

W E S T V I R G I N I A



# DEPARTMENT OF REVENUE

## **Joint Select Committee on Tax Reform Consumer Sales and Use Taxes**

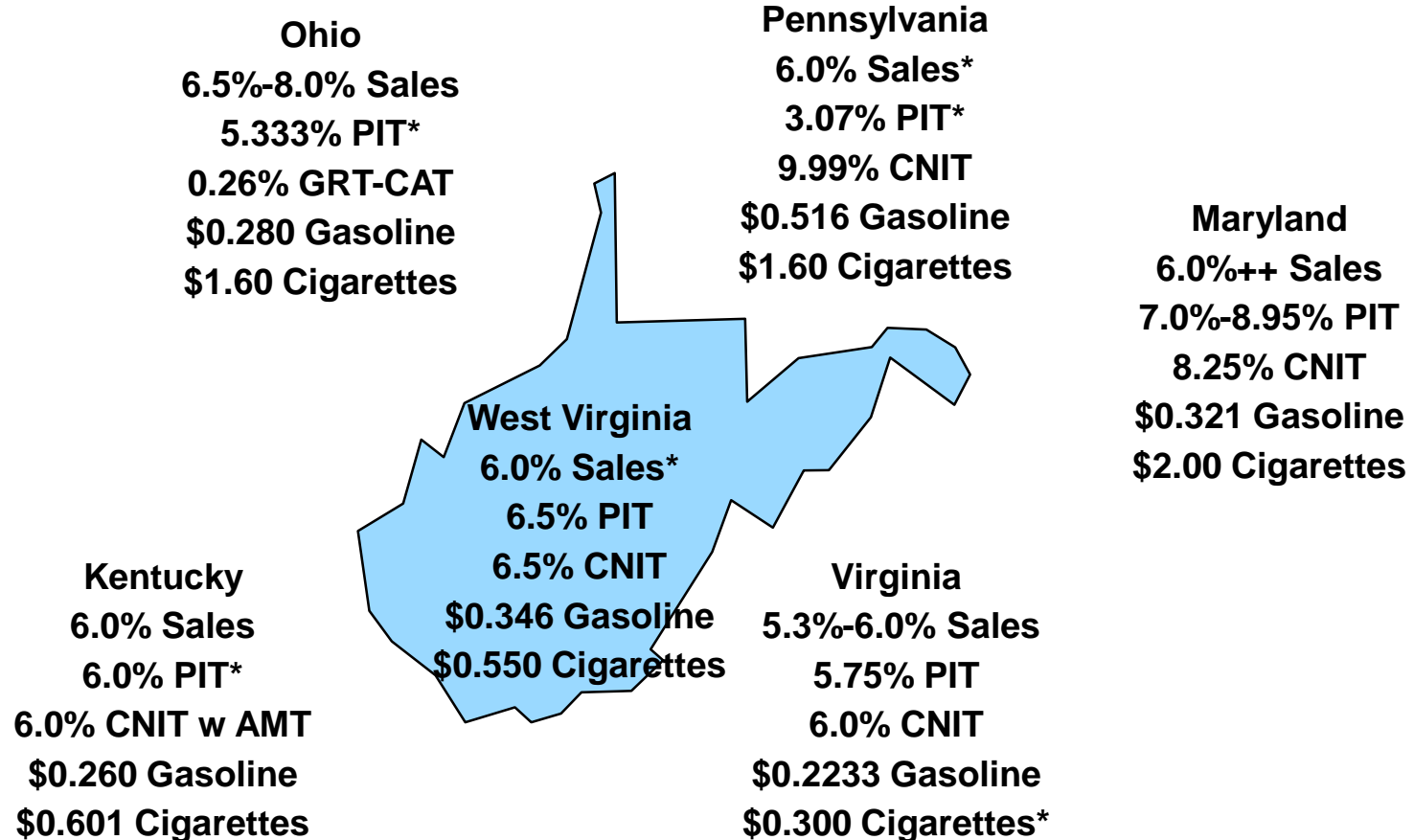
DEPUTY REVENUE SECRETARY MARK B. MUCHOW  
GENERAL COUNSEL MARK S. MORTON

West Virginia State Capitol  
August 31, 2015

# COMPARATIVE TAX RATES

As of July 1, 2015

\* Additional local taxes may apply



Model Sales Tax Imposed Once on Final Consumer of Goods and Services

# **CONSUMER SALES AND SERVICE AND USE TAX**

# West Virginia Consumer Sales and Service and Use Tax

## More Than \$1.305 Billion Yield in FY2015

- **Definition of tax base [Not Uniform Among States or Local Governments]**
  - **Retail sale or lease price of tangible personal property and furnishing of certain services**
    - More than \$18.5 billion in taxable sales in TY2014
    - More than 61,500 filers (35,600 with tax liability)
    - More than \$1.1 billion in Sales Tax and \$0.1 billion in Use Tax
  - 46 states and DC impose a broad-base consumer sales tax
  - 1 state: Local sales taxes are imposed, but no state tax (Alaska)
  - 4 states: no broad-based general sales tax (DE, MT, NH, OR) [Selective sales/gross receipt taxes in DE and NH]

### **Vendor, Consumer, and Hybrid Taxes** (Source: *Sales Taxation: State and Local Structure and Administration* by John f. Due and John L. Mikesell)

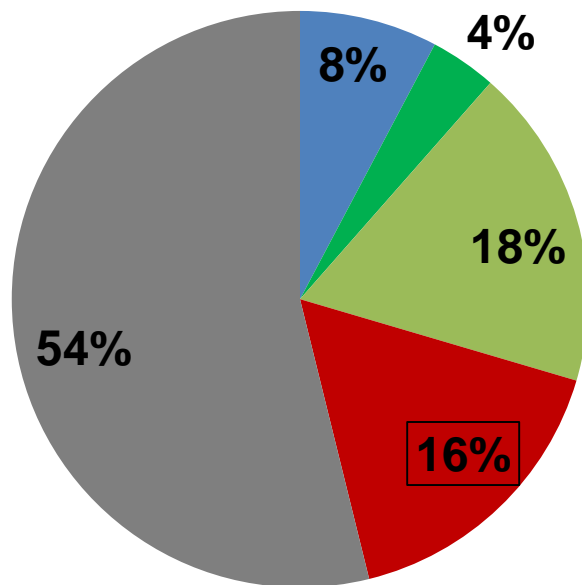
- 17 states impose tax on consumer selling price (Includes MD, NY, NC, OH, PA, WV, WY)
- 13 states impose a privilege tax on the vendor gross receipts (Includes CA, HI, KY, NM, SC, SD)
- 15 states & DC are hybrids with legal incidence on vendor but mandatory shifting provisions to the consumer (Includes AL, FL, GA, IL, IN, KS, NJ, TX, VA)

# Per Capita Personal Consumption Expenditures 2012

Average Citizen's Consumption of Health Care 8% Higher in WV

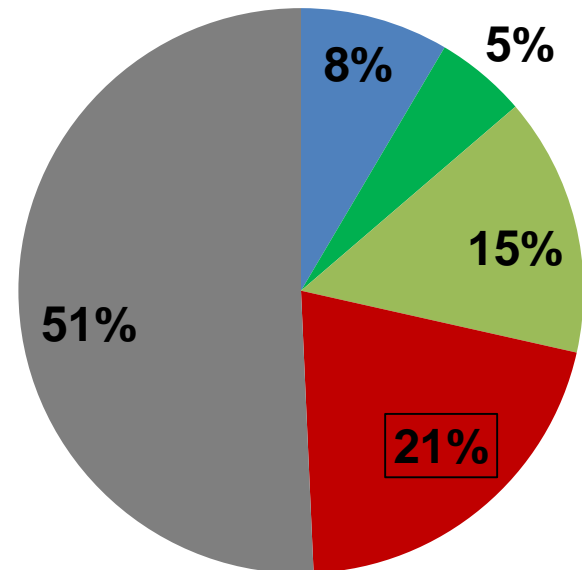
Source: U.S. Bureau of Economic Analysis

