

H. B. 2538

(By Delegates E. Nelson and Ashley)

[By Request of the Tax Division]

[Introduced February 2, 2015; referred to the
Committee on Finance.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-27, relating to administrative fees for the Tax Division of the Department of Revenue, specifying imposition and retention of fees by the Tax Division of the Department of Revenue from specified taxes and fees, and from any interest, additions to tax and penalties related thereto, specifying imposition and retention of fees in payment for Tax Division services in the collection, distribution and administration of taxes for state and local departments, divisions, subdivisions and agencies, authorizing reimbursements to the Tax Division for transaction fees imposed by the Enterprise Resource Planning System, authorizing fee increases by legislative rule, specifying limitations, and specifying an effective date.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §11-10-27, to read as follows:

3 **ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.**

4 **§11-10-27. Administrative Fees.**

5 (a) Administrative fee for the collection of money for other state departments, divisions,
6 agencies and institutions.

7 The Tax Commissioner may retain one percent of the taxes and fees, including one percent
8 of any interest, additions to tax and penalties related thereto, collected by the Tax Division of the
9 Department of Revenue that are to be deposited into any of the following special revenue funds: the
10 Special Reclamation Fund, the Special Reclamation Water Trust Fund, the Mining and Reclamation
11 Operations Fund, the Solid Waste Reclamation and Environmental Response Fund, the Solid Waste
12 Enforcement Fund, the Solid Waste Management Board Reserve Fund, the Recycling Assistance
13 Fund, the Closure Cost Assistance Fund, the Solid Waste Planning Fund, the Hazardous Waste
14 Emergency Response Fund, the Law-Enforcement Fund, the Gas Field Highway Repair and
15 Horizontal Drilling Waste Study Fund, the Waste Coal-Producing Counties Fund, the Coalbed
16 Methane Gas Distribution Fund, the Eligible Acute Care Provider Enhancement Account, the West
17 Virginia Affordable Housing Trust Fund, the special revenue account in the State Treasury to be
18 appropriated by the Legislature for the purposes of the Division of Forestry, and the special medical
19 school fund in the State Treasury to be used solely for the construction, maintenance and operation
20 of a four-year school of medicine, dentistry and nursing. For all taxes collected by the Tax Division
21 of the Department of Revenue that are to be deposited into any other special revenue funds, the Tax
22 Commissioner may retain, as an administrative fee, one percent of the taxes and fees, including one

1 percent of any interest, additions to tax and penalties related thereto: *Provided*, That the Legislature
2 has not expressly and specifically authorized a fee in a provision of this code other than this section,
3 to be collected by, retained by or dedicated to, the Tax Commissioner for the collection, distribution
4 or administration of a specified tax or fee. The amount retained by the Tax Commissioner is a fee
5 for the services provided by the Tax Division in the administration, distribution or collection, or any
6 combination thereof, of those taxes and fees.

7 (b) Administrative fee for the collection, administration and distribution of money for local
8 or municipal government, any other governmental subdivision or other public entity or public
9 corporation, where a fee is not otherwise provided for elsewhere in this code.

10 For all taxes or fees collected by the Tax Division of the Department of Revenue on behalf
11 of any local, county, or municipal government, or any other governmental subdivision or public
12 entity or public corporation, including, but not limited to, sanitary districts, water districts and solid
13 waste authorities, the Tax Commissioner may retain, as an administrative fee, one percent of the
14 taxes and fees, including one percent of any interest, additions to tax and penalties related thereto:
15 *Provided*, That the Legislature has not expressly and specifically authorized a fee in a provision of
16 this code other than this section, to be collected by, retained by or dedicated to, the Tax
17 Commissioner for the collection, distribution or administration of a specified tax or fee. For
18 purposes of this section the term "taxes and fees" includes any interest, additions to tax and penalties
19 relating to any taxes or fees.

20 (c) Transaction fees imposed by the Enterprise Resource Planning System may be
21 recovered by the Tax Division of the Department of Revenue.

22 If the Tax Division of the Department of Revenue incurs a fee imposed by the enterprise

1 resource planning system, which is developed, implemented, and managed by the West Virginia
2 Enterprise Resource Planning Board under article six-d, chapter twelve of this code, relating to a
3 transaction of any entity or person with the Tax Division of the Department of Revenue, then the Tax
4 Commissioner may charge that entity or person a fee in the amount that Tax Division of the
5 Department of Revenue incurred or will incur relating to that transaction.

6 (d) Fees collected under this section shall be retained in a revolving fund for the use of the
7 Tax Division of the Department of Revenue.

8 Any fees collected or retained under subsections (a), (b) and (c) of this section shall be held
9 in a revolving fund for the use of the Tax Division of the Department of Revenue for general tax
10 administration, which fund is hereby created in the State Treasury and designated the "Tax
11 Administration Services Fund." Expenditures from the fund are authorized from collections.
12 Moneys remaining in such fund on the last day of the fiscal year in excess of \$3 million shall be
13 transferred to the General Revenue Fund. The amount remaining in the fund after such transfer, if
14 any, is retained for use for by the Tax Division of the Department of Revenue.

15 (e) Fee Increases.-- Any state agency may increase any administrative fee that the agency is
16 authorized to impose by West Virginia statute or West Virginia rule by proposing a legislative rule,
17 for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of
18 this code, imposing the increase: *Provided*, That no such increase shall be made within three years
19 of the initial imposition of the fee or within three years of the most recent revision of a statute or rule
20 that increases or decreases the fee.

21 (f) Effective date.-- The provisions of this section become effective January 1, 2016.

NOTE: The purpose of this bill is to: (1) Authorize a 1% fee for the Tax Department on collections of specified taxes, for collection, distribution and administration of special revenue fees by the Tax Department and for collection of money for another state or local agency or entity, and to authorize limited changes to fees by legislative rule; (2) authorize reimbursement to the Tax Department for OASIS fees imposed on transactions; (3) authorize fee changes, subject to limitations, by legislative rule; and (4) authorize a Tax Department revolving fund for deposits of such fees, limited to a \$3 Million carryover.

Section 11-10-27 is new; therefore, it is entirely underscored.