WEST VIRGINIA

TAX EXPENDITURE

STUDY

Business Tax,
Excise Tax,
and Property Tax
Expenditures

January 2015

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for

Business Taxes,

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and Property Taxes

Prepared by:
Research and Development Division
State Tax Department
January 2015

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EXECUTIVE SUMMARY

This report covers the Business Registration Tax, business taxes imposed on certain West Virginia businesses, excise taxes and property taxes. The report analyzes various expenditures for these taxes. Some of these provisions constitute government expenditure programs while others are an integral part of the basic tax structure. The following summaries provide information on the taxes covered in this study.

BUSINESS TAXES

This section of the report analyzes the expenditures provided for the Business and Occupation Tax, Severance Tax, Health Care Provider Taxes, and Solid Waste Assessment Fees, which are levied on small groups of taxpayers, as well as expenditures for the Business Registration Tax.

Less than 120 businesses are subject to the State Business and Occupation Tax, a tax levied on public utilities, electric power companies, gas storage operators and manufacturers that produce synthetic fuel from coal. Gas storage operators and synthetic fuel producers pay a per unit tax. Electric power producers pay a per unit tax on taxable capacity while electric utilities pay a per unit tax on kilowatt hours of electricity sold. Other public utilities pay a tax based on gross income. Through statute or regulation, expenditures for application against the Business and Occupation Tax encompass businesses excluded from the tax, tax base exemptions, reduced rates, alternate tax calculations and credits against tax liability.

The Severance Tax is levied on the gross receipts of businesses that engage in the severance, extraction, or production of depletable natural resources. The tax base also includes the processing and treatment of certain natural resource products as part of the production process. A person who purchases raw coal and processes it into a commercially usable product only pays tax on the value added in the processing activity and not on the total value of the product. In that sense, the West Virginia Severance Tax differs from a usual severance tax, for which the tax base is determined at the point of extraction.

The Minimum Severance Tax on Coal, a tax of $0.75 per ton, is imposed on every business severing, extracting or producing coal in the State for sale, profit or commercial use. The Minimum Severance Tax on Coal is only applicable to coal production subject to the 5.0 percent Severance Tax rate. A credit is allowed against Severance Tax imposed on coal production for payment of the Minimum Severance Tax on Coal. However, no other credits can be used to offset the Minimum Severance Tax on Coal.

Health Care Provider Taxes represent a variety of taxes imposed on gross receipts of selected health care service providers within West Virginia. The proceeds from these taxes fund roughly 21 percent of the State's share of the Medicaid Program. The Medicaid Program is a jointly funded cooperative venture between the federal government and state government to assist states in providing medical care to eligible low-income persons. In West Virginia, federal funds are matched with State funds at a ratio of roughly three to one.

Disposal of solid waste at any solid waste disposal facility in West Virginia is subject to a number of statutory fees. The Solid Waste Assessment Fees are imposed in addition to any fee charged by the operator or owner of a solid waste disposal facility for receiving and disposing of solid waste. The combined base rate is $8.25 per ton of solid or sludge waste. However, a reduced rate of $2.00 per ton is applicable to the waste disposed of by commercial recyclers where at least 70 percent of the material entering the commercial recycling facility is separated for reselling or recycling.

The Business Registration Tax affects most businesses in West Virginia. By statute, each location of a business subject to the tax must obtain a business registration certificate from the State Tax Department before beginning business in the State. The tax is a set fee of $30.00 per business location. The business registration is permanent, but subject to revocation or suspension for cause. Business Registration Tax expenditures include activities excluded from the definition of business, activities exempt from registration, activities not required to obtain a registration certificate and activities exempt from payment of the tax.

EXCISE TAXES

Excise taxes are generally levied on units of consumption of certain commodities in order to generate revenue for the taxing authority. In West Virginia, excise taxes are imposed on the privilege of manufacturing, producing, distributing or selling certain items within the State. These items include gasoline and special fuel, non-intoxicating beer, wine, tobacco products and soft drinks. In addition to the excise tax, suppliers of gasoline and special fuel are also subject to the Consumers Sales Tax and Use Tax based on the average wholesale price of gasoline. Also, the excise tax on gasoline and special fuel is levied on motor carriers operating within the State.

West Virginia is a member of the International Fuel Tax Agreement (IFTA). IFTA is a fuel tax reciprocity agreement among states of the United States and provinces of Canada. The agreement is intended to simplify the reporting and payment of all fuel use taxes by interstate motor carriers. All West Virginia-based motor carriers who travel in at least one other IFTA jurisdiction and operate one or more qualified vehicles must obtain an IFTA license. All West Virginia-based IFTA licensees must file a single tax return with the State Tax Department. West Virginia then distributes both the tax and the carrier information to the other IFTA jurisdictions on behalf of the carrier. West Virginia receives its portion of gasoline taxes due from motor carriers based in other IFTA jurisdictions from the carrier's home jurisdiction.

Revenue collected from the Motor Fuel Excise Tax is deposited into the State Road Fund. All amounts collected under IFTA are deposited into the International Fuel Tax Agreement Clearing Fund for distribution of funds owed to other member jurisdictions as provided in the agreement and for payment of any refunds owed to West Virginia-based taxpayers. After refund payments and distributions to other jurisdictions, all remaining IFTA funds are deposited into the State Road Fund. Revenue collected from the excise taxes on non-intoxicating beer, wine and tobacco products is deposited into the General Revenue Fund of the State. Revenue collected from the Soft Drinks Tax is deposited into a special medical school fund. This fund shall be used solely for the construction, maintenance, and operation of a four-year school of medicine, dentistry, and nursing of West Virginia University.

There are many possible exemptions and refunds available for the excise taxes. However, most of the expenditures pertain to the taxes on gasoline and special fuel for off-highway uses of such products. In addition to refunds and credits, discounts are available for the excise taxes on tobacco products and soft drinks.

PROPERTY TAXES

The Property Tax and the Property Transfer Tax are collected at the county level, but the revenue from these taxes benefits both State and local governments. While the Property Tax is an annual levy on property, the Property Transfer Tax is levied on property only when it is transferred.

The Property Tax is levied on all real and personal property in West Virginia, except property specifically exempted in the West Virginia Code. Revenues from the Property Tax benefit the State, counties, county boards of education and municipalities. Each county and municipality can impose its own rates of property taxation. These rates can vary within counties depending upon the classification of the property. The West Virginia Legislature sets the regular rate of tax for county boards of education. This rate is used by all county boards of education Statewide. However, the total tax rate for county boards of education may differ from county to county due to excess levies and/or bond levies.

Property is assessed based on its use, location and value as of July 1 of each year. The amount of tax paid on property depends upon the assessed valuation of the property and the rate of tax. Each county assessor is required to maintain current values on all real and personal property, except operating public utility property, in that county. The State Tax Commissioner is required to determine the market value of all industrial and natural resource properties in the State. The State Tax Commissioner also is responsible for the valuation of public utility property and all types of property that are to be included in the operating property of a public utility.

Although all property is presumed to be taxable until its owner proves otherwise, there are many possible exemptions from the Property Tax. Some of these exemptions are based on the ownership of the property while others are based on the use of the property.

The Property Transfer Tax consists of an excise tax on the privilege of transferring real estate to be paid to the State and an excise tax to be paid to the county where the transfer is recorded. Both the State and county excise tax are paid to the county clerk. There are many exemptions to the tax. Some are transfers to or from governmental bodies while others are transfers between related parties.

INTRODUCTION

West Virginia Code §11-10-5s(c) requires a tax expenditure report to be submitted to the Legislature by January 15 of each year. In three-year cycles, these reports are intended to analyze tax expenditures for most major State taxes. The law defines the term "tax expenditure" as a provision in the tax laws designed to encourage certain kinds of activities or to aid taxpayers in special circumstances. Such provisions generally include exclusions, exemptions, deductions, adjustments, credits and deferrals from tax.

The State Tax Commissioner has promulgated rules setting forth a timetable for such reports. This report covers business taxes, excise taxes, and property taxes. Business taxes include the Business and Occupation Tax, Severance Tax, Health Care Provider Taxes, Solid Waste Assessment Fees, and the Business Registration Tax. Excise taxes include the Motor Fuel Excise Tax, Motor Carrier Road Tax, International Fuel Tax, Tobacco Products Excise Tax, Soft Drinks Tax, Beer Barrel Tax and Wine Liter Tax. Property taxes include both the Property Tax and the Property Transfer Tax. Other reports cover taxes administered by the State Tax Department that are not analyzed within this report.

OVERVIEW

The business taxes included in this report, excise taxes and property taxes combined to account for roughly $3.17 billion in State and local revenue in Fiscal Year 2014. These revenues were distributed as follows:

Fund	Revenue
State General Revenue Fund	$ 747.0 million
State Road Fund	$ 441.1 million
State Medicaid Fund	$ 174.1 million
State Infrastructure Fund	$ 23.0 million
West Virginia Medical School Fund	$ 14.2 million
Workers' Compensation Debt Reduction Fund (Additional Severance Tax)	$ 109.5 million
Solid Waste Fee Clearing Fund	$ 20.3 million
Local Government Funds	$1,637.7 million

The local share included over $24 million in Severance Tax revenue and more than $1.6 billion in property and property transfer taxes for Fiscal Year 2014.

This study will concentrate on the effect of tax expenditures upon tax yields. Most exclusions, exemptions, deductions and credits associated with these taxes may be viewed as tax expenditures. Tax expenditures tend to escape the usual legislative scrutiny afforded other expenditures in the annual budget approval process because provisions in the tax law often remain intact indefinitely. Programs funded through tax expenditures, in effect, receive priority funding over all other programs. The goal of this report is to facilitate an examination of business tax, excise tax and property tax expenditures using available resources.

Tax expenditures are deviations from a model tax structure. A model tax structure typically contains a minimal allowance for exclusions, exemptions, deductions and credits. A minimal allowance for tax expenditures is necessary to maximize tax equity and tax efficiency.

The distribution of tax burdens should be equitable. There are two types of equity, horizontal and vertical. Horizontal equity occurs when those with equal capacity (e.g., equal income) pay the same amount of tax. The achievement of vertical equity occurs whenever those with a greater income or tax base pay more than those with a lesser income or tax base. Tax expenditure provisions often reduce the horizontal equity of a tax structure through an allowance of special benefits to some at the expense of others.

Economic efficiency, a requirement of a model tax structure, occurs whenever tax interference in the economy is kept to a minimum. Tax expenditures tend to reduce economic efficiency through the promotion of some economic activities over others. For example, federal depreciation and passive loss rules of the 1980's led to a significant increase in office building construction and eventually to a glut of office space.

A low-rate, broad-based tax structure often results in optimal tax competitiveness between states, another requirement of a model tax structure. However, many states tend to use tax expenditures, such as investment tax credits, to gain a competitive advantage over other states with respect to a particular taxpayer or industry. The value of these expenditures should be minimized because their cost is distributed among other taxpayers.

A model tax structure produces stable and sufficient revenue for basic public services. Tax expenditures decrease revenue, which may result in fiscal instability.

Understandability and simplicity are also important requirements for a model tax structure. Tax expenditures may complicate the tax structure, resulting in high administration and compliance costs for both the taxpayer and the taxing authority.

A model tax structure would tax nearly all expenditures in West Virginia to the extent within the Legislature's power. Deductions or exclusions required by federal law would **not** be tax expenditures because such modifications could not be effectively repealed by the Legislature.

ESTIMATING COSTS OF TAX EXPENDITURES

This study provides estimates of the value of business tax, excise tax and property tax expenditures and certain provisions considered necessary to define a model tax structure. Except where otherwise noted, each expenditure within the study is examined independently from all other expenditures. Following the establishment of a value in isolation, the influence of outside factors (i.e., other expenditures and taxpayer behavior) is discussed, where applicable. Expenditure values less than $10,000 are reported as "minimal."

Several sources of information were used in the construction of expenditure valuations. These include, among others:

1. the Department's tax return data;
2. surveys of various organizations;
3. publications from the U.S. Department of Energy;
4. publications from the U.S. Census Bureau, and
5. information from other West Virginia agencies.

In most cases, the revenue impact attributable to the repeal of a tax expenditure is less than the value of that expenditure. This occurs because tax expenditures tend to overlap one another and taxpayers tend to alter their behavior whenever items of income or consumption become taxed for the first time.

BUSINESS TAXES

BUSINESS AND OCCUPATION TAX

OVERVIEW

The Business and Occupation Tax, known throughout most of its history as the "Gross Sales Tax," was originally enacted in 1921. As enacted, the Gross Sales Tax had as its intent to tax every individual, firm, partnership, association and corporation conducting business for profit in West Virginia.

Enactment of the "Tax Reform Act of 1985" altered the scope of the Business and Occupation Tax to a tax on public utilities and electric power producers **only**, effective July 1, 1987. As of 1989, natural gas storage facility operators are subject to a per unit tax under the Business and Occupation Tax statutes. Additionally, legislation in 1989 provided that electric power producers and distributors would be subject to the greater of the gross sales tax or a per unit tax on kilowatt-hours of electricity generated or distributed. Beginning in June 1995, electric power producers whose tax liability for every month in 1994 was based on kilowatt-hours of electricity generated were to determine their tax liability based upon "taxable generating capacity." The legislation enacted in 1995 defined "taxable generating capacity" as the "capacity factor" times the official capability of a generating unit. "Capacity factor" was defined as the fraction of the average four-year generation for the 1991 to 1994 period divided by the "maximum possible annual generation" of a unit. The official capability of a unit times 8,760 (the number of hours in a year) was defined as the "maximum possible annual generation." In 2001, the Business and Occupation Tax statute was revised to subject the manufacturing or production of synthetic fuel from coal to a tax at a rate of $0.50 per ton.

Applicable tax rates for the Business and Occupation Tax, as of January 1, 2015, are shown on the following two pages.

BUSINESS AND OCCUPATION TAX RATES[1]

Taxpayer Type	Activity and West Virginia Code Citation	Tax Base	Tax Rate
Electric power company	Generating or producing electricity for sale, profit or commercial use (§11-13-2o(b)(1))	Generating capacity	$22.78 per KW[2]
Electric power company	Generating or producing electricity for sale, profit or commercial use by a unit which has installed a flue gas desulfurization system (§11-13-2o(b)(1))	Generating capacity	$20.70 per KW[2]
Electric power company	Selling electricity that is not generated or produced in West Virginia by the taxpayer (§11-13-2o(b)(2))	Electricity sold	$0.0019 per KWH[3]
Electric power company	Selling electricity that is not generated or produced in West Virginia by the taxpayer and sale is to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds 200,000 kilowatts per hour per year (§11-13-2o(b)(2))	Electricity sold	$0.0005 per KWH[3]

1. Rates as of January 1, 2015
2. Kilowatt
3. Kilowatt-hour

BUSINESS AND OCCUPATION TAX RATES (continued)

Taxpayer Type	Activity and West Virginia Code Citation	Tax Base	Tax Rate
Natural gas storage operator	Withdrawal and/or injection of natural gas from/into storage reservoirs (§11-13-2e)	Net dekatherms[1]	$0.05 per dekatherm
Natural gas utility	Public service or utility business (§11-13-2d(a)(4))	Gross income	4.29 percent
Water utility	Public service or utility business (§11-13-2d(a)(2))	Gross income	4.40 percent
Street and inter urban and electric railways	Public service or utility business (§11-13-2d(a)(1))	Gross income	1.40 percent
Toll bridge companies	Public service or utility business (§11-13-2d(a)(5))	Gross income	4.29 percent
All other public service or utility business	Public service or utility business (§11-13-2d(a)(6))	Gross income	2.86 percent
Manufacturer or producer of synthetic fuel from coal	Producing synthetic fuel from coal (§11-13-2f)	Tons produced	$0.50 per ton

1. Dekatherm means the thermal energy unit equal to 1,000,000 British thermal units (BTU's) or the equivalent of 1,000 cubic feet of gas having a heating content of 1,000 BTU's per cubic foot.

ESTIMATING COSTS OF TAX EXPENDITURES

The values of the expenditures contained within this report have been determined from several sources. Where available, information from 2012 and 2013 Business and Occupation Tax returns was used. Also, other State Tax Department files, Public Service Commission reports and U. S. Department of Energy publications were used.

ORGANIZATION AND ANALYSIS

This study separates the Business and Occupation Tax expenditures into four groups. The groups are based on the type of expenditure or on the organization or activity involved. The five groups are as follows:

Income or Other Measurable Quantities Exempt from Tax
Activities Subject to Reduced Rates
Alternate Tax Calculations
Credits

Each expenditure listed in this report contains a brief rationale for its existence. In many cases, legislative documentation on why a particular tax expenditure was enacted was not available; thus, the rationales herein are based solely on the experience or inference of the State Tax Department.

INCOME OR OTHER MEASURABLE QUANTITIES EXEMPT FROM TAX

The Business and Occupation Tax statutes provide several exemptions that exclude gross income or units of activity from the base of the tax. The following items are excluded from the appropriate tax base prior to the calculation of the tax due:

Municipally-Owned Water, Sewer or Electric Plants
Electric Power or Natural Gas Related to Selected Manufacturing Processes
Gross Income from Interstate Commerce
Gas Consumed and/or Recycled in a Gas Storage Operation
Electric Generation by a Manufacturer
Net Generation Excluded from Taxable Generating Capacity
Capacity Related to Retired/Inactive Reserve Electric Generating Units
Capacity Exemptions for New Electric Generating Units
Non-Utility Natural Gas Sales
New Natural Gas Storage Reservoirs
Community Service Assessment Income of Nonprofit Homeowners' Associations

Expenditure calculations for these excluded items follow.

MUNICIPALLY-OWNED WATER, SEWER OR ELECTRIC PLANTS

STATUTE: West Virginia Code §§11-13-2d(a)(2), 11-13-2o(a)(10)(c), 11-13-2o(b)(2), 11-13-2o(c)(2) and 11-13-2o(c)(3)
West Virginia Legislative Regulation §110-13-3.2

EXEMPTION: Tax is not imposed on income received by municipally-owned water plants (§11-13-2d(a)(2))

"Net generation" for a period means the kilowatt-hours of net generation available for sale generated or produced by the generating unit in this state during such period less ... the total kilowatt hours of electricity generated ... by a municipally owned plant (§11-13-2o(a)(10)(c))

Upon every person ... in the business of selling electricity to consumers ... tax imposed ... provisions ... shall not apply to ... kilowatt hours of electricity generated and sold, or purchased and resold, by a municipally-owned plant (§11-13-2o(b)(2))

New generating units ... the taxable generating capacity of a county or municipally-owned generating unit shall equal zero percent of the official capability of the unit (§11-13-2o(c)(2))

Peaking units ... the taxable generating capacity of a county or municipally-owned generating unit shall equal zero percent of the official capability of the unit (§11-13-2o(c)(3))

Public service districts for water and sewage services, municipal waterworks, municipal combined waterworks and sewage systems and municipal and sanitary district sewage works are exempt from payment of the tax (§110-13-3.2)

VALUE: **$19.3 million per year**

Rationale

Municipalities provide clean, safe drinking water and sewage treatment more as a service to the residents than as a revenue-generating venture. Many municipalities have rate structures that produce revenue below that necessary to cover the cost of service and capital expenditures, including the debt service on bonds issued. Thus, the provision of drinking water is funded in part from other revenue sources of the municipality, including taxes and fees. Although municipalities are incorporated, the statutes permitting their incorporation are distinct from the statutes governing the incorporation of businesses. The exemption for municipally-owned water or sewage plants exists in recognition that municipalities and public service districts are not in the business of providing water or sewage services for profit.

While municipal water or sewage service plants often operate at a loss, several West Virginia municipalities have entered into electric power production and/or distribution activity to generate revenue for governmental operations. This exemption exists in recognition that municipalities are not businesses although the generation and distribution activities produce income in excess of costs. For tax equity purposes, this exemption can only be justified if the service does not compete with services available from non-government utilities.