**United States: \$35,498**



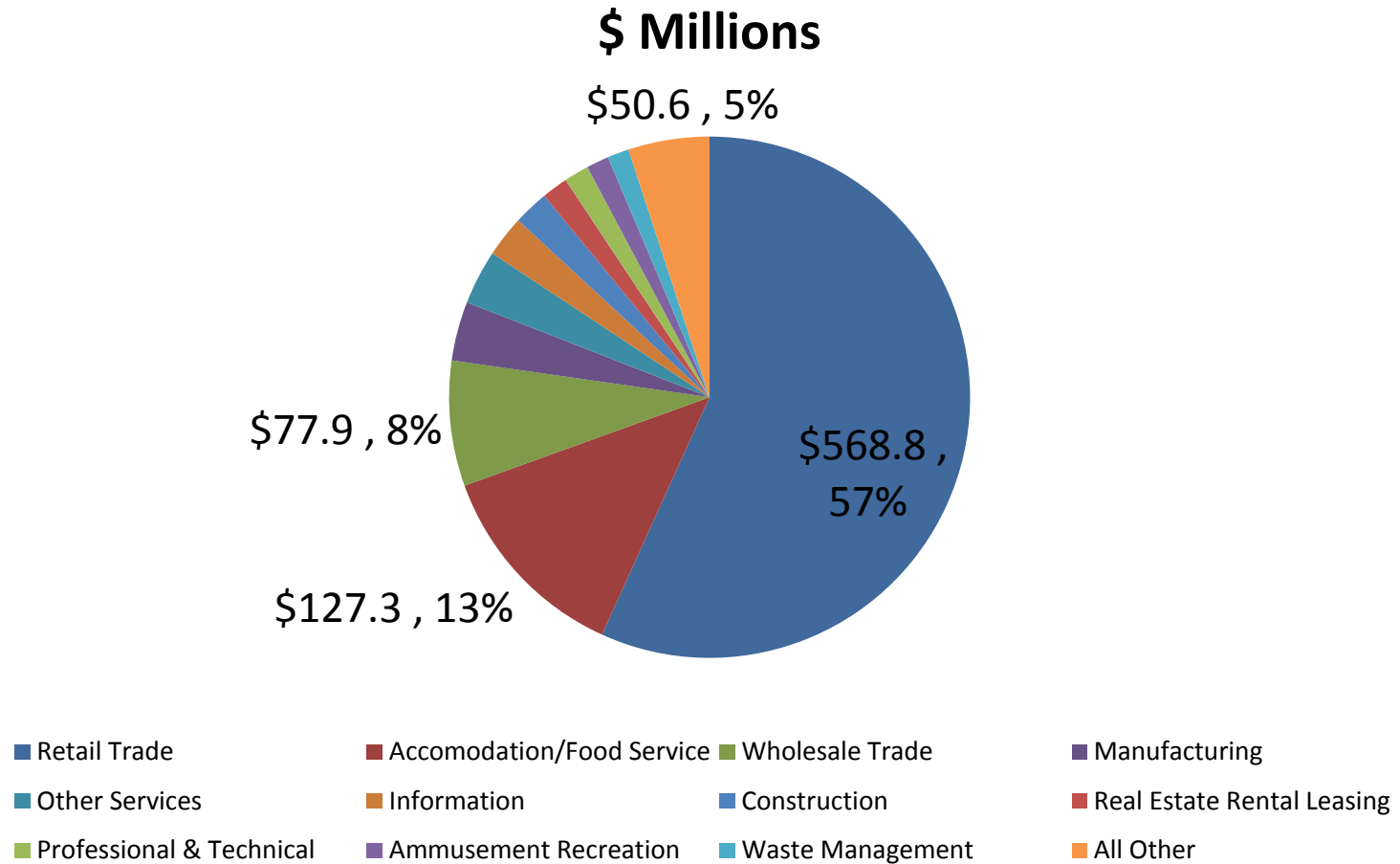
Food Energy Housing  
Health Care Other

**West Virginia: \$30,642**



Food Energy Housing  
Health Care Other

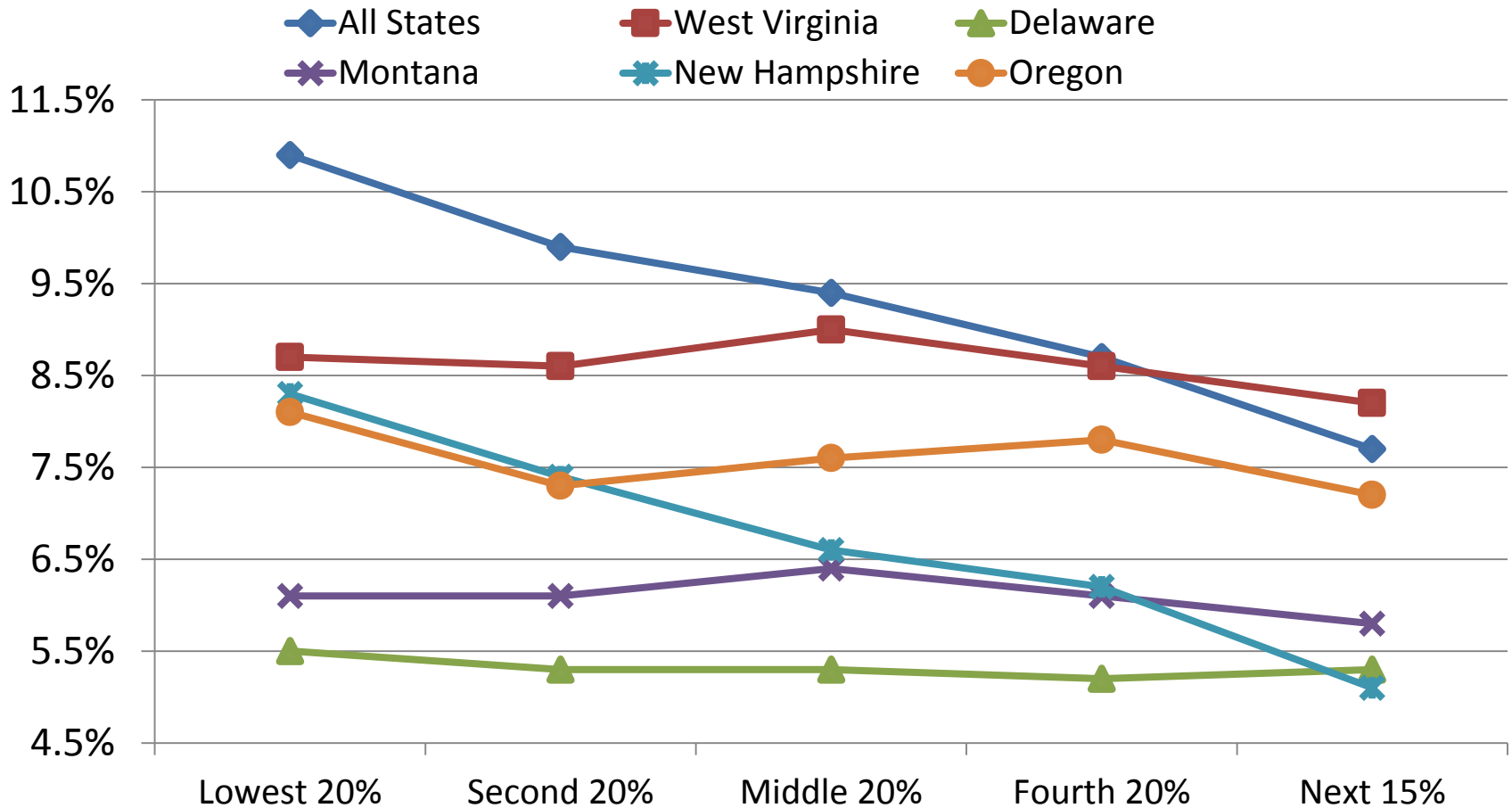
# CY2005 Sales Tax Collections



# States Without General Sales Tend To Impose Lower Tax Burden On Lower Income Residents Than West Virginia

## Estimated Tax Burdens By Income Level: Non-Elderly

Source: Institute on Taxation & Economic Policy: *Who Pays? A Distributional Analysis of the Tax Systems in All 50 States* January 2015



# Government Finance Statistics

## States Without Broad-Based Sales Taxes & WV

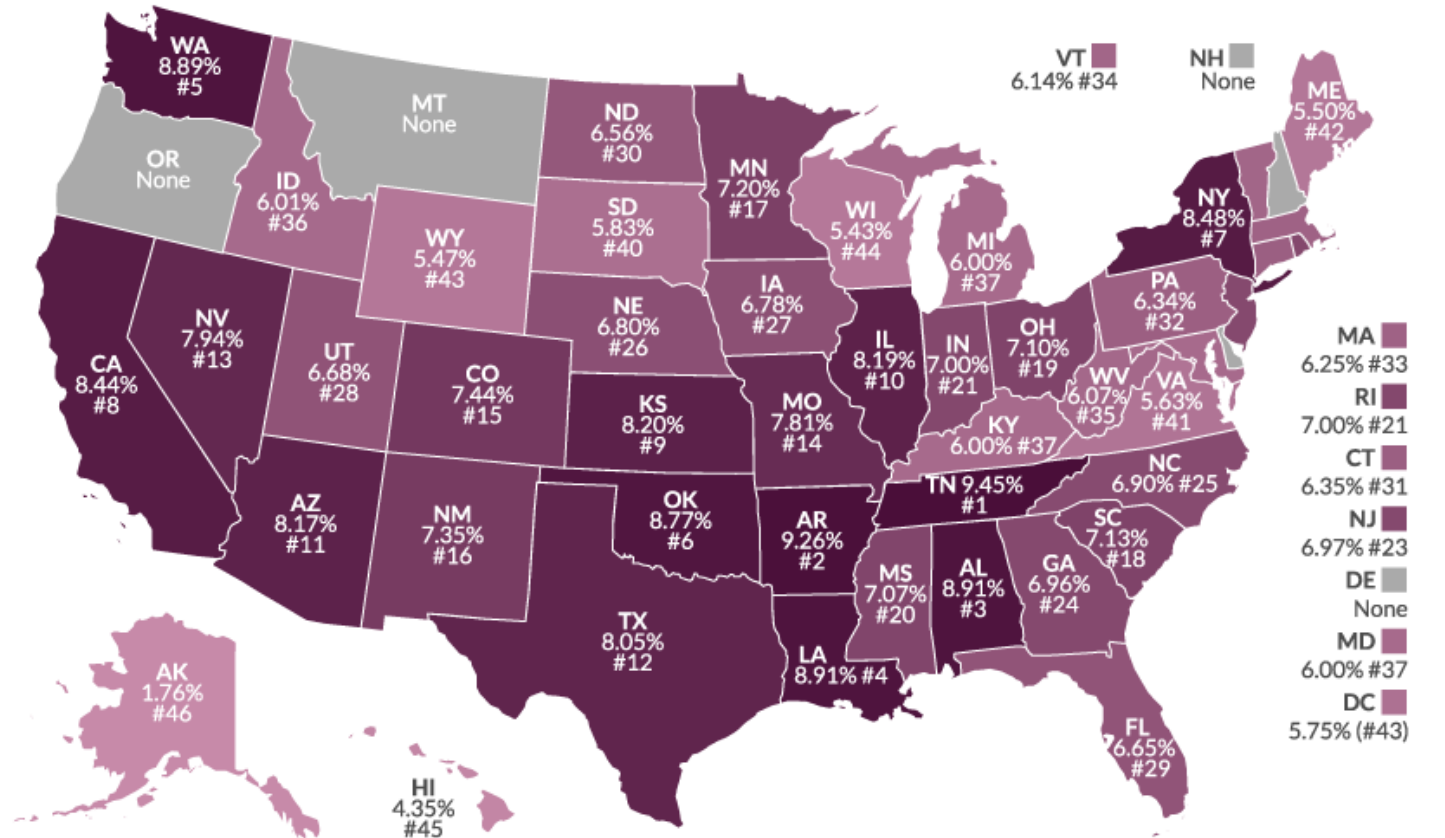
\* States with some sales tax features (e.g., meals, leases & lodging tax in NH)

