2 and article thirty-eight, chapter eight of this code.

3 (b) Pursuant to, and limited by, the provisions of section  
4 eight, article ten-a of this chapter, the Office of Tax Appeals has  
5 exclusive and original jurisdiction to hear disputes arising from  
6 any local sales and use taxes and excise taxes for which the Tax  
7 Commissioner has exclusive administration, enforcement and  
8 collection responsibility. No municipality or county has standing  
9 before the Office of Tax Appeals in any dispute arising under any  
10 local sales and use tax and excise tax upon which the Tax  
11 Commissioner has exclusive responsibility for administration,  
12 enforcement and collection.

13 (c) Notwithstanding any other provision of this code to the  
14 contrary, the Tax Commissioner may deduct and retain a fee for the  
15 benefit of his or her office for expenditure from all local sales  
16 and use taxes and excise taxes collected by the Tax Commissioner  
17 upon which he or she has exclusive responsibility for  
18 administering, collecting and enforcing: *Provided*, That such fee  
19 may exceed any fee otherwise authorized by this code or any duly  
20 enacted ordinance.

21 (d) Establishment of special revenue account.

22 (1) There is created in the State Treasury a special revenue  
23 revolving fund account known as the "Local Sales Tax and Excise Tax

1 Administration Fund," which shall be an interest-bearing account  
2 and expenditures are authorized from collections. The fund shall  
3 consist of:

4 (A) Any funds received on and after July 1, 2013, from fees  
5 charged by the Tax Commissioner pursuant to section six, article  
6 thirteen-c, chapter eight of this code; and

7 (B) Amounts deducted and retained by the Tax Commissioner  
8 under subsection (e), section eleven-a of this article; and

9 (C) Any future funds appropriated by the Legislature or  
10 transferred by any public agency as contemplated or permitted by  
11 applicable federal or state law; and

12 (D) Any accrued interest or other return on the moneys in the  
13 fund.

14 The balance remaining in the fund at the end of each fiscal  
15 year shall remain in the fund and not revert to the State General  
16 Revenue Fund.

17 (2) On July 1, 2013, all moneys in the Tax Department  
18 "Municipal Sales and Use Tax Operations Fund" established under  
19 section six, article thirteen-c, chapter eight of this code shall  
20 be transferred to the Local Sales Tax and Excise Tax Administration  
21 Fund established in this section.

22 (3) On July 1, 2013, all moneys in the "Special District  
23 Excise Tax Administration Fund" established under section eleven-b

1 of this article shall be transferred to the "Local Sales Tax and  
2 Excise Tax Administration Fund" established in this section.

3 (4) Amounts deposited in the "Local Sales Tax and Excise Tax  
4 Administration Fund" may be expended by the Tax Commissioner for  
5 the general administration, collection and enforcement of all local  
6 sales and use taxes and excise taxes imposed pursuant to article  
7 twenty-two, chapter seven of this code, section five-a, article  
8 one, chapter eight of this code, article thirteen-c, chapter eight  
9 of this code and article thirty-eight, chapter eight of this code.

10 (e) Notwithstanding the provisions of section eleven-b of this  
11 article, The Tax Commissioner may prescribe by rule the schedule  
12 and manner for deposits of moneys into the "Local Sales Tax and  
13 Excise Tax Administration Fund" and such other administrative and  
14 procedural requirements as may be useful or necessary for the  
15 management and handling of the fund.

16 (f) The Tax Commissioner is hereby authorized to promulgate  
17 legislative rules pursuant to the provisions of article three,  
18 chapter twenty nine-a of this code: *Provided*, That notwithstanding  
19 the provisions of article three, chapter twenty-nine-a of this code  
20 relating to the promulgation, disapproval and amendment of rules ,  
21 the Tax Commissioner has authority to promulgate emergency rules  
22 pursuant to the Tax Commissioner's finding that an emergency exists  
23 concerning the administration, assessment and collection of local

1 taxes and levies requiring that emergency rules be promulgated, and  
2 may promulgate the same to accomplish the following purposes:

3 (1) Provide rules for administering, collecting and enforcing  
4 all local sales and use taxes and excise taxes.

5 (2) Provide for and impose a fee for the Tax Commissioner's  
6 services: *Provided*, That such fee may exceed any fee otherwise  
7 authorized by this code or any duly enacted ordinance for  
8 enforcement, administration and collection of any local sales and  
9 use taxes and excise taxes for which the Tax Commissioner has  
10 exclusive administration, enforcement and collection  
11 responsibility.

12 (3) Provide sole authority for resolution of disputes  
13 pertaining to the administration, enforcement and collection of the  
14 local taxes administered by the Tax Commissioner.

15 (4) Prescribe the schedule and manner of deposits of moneys  
16 into the "Local Sales Tax and Excise Tax Administration Fund" and  
17 such other administrative and procedural requirements as may be  
18 useful or necessary for the management and handling of the fund.

19 (5) Such other purpose the Tax Commissioner finds useful or  
20 necessary.

21 (g) Effective Date - The provisions of this section adopted in  
22 2013 are effective on and after July 1, 2013.

NOTE: The purpose of this bill is to grant the Tax Commissioner exclusive responsibility for administering, collecting and enforcing specified local sales and use taxes and excise taxes.

§11-10-11c is new; therefore, strike-throughs and underscoring have been omitted.