ELECTRIC POWER OR NATURAL GAS RELATED TO SELECTED MANUFACTURING PROCESSES

STATUTE: West Virginia Code §§11-13-2d(a)(4) and 11-13-2o(a)(10)(c)

EXEMPTION: Sale of natural gas ... 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 (§11-13-2d(a)(4))

"Net generation" for a period means the kilowatt-hours of net generation available for sale generated or produced by the generating unit in this state during such period less ... the total kilowatt hours of electricity generated ... that are separately metered and consumed in an electrolytic process for the manufacture of chlorine ... that are separately metered and consumed in the manufacture of ferroalloy (§11-13-2o(a)(10)(c))

VALUE: **Cannot be disclosed**[1]

Rationale

The exemptions provided for electricity used in the manufacture of chlorine or a ferroalloy and for natural gas from which hydrogen and carbon monoxide are derived for use in the manufacture of chemicals are similar in nature. The West Virginia Code requires that the rate reduction or economic benefit derived from the exemption must be passed on to the manufacturer purchasing the electricity or natural gas. These exemptions exist to reduce production costs of manufacturing businesses in West Virginia.

[1] Due to taxpayer confidentiality

GROSS INCOME FROM INTERSTATE COMMERCE

STATUTE: West Virginia Code §11-13-2d(b)

EXEMPTION: The measure of this tax shall not include gross income derived from commerce between this State and other states of the United States or between this State and foreign countries

VALUE: **Cannot be determined**

Rationale

Federal law restricts the taxation of interstate commerce by the states. This exemption reaffirms the constraints cited in the Commerce Clause of the United States Constitution and thus does **not** constitute a tax expenditure since state lawmakers have no authority to tax the cited activity.

GAS CONSUMED AND/OR RECYCLED IN A GAS STORAGE OPERATION

STATUTE: West Virginia Legislative Regulation §§110-13-1a.2.5.1.a and 110-13-1a.2.5.1.b

EXEMPTION: The number of dekatherms of gas injected into or withdrawn from a gas storage reservoir shall not include any gas consumed by a gas storage operation as fuel for compressors used to pump gas into or out of storage (§110-13-1a.2.5.1.a)

The number of dekatherms of gas injected into or withdrawn from a gas storage reservoir shall not include any gas used in a recycling operation of the storage reservoir (§110-13-1a.2.5.1.b)

VALUE: **Cannot be determined**

Rationale

The exemption for gas consumed as fuel in a gas storage activity presumably exists in recognition that such gas is not part of the gas storage economic activity.

"Recycling operation" is defined in the Business and Occupation Tax Regulations as "the withdrawal of gas from a storage reservoir and the subsequent re-injection of gas into the same reservoir solely for the purpose of regulating the pressure of the storage reservoir or a portion thereof." Since the base of the tax is the net number of dekatherms injected into storage or the net number of dekatherms withdrawn from storage, this exemption presumably exists to avoid double taxation of recycled gas.

ELECTRIC GENERATION BY A MANUFACTURER

STATUTE: West Virginia Code §11-13-2o(c)(6)

EXEMPTION: When electricity used in a manufacturing activity is generated in this state by the person who owns the manufacturing facility in which the electricity is used and the electricity generating units or units producing the electricity so used are owned by such manufacturer, or by a member of the manufacturer's controlled group, as defined in section 267 of the Internal Revenue Code of 1986, as amended, the generation of the electricity shall not be taxable under this article

VALUE: **$3.5 million per year**

Rationale

This exemption exists because the eligible companies are not regularly involved in an activity subject to the Business and Occupation Tax.

NET GENERATION EXCLUDED FROM TAXABLE GENERATING CAPACITY

STATUTE: West Virginia Code §§11-13-2o(a)(10)(A) and 11-13-2o(a)(10)(B)

EXCLUSION: "Net generation" for a period means the kilowatt-hours of net generation available for sale generated or produced by the generating unit in this state during such period less the following: twenty-one twenty-sixths of the kilowatt-hours of electricity generated at the generating unit and sold during such period to a plant location of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour in a year or where the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year (§11-13-2o(a)(10)(A))

"Net generation" for a period means the kilowatt-hours of net generation available for sale generated or produced by the generating unit in this state during such period less the following: twenty-one twenty-sixths of the kilowatt-hours of electricity produced or generated at the generating unit during such period by any person producing electric power and an alternative form of energy at a facility located in this state substantially from gob or other mine refuse (§11-13-2o(a)(10)(B))

VALUE: **Cannot be disclosed**[1]

Rationale

In 1995, the Business and Occupation Tax on electric power producers shifted from a tax largely based on kilowatt hours of electricity generated to a tax on the capacity of the generating units. Prior to the change in 1995, the large volume sales to manufacturers and the generation from gob or other mine refuse were taxed at a reduced rate that was 5/26ths of the general rate on net generation. The exclusion cited above extended the preferential treatment into the revised tax base (i.e., taxable generating capacity).

Prior to June 1995, the reduced rate for large quantities of electric power delivered to a manufacturer presumably existed to provide reduced rates to the power provider. There was an understanding that the reduction in tax rates would, in turn, be passed on to the large user through lower charges. The reduced rate existed to lower production costs for manufacturers consuming large quantities of electric power.

[1] Due to taxpayer confidentiality

Gob piles and mine refuse are both environmental hazards and aesthetic eyesores. The reduced rate (prior to June 1995) for electricity produced or generated from such sites presumably existed to reduce the number and size of mine waste piles.

Other exclusions from the definition of net generation exist for the following:

Generation from municipally owned power plants,
Electric power separately metered and consumed in an electrolytic process for the manufacture of chlorine, and
Electric power separately metered and consumed in an electrolytic process for the manufacture of ferroalloy.

Further information on these three exclusions can be found in the first two expenditures of this section. An additional expenditure related to large volume sales to manufacturers may be found in a following group of expenditures entitled "Alternate Tax Calculations."

CAPACITY RELATED TO RETIRED/INACTIVE RESERVE ELECTRIC GENERATING UNITS

STATUTE: West Virginia Code §11-13-2o(c)(1)

EXEMPTION: If a generating unit is retired from service or placed in inactive reserve, a taxpayer shall not be liable for tax computed with respect to the taxable generating capacity of the unit for the period that the unit is inactive or retired

VALUE: **Cannot be disclosed**[1]

Rationale

Prior to 1995, the tax base for electric power producers was based upon ongoing economic activity either in the form of gross income or in the form of kilowatt hours of electricity generated. Under West Virginia Code §11-13-2o et. seq., the measure of the tax (i.e., taxable capacity) was based, in part, upon net generation. This exemption presumably exists in recognition that retired and/or inactive generating units are not producing net electric power generation.

[1] Due to taxpayer confidentiality

CAPACITY EXEMPTIONS FOR NEW ELECTRIC GENERATING UNITS

STATUTE: West Virginia Code §§11-13-2o(c)(2) and 11-13-2o(c)(3)

EXEMPTION: If a new generating unit, other than a peaking unit, is placed in initial service on or after the effective date of this section, the generating unit's taxable generating capacity shall equal forty percent of the official capability of the unit: Provided, that the taxable generating capacity of a county or municipally-owned generating unit shall equal zero percent of the official capability of the unit and the taxable generating capacity of a generating unit utilizing a turbine powered by wind shall equal five percent of the official capability of the unit. Provided further, That for taxable periods beginning on or after the first day of January, two thousand eight, the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind shall equal twelve percent of the official capability of the unit. (§11-13-2o(c)(2))

If a peaking unit is placed in initial service on or after the effective date of this section, the generating unit's taxable generating capacity shall equal five percent of the official capability of the unit: Provided, that the taxable generating capacity of a county or municipally-owned plant shall equal zero percent of the official capability of the unit (§11-13-2o(c)(3))

VALUE: **Cannot be disclosed**[1]

Rationale

These exemptions presumably exist to encourage the construction and operation of new generating plants.

[1] Due to taxpayer confidentiality

NON-UTILITY NATURAL GAS SALES

STATUTE: West Virginia Code §11-13-2d(a)

EXEMPTION: Upon any person engaging or continuing within this state in any public service or utility business ... the tax imposed by section two of this article shall be equal to the gross income of the business derived from such activity or activities

VALUE: **$15.8 million per year**

Rationale

Although the statute cited above was originally enacted in 1935, non-utility natural gas sales did not become exempt from tax under the Business and Occupation Tax until the "Tax Reform Act of 1985". Prior to July 1, 1987, non-utility sales of natural gas were subject to tax under the wholesale or retail classes of the Business and Occupation Tax. As previously stated, the 1985 legislation reduced the scope of the Business and Occupation Tax to a tax upon public utilities. The Public Service Commission issues companies a "Certificate of Public Convenience and Necessity" to operate as utilities in designated areas. As stated in United Fuel Gas Co. v. Battle, 153 W. Va. 222, 167 S.E. 2d 890, sales by utilities outside their designated service area are not classified as utility sales. In addition, non-utilities may make sales in areas in competition with utilities. With recent deregulation of the natural gas industry, non-utility sales of natural gas have become more significant in relation to all natural gas sales. This exemption exists in part due to the conversion of the Business and Occupation Tax to a tax upon utilities.

NEW NATURAL GAS STORAGE RESERVOIRS

STATUTE: West Virginia Code §11-13-1(b)(8)

EXEMPTION: "Storage reservoir" means that portion of any subterranean sand or rock stratum or strata into which gas has been injected for the purpose of storage prior to the first day of March, one thousand nine hundred eighty-nine

VALUE: **Cannot be disclosed**[1]

[1] Due to taxpayer confidentiality

Rationale

The inclusion of a date in the definition of storage reservoir created an exemption for storage reservoirs developed after February 28, 1989. This exemption presumably exists to encourage the development of new natural gas storage reservoir capacity in West Virginia.

COMMUNITY SERVICE ASSESSMENT INCOME OF NONPROFIT HOMEOWNERS' ASSOCIATION

STATUTE: West Virginia Code §11-13-3(b)(7)

EXEMPTION: The provisions of this article shall not apply to: ...(7) Gross income of a nonprofit homeowners' association received from assessments on its member for community services such as road maintenance, common are maintenance, water service, sewage service and security service.

VALUE: **Minimal**

Rationale

As stated previously, legislation in 1985 reduced the scope of the Business and Occupation Tax to a tax upon public utilities. The test to determine status as a public utility, as stated in United Fuel Gas Co. v. Battle, 153 W. Va. 222, 167 S.E. 2d 890, "is that to be such there must be a dedication or holding out either express or implied that such person, firm, or corporation is engaged in the business of supplying his or its product or services to the public as a class or any part thereof as distinguished from the serving of only particular individuals ... " Generally, a homeowners association only provides service to particular individuals (i.e., members of the association). This expenditure was enacted in 2005 in recognition that a homeowners association is not a public utility for purposes of the Business and Occupation Tax.

ACTIVITIES SUBJECT TO REDUCED RATES

Reduced tax rates are provided presumably in recognition of the cost or benefit associated with the particular activity or quantity. In some cases, only one or two taxpayers are eligible for the reduced tax rate. The following activities are eligible for reduced tax rates under the Business and Occupation Tax Statute:

Sales of Electric Power Exceeding 200,000 Kilowatts Per Hour Per Year Capacity of Units with a Flue Gas Desulfurization System

Expenditure calculations for the items subject to reduced rates follow.

SALES OF ELECTRIC POWER EXCEEDING 200,000 KILOWATTS PER HOUR PER YEAR

STATUTE: West Virginia Code §11-13-2o(b)(2)

TAX RATE: For taxpayers who sell electricity to consumers in this state that is not generated or produced in this state by the taxpayer ... the rate shall be five hundredths of one cent times the kilowatthours of electricity ... sold to a plant location in this state of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year

VALUE: **Cannot be disclosed**[1]

Rationale

The reduced rate for large quantities of electric power delivered to a manufacturer presumably exists to provide reduced rates to the power provider. There is an understanding that the reduction in tax rates would, in turn, be passed on to the large user through lower charges. This exemption exists to lower production costs for manufacturers consuming large quantities of electric power.

[1] Due to taxpayer confidentiality

CAPACITY OF UNITS WITH A FLUE GAS DESULFURIZATION SYSTEM

STATUTE: West Virginia Code §11-13-2o(b)(1)

TAX RATE: Upon every person engaging or continuing within this state in the business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or part, ... the tax imposed by section two of this article shall be equal to: ... the product of twenty-two dollars and seventy-eight cents multiplied by the taxable generating capacity of each generating unit in this state owned or leased by the taxpayer, ... Provided, that with respect to each generating unit in this state which has installed a flue gas desulfurization system, the tax imposed by section two of this article shall, on and after the thirty-first day of January, one thousand nine hundred ninety-six, be equal to the product twenty dollars and seventy cents multiplied by the taxable generating capacity of the units

VALUE: **Cannot be disclosed**[1]

Rationale

Flue gas desulfurization systems are intended to remove sulfur compounds from the exhaust gases of electric generating units fired by fossil fuel. The removal of sulfur compounds (e.g., sulfur dioxide) reduces the amount of acid rain formed when the exhaust gases combine with moisture in the air. This reduced tax rate presumably exists to encourage the installation of flue gas desulfurization systems at electric generating plants and, in turn, reduce the acid rain produced from the exhaust gases. The reduced tax rate also presumably promotes a market for high-sulfur coal.

[1] Due to taxpayer confidentiality

ALTERNATE TAX CALCULATIONS

Provisions that limit tax liability to the minimum of two alternate calculations are present for the following:

Gas Storage
Large Volume Electricity Sales to Manufacturers

Expenditure calculations for these alternate tax methods follow.

GAS STORAGE

STATUTE: West Virginia Code §11-13-2e(a)

ALTERNATE CALCULATION: Effective the first day of July, one-thousand nine hundred ninety-five, the net number of dekatherms of gas injected or the net number of dekatherms withdrawn shall not exceed the storage utilization index ... "storage utilization index" means the utilization of storage reservoir, through the operation of existing and functional facilities available for storage use during the five year base period ending the thirty-first day of December, one thousand nine hundred ninety-four, and the storage utilization index shall be the five-year average of taxable dekatherms as determined for each taxable period of the stated base period

VALUE: **$6.6 million per year**

Rationale

This expenditure was enacted in order to cap the tax liability of natural gas storage operators at the average monthly level experienced by such taxpayers between 1990 and 1994.

LARGE VOLUME ELECTRICITY SALES TO MANUFACTURERS

STATUTE: West Virginia Code §11-13-2o(b)(1)

ALTERNATE CALCULATION: Upon every person engaging or continuing within this state in the business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or part, ... the tax imposed by section two of this article shall be equal to: ... the product of twenty-two dollars and seventy-eight cents multiplied by the taxable generating capacity of each generating unit in this state owned or leased by the taxpayer, ... Provided, however, that with respect to kilowatt hours sold to or used by a plant location engaged in manufacturing activity in which the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year, in no event shall the tax imposed by this article with respect to the sale or use of such electricity exceed five hundredths of one cent times the kilowatt hours sold to or used by a plant engaged in such a manufacturing activity

VALUE: **Cannot be disclosed**[1]

Rationale

As indicated in prior sections concerning reduced tax rates for the provision of large quantities of electricity to manufacturers, it was understood that the rate reduction would be passed on to the user. This alternate calculation of tax presumably exists to ensure that under the revised tax structure enacted in 1995 the tax on the capacity dedicated to producing the electricity for the manufacturer is the same or less than the tax under prior statutes. This alternate tax calculation ensures that the pass-through of reduced-price electric power will not be affected by the change in the tax structure. If the qualified pass-through manufacturer consumes less electricity than was consumed during the base period, the alternative kilowatt-hour tax applies.

[1] Due to taxpayer confidentiality

CREDITS

The West Virginia Code provides for the application of various tax credits against the Business and Occupation Tax. Some credits provide qualifying businesses with an investment incentive. Others provide relief from double taxation or provide relief to utilities providing aid to low-income households. Some credits are carry-overs from an old tax base in place prior to 1995. Three of these old tax base credits, the Tax Credit for Increased Generation of Electricity from Coal, Credit for Electric Power Generation Taxes Paid to Another State and the Coal Loading Facilities Credit, no longer apply to the current tax base and are not subject to further discussion within this section. The following credits apply against current Business and Occupation Tax liability:

Economic Opportunity Tax Credit
Industrial Expansion and Revitalization Credit
Natural Gas Industry Jobs Retention Credit
Credit for Reducing Utility Charges to Low-Income Families
Consumers Sales and Service Tax and Use Tax Overpayment Credit
Community Contribution Tax Credit for Wind-Powered Projects
Annual Credit

Many of the credits listed above may also be applied against other business and personal taxes. Expenditure values presented in this section represent the amounts applied against **only** Business and Occupation Tax. In most cases, the priority order specified by statute or regulation specifies that the initial claim of the credit be applied against the Business and Occupation Tax. However, in some cases, the credits may be applied to other taxes first; thus, the credit amounts claimed against the Business and Occupation Tax may be negligible compared to the total cost of the credit. An analysis of these expenditures follows.

ECONOMIC OPPORTUNITY TAX CREDIT

STATUTE: West Virginia Code §11-13Q-7

CREDIT: Credit, attributable to qualified investment in tangible and real property and the creation of new jobs in West Virginia, may be used to offset up to eighty percent of Business and Occupation Tax liability attributable to generating or producing or selling electricity, provided that the credit may offset one-hundred percent of the tax if the median compensation of the new jobs exceeds an inflation adjusted value

VALUE: **Cannot be disclosed**[1]

Rationale

The Economic Opportunity Tax Credit was presumably enacted to encourage greater capital investment in West Virginia and create new jobs. In its base form, qualifying taxpayers must create at least 20 new jobs. However, the Economic Opportunity Tax Credit Law also contains Headquarters Relocation and Small Business provisions with lower minimum job creation requirements.

INDUSTRIAL EXPANSION AND REVITALIZATION CREDIT

STATUTE: West Virginia Code §§11-13D-3a and 11-13-3d

CREDIT: Credit, attributable to qualified investment by electric power producers in tangible and real property, may be used to offset up to fifty percent of Business and Occupation Tax liability for a period of ten years

VALUE: **$45.0 million per year**

Rationale

The Industrial Expansion and Revitalization Credit exists as an incentive for manufacturers of electricity to increase their property investment levels in West Virginia. The credit is available for

[1] Due to taxpayer confidentiality

nearly all purchases of real property and tangible personal property. Also, investment in replacement property is valued equally with investment in expansion property.

Revenue Analysis

The value of the Industrial Expansion and Revitalization Credit has grown significantly since 1992 when it was roughly $4.6 million. The increase in recent years is the result of increased investment by the electric power industry in the areas of plant revitalization and pollution control abatement.

NATURAL GAS INDUSTRY JOBS RETENTION CREDIT

STATUTE: West Virginia Code §11-13L

CREDIT: Credit, attributable to the number of qualified employees employed by a natural gas storage taxpayer during the taxable year multiplied by $1,000, may annually offset up to one hundred percent of Business and Occupation Tax liability attributable to the natural gas storage tax for tax years beginning on or after October 1, 1996

VALUE: **Cannot be disclosed**[1]

Rationale

The Natural Gas Industry Jobs Retention Credit exists as an incentive for natural gas storage companies to maintain their current employment levels within West Virginia.

[1] Due to taxpayer confidentiality

CREDIT FOR REDUCING UTILITY CHARGES TO LOW-INCOME FAMILIES

STATUTE: West Virginia Code §§11-13F-3 and 11-13-3f

CREDIT: Credit, attributable to the provision of electric or natural gas or water utility service to qualified low-income residential customers at special reduced rates, may be used to offset up to one hundred percent of Business and Occupation Tax liability

VALUE: **$6.4 million per year**

Rationale

This credit is a form of government assistance to qualified low-income households. Public utilities are compensated for the value of rate reductions to low-income customers through the tax credit program.