State	Property Tax Rank \$130K	Per Capita Rank Income Tax	Income Tax Rank \$130 K	Corp Income Tax Rate	K-12 Funding
AK*	(19) \$4,167	(45) \$ 0	(45)	9.4%	5
DE*	(37) \$2,654	(9) \$1,375	(23) 4.96%	8.7%	12
MT	(32) \$2,858	(29) \$ 902	(20) 5.07%	6.75%	29
NH*	(3) \$7,188	(43) \$ 62	(44)	8.5%*	13
OR	(20) \$4,055	(6) \$1,506	(2) 6.76%	7.6%	35
WV	(50) \$1,560	(26) \$ 946	(11) 5.77%	6.5%	23



# How High Are Sales Taxes In Your State?

Combined State & Average Local Sales Tax Rates in 2015



Note: Three states levy mandatory, statewide, local add-on sales taxes: CA (1%), UT (1.25%), VA (1%). We include these in their state sales tax. The sales taxes in HI, NM, and SD have broad bases that include many services. Due to data limitations, this table does not include sales taxes in local resort areas in MT. Salem County, NJ is not subject to the statewide sales tax rate of 7% and collects a total rate of 3.5%. New Jersey's average local rate is represented as a negative.

Sources: Sales Tax Clearinghouse, Tax Foundation calculations, State Revenue Department websites.



# Sales Tax Rate: Not All Uniform

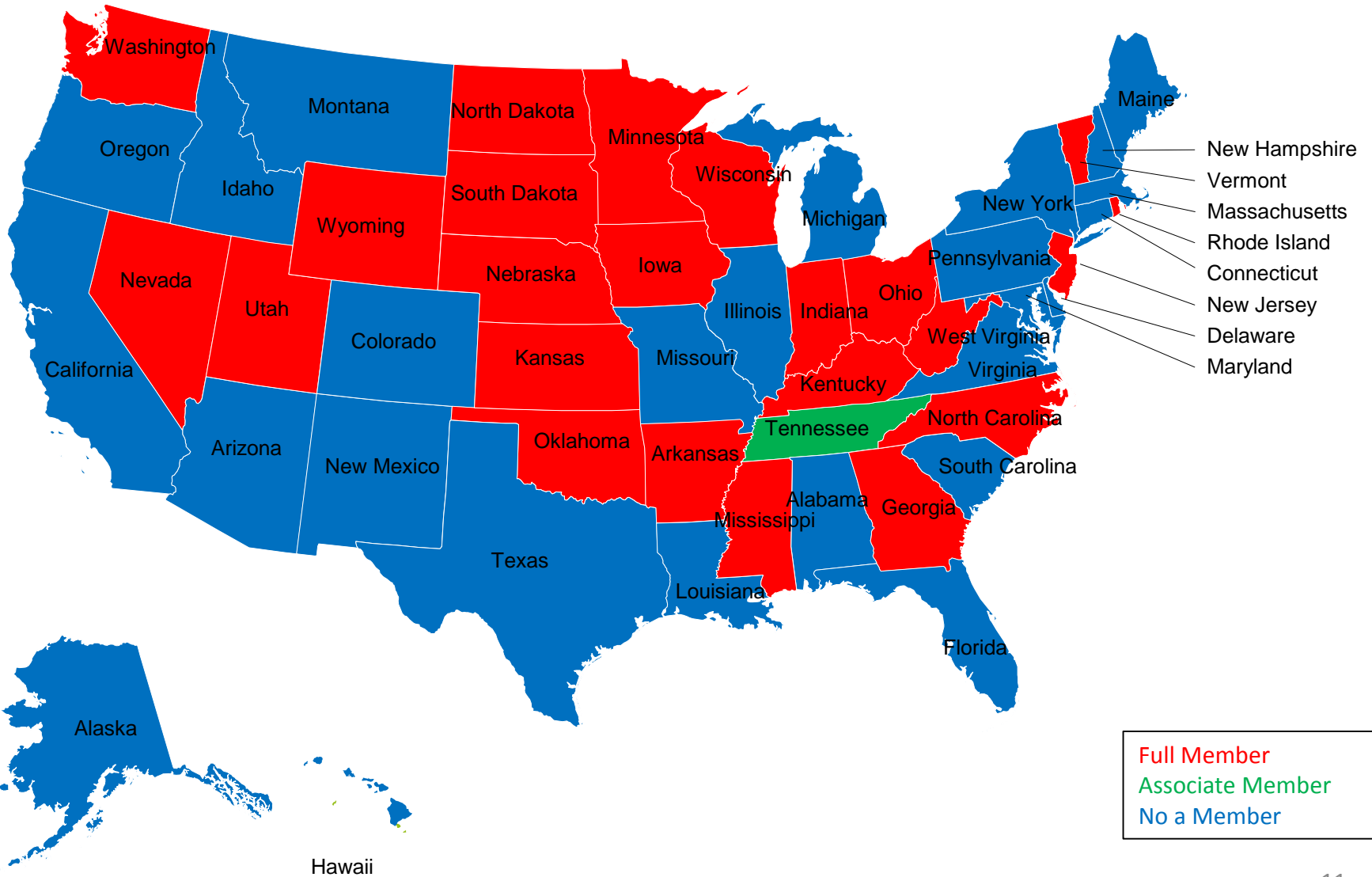
## West Virginia 6% Sales Tax

Price Range	Amount of Tax
0 to 8 cents	0 cents
9 to 24 cents	1 cent
25 to 41 cents	2 cents
42 to 58 cents	3 cents
59 to 74 cents	4 cents
75 to 91 cents	5 cents
92 cents to \$1.08	6 cents
\$1.09 to \$1.24	7 cents
\$1.25 to \$1.41	8 cents
\$1.42 to \$1.58	9 cents

## Maryland 6% Sales Tax

Price Range	Amount of Tax
0-20 cents	1 cent
21 to 33 cents	2 cents
34 to 50 cents	3 cents
51 to 66 cents	4 cents
67 to 83 cents	5 cents
84 to \$1.00	6 cents
\$1.01 to \$1.16	7 cents
\$1.17 to \$1.33	8 cents
\$1.34 to \$1.50	9 cents
\$1.51 to \$1.66	10 cents

# Streamline Sales Tax States



# Basic Features of Sales Tax Structure

- Sale for resale exemption
- Credit for tax paid elsewhere
- Allowance for bad debts
- Exemption Certificates & Direct Pay Permits
- Exemption of casual non-business activities
  - Isolated transactions
  - Casual & Occasional sales
- Exemption of business inputs

# Methods for Asserting an Exemption

**Exemption Certificate** – a standard certificate that allows a purchaser to make tax-free purchases that would otherwise be taxable. Purchaser fills out the certificate and gives a copy to the vendor, who keeps it on file.

**Refundable Exemption** – Purchaser pays tax to the vendor, and then applies to the Tax Department for a refund of the tax paid.

**Direct pay Permit** -- Certain purchasers may obtain a direct pay permit. The purchaser gives the vendor the direct pay permit number, and the vendor is then authorized to make sales to the purchaser without collecting the tax. The purchaser pays sales and use tax directly to the Tax Department through a monthly tax return.

**Per Se Exemptions** – do not require a separate exemption document or direct pay permit number as proof of the exempt status. Documentation of the transaction is sufficient proof of the “per se” exemption. For example:

Advertising	College Room and Board
Contracting	Day Care Centers
Prescription Drugs	Educational Summer Camp Tuition
Employees	

# Major West Virginia Tax Exempt Purchasers

- Federal, State and local governments: (8)
- Educational Institutions (8)
- Section 501 (c)(3) or (4) Non-Profits: (15)
  - More than half of support from gifts, grants, charitable contributions or membership fees)
- Churches
- Direct use industries – partial exemption

# State Sales Taxation of Manufacturing Inputs

Source: Commerce Clearing House *State Tax Handbook*

- Machinery:
  - (13) AL, AR, CA, DC, FL, HI, KY, MN, MS, NV, ND, SD
  - Reduced rates or partial exemption (8)
- Raw Materials:
  - (1) Hawaii
- Utilities/Fuel:
  - (14) AL, AZ, AR, GA, HI, IL, MS, NV, NJ, NM, ND, SD, TN, WA

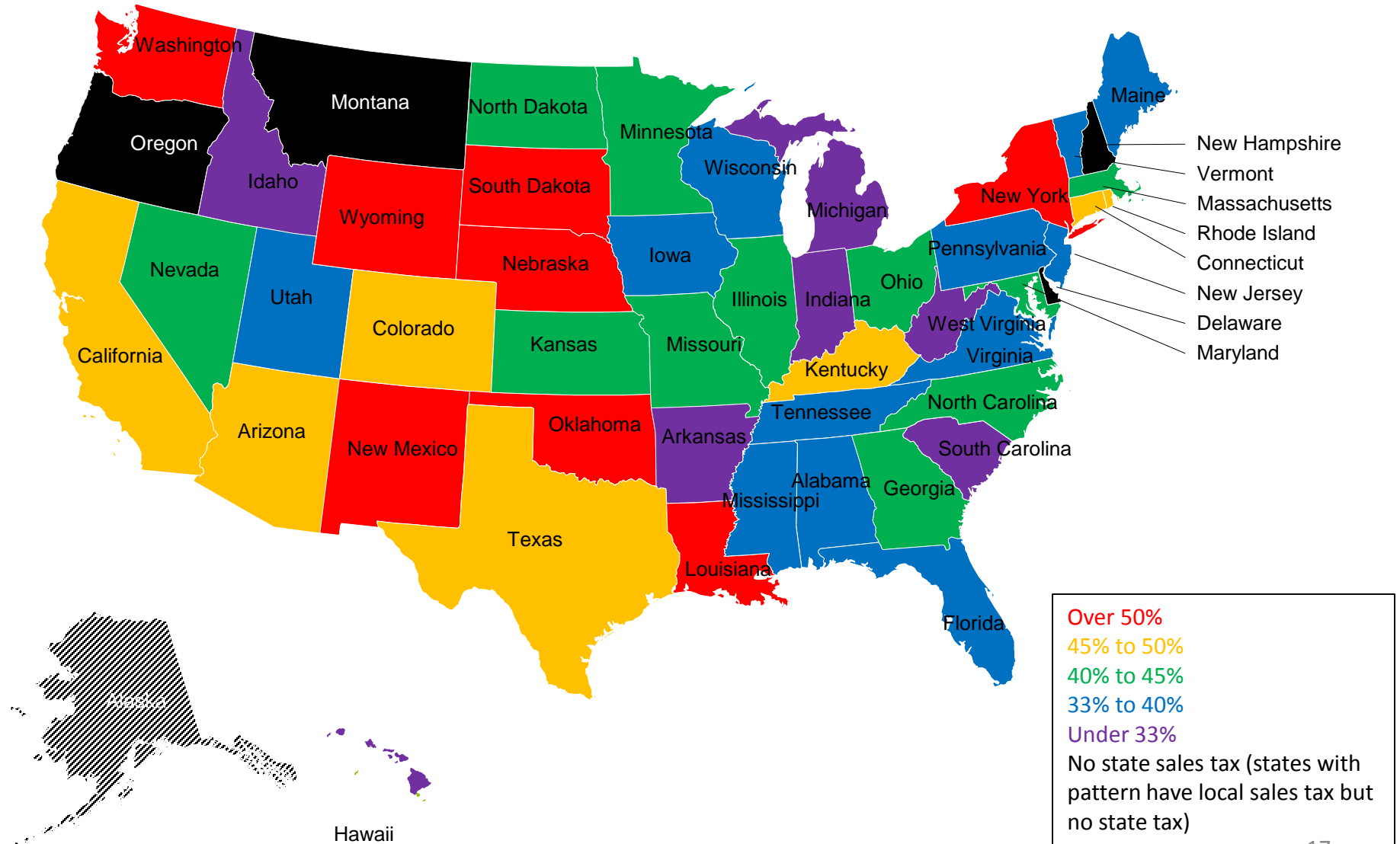
# WV Direct Use Industry Exemptions

(# of States with Similar Exemption-1991 Survey)

- Agriculture (30 States)
- Manufacturing (33 States)
- Transportation ( 8 States)
- Transmission ( 8 States)
- Communication ( 8 States)
- Production of Natural Resources (15 States)
- Gas Storage
- Production or Sale of Electricity
- Operation of a Public Utility Business



# Business Share of Total State and Local Sales Tax Collections



## Business Input Purchase Share : 2003

Source: Council On State Taxation *Sales Taxation of Business Inputs Existing Tax Distortions and the Consequences of Extending the Sales Tax to Business Services* January 25, 2005

Industry	Business Share	Total Purchases
<b><u>Principally Business</u></b>		<b><u>2003 (\$Billions)</u></b>
Advertising	98%	175.3
Architecture & Engineering	96%	125.2
Employment Services	94%	88.6
Management & Technical	88%	89.8
Data Processing	84%	38.4
Accounting & Legal Services	71%	196.1
Securities & Investment Services	66%	194.9
<b><u>Principally Household</u></b>		
Automobile Repairs	26%	145.6
Personal Services	11%	96.5
Education Services	7%	131.4
Amusements and Recreation	5%	81.0
Medical Services	1%	889.5

# Major West Virginia Sales Tax Exemptions

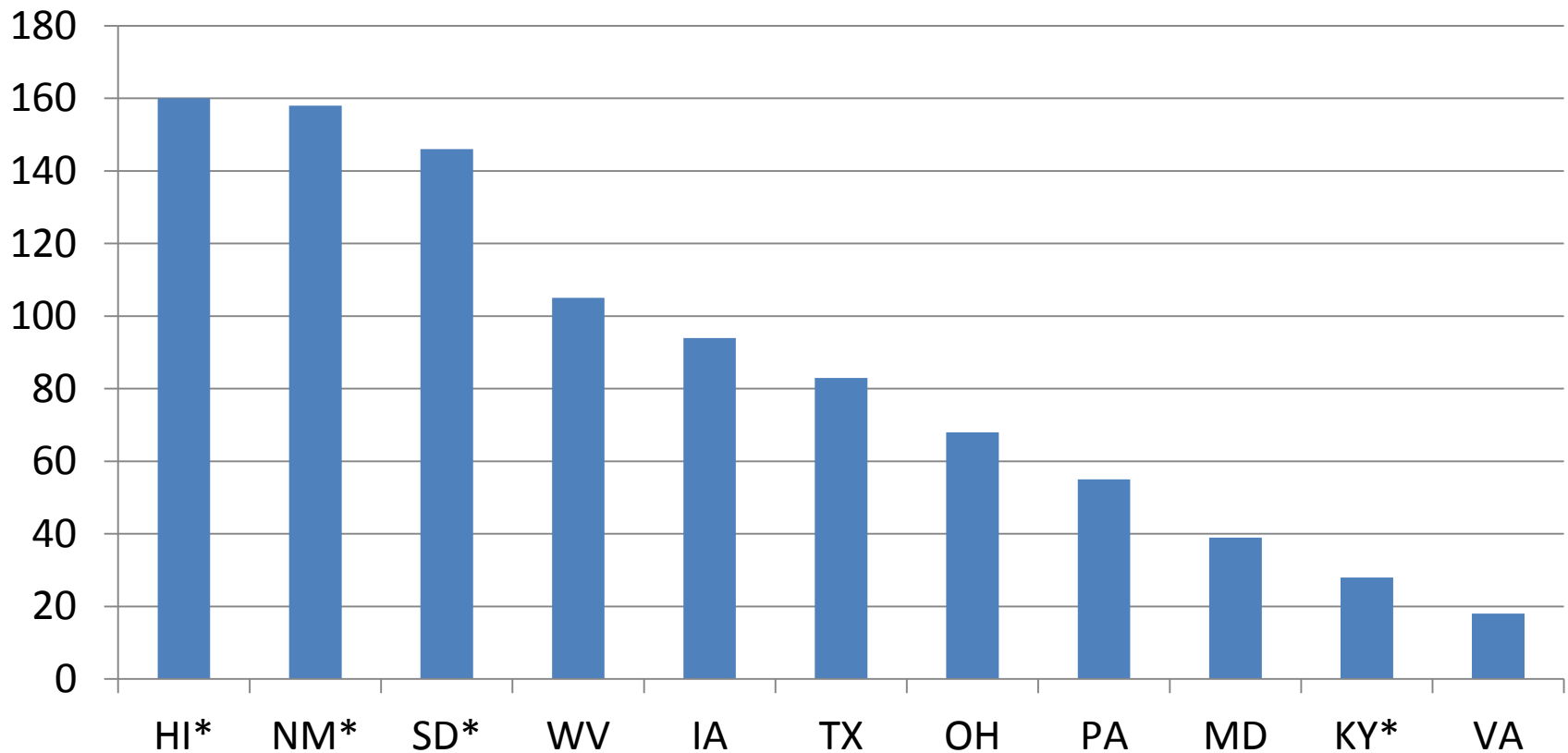
- “Public Utility” Services
- Professional Services
- Real Property Contracting Services
- Personal Services
- Electronic Data Processing Services
- Advertising Services/Space
- Day Care & Babysitting Services
- Personalized Fitness Program Services
- Prescription Drugs & Appliances
- Food for Home Consumption
- Motor Vehicles and Motor Fuel-Alternative Sales Taxation
- Digital Goods
- Mobile Homes (50% Price Exclusion)
- WV Clothing Vouchers
- Newspapers Delivered by Route Carriers