Revenue Analysis

Effective July 1, 2011, this credit is available to water utilities providing reduced rates to qualified low-income residential customers. However, for the period of this study, no water utility claimed this credit.

CONSUMERS SALES AND SERVICE TAX AND USE TAX OVERPAYMENT CREDIT

STATUTE: West Virginia Code §11-13-31

CREDIT: Overpayments of sales and use tax may be claimed as a credit against the Business and Occupation Tax

VALUE: **Minimal**

Rationale

This credit is a mechanism for taxpayers to claim a refund for the overpayment of Consumers Sales Tax or Use Tax without the need for filing a refund request with the State Tax Department.

This credit is **not** a tax expenditure because it simply provides an additional mechanism for expeditious return of funds never due the State.

COMMUNITY CONTRIBUTION TAX CREDIT FOR WIND-POWERED PROJECTS

STATUTE: West Virginia Code §11-13-2p

CREDIT: A credit equal to the money paid, or the lower of the cost or fair market value of property transferred, by the owner of a wind turbine unit to a county, county school board, or a municipality in the county in which the wind turbine is located

VALUE: **Cannot be disclosed**[1]

Rationale

Presumably, this credit was enacted to partially offset the increase in the tax rate on taxable generating capacity of generating units utilizing a wind-powered turbine. The credit is effective for taxable periods beginning on or after January 1, 2008.

ANNUAL CREDIT

STATUTE: West Virginia Code §11-13-3

CREDIT: An annual credit of $500 is permitted for each taxpayer subject to the Business and Occupation Tax

VALUE: **$50,000 per year**

Rationale

The purpose of this credit may be to provide some measure of tax relief to small businesses. However, the credit applies to all Business and Occupation taxpayers, regardless of size. This

[1] Due to taxpayer confidentiality

provision is a carryover from the old broad-based Business and Occupation Tax structure in place prior to July 1, 1987.

SEVERANCE TAX

OVERVIEW

The Severance Tax is imposed on the gross value of the severed natural resource. The gross value of the severed natural resource is the market value of the resource in the immediate vicinity where severed. Transportation costs to the customer are not included. The rate of taxation varies among the resources taxed as follows:

Natural Resource[1]	Tax Rate
Coal mined and produced, average seam thickness in excess of 45 inches	5.00%
Coal mined and produced from new underground mines, average seam thickness of 37 inches to 45 inches	2.00%
Coal mined and produced from new underground mines, average seam thickness less than 37 inches	1.00%
Waste coal	2.50%
Limestone or sandstone quarried or mined	5.00%
Oil	5.00%
Natural gas and coalbed methane	5.00%
Blast furnace slag	5.00%
Sand, gravel and other mineral products not quarried or mined	5.00%
Timber (Moratorium period - Three years for tax periods beginning on or after January 1, 2010)	0.00%
Timber	1.22%
Other natural resource products.	5.00%

Also, raw coal purchased and further processed into a commercially useable product is assessed tax on the value added in the processing. A Minimum Severance Tax of $0.75 per ton of coal produced by a taxpayer for sale, profit or commercial use applies to coal subject to the 5.0 percent rate.

The Workers' Compensation Debt Reduction Act of 2005 created three additional taxes to provide funding to reduce the unfunded liability of the current Workers' Compensation system, pay debt service on revenue bonds issued to provide the funding, or any combination of the two. These additional taxes apply as of December 1, 2005. The three new taxes are as follows:

[1] Reduced severance tax rates for "thin-seam" production apply only to new underground coal mines (mines first opened on or after April 11, 1997) with average seam thickness of less than 45 inches.

1. $0.56 per ton additional Severance Tax on persons for the privilege of engaging in West Virginia in the business of severing, extracting, reducing to possession and producing coal for sale, profit or commercial use;
2. $0.047 cents per mcf additional Severance Tax on persons for the privilege of engaging in West Virginia in the business of severing natural gas or coalbed methane (effective January 1, 2009) for sale, profit or commercial use, and
3. an additional Severance Tax imposed at the rate of 2.78 percent on persons for the privilege of engaging in West Virginia in the business of severing timber for sale, profit or commercial use (the measure of the tax is the gross value of the timber at the point where the production privilege ends).

The Severance and Business Privilege Tax is imposed at the rate of 5.0 percent on persons providing behavioral health services. Because the tax is similar to the Health Care Provider Taxes for other health care providers, all further discussion of this tax in this publication can be found under the Health Care Provider Taxes section.

ESTIMATING COSTS OF TAX EXPENDITURES

Several sources were used to estimate the costs of Severance Tax expenditures. However, taxpayer returns and other records of the State Tax Department were used primarily for the estimates.

ORGANIZATION AND ANALYSIS

The Severance Tax expenditures discussed in this report are divided into two groups as follows:

Exclusions and Other Tax Preferences
Credits

The analysis provided for each tax expenditure includes the item's cost to the State and a possible rationale.

EXCLUSIONS AND OTHER TAX PREFERENCES

Several types of activities are excluded from the Severance Tax due to the nature of the business activity or the level of that activity. In addition, certain coal mining activities are subject to preferential tax rates. The following is a list of these exclusions and other tax preferences:

Treatment Processes Not Considered as Mining
Gob or Coal Refuse
Treatment Processes Not Included in Extraction of Oil and Gas
Low-Volume Oil and Gas Well Exclusions
Ending of Severance Activity for Timber
Ending of Severance Activity for Limestone and Sandstone
Reduced Tax Rates for Thin-Seamed Coal from New Underground Mines
Reduced Tax Rate for Extracting Coal from Refuse and Gob Piles

An analysis of these exclusions and other tax preferences follows.

TREATMENT PROCESSES NOT CONSIDERED AS MINING

STATUTE: West Virginia Code §11-13A-4(b)

EXCLUSION: Unless such processes are otherwise provided for, or are necessary or incidental to processes provided for, the following treatment processes shall not be considered as "mining": Electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action and molding or shaping

VALUE: **Not applicable**

Rationale

That portion of income derived from value added by treatment processes after severance is by definition not part of the severance process and, therefore, is exempt from tax. These processes consist of electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other minerals, treatment effecting a chemical change, thermal action and molding or shaping. These processes generally occur after the resource is removed from the earth, the point at which severance occurs.

GOB OR COAL REFUSE

STATUTE: West Virginia Code §§11-13A-2c(5) and 11-13A-3e(e)

EXCLUSION: "Extraction of ores or minerals from the ground" includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining only when such extraction is sold (§11-13A-2c(5))

The tax imposed in West Virginia Code §11-13A-3e(b) shall not apply to any electrical power co-generation plant burning material from its wholly owned refuse or gob pile (§11-13A-3e(e))

VALUE: **Cannot be disclosed**[1]

Rationale

Gob that is severed but not sold by producers before use is excluded from the Severance Tax. Gob is considered to be "coal mine refuse."

As a result of technological developments and other factors, the material in some refuse or gob piles can be recovered and used as clean coal. The exemption for electric power co-generation plants using material from their own refuse or gob piles presumably exists to provide an incentive to reduce or eliminate the refuse or gob piles.

TREATMENT PROCESSES NOT INCLUDED IN EXTRACTION OF OIL AND GAS

STATUTE: West Virginia Code §11-13A-4(c)

EXCLUSION: The privileges of severing and producing oil and natural gas shall not include any conversion or refining process

VALUE: **Not applicable**

[1] Due to taxpayer confidentiality

Rationale

The conversion or refining of oil and natural gas is excluded from the Severance Tax. These processes are not considered part of the severance of the natural resource and, thus, are excluded from taxation.

LOW-VOLUME OIL AND GAS WELL EXCLUSIONS

STATUTE: West Virginia Code §11-13A-3a(a)

EXCLUSION: As of January 1, 2000, there are exclusions of receipts attributable to free natural gas provided to a surface owner, natural gas from wells with prior year production of less than five thousand cubic feet per day, oil from wells with prior year production of less than one-half barrel per day and, for a period of ten years, natural gas from wells with no marketable production for a prior five year period. On and after July 1, 2013, the ten-year exemption for shut-in wells no longer applies to horizontally drilled wells.

VALUE: **$4.5 million per year**

Rationale

Free natural gas provided to a surface owner is presumably excluded from taxation in recognition that tax on severed natural gas is imposed on the gross proceeds of the production and the producer does not receive direct monetary compensation for the gas provided to the surface owner. The exclusion of receipts from low-volume wells presumably exists to keep low marginal wells in production. In addition, the ten-year exemption for inactive wells presumably promotes additional development and marketing of conventional natural gas wells in West Virginia.

Revenue Analysis

The expenditure value provided above is an estimate of the tax foregone due to the exclusion of natural gas and oil obtained from low-volume wells.

An estimate of the tax foregone due to the provision of free natural gas to the owner of the surface rights where gas wells are located is not available. However, the amount of tax foregone for this exclusion is likely minimal.

The expenditure value attributable to the ten-year exclusion of receipts from gas wells not in production over a prior five-year period is unavailable, but could be significant. Depending upon current market prices for natural gas, producers may alter their normal production patterns to take advantage of the exclusion. When prices are low, producers may consider capping all of their newly drilled productive wells for the minimum five-year exclusion qualification period to wait for a change in the price. Conversely, when prices are high, producers may be enticed to uncap old wells.

ENDING OF SEVERANCE ACTIVITY FOR TIMBER

STATUTE: West Virginia Code §11-13A-4(d)

EXCLUSION: The privilege of severing and producing timber shall end once the tree is severed and delimbed

VALUE: **Not applicable**

Rationale

Severance activity ends when the tree is severed and delimbed. Any processing past this point is considered manufacturing activity and is not taxed under the Severance Tax law.

ENDING OF SEVERANCE ACTIVITY FOR LIMESTONE AND SANDSTONE

STATUTE: West Virginia Code §11-13A-4(e)

EXCLUSION: The privilege of severing and producing limestone and sandstone by quarrying or mining shall end once the limestone or sandstone is severed from the earth

VALUE: **Not applicable**

Rationale

Once limestone or sandstone has been removed from the seam and is on the quarry floor, the act of severance is completed. Taxation is levied only on the severance activity; therefore, further processing (e.g., crushing or sizing) is not considered part of the severance activity and is not taxable under the law.

REDUCED TAX RATES FOR THIN-SEAMED COAL FROM NEW UNDERGROUND MINES

STATUTE: West Virginia Code §11-13A-3(f)

TAX RATE: For tax years beginning after April 10, 1997, any new underground mine producing coal from seams of less than forty-five inches in average thickness or any existing underground mine that had not produced coal from seams of less than forty-five inches in thickness between October 12, 1996 and April 10, 1997 may qualify for reduced severance tax rates. The tax rate is two percent for coal mined from seams with an average thickness of thirty-seven inches to forty-five inches and one percent for coal mined from seams with an average thickness of less than thirty-seven inches

VALUE: **$60.0 million per year**

Rationale

The application of reduced coal severance tax rates for "new" thin-seamed underground mines presumably exists to encourage greater coal production from thin-seamed underground mines. The application of the reduced tax rates to just "new" mines represents an effort to minimize the initial cost of this expenditure.

REDUCED TAX RATE FOR EXTRACTING COAL FROM REFUSE AND GOB PILES

STATUTE: West Virginia Code §11-13A-3e(c)

TAX RATE: The tax imposed in West Virginia Code §11-13A-3e(b) shall be two and one-half percent of the gross value of the coal so produced

VALUE: **$170,000 per year**

Rationale

The application of a reduced coal severance tax rate for the extracting and recovering material from refuse, gob piles or other sources of waste coal presumably exists to reduce the volume and number of coal refuse and gob piles.

CREDITS

The West Virginia Code provides for the application of various tax credits against the Severance Tax. Some credits provide qualifying businesses with an investment incentive while others provide relief from double taxation. Although there are various credits provided by statute that can be applied against Severance Tax liability, this report analyzes only those tax credit applications subject to potential utilization by Severance taxpayers. For example, the Housing Development Projects Credit is not subject to further discussion within this section, even though it may technically apply against the Severance Tax. Since those in the business of mineral extraction are not in the business of residential housing construction, the Housing Development Projects Credit is not used by taxpayers against the Severance Tax. The following credits apply against Severance Tax liability:

Manufacturing Investment Tax Credit
Coal Loading Facilities Credit
Credit for Payment of Minimum Severance Tax on Coal
Annual Credit

Many of the credits listed above may also be applied against other business and personal taxes. Expenditure values presented in this section represent the amounts applied against **only** the Severance Tax. An analysis of these expenditures follows.

MANUFACTURING INVESTMENT TAX CREDIT

STATUTE: West Virginia Code §11-13S-4(b)(2)

CREDIT: Credit, attributable to qualified investment by manufacturers in tangible and real property, may be used to offset up to fifty percent of Severance Tax liability for a period of ten years

VALUE: **$900,000 per year**

Rationale

The Manufacturing Investment Tax Credit was enacted to encourage the location of new industry in West Virginia and to encourage the expansion, growth and revitalization of existing industrial facilities in West Virginia. Qualified investment placed in service or use on or after January 1, 2003 may qualify for the credit. Eligible taxpayers include those with business activity classified as having a sector identifier, consisting of the first two digits of the six-digit North American Industry Classification System code number, of thirty-one, thirty-two or thirty-three.

COAL LOADING FACILITIES CREDIT

STATUTE: West Virginia Code §§11-13E-3a and 11-13A-10a(3)

CREDIT: Credit, attributable to qualified investment in tangible and real property for use in a coal loading facility, may be used to offset up to fifty percent of Severance Tax liability for a period of ten years

VALUE: **$1.1 million per year**

Rationale

The Coal Loading Facilities Credit exists as an incentive to encourage the construction and maintenance of coal loading facilities in West Virginia. Under this credit program, investment in replacement property is valued equally with investment in expansion property.

CREDIT FOR PAYMENT OF MINIMUM SEVERANCE TAX ON COAL

STATUTE: West Virginia Code §11-12B-3(b)

CREDIT: A person who pays the Minimum Severance Tax shall be allowed a credit against the Severance Tax, but not including the Additional Severance Tax on Coal

VALUE: **$83.0 million per year**

Rationale

A business that pays the Minimum Severance Tax on Coal is allowed a credit against the net State Severance Tax, (i.e., the gross receipts tax rate less the 0.35 percent designated for local governments). The credit amount is equal to the liability for the Minimum Severance Tax on Coal for the taxable year. The amount of the credit may not exceed the Severance Tax liability of the taxpayer. This credit is **not** a true tax expenditure. It is part of a mechanism to ensure that a minimum amount of tax per ton of mined coal is paid.

ANNUAL CREDIT

STATUTE: West Virginia Code §11-13A-10

CREDIT: An annual credit of $500 is permitted for each taxpayer subject to the Severance Tax

VALUE: **$2.1 million per year**

Rationale

The purpose of this credit may be to provide some measure of tax relief to small businesses. However, the credit applies to all Severance taxpayers, regardless of size.

HEALTH CARE PROVIDER TAXES

OVERVIEW

The Health Care Provider Taxes are imposed on the provision of selected types of health care services provided in West Virginia. The following is a list of taxable health care services and their respective tax rates, effective July 1, 2015:

Ambulatory Surgical Centers	1.75%
Independent Laboratory or X-ray Services	5.00%
Inpatient Hospital Services	2.50%
Intermediate Care Facility Services for the Mentally Retarded	5.50%
Nursing Facilities other than Intermediate Care Facility Services for the Mentally Retarded	5.50%
Outpatient Hospital Services	2.50%
Acute Care Hospital Services (in addition to 2.50%)	0.62%

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. Gross receipts that are not related to providing of 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.

ESTIMATING COSTS OF TAX EXPENDITURES

Tax return information was used to estimate expenditure valuations. Estimates were calculated using the various tax rates and include the aggregate of all Health Care Provider Taxes.

ORGANIZATION AND ANALYSIS

There are only two possible deductions from the Health Care Provider Tax bases, contractual allowances and bad debts. In addition, certain tax credits apply to selected provider activities. The analysis provided for each deduction or credit includes the item's value and a rationale.

DEDUCTIONS

The two possible deductions from the gross receipts tax base of the various Health Care Provider Taxes are as follows:

Contractual Allowances
Bad Debts

An analysis of these deductions follows.

Rationale

The deductions for contractual allowances and bad debts exist to prevent taxation of gross receipts never received by accrual basis taxpayers. Contractual allowances represent the difference between gross receipts at established rates and amounts realizable from third-party payers under contractual agreements. Bad debts are deducted to the extent such amounts were previously included in the measure of gross receipts upon which tax was paid. These deductions are **not** tax expenditures.

CONTRACTUAL ALLOWANCES

STATUTE: West Virginia Code §11-27

DEDUCTION: Accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein

VALUE: **$154.5 million per year**

BAD DEBTS

STATUTE: West Virginia Code §11-27

DEDUCTION: Accrual basis providers shall be allowed to reduce gross receipts by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid

VALUE: **$13.6 million per year**

CREDITS

The possible tax credit application for selected provider activities is as follows:

Annual Credit

The Annual Credit may only be applied against the Severance Tax on Behavioral Health Services. An analysis of the credit follows.

ANNUAL CREDIT

STATUTE: West Virginia Code §11-13A-10

CREDIT: An annual credit of $500 is permitted for each taxpayer subject to the Severance Tax

VALUE: **$30,000 per year**

Rationale

The Annual Credit is part of the regular Severance Tax base. The federal regulations on state Medicaid funding require similar tax treatment for all taxpayers subject to an eligible broad-based tax. These tax credits are available to Behavioral Health Services providers because they are available to all other Severance taxpayers.

SOLID WASTE ASSESSMENT FEES

OVERVIEW

Several Solid Waste Assessment Fees are levied and imposed on the disposal of solid waste at any solid waste disposal facility in West Virginia. The Solid Waste Assessment Fees are imposed in addition to all other fees levied. The fees are to be added to, and constitute part of, any fee charged by the operator or owner of a solid waste disposal facility for receiving and disposing of solid waste. The following table shows the Solid Waste Assessment Fees by West Virginia Code Section:

Fee	West Virginia Code	Fee Per Ton
Solid Waste Assessment Fee	§22-15-11(a)	$1.75
Solid Waste Assessment Interim Fee	§22C-4-30(a)	1.00
Recycling Assessment Fee	§22-15A-19(a)	2.00
Solid Waste Assessment Fee–Landfill Closure	§22-16-4(a)	3.50
Horizontal Drilling Waste Assessment Fee	§22-15-11(a)	1.00

By statute, waste disposed of by commercial recyclers is only subject to the $2.00 per ton Recycling Assessment Fee levied via W. Va. Code §22-15A-19. The term "commercial recyclers" refers to any person, corporation or business entity whose operation involves mechanical separation of materials for the purpose of reselling or recycling at least 70 percent by weight of the materials coming into the commercial recycling facility.

The Horizontal Drilling Waste Assessment Fee, effective July 1, 2014, is levied upon the disposal of drill cuttings and drilling waste generated by horizontal well sites. The fee is in addition to all other solid waste fees.

The following types of waste collected at solid waste disposal facilities are exempt from all four of the Solid Waste Assessment Fees listed above:

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1. waste disposed by owner, operator or renter of waste disposal facility;
2. reused or recycled waste, and
3. residential waste disposed by individuals on specific days

While a statutory exemption for the waste disposed of by commercial recyclers is included in three of the four Solid Waste Assessment Fees, for purposes of this study the commercial recyclers expenditure is addressed as a reduced rate. In addition to the indicated exemptions, the fee assessed via W. Va. Code §22-16-4 provides an expenditure for waste disposal facilities that are required to set some of the fee aside for facility closure requirements.