# Number of Services Taxed Out of 168

\* Sales Tax Liability on Vendor, Not Consumer

Source: Federation of Tax Administrators Survey : July 2007 Update

## # Taxable Services Under General Sales Tax



# Major West Virginia Sales Tax Exemptions

## “Public” Utility Services: \$200 to 300 Million +

### **State B&O Tax Yield: \$120 Million**

- Electric power sales: (20)     \$100 - \$150 million
- Natural gas sales: (20)        \$28 - \$39 million
- Water utility sales: (10)        \$15 - \$20 million
- Sewer utility sales:     (8)     \$10 - \$15 million
- Telecommunications: (41)     \$60 - \$80 million
- Refuse Services: (8)            \$1 - \$2 million
- Intrastate Transportation: (8) < \$1 million

# Major West Virginia Sales Tax Exemptions

In WV, Exempt if Vendor Qualifies As Professional

## **Professional Services:**

- Lawyers: (HI, NM, SD) \$ 70 million
- Accounting: (HI, NM, SD) \$ 15 million
- Medical (includes hospital): \$750 million
  - Physicians (HI)
  - Dentists: (HI)
  - Nurses out of hospital (HI)
- Other: \$ 60 million
  - Engineer: (HI, NM, SD)
  - Architects: (HI, NM, SD)
  - Investment Counseling (HI, NM, SD)
  - Land Surveying: (HI, NM, SD, TX, WV)

# Major West Virginia Sales Tax Exemptions

## WV: taxes purchases of materials

### **Real Property Contracting Services vs Taxable Service Provider:**

- Usual Rule: Taxation of Material Purchases with Exemption for Services
- Special Issues
  - Contractor-Retailer
  - Manufacturing Contractors: 50% exclusion on mobile homes
  - Contract work for exempt purchasers
  - Installation Contracts
- Exceptions:
  - Arizona – Tax on contract price less 35% for labor
  - South Dakota – Additional 2% excise tax on gross receipts
  - Mississippi – 3.5% tax on all contracts > \$10,000
  - New Mexico – Subject to gross sales tax with exemption for subcontractor costs

# The Capital Improvement Rule

For sales tax purposes, a **CAPITAL IMPROVEMENT** is any addition or alteration to real property which meets **ALL THREE** of the following requirements:

1. It substantially adds to the value of real property or appreciably prolongs the useful life of the real property: AND
2. It becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; AND
3. It is intended to become a permanent installation or to remain there for an indefinite period of item.

If the end result of the service **is** a capital improvement to the real property, the service is considered to be "contracting" and is not taxable. Persons engaged in contracting generally pay the sales tax on purchases of building materials.

If the end result **is not** a capital improvement, then that service is taxable. For Example: repairs, touch up painting or repainting, roof patching, mowing grass, placement of furniture.

The service provider is authorized to assert the purchases for resale exemption for purchases of materials to be installed in the process of providing a taxable service.



# Major West Virginia Sales Tax Exemptions

## Personal Services:

- Barber shops, beauty salons, nail salons, massage parlors, tattoo parlors: (5) \$3.8 million
- Death care services: (10) \$ 4 million
- Home health care services: \$10 million
- Residential care services: \$45 million

# Major West Virginia Sales Tax Exemptions

## **Other Services:**

- Electronic Data Processing: (7)      \$ 5 million
- Advertising: (1-Hawaii)              \$27 million
- Day Care/Babysitting Services:      \$ 7 million
- Personalized Fitness: (19)            \$ 2 million

# Major West Virginia Sales Tax Exemptions

## Food for Home Consumption:

- Food for Home Consumption: \$170 Million
  - Food Stamps & WIC Vouchers: \$32.5 Million
  - Candy included in exemption
- What is **not** Included?
  - Prepared food
  - Eating & Drinking establishments
  - Soft drinks

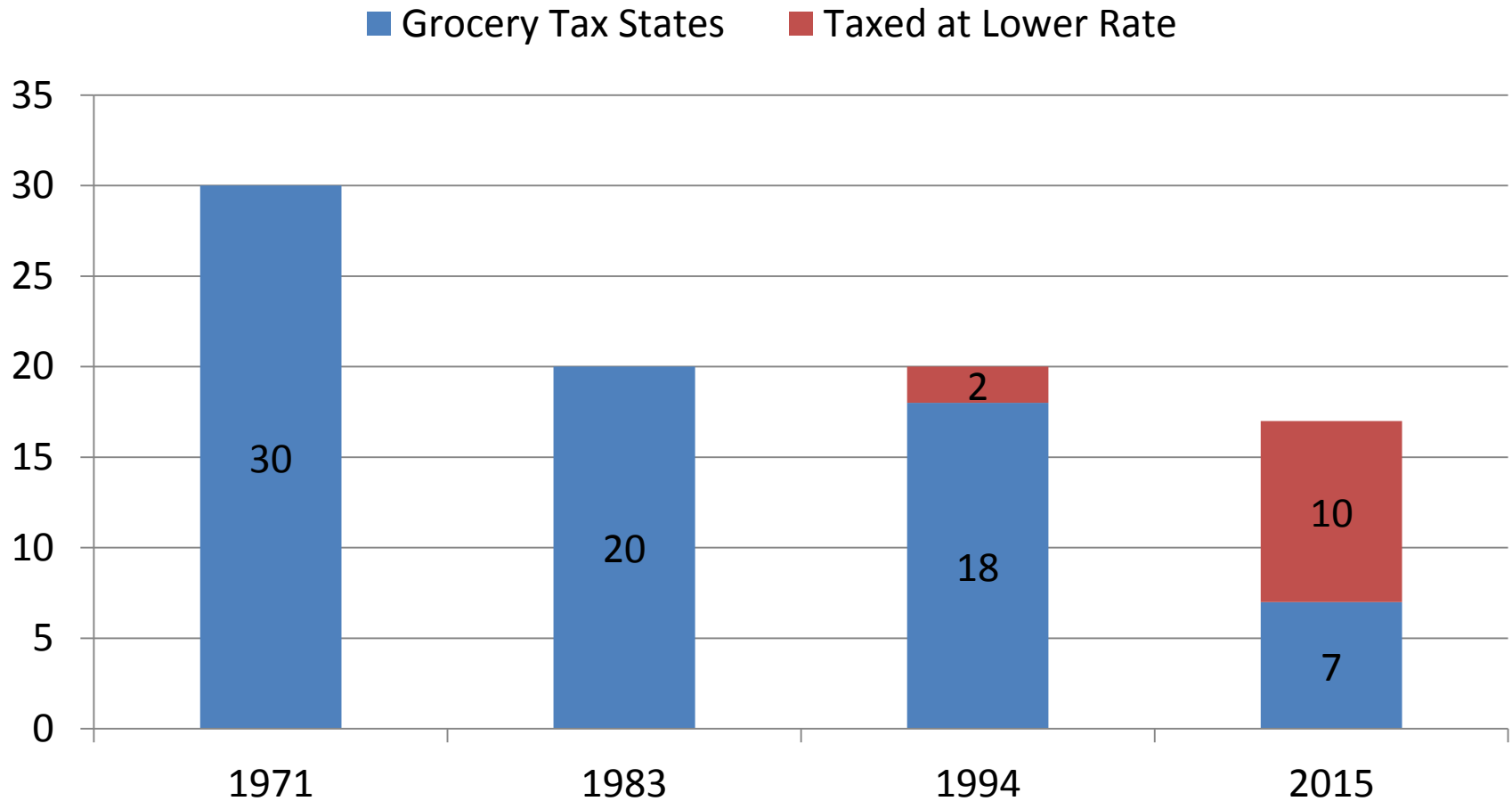
# Why Exempt “Food” From Sales Tax?