ORGANIZATION AND ANALYSIS

This study separates the Solid Waste Assessment Fee expenditures into two groups. The groups are based on the type of expenditure or on the organization or activity involved. The two groups are as follows:

Measurable Transactions Exempt from Fees
Activities Subject to Reduced Rates and Deductions

Each expenditure listed in this report contains a brief rationale to briefly explain the existence and the theory behind each expenditure.

MEASURABLE TRANSACTIONS EXEMPT FROM FEES

The Solid Waste Assessment Fee statutes provide several exemptions that exclude specific transactions from the assessment fee. The following transactions are excluded from the appropriate fee base prior to the calculation of the amount due:

Exclusive Disposals
Recycled or Reused Waste
Residential Disposal on Specific Days

Expenditure calculations for these excluded items follow.

EXCLUSIVE DISPOSALS

STATUTE: West Virginia Code §§22-15-11(e)(1), 22-16-4(e)(1), 22C-4-30(e)(1), and 22-15A-19(e)(1)

EXEMPTION: Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis

VALUE: **$110,000 per year**

Rationale

The purpose of this exclusion is to provide some measure of relief for an operator of a waste disposal facility by not imposing a fee on waste produced by operator's personal activity or regular business.

RECYCLED OR REUSED WASTE

STATUTE: West Virginia Code §§22-15-11(e)(2), 22-16-4(e)(2), 22C-4-30(e)(2), and 22-15A-19(e)(2)

EXEMPTION: No fee applies to any waste that was reused or recycled

VALUE: **$50,000 per year**

Rationale

The purpose of this exclusion is to encourage reuse or recycling of solid waste.

RESIDENTIAL DISPOSAL ON SPECIFIC DAYS

STATUTE: West Virginia Code §§22-15-11(e)(3), 22-16-4(e)(3), 22C-4-30(e)(3), and 22-15A-19(e)(3)

EXEMPTION: Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director

VALUE: **$40,000 per year**

Rationale

This exclusion encourages individuals to dispose of larger items or accumulated refuse without having to pay any additional waste removal fee.

ACTIVITIES SUBJECT TO REDUCED RATES AND DEDUCTIONS

The Solid Waste Assessment Fee expenditure related to reduced rates and deductions is as follows:

Solid Waste Disposed by Commercial Recycler

An analysis of this expenditure follows.

SOLID WASTE DISPOSED BY COMMERCIAL RECYCLER

STATUTE: West Virginia Code §§22-15-11(e)(4), 22-16-4(e)(4), and 22C-4-30(e)(4)

EXEMPTION: Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. Rate is two dollars per ton for any commercial recycler that is eligible for this reduction.

VALUE: **$560,000 per year**

Rationale

The purpose of this reduction is to support and encourage recycling. By recovering valuable resources from solid waste, commercial recyclers reduce the need for landfills while extending their life.

BUSINESS REGISTRATION TAX

OVERVIEW

The Business Registration Tax is a license fee required prior to starting business operations in West Virginia. The tax was originally enacted in 1970 as the "Business Franchise Registration Tax" to replace both the General License Tax and the Store Tax. In 1986, the name was changed to the Business Registration Tax to avoid confusion with the Business Franchise Tax, a tax on the net worth of businesses. In Fiscal Year 2014, Business Registration Tax collections totaled $698,000. All Business Registration Tax Certificates issued for periods beginning on or after July 1, 2010 will be permanent unless suspended or revoked for cause or cancelled by the holder of the certificate.

ESTIMATING COSTS OF TAX EXPENDITURES

The values of the expenditures contained within this section were determined from a variety of sources. In many cases, internal State Tax Department data was used to calculate a value for the expenditure. In other cases, the information to calculate an expenditure value was not readily available to the Department.

ORGANIZATION AND ANALYSIS

This study separates the Business Registration Tax expenditures into four groups based on statutory language. The expenditure groups are listed below:

Activities Excluded from Definition of Business Activity
Activities Exempt from Registration
Activities not Requiring Business Registration Certificate
Activities Exempt from Payment of Tax

Each expenditure listed in this section contains a brief rationale for the existence of the expenditure. Legislative documentation on why a particular tax expenditure was enacted is generally not available. Thus, the rationales herein are based solely on the experience of the State Tax Department.

ACTIVITIES EXCLUDED FROM DEFINITION OF BUSINESS ACTIVITY

The following activities are excluded from the definition of business activity and are thus excluded from taxation under Business Registration Tax statutes:

Sales of Property Directed by or Conducted by Governmental Agencies
The Conduct of Charitable Bingo or Raffle
Horse or Dog Race Meeting Activities and Associated Services
Occasional or Casual Sales of Property or Services

An analysis of these exclusions follows.

SALES OF PROPERTY DIRECTED BY OR CONDUCTED BY GOVERNMENTAL AGENCIES

STATUTE: West Virginia Code §§11-12-2(b)(2)(A) and 11-12-2(b)(2)(B)

EXCLUSION: "Business Activity" shall not include:
Judicial sales directed by law or court order (§11-12-2(b)(2)(A))
Sales for delinquent taxes of real or personal property (§11-12-2(b)(2)(B))

VALUE: **Minimal**

Rationale

Judicial sales directed by law or court order are predominantly of two types. The first type involves the sale of property owned by persons claiming bankruptcy while the second type involves the sale of confiscated property. The confiscated property generally results from its use in criminal activities or due to outstanding tax liabilities, not including outstanding property tax liabilities. While one could construe these sales as satisfying the "revenue-generating" and "gain or economic benefit" clauses in the definition of "business activity," the intent of the sales is generally otherwise. These sales are presumably excluded since the purpose of the sale is generally not for economic gain by the entity conducting the sale. The proceeds of sales resulting from bankruptcy proceedings are, in part, distributed to the creditors of the company claiming bankruptcy protection. However, the revenue received by the creditors from these sales is usually only a fraction of the amount due. In these cases, the sales reduce the "economic loss" of the creditors. Sales of property seized due to

outstanding tax liabilities are generally applied to reduce the amount due. The sale of property seized due to criminal activity is made to reduce the economic gain of the criminal activity.

The sales of real or personal property for delinquent taxes are generally made by county sheriffs and the State. This exclusion exists in recognition that the entities making the sales are not businesses.

THE CONDUCT OF CHARITABLE BINGO OR RAFFLE

STATUTE: West Virginia Code §§11-12-2(b)(2)(C) and 11-12-2(b)(2)(D)

EXCLUSION: "Business Activity" shall not include:

The conduct of charitable bingo by any person licensed under West Virginia Code §47-20-1 et seq. (§11-12-2(b)(2)(C))

The conduct of a charitable raffle by any person (§11-12-2(b)(2)(D))

VALUE: **Minimal**

Rationale

Tax-exempt charitable and public service organizations conducting bingo games are required to complete a separate application to obtain a license to conduct bingo games. Similarly, charitable and public service organizations, including the West Virginia State Fair Board, qualified to conduct raffles are required to file for a raffle license. Organizations conducting charitable bingo and/or raffles are excluded from the Business Registration Tax due to their filing and paying a separate license fee.

Revenue Analysis

While some organizations conduct bingo games or raffles on a fairly regular basis, there are licenses available for limited occasion use. The organizations conducting bingo or raffles on a limited occasion license could presumably qualify for the exclusion provided for occasional or casual sales of property or services. Many of the organizations conducting bingo or raffles are charitable organizations and would be exempt from payment of the tax due to their nonprofit status.

HORSE OR DOG RACE MEETING ACTIVITIES AND ASSOCIATED SERVICES

STATUTE: West Virginia Code §§11-12-2(b)(2)(E), 11-12-2(b)(2)(F), 11-12-2(b)(2)(G) and 11-12-2(b)(2)(H)

EXCLUSION: "Business Activity" shall not include:

- The conduct of a horse or dog race meeting by any racing association licensed under West Virginia Code §19-23-1 et seq. (§11-12-2(b)(2)(E))
- The operation or maintenance of the pari-mutuel system of wagering during the conduct of a licensed horse or dog race meeting (§11-12-2(b)(2)(F))
- The sale of any commodity during the conduct of a licensed horse or dog meeting (§11-12-2(b)(2)(G))
- The services of owners, trainers or jockeys which are essential to the effective conduct a licensed horse or dog meeting (§11-12-2(b)(2)(H))

VALUE: **Minimal**

Rationale

West Virginia Code §19-23-1 requires all associations conducting horse or dog race meetings for any purse to possess a license from the West Virginia Racing Commission. The exclusion for the conduct of a horse or dog race meeting that involves a purse exists in recognition of the separate licensing requirements for such activities.

The exclusion concerning the operation or maintenance of the pari-mutuel wagering system presumably exists due to an interpretation that this activity requires a separate license from the West Virginia Racing Commission. The interpretation that a separate license is required may be the result of the language in the West Virginia Code pertaining to horse or dog racing.

A segment of West Virginia Code §19-23-12 reads in part "nor shall there be, hereafter, any imposition of tax pursuant to articles twelve, thirteen or fifteen of chapter eleven of this code on the income or receipts of owners, trainers or jockeys directly arising from their services which are essential to the effective conduct of a horse or dog race meeting." Additionally, West Virginia Code §19-23-12 precludes the taxation of the sale of any commodities during a horse or dog race meeting.

Revenue Analysis

Repeal of the exclusions relating to horse and dog racing meetings would result in no revenue gain for the State. West Virginia Code §19-23-12 reads in part "The license tax imposed in section ten [West Virginia Code §19-23-10] of this article shall be in lieu of all other license, income, excise, special or franchise taxes of this State, and no county or municipality or other political subdivision of this State shall be empowered to levy or impose any license, income, pari-mutuel, excise, special or franchise tax on any racing association engaged in the business of conducting a horse or dog race meeting at which horse or dog races are run for purses under the jurisdiction of and being licensed by the racing commission, or on the operation or maintenance of the pari-mutuel system of wagering, or on the sale of any commodity during a horse or dog race meeting at which horse or dog races are run, or at any such horse or dog racetrack...." While the removal of this expenditure might subject activities coincidental to the conduct of horse or dog race meetings to the registration requirements of the Business Registration Tax, the above statement precludes the assessment of any tax.

In some cases, a business that conducts horse or dog race meetings may also be engaged in other business activity at the same location. This other business activity would be subject to the Business Registration Tax. Since the tax is based on the location of the business and not the activities, businesses already paying the tax would continue to pay if the exclusion stated above is repealed. In this case, State revenue would not change due to the repeal of the exclusion.

While the repeal of this expenditure may subject the owners, trainers and jockeys to the registration requirements of West Virginia Code §11-12-1 et seq., the imposition of the tax is precluded as stated above.

OCCASIONAL OR CASUAL SALES OF PROPERTY OR SERVICES

STATUTE: West Virginia Code §11-12-2(b)(2)(I)

EXCLUSION: "Business Activity" shall not include:
Occasional or casual sales of property or services

VALUE: **Minimal**

Rationale

Regulations specify occasional or casual sales as those occurring not more than four times a year. The sale of outgrown or unneeded items by individuals through yard sales, bulletin boards or classified advertisements is often undertaken less than five times in a year. This expenditure exists because of the administrative difficulties of registering every individual conducting occasional or casual sales.

ACTIVITIES EXEMPT FROM REGISTRATION

The only businesses exempt from registering for the Business Registration Tax are those persons not required to collect or withhold a tax administered under West Virginia Code §11-10-1 et seq. An analysis of this exemption follows.

PERSONS NOT REQUIRED TO COLLECT OR WITHHOLD TAX

STATUTE: West Virginia Code §11-12-3(c)

EXCLUSION: Persons engaging in business activity in West Virginia who are not required by law to collect or withhold a tax administered under West Virginia Code §11-10-1 et seq. and who does not claim exemption from payment of taxes imposed by articles fifteen and fifteen-a of the West Virginia Code shall be exempt from both registration and payment of the tax imposed by article twelve if such person had gross income from business activity of $4,000 or less during that person's tax year for income tax purposes immediately preceding the registration period for which a registration certificate is otherwise required

VALUE: **Minimal**

Rationale

The restrictions stated in this exemption applying to persons not required to collect or withhold a tax administered by West Virginia Code §11-10-1 et seq. severely limits the application of the exemption. Since Article 10, relating to tax procedure and administration, of the West Virginia Code applies to the Consumers Sales Tax and the Personal Income Tax, the exemption is limited to persons with no sales or only exempt sales and no employees. Additionally, the limit on gross income from business activity of $4,000 or less would limit application of the exemption.

This exemption presumably exists in recognition that persons satisfying the above-cited restrictions do not meet the "purposeful revenue-generating activity" clause in the definition of "business activity" stated in West Virginia Code §11-12-2(b)(2).

ACTIVITIES NOT REQUIRING
BUSINESS REGISTRATION CERTIFICATE

The Business Registration Tax statutes provide several activities with an exemption from obtaining the Business Registration Certificate required of most other businesses. The following exempted activities are discussed in this section:

Individual Coin-Operated Machines
Employment Agencies, Collection Agencies and Drug Paraphernalia Businesses

Expenditure calculations for these exempt business activities follow.

INDIVIDUAL COIN-OPERATED MACHINES

STATUTE: West Virginia Code §11-12-3(b)(2)

EXEMPTION: A separate business registration certificate is not required for each coin-operated machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity

VALUE: **Minimal**

Rationale

The coin-operated machine exemption exists to recognize that the activity of making coin-operated machines available, rather than operating the individual machines, is the "business activity" subject to the Business Registration Tax.

EMPLOYMENT AGENCIES, COLLECTION AGENCIES AND DRUG PARAPHERNALIA BUSINESSES

STATUTE: West Virginia Code §11-12-3(b)(4)

EXEMPTION: Persons engaging in purposeful revenue generating activity for which an employment agency license or collection agency license or a license to sell drug paraphernalia is required and no other business activity is conducted by that person at each business location for which the employment agency license or collection agency license or license to sell drug paraphernalia is issued, then only that license is required for each such activity conducted by the licensee at each business location

VALUE: **Minimal**

Rationale

Employment agencies, collection agencies and businesses selling drug paraphernalia each have their own licensing requirements. The exemption exists to avoid the duplication of licensing and registration under the Business Registration Tax and the licensing and registration required in other parts of the West Virginia Code.

Revenue Analysis

The repeal of this exemption would provide minimal revenue gain. As noted in the statement of the expenditure, the portion of the exemption available to employment agencies, collection agencies or drug paraphernalia businesses can be used if the listed activity is the **only** business activity conducted at each location. However, most of these businesses are also engaged in other activities in addition to the exempt activity. These other activities are subject to the Business Registration Tax.

ACTIVITIES EXEMPT FROM PAYMENT OF TAX

Several groups of taxpayers who are required by law to collect or withhold taxes administered by West Virginia Code §11-10-1 et seq., or who claim exemption from payment of Consumers Sales and Service Tax and Use Tax are exempt from payment of the biennial $30 Business Registration Tax. However, these taxpayers **are required** to obtain a business registration certificate. The groups exempt from payment of the Business Registration Tax are as follows:

Persons with Limited Business Activity or Nexus
Governmental Agencies or Instrumentalities
Persons Engaged in Agriculture and Farming

An analysis of these expenditures follows.

PERSONS WITH LIMITED BUSINESS ACTIVITY OR NEXUS

STATUTE: West Virginia Code §§11-12-3(d)(1), 11-12-3(d)(2) and 11-12-3(d)(6)

EXCLUSION:
- A person who had gross income from businessactivity of $4,000 or less during that person's tax year for State income tax purposes immediately preceding the registration period for which a registration certificate is required is exempt from payment of the tax (§11-12-3(d)(1))
- An organization which qualifies, or would qualify, for exemption from federal income taxes under section 501 of the Internal Revenue Code of 1986 are exempt from payment of the tax (§11-12-3(d)(2))
- A foreign retailer who is not a "retailer engaging in business in West Virginia" as defined in West Virginia Code §11-15A-1 who enters into an agreement with the State Tax Commissioner to voluntarily collect and remit Use Tax on sales to West Virginia customers is exempt from payment of the tax (§11-12-3(d)(6))

VALUE: **Minimal**

Rationale

For persons with business gross income of $4,000 or less, the exemption presumably exists to reduce the cost of operating a business. The "purposeful revenue-generating activity" of these businesses is a marginal activity.

Prior to 1986, the occasional sales by societies acting for charitable, religious or benevolent purposes were excluded from the definition of "business" and therefore were exempt from registration. Under current law, these organizations must obtain a license but are exempt from payment. These businesses, which include charitable and religious organizations, are usually exempt from taxes, presumably in recognition of the benevolent services provided by these groups.

While engaging in "business activity", foreign retailers are not always engaged in such activity within the borders of West Virginia. This expenditure exists in recognition of the lack of "West Virginia tax nexus" for these businesses. In addition, Use Tax collections by foreign retailers are voluntary.

GOVERNMENTAL AGENCIES OR INSTRUMENTALITIES

STATUTE: West Virginia Code §§11-12-3(d)(3) and 11-12-3(d)(4)

EXEMPTION: The State of West Virginia, or a political subdivision thereof, selling tangible personal property, admissions or services, when those activities compete with or may compete with the activities of another person are exempt from payment of the tax (§11-12-3(d)(3))

The United States, or an agency or instrumentality thereof, which is exempt from taxation by the states is exempt from payment of the tax (§11-12-3(d)(4))

VALUE: **Minimal**

Rationale

The payment of the Business Registration Tax by the State and its political subdivisions would increase the cost of governmental services and the taxes and fees used to fund the services. Payment of the tax would generally result in a transfer of local government revenue to the State. The exemption thus exists to reduce the cost of governmental services and the transfer of local revenue to the State.

The exemption from payment of the Business Registration Tax by the United States and its agencies and instrumentalities is required by the federal supremacy clause in the United States Constitution. This exemption from payment of the tax is **not** an expenditure since states are prohibited from levying direct taxes upon the United States government.

PERSONS ENGAGED IN AGRICULTURE AND FARMING

STATUTE: West Virginia Code §11-12-3(d)(5)

EXEMPTION: A person engaged in the business of agriculture and farming is exempt from payment of the tax

VALUE: **Minimal**

Rationale

This exemption presumably exists to promote agriculture and farming. Prior to 1986, sales of products from farms, gardens, or dairies by the producers or growers were excluded from the definition of "business" and therefore were exempt from registration. Under current law, these organizations must obtain a license but are exempt from payment of the tax.

EXCISE TAXES

MOTOR FUEL EXCISE TAX

OVERVIEW

The Motor Fuel Excise Tax is a combination of a flat tax and a variable tax. The variable component of the tax is the Consumers Sales and Service Tax and Use Tax, which is based on 5.0 percent of the average wholesale price of motor fuels as determined by the State Tax Commissioner. Each January 1, the State Tax Commissioner will determine the average wholesale price for the annual period based on price and sales data gathered for the preceding period of July 1 through October 31 and publish the information in an Administrative Notice. Administrative Notices for current and prior average wholesale prices can be found on the State Tax Department web page.

The Motor Fuel Excise Tax rates in effect for January 1, 2015 through December 31, 2015 are as follows:

Motor Fuel	Flat Tax Rate	Variable Tax Rate	Combined Tax Rate
Conventional Motor Fuels (Gasoline, Diesel, Kerosene, etc., unless listed below)	$0.205 per gallon	$0.141 per gallons	$0.346 per gallon
Compressed Natural Gas (CNG)	$1.618 per 1,000 cubic feet	$0.276 per 1,000 cubic feet	$1.894 per 1,000 cubic feet
Liquified Natural Gas (LNG)	$0.132 per gallon of LNG	$0.023 per gallon of LNG	$0.155 per gallon of LNG
Liquified Petroleum Gas (LPG-Propane)	$0.150 per gallon of LPG	$0.061 per gallon of LPG	$0.211 per gallon of LPG
Field Gas	$1.618 per 1,000 cubic feet	$0.113 per 1,000 cubic feet	$1.731 per 1,000 cubic feet

The Use Tax is based on the percentage of carrier operations in West Virginia. The relevant percentage is the proportion of West Virginia miles compared with the total miles traveled within and without West Virginia. Consumers Sales and Service Tax will be included in the price of fuel purchased in West Virginia and can offset the Use Tax.

The Motor Fuel Excise Tax is imposed at the time motor fuel is imported into West Virginia, other than by a bulk transfer and is measured by invoiced gallons received outside this State at a refinery, terminal or bulk plant for delivery to a destination in West Virginia. The tax is payable by the person importing the motor fuel. The tax is also imposed on invoiced gallons of motor fuel removed, other than by bulk transfer:

1. from the bulk transfer/terminal system in West Virginia;
2. from the bulk transfer/terminal system outside West Virginia for delivery to a location in West Virginia as represented on the shipping papers, or
3. upon sale or transfer in a terminal or refinery in West Virginia to any person not holding a supplier's license.

The tax does not apply to motor fuel imported into West Virginia in the motor fuel supply tank or tanks of a motor vehicle, but the Motor Carrier Road Tax may still apply. Tax applies to fuel blended in West Virginia and is calculated on the difference between the total quantity blended and the quantity used for blending but previously taxed.

There are several exemptions from the excise tax on gasoline and special fuel. Certain exemptions are an integral part of the "normal" tax base and are not considered true expenditures. These include gasoline or special fuel used for off-highway purposes and gasoline or special fuel exported out of the State. Also included in the "normal" tax base are federally mandated exemptions. These include sales to the United States government and interstate motor carriers.

ORGANIZATION AND ANALYSIS

Motor Fuel Excise Tax expenditures are divided into three groups:

Exemptions
Refunds
Deductions and Discounts

The analysis provided for each tax expenditure includes a rationale for each item and the item's cost to the State.

EXEMPTIONS

Exemptions from the Motor Fuel Excise Tax are allowed depending upon the use of the fuel. The following exemptions are discussed in this section:

Gasoline or Special Fuel Exported Out-of-State
Sales of Aviation Fuel
Sales of Dyed Special Fuel
Sales of Propane
Sales to the United States Government
Sales to County Boards of Education
Sales to Municipalities, Urban Mass Transportation Authorities, Units of County Government and Volunteer Fire Departments
Sales to Licensed Exporters
Sales to Urban and Suburban Bus Lines
Sales of Propane to Consumers for Poultry House Heating Purposes
Certain Off-Highway Uses

An analysis of these exemptions follows.

GASOLINE OR SPECIAL FUEL EXPORTED OUT-OF-STATE

STATUTE: West Virginia Code §§11-14C-9(a)(1) and 11-14C-9(b)

EXEMPTION: All motor fuel exported from this State to any other state or nation

VALUE: **Cannot be determined**

Rationale

The purpose of this per se exemption from both the flat rate component and the variable rate component is to exclude from taxation motor fuel not sold or used within this State. This is **not** a true tax expenditure. It is inherent in the structure of the Motor Fuel Excise Tax that only fuel sold and used on the highways of West Virginia is taxable.

SALES OF AVIATION FUEL

STATUTE: West Virginia Code §11-14C-9(a)(2)

EXEMPTION: All sales of aviation fuel

VALUE: **$1.6 million per year**

Rationale

This per se exemption from the flat rate component of tax is **not** considered a tax expenditure. As part of the "normal" tax base, certain off-highway uses of motor fuel are exempt from taxation. It is inherent in the structure of the Motor Fuel Excise Tax that only fuel used on the highways of West Virginia is taxable under the flat rate.

SALES OF DYED SPECIAL FUEL

STATUTE: West Virginia Code §11-14C-9(a)(3)

EXEMPTION: All sales of dyed special fuel

VALUE: **$61.8 million per year**

Rationale

This per se exemption from the flat rate component of tax is **not** considered a tax expenditure. As part of the "normal" tax base, certain off-highway uses of motor fuel are exempt from taxation. It is inherent in the structure of the Motor Fuel Excise Tax that only fuel used on the highways of West Virginia is taxable. "Dyed diesel fuel" is defined in the West Virginia Code §11-14C-2(31) as follows:

> "...diesel fuel that meets the dyeing and marking requirements of section 4082, Title 26, United States Code, regardless of how the diesel fuel was dyed."

SALES OF PROPANE

STATUTE: West Virginia Code §11-14C-9(a)(4)

EXEMPTION: All sales of propane

VALUE: **$9.9 million per year**

Rationale

This per se exemption from the flat rate component of tax is **not** considered a tax expenditure. As part of the "normal" tax base, certain off-highway uses of motor fuel are exempt from taxation. It is inherent in the structure of the Motor Fuel Excise Tax that only fuel used on the highways of West Virginia is taxable under the flat rate.

SALES TO THE UNITED STATES GOVERNMENT

STATUTE: West Virginia Code §§11-14C-9(c)(1) and 11-14C-9(d)(1)

EXEMPTION: All gallons of motor fuel sold to and purchased by the United States or any agency thereof

VALUE: **$140,000 per year**

Rationale

This refundable exemption from both the flat rate component and the variable rate component of tax is mandated by federal law and, therefore, is **not** considered a tax expenditure.

SALES TO COUNTY BOARDS OF EDUCATION

STATUTE: West Virginia Code §§11-14C-9(c)(4) and 11-14C-9(d)(5)

EXEMPTION: All gallons of motor fuel sold to and purchased by any county boards of education

VALUE: **$12.1 million per year**

Rationale

This refundable exemption from both the flat rate component and the variable rate component presumably exists to benefit West Virginia public school children and to reduce costs to public school systems in the State.

Revenue Analysis

The value presented for this expenditure is based on the amount of fuel used in school buses operated on behalf of county boards of education. Fuel used in public school buses is also exempt from the Motor Carrier Road Tax.

SALES TO MUNICIPALITIES, URBAN MASS TRANSPORTATION AUTHORITIES, UNITS OF COUNTY GOVERNMENT AND VOLUNTEER FIRE DEPARTMENTS

STATUTE: West Virginia Code §§11-14C-9(c)(2) & (d)(3), 11-14C-9(c)(3) & (d)(4), 11-14C-9(c)(5) & (d)(6), 11-14C-9(c)(6) & (d)(7) and 11-14C-9(c)(18) & (d)(8)

EXEMPTION:

All gallons of motor fuel sold any county government or agency thereof (§§11-14C-9(c)(2) and 11-14C-9(d)(2))

All gallons of motor fuel sold to any municipal government or agency thereof (§§11-14C-9(c)(2) and 11-14C-9(d)(3))

All gallons of motor fuel sold to any urban mass transportation authority, created pursuant to the provisions of article twenty-seven [§8-27-1 et seq.], chapter eight of this code (§§11-14C-9(c)(5) and 11-14C-9(d)(6))

All gallons of motor fuel sold to and purchased by any municipal, county, state, or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith (§§11-14C-9(c)(6) and 11-14C-9(d)(7))

All gallons of motor fuel sold to and purchased by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service (§§11-14C-9(c)(18) and 11-14C-9(d)(8)

VALUE: **$1.9 million per year**

Rationale

This refundable exemption from both the flat rate component and the variable rate component of the tax for sales to any municipal, county, State or federal civil defense or emergency service program or urban mass transportation system exists because these items are made available for the convenience and welfare of the citizens of West Virginia. The refundable exemptions for sales of fuel to municipalities and units of county governments presumably exist to reduce costs to these entities, thereby benefitting the citizens of West Virginia.

SALES TO LICENSED EXPORTERS

STATUTE: West Virginia Code §§11-14C-9(c)(7) and 11-14C-9(d)(9)

EXEMPTION: All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, that the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund

VALUE: **Cannot be determined**

Rationale

The purpose of this refundable exemption from both the flat rate component and the variable rate component is to exclude from taxation motor fuel not sold or used within this State. This is **not** a true tax expenditure. It is inherent in the structure of the Motor Fuel Excise Tax that only fuel sold and used on the highways of West Virginia is taxable.

SALES TO URBAN AND SUBURBAN BUS LINES

STATUTE: West Virginia Code §11-14C-9(c)(17)

EXEMPTION: All gallons of motor fuel sold to any person regularly operating any vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of twenty-five gallons or more; Provided, that the amount refunded is equal to six cents per gallon; Provided, however, that the gallons of motor fuel have been consumed in the operation of urban and suburban bus lines and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools

VALUE: **Minimal**

Rationale

This refundable exemption from the flat rate component of the tax is made available for the convenience and welfare of the citizens of West Virginia.

SALES OF PROPANE TO CONSUMERS FOR POULTRY HOUSE HEATING PURPOSES

STATUTE: West Virginia Code §11-15-9(18)

EXEMPTION: Sales of propane to consumers for poultry house heating purposes

VALUE: **$190,000 per year**

Rationale

This refundable exemption from the variable rate component of tax for sales of propane to consumers to heat poultry houses presumably exists to promote the poultry industry in West Virginia.

CERTAIN OFF-HIGHWAY USES

STATUTE: West Virginia Code §§11-14C-9(c)(8), 11-14C-9(c)(9), 11-14C-9(c)(10), 11-14C-9(c)(11), 11-14C-9(c)(12), 11-14C-9(c)(13), 11-14C-9(c)(14), 11-14C-9(c)(15), and 11-14C-9(c)(16)

EXEMPTION:

All gallons of gasoline or special fuel used and consumed in stationary off-highway turbine engines (§11-14C-9(c)(8))

All gallons of special fuel for heating any public or private dwelling, building or other premises (§11-14C-9(c)(9))

All gallons of special fuel for boilers (§11-14C-9(c)(10))

All gallons of gasoline or special fuel used as a dry cleaning solvent or commercial or industrial solvent (§11-14C-9(c)(11))

All gallons of gasoline or special fuel used as lubricants, ingredients or components of any manufactured product or component (§11-14C-9(c)(12))

All gallons of gasoline or special fuel sold for use or used as a fuel for commercial watercraft (§11-14C-9(c)(13))

All gallons of special fuel sold for use or consumed in railroad diesel locomotives (§11-14C-9(c)(14))

All gallons of motor fuel purchased in quantities of twenty-five gallons or more for use as a motor fuel for internal combustion engines not operated upon highways of this state (§11-14C-9(c)(15))

All gallons of motor fuel purchased in quantities of twenty-five gallons or more and used to power a power take-off unit on a motor vehicle (§11-14C-9(c)(16))

VALUE: **$80.6 million per year**

Rationale

As part of the "normal" tax base, certain off-highway uses of motor fuel are exempt from taxation. It is inherent in the structure of the Motor Fuel Excise Tax that only fuel used on the highways of West Virginia is taxable. Fuel purchased for use in any of the above circumstances is entitled to a refundable exemption from the flat rate component of the Motor Fuel Excise Tax.

REFUNDS

A refund for Motor Fuel Excise Tax paid is allowed for the following reasons:

Erroneously Collected Taxes
Motor Fuel Lost through Fire, Lightning, Breakage, Flood, or Other Casualty
Motor Fuel Lost through Evaporation
Tax Rate Decrease

An analysis of these refunds follows.

ERRONEOUSLY COLLECTED TAXES

STATUTE: West Virginia Code §11-14C-30(a)

REFUND: Refund of motor fuel taxes erroneously collected from any person, including any tax, interest, additions to tax, or penalties

VALUE: **Cannot be determined**

Rationale

This refund exists to protect the taxpayer and to enable the taxpayer to reclaim taxes that should not have been paid.

MOTOR FUEL LOST THROUGH FIRE, LIGHTNING, BREAKAGE, FLOOD, OR OTHER CASUALTY

STATUTE: West Virginia Code §11-14C-30(b)

REFUND: Refund of any invoiced gallons of motor fuel lost through fire, lightning, breakage, flood or other casualty by any supplier, distributor, producer, retail dealer, exporter or importer equal to the amount of the flat rate component of the tax

VALUE: **Minimal**

Rationale

A refund for the flat rate of tax paid on invoiced gallons of motor fuel lost through fire, lightning, breakage, flood or other casualty exists as part of the "normal" tax base. Tax should not be paid on motor fuel that is destroyed and cannot be sold or used.

Revenue Analysis

The amount of this refund has been minimal in recent years due to technological improvements in the equipment used to store and haul motor fuel. There have also been improvements in preventing and managing accidents or other casualties involving the handling of motor fuel.

MOTOR FUEL LOST THROUGH EVAPORATION

STATUTE: West Virginia Code §11-14C-30(c)

REFUND: Annual refund of the flat rate component of tax to retail dealers, and any bulk plant, for invoiced gallons of motor fuel lost through evaporation, not exceeding one-half of one percent of adjusted total accountable gallons

VALUE: **Minimal**

Rationale

A refund for motor fuel lost through evaporation exists as part of the "normal" tax base because tax should not be paid on gasoline or special fuel that is lost and cannot be sold or used.

TAX RATE DECREASE

STATUTE: West Virginia Code §11-14C-30(d)

REFUND: Refund of the flat rate component of tax paid resulting from a change of rate decreasing the tax on motor fuel, which is on hand and in inventory on the effective date of the rate change

VALUE: **$0 per year**

Rationale

This refund of the flat rate component of tax exists to protect the taxpayer and to enable the taxpayer to reclaim an overpayment of taxes.

Revenue Analysis

There have been no refunds because the flat tax rate component has not changed since enactment of the Motor Fuel Excise Tax Act in 2003.

DEDUCTIONS AND DISCOUNTS

Deductions and discounts from the Motor Fuel Excise Tax are allowed for the following reasons:

Default Payments
Administrative Discount for Suppliers
Deduction for Sales to Distributors

An analysis of these discounts and deductions follows.

DEFAULT PAYMENTS

STATUTE: West Virginia Code §11-14C-23(a)

DEDUCTION: Deduction for motor fuel taxes not remitted by any licensed distributor or importer to a supplier

VALUE: **Minimal**

Rationale

This deduction exists to protect suppliers from distributors who default on payments owed to the supplier.

ADMINISTRATIVE DISCOUNT FOR SUPPLIERS

STATUTE: West Virginia Code §11-14C-23(b)

DISCOUNT: A supplier or permissive supplier who timely files a return with the payment may deduct an administrative discount of one tenth of one percent of the amount of tax payable to this state, not to exceed five thousand dollars per month

VALUE: **$520,000 per year**

Rationale

This discount presumably exists as an incentive to suppliers to timely file their tax-due returns.

DEDUCTION FOR SALES TO DISTRIBUTORS

STATUTE: West Virginia Code §11-14C-23(c)

DEDUCTION: For sales to licensed distributors, a supplier or permissive supplier shall deduct three fourths of one percent of the tax due from the licensed distributor as a discount to the licensed distributor

VALUE: **$2.4 million per year**

Rationale

This deduction exists to provide a discount to licensed distributors. It does not apply to any other transactions, including, but not limited to, licensed distributor to licensed distributor transactions. Additionally, if the permissive supplier and/or supplier is also a licensed distributor, this discount does not apply.

MOTOR CARRIER ROAD TAX

OVERVIEW

The Motor Carrier Road Tax is a tax on every person or firm who operates any passenger vehicle that has seats for more than nine passengers, in addition to the driver, and any road tractor, tractor truck or truck that has more than two axles. The tax is closely related to the Motor Fuel Excise Tax. The rate of tax for motor carriers is the same as the flat rate component of the Motor Fuel Excise Tax (i.e., 20.5 cents per gallon). When motor carriers operate in interstate commerce, tax computation is accomplished by basing Motor Carrier Road Tax liability on the fraction of the total amount of motor fuel that is the same fraction that the miles traveled by the carrier on West Virginia highways is of the total number of miles traveled by the carrier in all states.

Interstate motor carriers must obtain an International Fuel Tax Agreement (IFTA) license. All West Virginia-based motor carriers who travel in at least one other IFTA jurisdiction and operate one or more qualified vehicles must obtain an IFTA license. All West Virginia-based IFTA licensees must file a single tax return with the West Virginia State Tax Department. This tax return will contain detailed information about vehicle operations in each IFTA member jurisdiction. West Virginia then distributes both the tax and the carrier information to the other IFTA jurisdictions on behalf of the carrier. West Virginia receives its portion of gasoline taxes due from motor carriers based in other IFTA jurisdictions from the carrier's home jurisdiction. If a motor carrier does not operate in any other IFTA jurisdiction, the motor carrier must file the Motor Carrier Road Tax return for tax due to West Virginia and file returns as required by other non-IFTA jurisdictions in which the carrier traveled. More specific information can be found in the separate International Fuel Tax Agreement section.

The Motor Carrier Road Tax was created as a tax on motor carriers operating upon the highways of West Virginia. Collections of the Motor Carrier Road Tax are deposited into the State Road Fund and used **only** for the following purposes: construction, reconstruction, maintenance and repair of highways; matching of federal funds available for highway purposes, and payment of the interest and sinking fund obligations on State bonds issued for highway purposes. Unless necessary for bond requirements, five-fourteenths of the tax shall be used for feeder and State-local service highway purposes.

Certain exemptions are an integral part of the "normal" tax base for motor carriers and are **not** considered true tax expenditures. These include an exemption for gasoline or special fuel purchased in this State but consumed out of the State and a credit for the Motor Fuel Excise Tax paid to avoid double taxation. Also included in the "normal" tax structure are federally mandated exemptions. The federally mandated exemptions are **not** considered expenditures in this study since they are excluded from state taxation by federal law.

ORGANIZATION AND ANALYSIS

Motor Carrier Road Tax expenditures are divided into three groups:

Exemptions
Refunds
Credits

The analysis provided for each tax expenditure includes a rationale for each item and the item's cost to the State.

EXEMPTIONS

Exemptions from the Motor Carrier Road Tax are allowed depending upon the use of the fuel. The following exemptions are discussed in this section:

Motor Carriers Operated on Behalf of the Federal Government or any State Government
Private and State School Buses

An analysis of these exemptions follows.

MOTOR CARRIERS OPERATED ON BEHALF OF THE FEDERAL GOVERNMENT OR ANY STATE GOVERNMENT

STATUTE: West Virginia Code §11-14A-8

EXEMPTION: Motor carriers operated on behalf of any agency of the federal government, any state government or political subdivision of any state

VALUE: **Cannot be determined**

Rationale

States are prohibited from taxing purchases of motor fuel for use in vehicles operated on behalf of the federal government. Therefore, this portion of the exemption is **not** considered a true tax expenditure. Motor carriers operated on behalf of any state government are also exempt from taxation to avoid increased costs for those entities.

PRIVATE AND STATE SCHOOL BUSES

STATUTE: West Virginia Code §11-14A-8

EXEMPTION: School buses operated on behalf of any private school and operated on behalf of this State or any of its political subdivisions

VALUE: **Negligible**

Rationale

This exemption exists to benefit all West Virginia school children by reducing the operating costs of elementary and secondary schools in the State.

Revenue Analysis

This exemption only effects school buses owned by private schools. County school buses are already exempt under an exemption from Motor Fuel Excise Tax.

REFUNDS

A refund of the Motor Carrier Road Tax is only available for fuel consumed outside of this State. An analysis of this refund follows.

FUEL CONSUMED OUTSIDE OF THIS STATE

STATUTE: West Virginia Code §11-14A-11

REFUND: Refund for gallons of motor fuel purchased in this State but consumed outside of this State

VALUE: **Minimal**

Rationale

Tax on fuel consumed outside of this State is refundable because it is not used upon the highways of West Virginia.

Revenue Analysis

The value for refunds is minimal due to the enactment of IFTA, which began on January 1, 1996. Since IFTA involves a reciprocity agreement among member jurisdictions, the need for refunds for fuel consumed outside of the State has become negligible. The West Virginia State Tax Department distributes both the tax and the carrier information to the other IFTA jurisdictions on behalf of the carrier. West Virginia receives its portion of motor fuel taxes due from motor carriers based in other IFTA jurisdictions from the carrier's home jurisdiction.