Food for Home Consumption: \$170 Million

1. Tax system less regressive unless trade-off is higher sales tax rate
  1. Lower-income people spend a greater share of resources on “Food”
  2. “Food” accounts for 13% to 15% of the Tax Base
  3. States with “Food” Exemptions Tend to Impose Higher Sales Tax Rates
2. Geographical Concern - Less cross-border shopping
  1. WV in geographical center of area relying more heavily than average on income taxes
  2. Virginia only contiguous neighbor taxing “Food” at 2.5% (5.3% general rate is lowest)
3. Residents prefer other types of taxation
  1. No Sales Tax in NH (Property), DE (Income), MT, & OR (Income & Property)
  2. In WV, additional Severance Tax revenues currently filling the gap
  3. KY & MD rely more heavily upon personal income taxes
  4. PA relies more heavily on real property taxes
  5. OH has the CAT & higher sales tax rates along with local income taxes

# Greater Number of States Exempting Groceries Over Time

Source: Sales Taxation: *State and Local Structure and Administration* by John F. Due and John L. Mikesell



## History of West Virginia Sales Tax on Food for Home Consumption

April 1, 1934 to June 30, 1961: 2%

July 1, 1961 to June 30, 1979: 3%

### Sales Tax on Food-Home Consumption: Phase- Out 1979-1981

7/1979: 3% to 2%

7/1980: 2% to 1%

7/1981: 1% to 0%

### Sales Tax Rate Increase(s)

1. 6/1981: 3% to 5%

2. 6/1988: 5% to 6%

3. 3/1989: Food @ 6%

### Sales Tax on Food-Home Consumption: Phase-Out 2006-2013

1/2006: 6% to 5%

7/2007: 5% to 4%

7/2008: 4% to 3%

1/2012: 3% to 2%

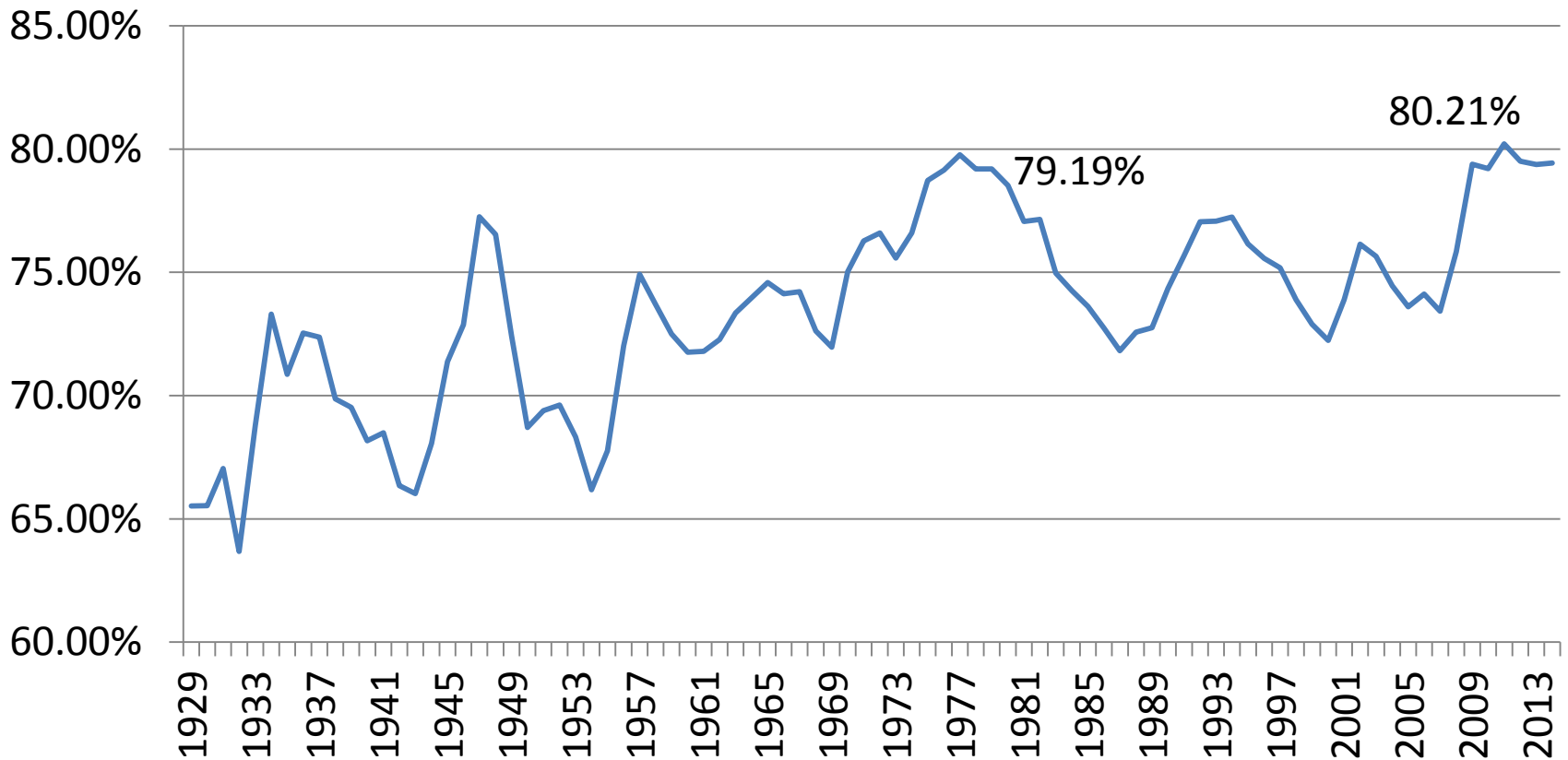
7/2012: 2% to 1%

7/2013: 1% to 0%

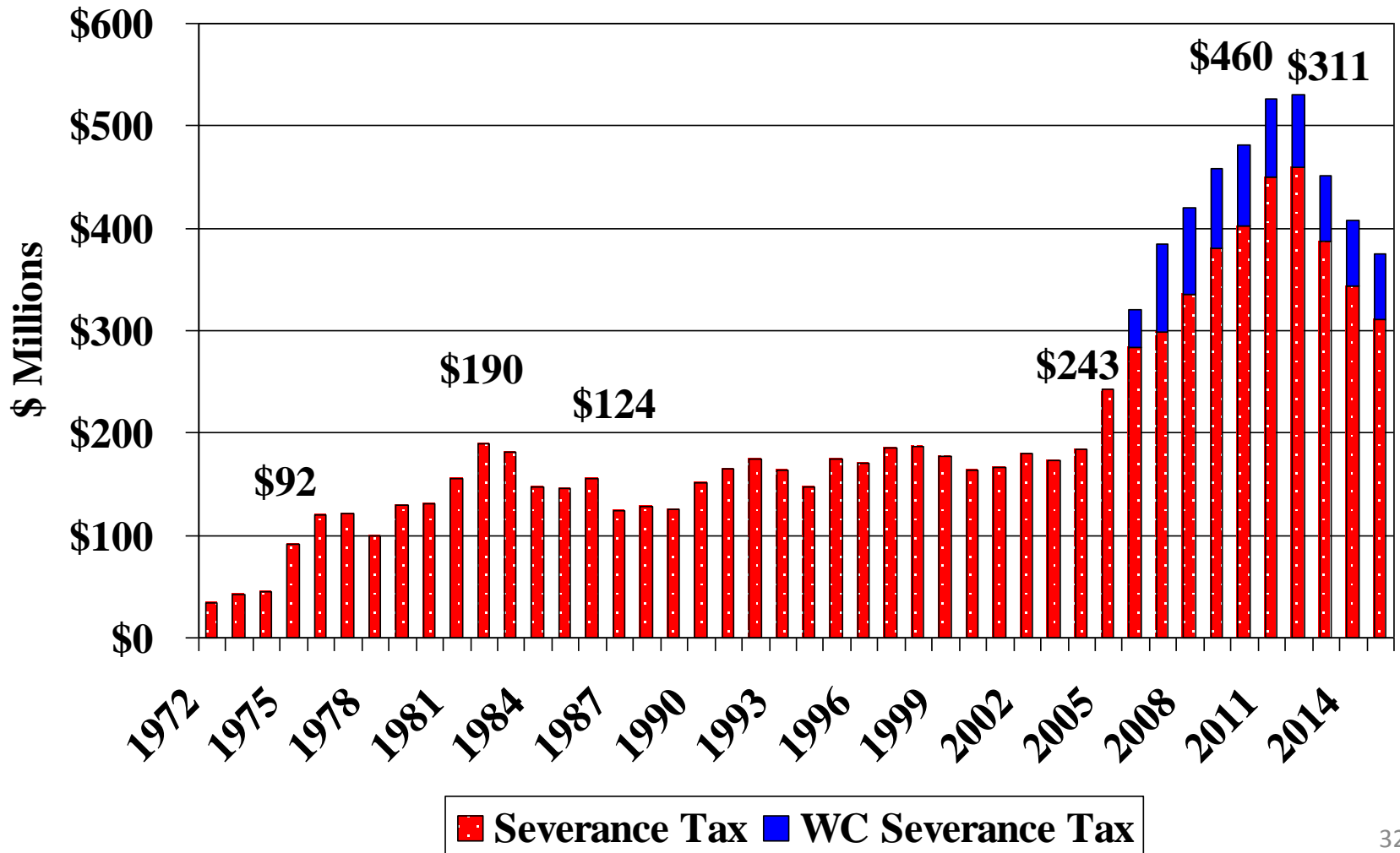
# Timing – “Food” Sales Tax Phase-Outs Enacted When Ratio of West Virginia to U.S. Per Capita Personal Income At Or Near Peak Levels