CREDITS

A credit against Motor Carrier Road Tax is allowed for an amount equal to the amount of Motor Fuel Excise Tax paid. An analysis of this credit follows.

CREDIT AGAINST MOTOR CARRIER ROAD TAX EQUAL TO AMOUNT OF MOTOR FUEL EXCISE TAX PAID

STATUTE: West Virginia Code §11-14A-9

CREDIT: Credit for amount of Motor Fuel Excise tax paid, if no other refund was given

VALUE: **Cannot be determined**

Rationale

This credit exists to avoid double taxation on gasoline or special fuel.

INTERNATIONAL FUEL TAX AGREEMENT

OVERVIEW

The International Fuel Tax Agreement (IFTA) is a fuel tax reciprocity agreement among states of the United States and provinces of Canada. The agreement is intended to simplify the reporting and payment of all fuel use taxes by interstate motor carriers for all qualified vehicles. Qualified vehicles are only those taxed under IFTA and used, designed or maintained for transportation of persons or property having two or more axles and gross vehicle weight of more than 26,000 pounds. The rate of tax is the same as the Motor Carrier Road Tax.

All West Virginia-based motor carriers who travel in at least one other IFTA jurisdiction and operate one or more qualified vehicles must obtain an IFTA license. All IFTA licensees must file a single quarterly tax return with the West Virginia State Tax Department. This tax return will contain detailed information about vehicle operations in each IFTA member jurisdiction. West Virginia then distributes both the tax and the carrier information to the other IFTA jurisdictions on behalf of the carrier. West Virginia receives its portion of gasoline taxes due from motor carriers based in other IFTA jurisdictions from the carrier's home jurisdiction. If a motor carrier does not operate in any other IFTA jurisdiction, the motor carrier must file the Motor Carrier Road Tax return for tax due to West Virginia and file returns as required by other non-IFTA jurisdictions in which the carrier traveled.

All amounts collected under IFTA are deposited into the International Fuel Tax Agreement Clearing Fund for distribution of funds owed to other member jurisdictions as provided in the agreement and for payment of any refunds owed to West Virginia-based taxpayers. After all payments and distributions, the remaining funds are deposited into the State Road Fund and used **only** for the following purposes: construction, reconstruction, maintenance and repair of highways; matching of federal funds available for highway purposes, and payment of the interest and sinking fund obligations on State bonds issued for highway purposes.

The same expenditures available under the Motor Carrier Road Tax also apply under IFTA. These include vehicles owned and operated by the federal government or any State government agency and school buses. Refunds help define and should be considered as part of the "normal" tax base. A refund is also allowed for any overpayment of motor fuel taxes paid by a West Virginia-based interstate motor carrier. Since this expenditure is part of the "normal" tax base, it is **not** considered a true expenditure for purposes of this study. In this section, only the refund for overpayment of taxes is discussed. A specific discussion of the other expenditures can be found in the Motor Carrier Road Tax section. Also, as part of the "normal" tax base, non-highway uses of gasoline or special fuel are exempt from taxation under IFTA. It is inherent in the structure of the Motor Fuel Excise Tax, and the related Motor Carrier Road Tax, that only fuel used on the highways of West Virginia is taxable. Therefore, any private or non-highway use of fuel by motor carriers is not required to be reported on the IFTA tax return. Information on specific expenditures relating to

the sale of gasoline and special fuel for non-highway purposes can be found in the Motor Fuel Excise Tax section.

ORGANIZATION AND ANALYSIS

Refunds will be the only IFTA expenditures discussed in this section. The analysis for the overpayment of motor fuel taxes includes a rationale and the cost to the State.

REFUNDS

A refund for overpayment of any motor fuel tax paid by a West Virginia-based interstate motor carrier is available under IFTA. An analysis of this refund follows.

OVERPAYMENT OF MOTOR FUEL TAXES

STATUTE: West Virginia Code §11-14B-11(b)(2)

REFUND: Refund for overpayment of motor fuel taxes by a West Virginia-based interstate motor carrier

VALUE: **$190,000 per year**

Rationale

Overpayment of motor fuel taxes by a West Virginia-based interstate motor carrier is refundable since the taxes were never due to the State. This refund is **not** a tax expenditure because it simply provides for a return of funds never owed to West Virginia. Overpayment of taxes may also be recovered through a credit for use against future motor fuel taxes owed.

TOBACCO PRODUCTS EXCISE TAX

OVERVIEW

The Tobacco Products Excise Tax Act was passed in 2001 and replaced the Cigarette Excise Tax with a tax on both cigarettes and tobacco products other than cigarettes. Effective May 1, 2003, the tax on cigarettes was raised to the rate of $0.55 on each pack of twenty cigarettes. The tax is imposed on every wholesaler, subjobber, subjobber dealer, retail dealer and vending machine operator by the purchase of stamps to be affixed to or impressed upon each package of cigarettes to be sold. Stamps or meter impressions are purchased from the State Tax Commissioner and are evidence of payment of the tax.

Effective January 1, 2002, an excise tax is levied on the sale of tobacco products other than cigarettes at a rate of 7.0 percent of the wholesale price of each item or article sold. Tobacco products to be taxed include cigars, snuff, chewing tobacco, and other non-cigarette tobacco products.

The excise tax on cigarettes and other tobacco products was created to provide revenue for the General Revenue Fund of the State. There are two types of expenditures that apply to the Tobacco Products Excise Tax, discounts and refunds. Discounts are allowed on all tax due on cigarettes for affixing stamps and collecting and paying the tax as required by law. Wholesalers of other tobacco products are also allowed a discount for collecting and remitting the tax. Discounts are not considered to be a part of the "normal" tax base. However, refunds in this case help define, and should be considered as part of, the "normal" tax base. Since the tax is on cigarettes meant for retail sale, a refund is allowed on any unsalable merchandise returned to the manufacturer. Refunds are also allowed on any unused or mutilated stamps.

ORGANIZATION AND ANALYSIS

Tobacco Products Excise Tax expenditures are divided into two groups as follows:

Discounts
Refunds

The analysis provided for each tax expenditure includes a rationale for each item and the item's cost to the State.

DISCOUNTS

Discounts are allowed on all tax due for affixing stamps and collecting and paying the tax. Discounts that apply are as follows:

Four Percent Discount on Stamp Purchases and for Collecting and Remitting the Tax
Commission for Banks Authorized to Set Meters or Sell Stamps

An analysis of these discounts follows.

FOUR PERCENT DISCOUNT ON STAMP PURCHASES AND FOR COLLECTING AND REMITTING THE TAX

STATUTE: West Virginia Code §§11-17-4(b) and 11-17-9

DISCOUNT: A discount of four percent on all tax due for persons affixing stamps, collecting and paying of tax as required and prescribed by this article

VALUE: **$4.1 million per year**

Rationale

The 4 percent discount allowed on purchases of stamps is granted to taxpayers for providing the service of affixing stamps and collecting and remitting the tax on cigarettes and for collecting and remitting the tax on other tobacco products.

COMMISSION FOR BANKS AUTHORIZED TO SET METERS OR SELL STAMPS

STATUTE: West Virginia Code §11-17-6

DISCOUNT: The Tax Commissioner may appoint any bank or trust company authorized to do business in this State, as his/her deputy for the purpose of selling stamps or checking, setting and sealing meters; such deputy is allowed a fee of one eighth of one percent of the face value of all stamps sold

VALUE: **Minimal**

Rationale

The commission for banks authorized to set meters or sell stamps exists as an incentive for their assistance in providing the service of selling such stamps and collecting and remitting the tax.

REFUNDS

A refund of the tax on cigarettes is available for any unused or mutilated stamps or for any unsalable merchandise returned to the manufacturer with stamps affixed. An analysis of this refund follows.

UNUSED OR MUTILATED STAMPS OR UNSALABLE MERCHANDISE RETURNED TO MANUFACTURER

STATUTE: West Virginia Code §11-17-10

REFUND: Unused or mutilated stamps and stamps destroyed by fire or flood, or stamps or meter impressions on cigarettes returned to manufacturer may be redeemed for a refund of ninety-five percent of the face value of the stamps, less any discount allowed on the purchase of the stamps

VALUE: **$140,000 per year**

Rationale

A refund for unused or mutilated stamps or unsalable merchandise returned to the manufacturer exists as part of the "normal" tax base. Tax should not be paid on cigarette tax stamps that are destroyed or on cigarettes that cannot be sold or used.

Revenue Analysis

The amount of refunds has been declining because manufacturers are not taking back as many used or mutilated merchandise as in previous years.

SOFT DRINKS TAX

OVERVIEW

The Soft Drinks Tax is an excise tax levied on all bottled soft drinks, all soft drink syrups, and dry mixtures as defined by regulation, whether manufactured within or without this State. The rates of tax are as follows:

1. on each bottled soft drink, a tax of one cent on each sixteen and nine-tenths fluid ounces or on each one-half liter, or portion thereof;
2. on each gallon of soft drink syrup, a tax of eighty cents, or on each four liters of soft drink syrup a tax of eighty-four cents, or portion thereof, and
3. on each ounce by weight of dry mixture, a tax of one cent, or on each 28.35 grams, a tax of one cent, or portion thereof.

The tax is imposed on any West Virginia manufacturer or producer of bottled soft drinks or soft drink syrup for sale within this State. The tax also applies to distributors and wholesale or retail dealers who are the original consignees of any bottled soft drink or soft drink syrup brought into the State that was manufactured or produced outside of this State. In addition, the tax is imposed on any out-of-state bottler who puts indicia on a product to be sold in West Virginia.

The excise tax on soft drinks was created for the sole purpose of providing revenue for the construction, maintenance and operation of a four-year school of medicine, dentistry and nursing of West Virginia University. The revenue collected is deposited into a special medical school fund.

There are only two types of expenditures that apply to the Soft Drinks Tax, discounts and refunds. Discounts are not considered to be a part of the "normal" tax base. However, refunds in this case help define, and should be considered as part of, the "normal" tax base. Since the tax is on soft drinks meant for retail sale, a refund is allowed on any stamps, crowns or soft drinks, soft drink powders or soft drink syrups that are destroyed by fire, lightning or flood. Refunds are also allowed on soft drinks, syrups or powders exported from West Virginia or destroyed pursuant to a federal or State order. Because of the discounts on stamps and crowns, refunds are not allowed on tax paid stamps or crowns in the case of breakage or destruction of containers stamped or crowned. This also applies to the spoilation of soft drinks or syrups, or the loss or destruction of tax stamps or crowns.

In addition to the refunds mentioned above, several items specifically exempt from the Soft Drinks Tax base help define, and are considered part of, the "normal" tax base. Although the term "soft drinks" is interpreted quite liberally, it does **not** apply to fluid milk to which no flavoring has been added or to natural undiluted fruit or vegetable juices that may not be sweetened. Also, the tax does not apply to 100 percent pure juice with sweetener added. These exempt items are **not** considered expenditures for the purposes of this report and therefore will not be discussed further in this section.

ORGANIZATION AND ANALYSIS

Soft Drinks Tax expenditures are divided into two groups as follows:

Discounts
Refunds

The analysis provided for each tax expenditure includes a rationale for each item and the item's cost to the State.

DISCOUNTS

Discounts are allowed on the sale of both tax stamps and crowns for soft drinks. The following discounts apply:

Sale	Discount
Stamp sales of less than $25	No discount
Stamp sales of $25 or over and less than $50	5%
Stamp sales of $50 or more	10%
Crown sales	12.5%

Due to the small number of tax stamp discounts, they will be combined for the purposes of this study. The following discounts are discussed:

Discount on Stamp Sales
Twelve and One-half Percent Discount on Crowns

An analysis of these discounts follows.

DISCOUNT ON STAMP SALES

STATUTE: West Virginia Code §11-19-5

DISCOUNT: Stamp sales of twenty-five dollars or over and less than fifty dollars, a discount of five percent of the face value of all stamps sold; and on stamp sales of fifty dollars or more, a discount of ten percent of the face value of all stamps sold

VALUE: **Minimal**

Rationale

The discounts allowed on purchases of stamps exist for providing the service of affixing stamps and collecting and remitting the tax.

TWELVE AND ONE-HALF PERCENT DISCOUNT ON CROWNS

STATUTE: West Virginia Code §11-19-5

DISCOUNT: On the purchase of tax crowns, a discount of twelve and one-half percent on the value of the crowns

VALUE: **$3.0 million per year**

Rationale

The 12.5 percent discount allowed on purchases of crowns exists for providing the service of affixing the crowns and collecting and remitting the tax, and to allow for crowns lost through breakage and spoilage.

REFUNDS

A refund of the Soft Drinks Tax is available when the tax stamps or crowns or soft drinks, soft drink powders or soft drink syrups are destroyed by fire, lightning or flood or must be destroyed pursuant to federal or State order. A refund is also available when the soft drinks, syrups or powders are exported out of this State. The following refunds are discussed in this section:

Destruction of Soft Drink Tax Stamps, Crowns or Soft Drinks
Soft Drinks, Syrups or Powders Exported Out-of-State

Analysis of these refunds follows.

DESTRUCTION OF SOFT DRINK TAX STAMPS, CROWNS OR SOFT DRINKS

STATUTE: West Virginia Code §11-19-5

REFUND: Refunds are allowed when tax stamps or crowns or soft drinks, soft drink powders or soft drink syrups, upon which tax has been paid, are destroyed by fire, lightning or flood; or are required to be destroyed pursuant to federal or State order

VALUE: **$0 per year**

Rationale

The refund for stamps, crowns or soft drink products that are destroyed by fire, lightning or flood exists as part of the "normal" tax base. Tax should not be paid on stamps or crowns or soft drinks that are destroyed and cannot be sold or used.

Revenue Analysis

The refund for tax stamps, crowns or soft drink products that have been destroyed has not been claimed in recent years. No accidents have been reported in the last few years involving soft drink manufacturers or distributors. Technological improvements are another reason for the lack of refund requests. Soft drink product containers have become more durable in recent years as manufacturers switched from glass bottles to cans and plastic containers. Since these soft drink product containers are more durable, the products with tax stamps and crowns already attached are not as easily destroyed.

SOFT DRINKS, SYRUPS OR POWDERS
EXPORTED OUT-OF-STATE

STATUTE: West Virginia Code §11-19-5

REFUND: Refunds are allowed when soft drinks, syrups or powders upon which tax has been paid are exported from this State

VALUE: **Minimal**

Rationale

The purpose of this refund is to exclude from taxation soft drinks, syrups or powders not sold or used within this State.

BEER BARREL TAX

OVERVIEW

The Beer Barrel Tax is levied at the rate of $5.50 per barrel of thirty-one gallons of "non-intoxicating beer" manufactured and sold in this State, whether contained or sold in barrels, bottles or other containers. The tax also applies to distributors who are the original consignees of non-intoxicating beer manufactured outside this State and brought into the State for sale. The Beer Barrel Tax does not apply to non-intoxicating beer manufactured by a brewpub.

The term "non-intoxicating beer" refers to the following products of the brewing industry: cereal malt beverages, beer, lager beer, ale, malt coolers and other similar items. A product that contains at least 0.5 percent alcohol by volume, but not more than 4.2 percent alcohol by weight or 6.0 percent by volume, whichever is greater, is considered "non-intoxicating beer."

Except for the exemption of brewpubs, there are no tax expenditures that apply to the Beer Barrel Tax. Unlike the other excise taxes in this study, there are no refunds or discounts that pertain to the Beer Barrel Tax.

ORGANIZATION AND ANALYSIS

The brewpub exemption from the Beer Barrel Tax is discussed in this section. The analysis includes a rationale for the item and the item's cost to the State.

EXEMPTIONS

The only item exempted from the Beer Barrel Tax is non-intoxicating beer manufactured by a brewpub. An analysis of this exemption follows.

BREWPUBS

STATUTE: West Virginia Code §11-16-13(a)

EXEMPTION: The barrel tax shall not apply to non-intoxicating beer manufactured by a brewpub

VALUE: **Minimal**

Rationale

The exemption for brewpubs exists in order to promote small-scale manufacturing within the State.

WINE LITER TAX

OVERVIEW

The Wine Liter Tax is levied on all wine sold by suppliers to distributors, except wine sold to the Alcohol Beverage Control Commissioner. As of April 30, 1983, the tax is levied at a rate of $0.26 per liter. Collections of the Wine Liter Tax are deposited into the General Revenue Fund.

Refunds are the only types of expenditures that apply to the Wine Liter Tax. Refunds help define, and should be considered as part of, the "normal" tax base. Since the tax is meant to be imposed on wine that will eventually sell at the retail level, a refund is allowed on wine lost through fire or casualty. A refund or credit is also allowed on tax erroneously or illegally collected. Since these refunds are part of the "normal" tax base, they are **not** considered true expenditures for purposes of this study.

ORGANIZATION AND ANALYSIS

Although **not** a true tax expenditure, refunds are analyzed in this section. The analysis provided for each tax refund includes a rationale for each item and the item's cost to the State.

REFUNDS

As part of the "normal" tax base, refunds of tax paid on liters of wine are allowed for the following reasons:

Erroneously or Illegally Collected Taxes
Wine Lost through Fire or Casualty

An analysis of these items follows.

ERRONEOUSLY OR ILLEGALLY COLLECTED TAXES

STATUTE: West Virginia Code §60-8-5

REFUND: Refund or credit will be granted for any tax erroneously or illegally collected

VALUE: **Minimal**

Rationale

This refund exists to protect the taxpayer and to enable the taxpayer to reclaim taxes that should not have been paid.

WINE LOST THROUGH FIRE OR CASUALTY

STATUTE: West Virginia Code §60-8-5

REFUND: Refund of wine lost through fire or casualty, other than breakage, when the amount of tax paid exceeds $50

VALUE: **$0 per year**

Rationale

A refund for taxes of over $50 paid on wine lost through fire or casualty, other than breakage, exists as part of the "normal" tax base. Tax should not be paid on wine that is lost and cannot be sold or used.

Revenue Analysis

The refund for wine lost through fire or casualty when taxes of over $50 have been paid has not been taken in recent years. This may be because the refund excludes breakage of products, which is probably the most likely accident to occur on a daily basis. There have been no reported fires or other casualties by suppliers in recent years.

PROPERTY TAXES

PROPERTY TAX

OVERVIEW

The Property Tax, which was enacted in 1863, is one of the oldest forms of taxation in West Virginia. This tax is administered by county officials and officials of several State government agencies. For the purposes of taxation, property can be divided into two categories: real and personal. Real property is land and anything permanently attached to land and owned by the owner of the land. Personal property is all other objects or rights that can be owned. Personal property can also be categorized as tangible and intangible. Generally, intangible property consists of rights to, or claims against, other property or services. In West Virginia, the Property Tax is levied on all real and personal property, except that which is specifically exempt in the West Virginia Code. Most of the exemptions discussed in this study have been in effect since the Property Tax laws were first enacted.

Less than 0.5 percent of all the Property Taxes collected in West Virginia goes to State government. The other beneficiaries of the Property Tax are county boards of education, county commissions and municipalities. For the fiscal year ending June 30, 2015, $1.6 billion in Property Taxes was levied by the State, county boards of education, county commissions and municipalities. The following list shows the amount of Property Taxes levied by each levying body for the fiscal year ending June 30, 2015 (Tax Year 2014).

Levying Body	Taxes Levied
State	$ 6,763,028
County	427,943,271
School Boards	1,060,323,290
Municipalities	114,742,034
Total	$1,609,771,623

The Property Tax is levied at different tax rates depending on the class of property. The State rate is set in the West Virginia Constitution. Each county and municipality can impose its own rates of property taxation. The West Virginia Legislature sets the rate of tax for county boards of education. This rate is used by all county boards of education Statewide. The following classes of property are used for tax purposes:

Class I
- a. All tangible personal property used exclusively in agriculture, including horticulture and grazing, and
- b. all products of agriculture, including livestock, while owned by the producer

Class II	a.	All property owned, used and occupied by the owner exclusively for residential purposes, and
	b.	all farms including land used for horticulture and grazing, which are occupied and cultivated by their owners or bona fide tenants
Class III		All real and personal property situated outside municipalities, exclusive of Classes I and II
Class IV		All real and personal property situated inside municipalities, exclusive of Classes I and II

Class I property has been exempt from Property Tax since 2008.