Source: U.S. Bureau of Economic Analysis

## West Virginia Per Capita Personal Income Ratio



## “Food” Tax Removed When Coal Severance Revenue Spikes





# Major West Virginia Sales Tax Exemptions

## Sales Taxes Dedicated to State Road Fund

### **Goods Subject to Alternative Sales Tax:**

- Motor Vehicle Sales and Leases: 5% Sales Tax
  - \$206 million yield in FY2015 (\$247M @ 6%)
    - Vehicles subject to title registration
    - Recreational vehicles
      - Snowmobiles
      - All Terrain Vehicles
- Gasoline and Special Fuels: 5% Sales Tax
  - Roughly \$200 million current yield @ 14.1 cents
  - Base equals average wholesale price (July-October)

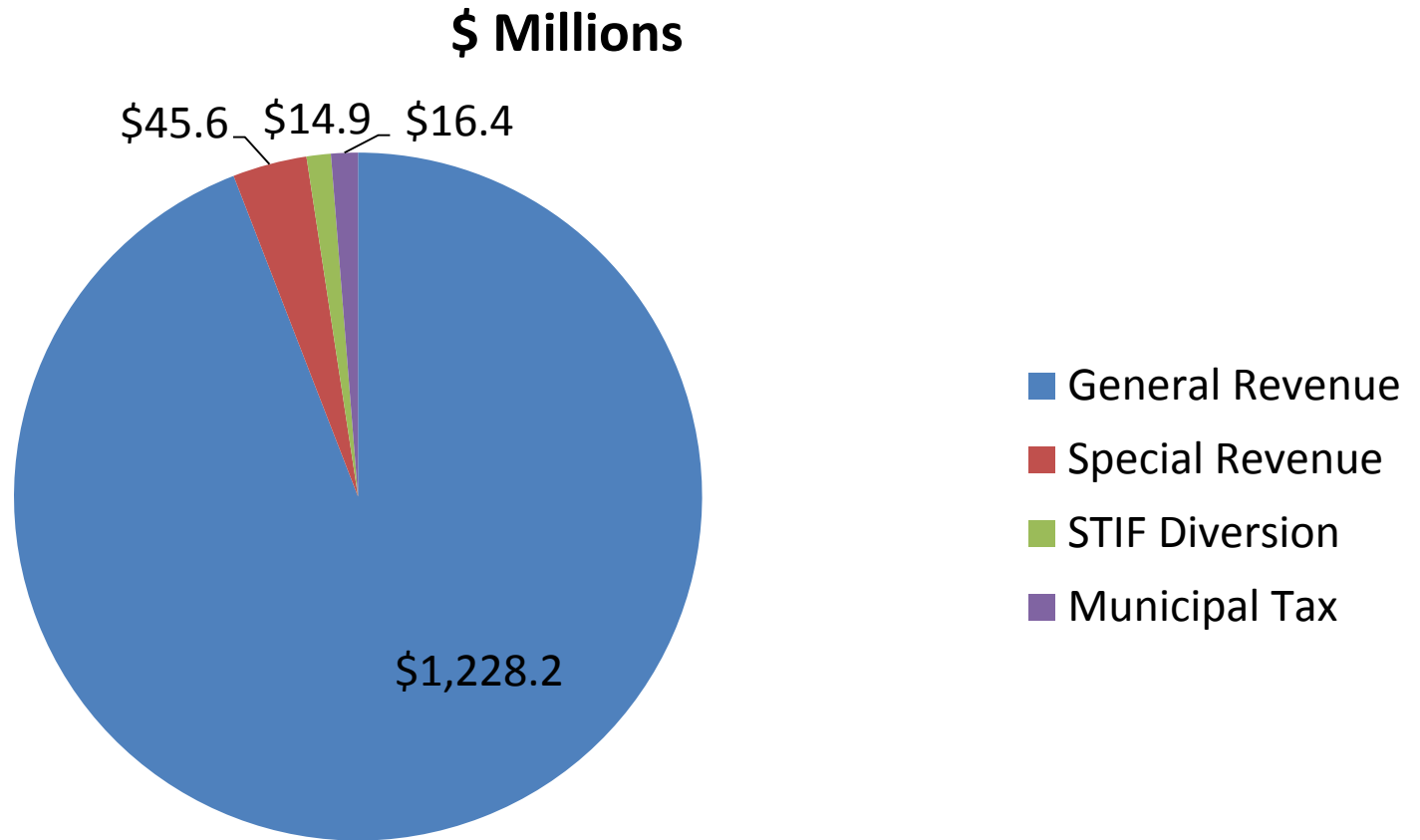
# Major West Virginia Sales Tax Exemptions

## Other Goods

### Other Goods:

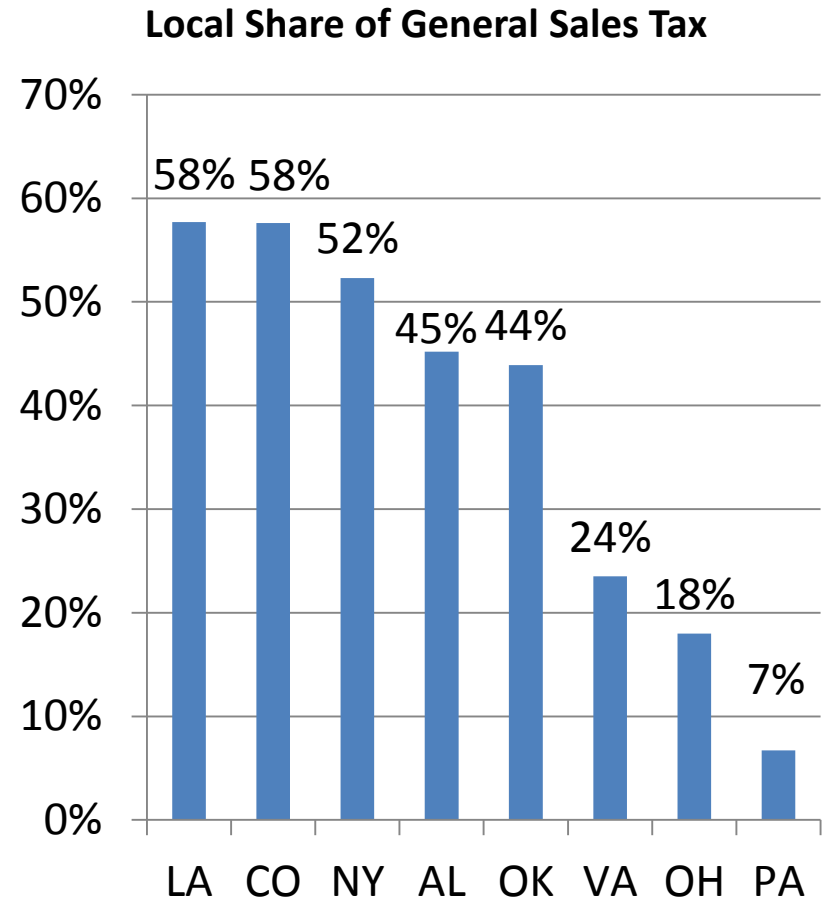
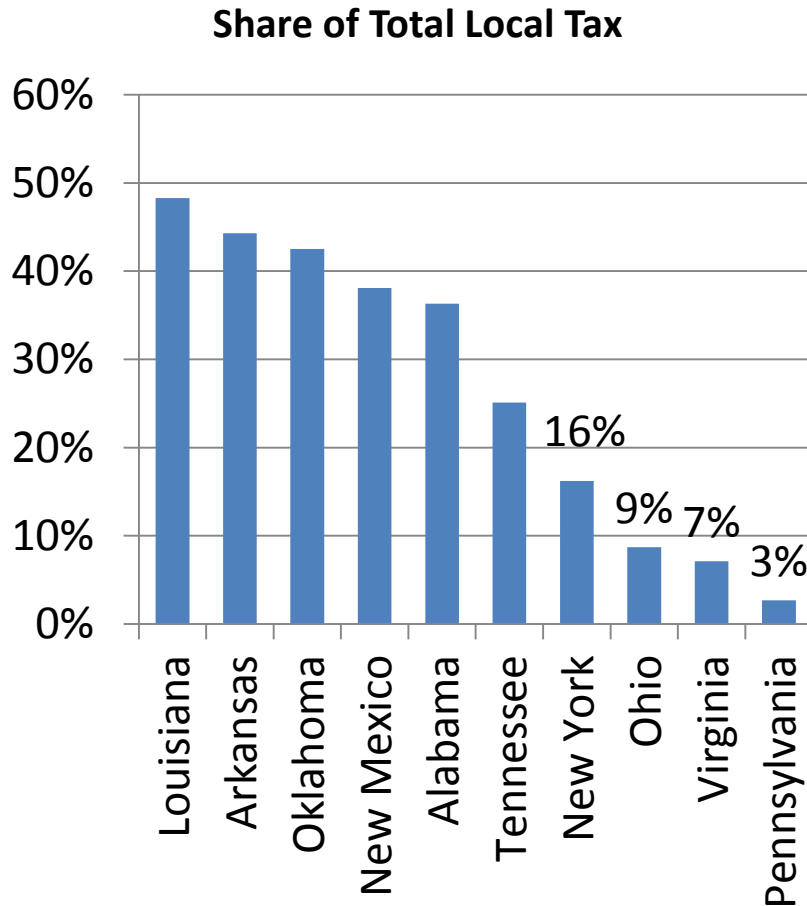
- Digital Goods: (24) \$3.5 million
- Mobile Homes (50% off): \$5.0 million
- WV Clothing Vouchers: \$1.06 million
- Newspapers-by Route Carriers: \$2.0 million