The maximum current tax rates shown in the table below for each local taxing authority are given in terms of class of property.

MAXIMUM PROPERTY TAX RATES

Rates in dollars per $100

Taxing Authority	Class I	Class II	Class III	Class IV
State	$.0025	$.0050	$ .0100	$ .0100
County	.1430	.2860	.5720	.5720
School Boards	.2295	.4590	.9180	.9180
Municipalities	.1250	.2500	--	.5000
	$.5000	$1.0000	$1.5000	$2.0000

Amendments to the State Constitution provide that these maximum rates can be temporarily exceeded by all the taxing authorities except State government. The voters of each taxing authority must approve any excess levy of tax proposed for their municipality, school board or county by a prescribed majority. The average actual tax rates per $100 of assessed valuation for the 2014 tax year, expressed in rounded dollars, are shown in the following table.

ACTUAL TAX YEAR 2014 PROPERTY TAX RATES[1]

Rates in dollars per $100 of **assessed** valuation

	Average
Class I	$ .00
Class II	1.19
Class III	2.19
Class IV	2.87

Statewide, the average rate for all property is $1.91 per $100 of assessed valuation. Beginning in Tax Year 2008, all Class I property is completely exempt from all property taxes.

ESTIMATING COSTS OF TAX EXPENDITURES

Several sources of information were used to determine the expenditure valuations. These include publications from the United States Census Bureau, the West Virginia Division of Banking, the West Virginia Higher Education Policy Commission, and the West Virginia Public Service Commission. Estimates were calculated using tax levy rates provided by the Chief Inspector Division of the State Auditor's Office and include all regular, special and excess levy rates. The estimates were based on an assumed equalization rate of 60 percent.

ORGANIZATION AND ANALYSIS

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Although all property is presumed to be taxable until its owner proves otherwise, there are many possible exemptions from the Property Tax. The exemptions can be divided into seven distinct groups. The following is the list of groups used in this study:

Government Exemptions
Educational Exemptions
Exemptions for Church Property
Exemptions for Property Owned by Nonprofit Organizations
Miscellaneous Exemptions
Property Valuation Preferences
Homestead Exemption

An analysis provided for each tax expenditure includes a rationale for each item and the item's cost to the State and local governments.

[1] Rates include excess levy rates.

GOVERNMENT EXEMPTIONS

Exemptions from Property Tax are granted to several different government entities. The exemptions included in this section are as follows:

United States Government Property
State Government Property
Local Government Property
Property Belonging to Another State
Government Property Subject to Lease Purchase Agreements
Government-Owned Waterworks and Electrical Power Systems

Rationale

The exemption for property of the United States is required by the federal supremacy clause in the United States Constitution. Since state and local governments are prohibited from levying direct taxes upon the United States government, this exemption is **not** a true tax expenditure.

Unlike the exemption for property belonging to the United States government and its agencies, taxation of State property and local government property used for public purposes is not prohibited by constitutional restrictions. However, if the State imposed a Property Tax on State property and local government property used for public purposes, this would result in increased costs to those entities. An increase in costs to State and local governments would possibly result in an unintended transfer of funds from one government entity to another.

UNITED STATES GOVERNMENT PROPERTY

STATUTE: West Virginia Code §11-3-9(a)(1)

EXEMPTION: Property that belongs to the United States government, other than property permitted by the United States to be taxed under state law

VALUE: **$6.7 million per year**

Revenue Analysis

All real and personal property belonging to the United States government is exempt from Property Tax in West Virginia. This includes all public corporations and other agencies created by the federal government for national purposes. This exemption does **not** include private corporations hired by the United States government.

STATE GOVERNMENT PROPERTY

STATUTE: West Virginia Code §11-3-9(a)(2)

EXEMPTION: Property that belongs exclusively to the state

VALUE: **$70.2 million per year**

Revenue Analysis

All real and personal property belonging exclusively to the State of West Virginia is exempt from Property Tax in this State. This estimate does **not** include property belonging to State colleges and universities because such property is included in the exemption for educational institutions presented later in this report.

LOCAL GOVERNMENT PROPERTY

STATUTE: West Virginia Code §11-3-9(a)(3)

EXEMPTION: Property that belongs exclusively to any county, district, city, village or town in this State and used for public purposes

VALUE: **$75.8 million per year**

Revenue Analysis

This exemption includes property owned by counties and municipalities, including the property of any parks and recreation commissions or county development authorities created by a county commission. Property used for municipal and county waterworks is **not** included in the calculations for this exemption. Also **not** included is property owned by county boards of education, which is included in the exemption for educational institutions discussed later in this section.

PROPERTY BELONGING TO ANOTHER STATE

STATUTE: West Virginia Code §11-3-9(a)(4)

EXEMPTION: Property located in this state belonging to any city, town, village, county or other political subdivision of any other state when it is used for public purposes

VALUE: **Negligible**

Revenue Analysis

Property located in West Virginia that belongs to any municipality, county or other political subdivision of another state is exempt from Property Tax in West Virginia if the property is used for public purposes. The value of this exemption is negligible since there is little property of this type within West Virginia.

GOVERNMENT PROPERTY SUBJECT TO LEASE PURCHASE AGREEMENTS

STATUTE: West Virginia Code §11-3-9(a)(27)

EXEMPTION: All property belonging to the state, any county, district, city, village, town or other political subdivision or any state college or university which is subject to a lease purchase agreement and which provides that, during the term of the lease purchase agreement, title to the leased property rests in the lessee so long as lessee is not in default or shall not have terminated the lease as to the property

VALUE: **Cannot be determined**

GOVERNMENT-OWNED WATERWORKS AND ELECTRICAL POWER SYSTEMS

STATUTE: West Virginia Code §8-19-4

EXEMPTION: Personal and real property of a municipality or a county which was acquired and constructed for the purposes of a waterworks system or electrical power system and any leasehold interest in such systems which are held by other persons

VALUE: **$41.6 million per year**

Revenue Analysis

Property used for a municipal or county waterworks is exempt from Property Tax in West Virginia. Additionally, the property used for municipal and county electrical power systems is exempt. An exemption for this type of property is justified for tax equity purposes only if the service does not compete with a similar service available from a non-government utility.

EDUCATIONAL EXEMPTIONS

Certain types of property related to education are exempt from Property Tax in West Virginia. These exemptions include the following:

Property Used for Educational Purposes
Property Whose Income Supports Institutions of Higher Education
Dormitories, Literary Halls and Clubrooms

Rationale

These exemptions presumably exist to maximize funding of education since a tax on school property would result in the net transfers of some funds from the schools to the State, county commissions, and municipalities.

PROPERTY USED FOR EDUCATIONAL PURPOSES

STATUTE: West Virginia Code §11-3-9(a)(9)

EXEMPTION: Property belonging to, or held in trust for, colleges, seminaries, academies and free schools when it is used for educational, literary or scientific purposes including books, apparatus, annuities and furniture

VALUE: **$138.9 million per year**

Revenue Analysis

This exemption applies to property directly used for education, literary or scientific purposes by colleges, seminaries, and public and private elementary and secondary schools. However, colleges must have approval from the West Virginia Higher Education Policy Commission or the West Virginia Community and Technical College System to grant degrees of higher education to qualify for this exemption. The educational, literary or scientific use of the property must be the primary use of the property.

PROPERTY WHOSE INCOME SUPPORTS INSTITUTIONS OF HIGHER EDUCATION

STATUTE: West Virginia Code §11-3-9(a)(10)

EXEMPTION: Property belonging to, or held in trust for, colleges and universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university

VALUE: **$1.1 million per year**

Revenue Analysis

To qualify for this exemption, the property must meet several conditions. The property must belong to or be held in trust by a West Virginia college or university or a public or private nonprofit foundation that receives contributions exclusively for an institution of higher education in West Virginia. In addition, the property, or the dividends, interest, rents and royalties derived from the property, must be used for the educational purposes of the college or university. The property must belong exclusively to the college, university or foundation.

DORMITORIES, LITERARY HALLS AND CLUBROOMS

STATUTE: West Virginia Code §11-3-9(a)(15)

EXEMPTION: All real estate, not exceeding one acre in extent, and the buildings on the real estate, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations, or as a dormitory, for members of the organization

VALUE: **$8.7 million per year**

Revenue Analysis

All real estate not exceeding one-half acre and any building on that property used by a college or university organization as a literary hall, dormitory or clubroom is exempt from Property Tax in West Virginia. This includes property used as residential accommodations for sorority or fraternity members and property owned by a nonprofit housing corporation and used as dormitories for students. In order for the property to be exempt, any revenue generated from that property must not exceed the cost of maintaining that property and the reasonable operating costs of the organization.

EXEMPTIONS FOR CHURCH PROPERTY

Several exemptions exist for churches and religious organizations. These include the following:

Property Used Exclusively for Divine Worship
Parsonages
Securities Sold by Churches and Religious Organizations

Rationale

The exemptions for churches were presumably enacted to avoid State interference with church activities.

PROPERTY USED EXCLUSIVELY FOR DIVINE WORSHIP

STATUTE: West Virginia Code §11-3-9(a)(5)

EXEMPTION: Property used exclusively for divine worship

VALUE: **$44.0 million per year**

Revenue Analysis

This exemption applies only to property used exclusively for divine worship. Property considered to be used for "divine worship" includes property used for religious services, for educational activities, such as Sunday School or Hebrew School classes, and for meetings and other activities held to further the religious activities of the organization. Property used for divine worship usually qualifies for the exemption for property used for charitable purposes as well.

PARSONAGES

STATUTE: West Virginia Code §11-3-9(a)(6)

EXEMPTION: Parsonages and the household goods and furniture pertaining thereto

VALUE: **$2.5 million per year**

Revenue Analysis

Parsonages and the household goods of these residences are exempt from Property Tax in West Virginia. In order for the property to qualify for this exemption, the parsonage must be owned by the trustees of the church and must be used as a home by the pastor, priest, bishop or other similar leader of that church. The household goods excluded from taxation by this exemption are those owned by the church and do not include those goods owned by the pastor or other leader. However, household goods owned by the resident of the parsonage would be exempt under the exemption for all household goods and personal effects.

SECURITIES SOLD BY CHURCHES AND RELIGIOUS ORGANIZATIONS

STATUTE: West Virginia Code §11-3-9(a)(7)

EXEMPTION: Mortgages, bonds and other debt securities in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings to be used exclusively for divine worship or for the purpose of paying indebtedness thereon

VALUE: **$0 per year**

Revenue Analysis

Mortgages, bonds and other types of debt securities sold by churches and religious societies to secure money to be used in the erection of church buildings used exclusively for divine worship are specifically exempt from Property Tax in West Virginia. Although this exemption is church-related, the taxpayers who are exempt from Property Tax in West Virginia on these types of debt instruments are the owners and holders of the securities, not the churches. Beginning in Tax Year

2008, all Class I personal property, including intangible personal property, is completely exempt from all property taxes.

EXEMPTIONS FOR PROPERTY OWNED BY NONPROFIT ORGANIZATIONS

The property of various nonprofit organizations is exempt in West Virginia. The organizations whose property is partially or completely exempt from Property Taxes are as follows:

Libraries
Charitable and Benevolent Organizations
Nonprofit Corporations Distributing Electricity, Water or Natural Gas or Providing Sewer Services
Public Institutions for the Deaf, Mute and Blind
Nonprofit Hospitals
Houses of Refuge, Lunatic or Orphan Asylums, and Homes for Those in Need
Fire Departments

Rationale

These exemptions generally involve organizations providing socially desirable services, often for low-income individuals. These exemptions exist to promote the social welfare and public service activities of these organizations.

LIBRARIES

STATUTE: West Virginia Code §11-3-9(a)(11)

EXEMPTION: Public and family libraries

VALUE: **$3.7 million per year**

Revenue Analysis

Both real and personal property owned by public and family libraries are exempt under this expenditure. Family libraries only qualify for this exemption if the materials kept in the library are available for use by the public. All books, manuscripts, musical scores and other literary, scientific or artistic writings or materials owned by the library are exempt. In addition, personal property, such as desks and audiovisual equipment, necessary for the operation of the library and the building that houses the materials is exempt.

CHARITABLE AND BENEVOLENT ORGANIZATIONS

STATUTE: West Virginia Code §§11-3-9(a)(12) and 11-3-9(a)(16)

EXEMPTION: Property used for charitable purposes and not held or leased out for profit (W. Va. Code §11-3-9(a)(12))
All property belonging to benevolent associations not conducted for private profit (W. Va. Code §11-3-9(a)(16))

VALUE: **$10.5 million per year**

Revenue Analysis

Charities are eligible for an exemption from Property Tax in West Virginia under certain conditions. The charity must be operated on a nonprofit basis, must directly benefit society and must be exempt from federal income tax as a 501(c)(3) or (4) organization. In addition, the primary and immediate use of the property must be for one or more charitable purposes in order for the property to be exempt.

Some property belonging to a fraternal, benevolent or relief society or association is exempt from the Property Tax in West Virginia. In order for the property to be exempt, it must be used primarily for charitable purposes. Lodges, meeting halls, clubhouses, and other buildings, which are used mainly for social purposes for the enjoyment of the members, are not exempt.

NONPROFIT CORPORATIONS DISTRIBUTING ELECTRICITY, WATER OR NATURAL GAS OR PROVIDING SEWER SERVICES

STATUTE: West Virginia Code §11-3-9(a)(13)

EXEMPTION: Property used for public purposes of distributing electricity, water or natural gas or providing sewer services by a duly chartered nonprofit corporation when such property is not held, leased or used for profit

VALUE: **$40.5 million per year**

Revenue Analysis

Property held by a duly chartered nonprofit corporation that distributes electricity, water or natural gas or provides sewer services for public purposes is exempt. To qualify for this exemption the property must not be used for profit.

PUBLIC INSTITUTIONS FOR THE DEAF, MUTE AND BLIND

STATUTE: West Virginia Code §11-3-9(a)(17)

EXEMPTION: Property belonging to any public institution for the education of the deaf, mute or blind

VALUE: **Minimal**

Revenue Analysis

This exemption applies to any public institution for the education of the deaf, mute and blind. Since there are very few of these types of institutions in West Virginia, the value of this exemption is minimal if considered in isolation from other exemptions. However, repeal of this exemption would not affect Property Tax revenue since these types of institutions would qualify for another exemption, such as that for charitable purposes.

NONPROFIT HOSPITALS

STATUTE: West Virginia Code §11-3-9(a)(17)

EXEMPTION: Property belonging to any hospital not held or leased out for profit

VALUE: **Cannot be determined**

Revenue Analysis

Nonprofit hospitals qualify for an exemption only if the primary and immediate use of the property is for charitable purposes. Any health care organization or hospital operated for the private gain of physicians, officers or members of the board of the institutions does not qualify for this exemption.

HOUSES OF REFUGE, MENTAL HEALTH FACILITIES, ORPHANAGES AND HOMES FOR THOSE IN NEED

STATUTE: West Virginia Code §§11-3-9(a)(18) and 11-3-9(a)(19)

EXEMPTION: House of refuge and mental health facility or orphanage (W.Va. Code §11-3-9(a)(18))
Homes for children or for the aged, friendless or infirm not conducted for private profit (W. Va. Code §11-3-9(a)(19))

VALUE: **Minimal**

Revenue Analysis

The following types of property are specifically exempted from West Virginia Property Tax:

1. houses of refuge, such as a community shelter for battered women;
2. mental health facilities;
3. orphanages;
4. homes for children, and
5. homes for the aged, the friendless or the infirm.

To qualify for an exemption from Property Tax, the property must be used for charitable purposes. A home for the aged, friendless, or infirm or for children does not qualify if, to gain admittance to the home, a person must deposit a substantial amount of money that could be equated as prepayment of rent. Homes also do not qualify if they require an application fee, damage deposit, or room charge unless the charge is substantially less than market value.

Although there is a specific exemption for these homes and shelters, the institutions would qualify for an exemption either as a charitable organization, an educational institution, or a government entity. Therefore, repeal of this exemption would have no impact on Property Tax revenue.

FIRE DEPARTMENTS

STATUTE: West Virginia Code §11-3-9(a)(20)

EXEMPTION: Fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies

VALUE: **$5.7 million per year**

Revenue Analysis

All fire engines, equipment used to extinguish fires and all other equipment used by firefighters and the building and land used by the fire department to store those items are exempt from Property Tax in West Virginia. Since fire equipment owned by State, county and municipal fire departments is exempt under the exemption for State and local governments, the value of that equipment was not included in the calculations of the value of this exemption. The exemption value is based **only** on the value of equipment and real property owned by volunteer fire departments.

MISCELLANEOUS EXEMPTIONS

The West Virginia Code provides for several miscellaneous exemptions that cannot be classified in the above-listed groups. The following is a list of the exemptions not previously discussed:

Property Used for Area Economic Development Purposes
Inventory Property Stored While in Transit
Cemeteries
Property Used in the Subsistence of Livestock
Household Goods and Personal Effects
Bank Deposits and Money
Farm Equipment, Crops and Livestock
Capital Stock
Class I Intangible Property
Property Acquired by Land Reuse Agencies

An analysis of these exemptions follows.

PROPERTY USED FOR AREA ECONOMIC DEVELOPMENT PURPOSES

STATUTE: West Virginia Code §11-3-9(14), Legislative Regulation 11-3-20.1

EXEMPTION: Property used for area economic development purposes by nonprofit corporations when such property is not leased for profit whose purpose is to develop special programs to improve the quality of social participation in community life, contribute to the elimination of poverty and establish permanent economic and social benefits in urban or rural low-income areas

VALUE: **Cannot be determined**

Rationale

This exemption presumably exists to encourage economic development in the State. The exemption applies to property owned by community development corporations or property used by certain nonprofit corporations.

INVENTORY PROPERTY STORED WHILE IN TRANSIT

STATUTE: West Virginia Code §11-5-13

EXEMPTION: Tangible personal property which is moving in interstate commerce through West Virginia, or which was consigned from a point of origin outside the state to a warehouse, public or private, within the state for storage in transit to a final destination outside the state

VALUE: **$13.2 million per year**

Rationale

This exemption, also known as the "Freeport Exemption," was approved by the voters in a Constitutional Amendment to encourage the development and maintenance of goods distribution centers in the State.

CEMETERIES

STATUTE: West Virginia Code §11-3-9(a)(8)

EXEMPTION: Cemeteries, except for certain personal property of commercial cemeteries, including any sites of unmarked graves which have been certified as such by the Division of Culture and History

VALUE: **$1.9 million per year**

Rationale

This exemption relates specifically to burial plots at cemeteries and unmarked graves certified by the Division of Culture and History. This exemption presumably exists because of the use of the property as a burial site. Such property cannot readily be used for other purposes.

For purposes of this exemption, property classified as cemetery property includes property where remains are buried or interred, tombstones, and access roads to service the property. Family-owned cemeteries are exempt only if the immediate use of the entire parcel of land is as a cemetery. Property owned by a cemetery company, such as office furniture, office buildings and chapels, is **not** exempt from Property Tax.

Revenue Analysis

An accurate estimate of the value of this exemption could not be made since the property actually belongs to the individuals who own the burial lots, not the cemetery companies who operate the cemeteries.

PROPERTY USED IN THE SUBSISTENCE OF LIVESTOCK

STATUTE: West Virginia Code §11-3-9(a)(21)

EXEMPTION: All property to be used in the subsistence of livestock on hand at the commencement of the assessment year

VALUE: **$640,000 per year**

Rationale

This exemption aids farmers by exempting all feed and other items intended to be used to feed livestock owned or kept by the farmer. This exemption is for the personal property a farmer uses in the subsistence of livestock the farmer owns.

Revenue Analysis

All Class I property is completely exempt from property taxes. Even if this exemption was eliminated, property to be used in the subsistence of livestock would be exempt under the constitutional amendment that excluded Class I property from Property Tax.

HOUSEHOLD GOODS AND PERSONAL EFFECTS

STATUTE: West Virginia Code §§11-3-9(a)(22), 11-3-9(a)(24), 11-3-9(a)(25) and 11-3-9(a)(26).

EXEMPTION: Household goods to the value of two hundred dollars, whether or not held or used for profit (W. Va. Code §11-3-9(a)(22)

Household goods, which for purposes of this section means only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property, when not held or used for profit (W. Va. Code §11-3-9(a)(24))

Personal effects, which for purposes of this section means only articles and items of personal property commonly worn on or about the human body or carried by a person and normally thought to be associated with the person when not held or used for profit (W. Va. Code §11-3-9(a)(25))

Dead victuals laid away for family use (W. Va. Code §11-3-9(a)(26))

VALUE: **Cannot be determined**

Rationale

This exemption benefits taxpayers by exempting their household goods and personal effects. These items were exempted to limit invasion of privacy. Also, there would be administrative and compliance difficulties associated with the collection of Property Tax on these items.

BANK DEPOSITS AND MONEY

STATUTE: West Virginia Code §11-3-9(a)(23)

EXEMPTION: Bank deposits and money

VALUE: **$136.3 million per year**

Rationale

This exemption presumably exists in recognition of the difficulty in administering a tax on intangible assets. However, the exemption was limited to bank deposits and money.

Revenue Analysis

All Class I property is completely exempt from property taxes. Even if this exemption was eliminated, bank deposits and money would still be exempt under the constitutional amendment that excluded intangibles from Property Tax.

FARM EQUIPMENT, CROPS AND LIVESTOCK

STATUTE: West Virginia Code §11-3-9(a)(28)

EXEMPTION: All implements, equipment, machinery, vehicles, supplies, crops and livestock used to engage in commercial farming

VALUE: **$1.1 million per year**

Rationale

This exemption exists for items that are specifically used in commercial farming.

CAPITAL STOCK

STATUTE: West Virginia Code §11-5-6

EXEMPTION: Shares in companies whose stock is assessed

VALUE: **Cannot be determined**

Rationale

This exemption exists to avoid double taxation since the exemption only applies to shares in companies that have already been assessed Property Tax on their assets. This exemption only applies to shares owned by taxpayers in West Virginia.

CLASS I INTANGIBLE PROPERTY

STATUTE: West Virginia Code §11-1C-1b

EXEMPTION: Intangible personal property with tax situs in this state shall be exempt from ad valorem property tax beginning tax year one thousand nine hundred ninety-eight: Provided, That such property shall be subject to ad valorem property tax and taxed at fifty percent of assessed value for tax year one thousand nine hundred ninety-eight; at forty percent of assessed value for the tax year one thousand nine hundred ninety-nine; at thirty percent of assessed value for the tax year two thousand; at twenty percent of assessed value for the tax year two thousand one; at ten percent of assessed value for the tax year two thousand two and eliminated completely for the tax year two thousand three and thereafter

VALUE: **Cannot be determined**

Rationale

This exemption was approved by the voters in a Constitutional Amendment and presumably exists in recognition of the difficulty in administering a tax on intangible assets. All Class I property, including intangible personal property, is completely exempt from property taxes.

PROPERTY ACQUIRED BY LAND REUSE AGENCIES

STATUTE: West Virginia Code §31-18E-9

EXEMPTION: The real property of a land reuse agency and its income and operations are exempt from property tax. Provided, that this exemption does not apply to real property of a land reuse agency after the fifth consecutive year in which the real property is continuously leased to a private third party. A land reuse agency may acquire real property or interests in real property by any means on terms and conditions and in a manner the land reuse agency considers proper. Provided, that a land reuse agency may not acquire any interest in oil, gas or minerals which have been severed from the realty

VALUE: **Cannot be determined**

Rationale

Land reuse agencies, often called land banks in other jurisdictions, are one of the tools that municipalities and counties may use to facilitate the return of vacant, abandoned and tax-delinquent properties to productive use. These vacant, abandoned and tax-delinquent properties impose significant costs on neighborhoods, communities, municipalities, and counties by lowering property values, increasing fire and police protection costs, decreasing tax revenues and undermining community cohesion. Real property acquired by a land reuse agency may be used for purely public spaces and places, affordable housing, conservation areas, and retail, commercial, and industrial activities. Therefore, the real property of a land reuse agency and its income and operations are exempt from property tax.

PROPERTY VALUATION PREFERENCES

The West Virginia Code provides special valuation procedures for certain types of property. In the determination of tax appraisals, these valuation procedures generally place a greater weight upon actual economic use rather than market valuation based on the highest and best use of the property. The following types of property are subject to special valuation procedures which result in a partial exclusion from taxation:

Farm Real Estate Property
Managed Timberland
Qualified Continuing Care Retirement Communities
Pollution Control Facilities
Specialized Manufacturing Production Property
Qualified Capital Additions to Manufacturing Facilities
Special Aircraft Property
High Technology Business Property
Owner-Occupied Residential Property

An analysis of these preferences follows.

FARM REAL ESTATE PROPERTY

STATUTE: West Virginia Code §11-1A-10

PREFERENCE: With respect to farm property, the tax commissioner shall appraise such property so as to ascertain its fair and reasonable value for farming purposes regardless of what the value of the property would be if used for some other purpose, and the value shall be arrived at by giving consideration to the fair and reasonable income which the property might be expected to earn in the locality wherein situated, if rented

VALUE: **$14.6 million per year**

Rationale

This preference presumably exists to encourage the preservation of farming activities within the State. If such property is actually used for viable farming activity, then the preference exists to discourage the conversion of such property over to alternative uses. This preference applies to real property designated for farm use.

MANAGED TIMBERLAND

STATUTE: West Virginia Code §11-1C-11b(a)

PREFERENCE: Property certified by the Division of Forestry as managed timberland shall be valued based upon the land's potential to produce future income according to its use and productive potential as managed timberland

VALUE: **$8.3 million per year**

Rationale

This preferential valuation treatment was approved by the voters in a constitutional amendment to encourage the development and maintenance of managed timberland in the State. The preference arose out of concern that excessive property taxation encourages the clear-cutting of forest land. Managed timberland is defined by legislative regulation to include surface real property of at least ten contiguous acres which is devoted to forest use, has sufficient numbers of commercially valuable trees and is managed pursuant to a State-approved plan.

QUALIFIED CONTINUING CARE RETIREMENT COMMUNITIES

STATUTE: West Virginia Code §11-4-3

PREFERENCE: Property belonging to qualified continuing care retirement communities, which are defined as being

a. owned by a corporation or other organization exempt from federal income taxes under the Internal Revenue Code;
b. used in a manner consistent with the purpose of providing housing and health care for residents, and
c. receiving no Medicaid funding under the provisions of W. Va. Code §9-4

is included under the provisions of the "Tax Limitations Amendment".

VALUE: **$310,000 per year**

Rationale

This preferential treatment presumably exists to benefit retirement communities providing housing and health care to West Virginia citizens who are no longer able to live in their own homes, which are classified as Class II property. The tax rate is equivalent to the tax rate imposed upon citizens who own their own homes.

Revenue Analysis

The preferential treatment is only for retirement communities that are exempt from federal income taxes and that received no Medicaid funding.

POLLUTION CONTROL FACILITIES

STATUTE: West Virginia Code §11-6A-3

PREFERENCE: The value of a pollution control facility first placed into operation subsequent to July 1, 1973, shall ... be deemed to be its salvage value

VALUE: **$72.8 million per year**

Rationale

This preferential treatment recognizes the limited economic benefits associated with pollution control facilities. Pollution control facilities are appraised at 5 percent of original cost.

SPECIALIZED MANUFACTURING PRODUCTION PROPERTY

STATUTE: West Virginia Code §11-6E-3

PREFERENCE: The value of specialized manufacturing production property shall ... be its salvage value

VALUE: **$1.3 million per year**

Rationale

Specialized manufacturing production property includes molds, jigs, dies, forms, patterns and templates directly used in manufacturing. This preferential treatment recognizes the limited uses or useful life of this type of property. Such property is appraised at 5 percent of original cost.

QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES

STATUTE: West Virginia Code §11-6F-3

PREFERENCE: The value of a certified capital addition which exceeds $50 million added to an existing manufacturing facility with an original cost valuation of $100 million or more first placed into operation for tax years beginning on or after July 1, 1997, shall be ... deemed to be appraised at five percent of its original cost. Beginning on and after July 1, 2011, when the new capital addition is a facility that is or will be classified under the North American Industry Classification System with a six digit code number 211112, or is a manufacturing facility that uses product produced at a facility with code number 211112, then wherever the term "100 million" is used in this subsection, the term "20 million" shall be substituted and where the term "50 million" is used, the term "10 million" shall be substituted. For capital additions certified on or after July 1, 2011, the value of the land before any improvements shall be subtracted from the value of the capital addition and the unimproved land value shall not be given salvage value treatment

VALUE: **$24.5 million per year**

Rationale

This preferential treatment presumably exists to encourage manufacturing companies with huge existing facilities within the State to undertake major expansions within the State. The new qualifying investment would be appraised at 5 percent of original cost.

Revenue Analysis

The parameters for this preference were changed during the 2011 Legislative Session to reduce the amount of new and existing valuations for certain manufacturers and to add the stipulation that the value of the land before any improvements shall be subtracted from the value of the capital addition and unimproved land value shall not be given salvage value treatment. Previously, there was

no subtraction for the value of land. The cost of the preference under the previous parameters was $10 million per year.

SPECIAL AIRCRAFT PROPERTY

STATUTE: West Virginia Code §11-6H-3

PREFERENCE: The value of special aircraft property, for the purpose of ad valorem property taxation under this chapter and under article X of the Constitution of the State of West Virginia, shall be its salvage value

VALUE: **$1.4 million per year**

Rationale

This preferential treatment presumably exists to benefit commercial airlines, charter carriers, and private carriers by more closely mimicking the tax policy in place in surrounding states with regard to such mobile property.

HIGH TECHNOLOGY BUSINESS PROPERTY

STATUTE: West Virginia Code §11-6J-3

PREFERENCE: The value of servers directly used in a high-technology business or in an internet advertising business and the value of tangible personal property directly used in a high-technology business or in an internet advertising business, for purpose of ad valorem property taxation under this chapter and under Article X of the Constitution of the State of West Virginia, shall be its salvage value

VALUE: **$170,000 per year**

Rationale

This preferential treatment presumably exists to benefit high-technology and internet advertising businesses.

OWNER-OCCUPIED RESIDENTIAL PROPERTY

STATUTE: West Virginia Code §§1-8-5; 11-8-6

PREFERENCE: Class II is all property owned, used and occupied by the owner exclusively for residential purposes, and the aggregate of taxes assessed in any one year by all levying bodies ... shall not exceed fifty cents on each one hundred dollars' assessed valuation on Class I property; one dollar on Class II property; one dollar fifty cents on Class III property; and two dollars on Class IV property

VALUE: **$392.9 million per year**

Rationale

This preferential treatment presumably exists to benefit homeowners in West Virginia by allowing residential property to be taxed at 50 percent of the rate of other real and personal property.

Revenue Analysis

If this preferential treatment was eliminated, the cost for the Homestead Exemption would rise.

HOMESTEAD EXEMPTION

This program provides for a $20,000 exemption against the total assessed value of single-family dwellings, including mobile or manufactured homes, owned and occupied as a residence by any person who is at least sixty-five years old or totally and permanently disabled and has legally resided in and paid taxes on a homestead in this State for two consecutive taxable years before filing for this exemption. In general, this represents an exclusion of the first $33,333 of the appraised residential property value. However, the exclusion can exceed $33,333 in cases of additional tax preferential treatment.

STATUTE: West Virginia Code §11-6B-3

EXEMPTION: An exemption ... shall be allowed for the first twenty thousand dollars of assessed value of a homestead that is used and occupied by the owner thereof exclusively for residential purposes when such owner is sixty-five years of age or older or is certified as being permanently and totally disabled

VALUE: **$48.3 million per year**

Rationale

This exemption provides a measure of tax relief for some elderly and permanently and totally disabled taxpayers in addition to the 50 percent tax preference for all owner-occupied residential property. The exemption applies to these taxpayers regardless of income level or ability to pay.

PROPERTY TRANSFER TAX

OVERVIEW

The Property Transfer Tax was enacted as a State tax in 1959. The tax is imposed on the privilege of transferring real property. The State tax rate is $1.10 per each $500 of value transferred, or fraction thereof. The proceeds of the State tax are deposited in the General Revenue Fund.

In 1968, an additional county tax was imposed at a rate of $0.55 per each $500 of value, or fraction thereof. In 1989, county commissions were given the option of increasing their tax rate by an additional 55 cents per each $500 of value, upon a majority vote of the county commission. The proceeds of the county tax are deposited into the general fund of the county in which the property is located.

The Property Transfer Tax represented approximately 0.3 percent of all funds paid into the General Revenue Fund for Fiscal Year 2014. The following table shows the amounts received by the General Revenue Fund in Property Transfer Tax receipts for the last three fiscal years.

Fiscal Year	Tax Receipts
2012	$8,127,577
2013	$8,776,174
2014	$10,391,897

Each deed or other instrument presented to the county clerk for recordation is to be accompanied by a sales listing form. The form includes, among other information, the actual consideration for the property (i.e., the value on which the tax is calculated). Payment of the tax is shown by affixing documentary stamps, or other evidence of payment, to the instrument presented for recordation.

ESTIMATING COSTS OF TAX EXPENDITURES

Tax data provided to the State Tax Department by county clerks was the primary means in determining the value of each tax expenditure.

ORGANIZATION AND ANALYSIS

The Property Transfer Tax expenditures discussed in this report are divided into three groups:

Transfers to or from Governmental Bodies
Transfers between Related Parties
Certain Miscellaneous Transfers

The analysis provided for each tax expenditure includes the item's cost to the State and a rationale.

TRANSFERS TO OR FROM GOVERNMENTAL BODIES

Certain transfers of property are excluded from the Property Transfer Tax if the transferor or transferee is a governmental entity. These exclusions may be divided into two categories:

Transfers to or from the United States Government
Transfers to or from West Virginia Governmental Entities

An analysis of these expenditures follows.

TRANSFERS TO OR FROM THE UNITED STATES GOVERNMENT

STATUTE: West Virginia Code §11-22-1

EXCLUSION: "Document" ... does not include ... transfers to or from the United States.

VALUE:	State	**$70,000**
	County	**$70,000**

Rationale

States are prohibited from imposing ad valorem or any other form of taxation on the value of real property owned by the federal government unless the federal government chooses to subject itself to this form of taxation. Therefore, this exclusion is **not** a true tax expenditure.

TRANSFERS TO OR FROM WEST VIRGINIA GOVERNMENTAL ENTITIES

STATUTE: West Virginia Code §11-22-1

EXCLUSION: "Document" ... does not include ... transfers to or from ... the State of West Virginia, or to or from any of their ... political subdivisions.

VALUE:	State	**$110,000**
	County	**$110,000**

Rationale

The purpose of this expenditure is presumably to reduce the cost of acquiring property for the State of West Virginia and local governments. An exclusion from the Property Transfer Tax reduces the cost of purchasing property.

TRANSFERS BETWEEN RELATED PARTIES

Property transfers excluded from the Property Transfer Tax due to the relationship of the transferor and transferee parties may be divided into three categories:

Transfers between Related Business Entities
Transfers between Related Individuals
Transfers between a Principal and a Straw Party

An analysis of these expenditures follows.

TRANSFERS BETWEEN RELATED BUSINESS ENTITIES

STATUTE: West Virginia Code §11-22-1

EXCLUSION: "Document" ... does not include ... deeds made pursuant to mergers of corporations or limited liability companies, partnerships, or limited partnerships, deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock and deeds made due to the conversions of corporations or other business organizations into limited liability companies

VALUE:		
	State	**$120,000**
	County	**$120,000**

Rationale

The purpose of this expenditure is to exclude various types of property transfers between related business entities when no financial gain is realized by the business entity transferring the property.

TRANSFERS BETWEEN RELATED INDIVIDUALS

STATUTE: West Virginia Code §11-22-1

EXCLUSION: "Document" ... does not include ... transfers between husband and wife, transfers between parent and child, transfers between parent and child and his or her spouse, transfers between grandparent and grandchild and his or her spouse, without consideration.

VALUE:		
	State	**$300,000**
	County	**$300,000**

Rationale

The purpose of this expenditure is to exclude various types of property transfers between related persons when no financial gain is realized by the person transferring the property.

TRANSFERS BETWEEN A PRINCIPAL AND A STRAW PARTY

STATUTE: West Virginia Code §11-22-1

EXCLUSION: "Document" ... does not include ... transfers between a principal and straw party for any reason.

VALUE: **Minimal**

Rationale

The purpose of this expenditure is to exclude various types of property transfers where no financial gain is realized by the party transferring the property. A straw party is defined by Black's Law Dictionary as " ... a third party who is put up in name only to take part in a transaction. Nominal party to a transaction; one who acts as an agent for another for the purpose to taking title to real property and executing whatever documents and instruments the principal may direct respecting the property. Person who purchases property for another to conceal identity of real purchaser, or to accomplish some purpose otherwise not allowed."

CERTAIN MISCELLANEOUS TRANSFERS

Other property transfers excluded from the Property Transfer Tax may be divided into four categories:

Transfers Where the Value of Property is $100 or Less
Quitclaim or Corrective Deeds
Transfers to or from Voluntary Charitable or Educational Associations
Other Miscellaneous Transfers

An analysis of these expenditures follows.

TRANSFERS WHERE THE VALUE OF PROPERTY IS $100 OR LESS

STATUTE: West Virginia Code §11-22-1

EXCLUSION: "Document" ... does not include ... transfer of real property where the value of the property transferred is one hundred dollars or less

VALUE: **Minimal**

Rationale

The presumed purpose of this expenditure is ease of administration.

QUITCLAIM OR CORRECTIVE DEEDS

STATUTE: West Virginia Code §11-22-1

EXCLUSION: "Document" ... does not include ... quitclaim or corrective deeds without consideration.

VALUE:

State	**$100,000**
County	**$100,000**

Rationale

The purpose of this expenditure is to exclude quitclaim or corrective deeds from Property Transfer Tax. Quitclaim deeds are defined by Black's Law Dictionary as, "A deed of conveyance operating by way of release; that is, intended to pass any title, interest, or claim which the grantor may have in the premises, but not professing that such title is valid, nor containing any warranty or covenants for title..."

TRANSFERS TO OR FROM VOLUNTARY CHARITABLE OR EDUCATIONAL ASSOCIATIONS

STATUTE: West Virginia Code §11-22-1

EXCLUSION: "Document" ... does not include ... gifts to or transfers from or between voluntary charitable or educational associations or trustees thereof and like nonprofit corporations having the same or similar purposes.

VALUE: **Minimal**

Rationale

The purpose of this expenditure is to exclude property transfers to or from charitable or educational associations from the Property Transfer Tax. Presumably, this exclusion exists in recognition of the public good rendered by these organizations.

OTHER MISCELLANEOUS TRANSFERS

STATUTE: West Virginia Code §11-22-1

EXCLUSION: "Document" ... does not include ... wills ... testamentary or inter vivos trusts, deeds of partition ... .

VALUE: **Minimal**

Rationale

The purpose of this expenditure is to exclude various types of property transfers where no financial gain is realized by the party transferring the property.