# FY2015 Distribution of Sales Tax

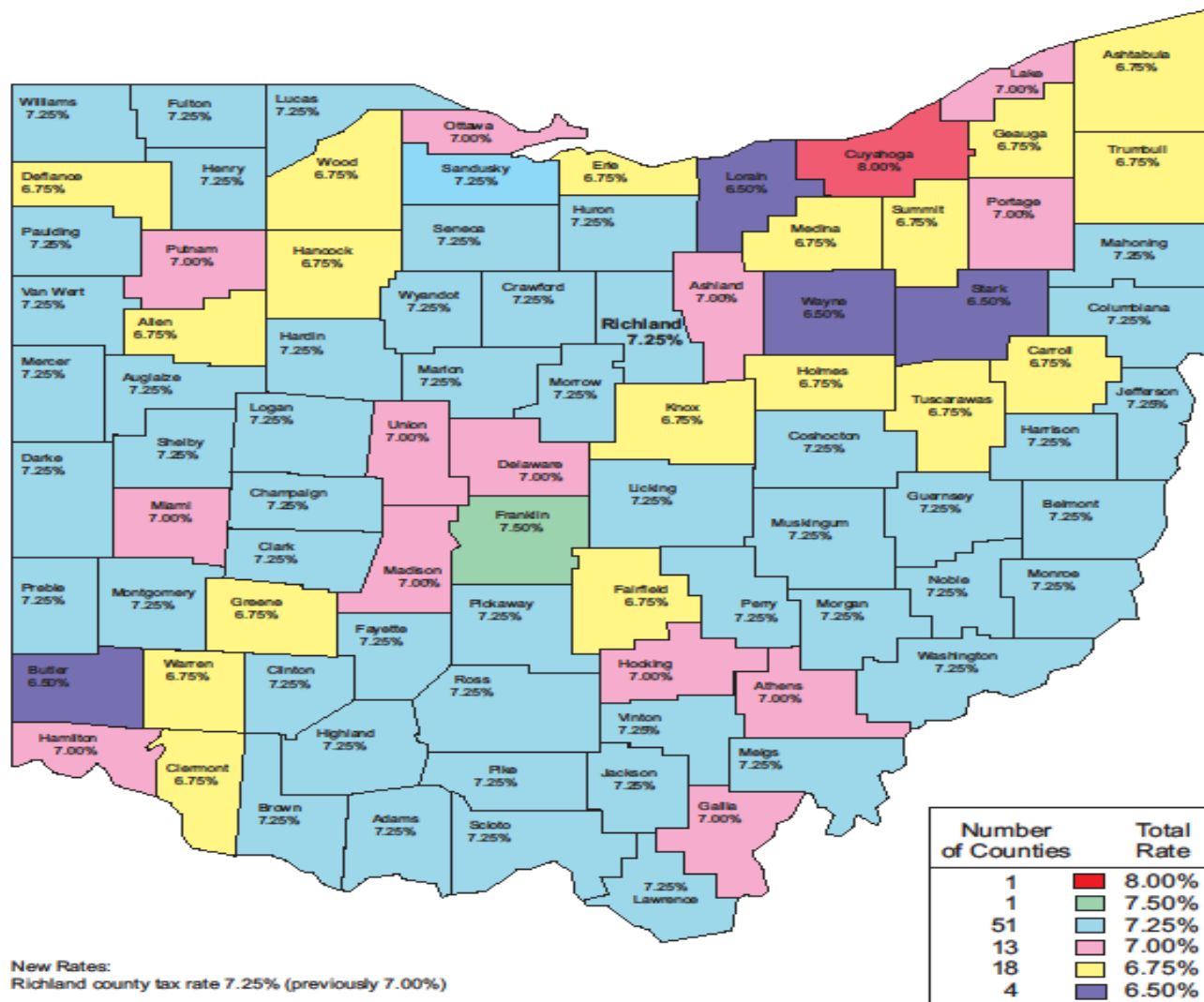


# Local Sales Taxes: 11.8% of Total Local Taxes

West Virginia's Contiguous Neighbors Account for just 5% of \$69.35 Billion



# **Total State and Local Sales Tax Rates, By County Effective July 2015**



Note: Small portions of Delaware, Fairfield, Licking & Union Counties assess a transit authority sales tax levy of 0.50% (not reflected on this map).

Ohio Department of Taxation  
June 22, 2015

# Current WV Municipal Sales Taxes

## **Municipalities Without B&O Tax**

October 2011:	Williamstown
April 2013:	Rupert
October 2013:	Harrisville, Quinwood
July 2015:	Bolivar, Thomas

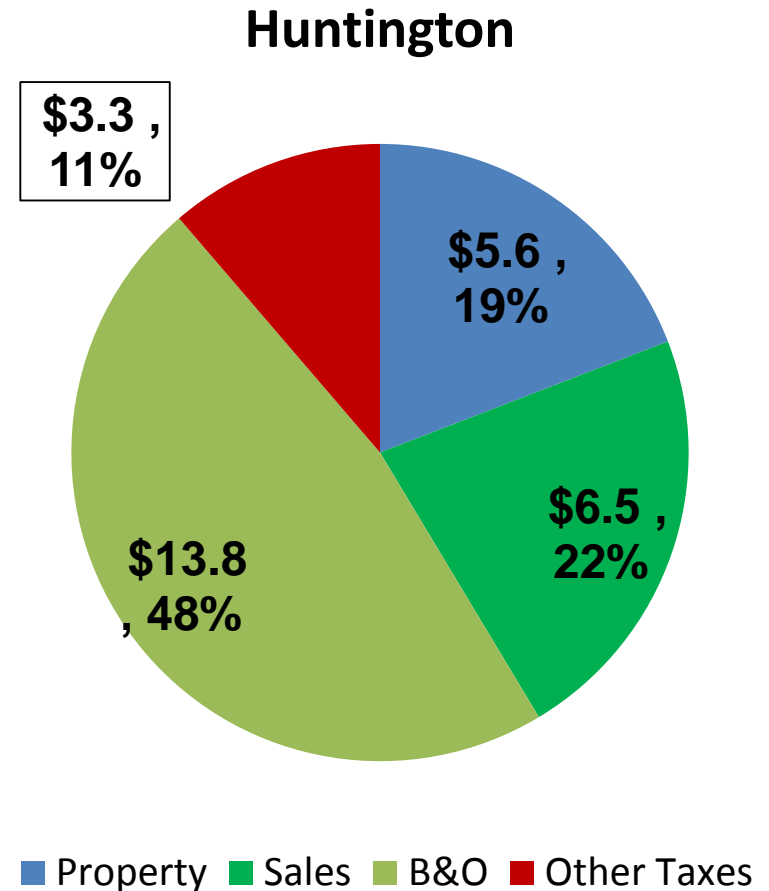
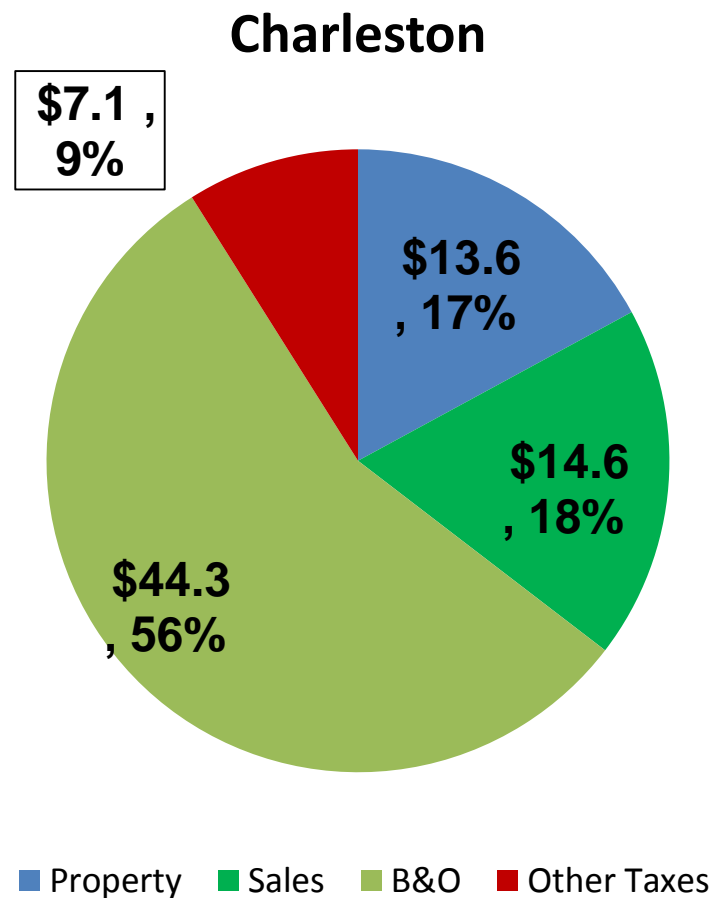
## **Municipalities With B&O Tax**

January 2012:	Huntington
October 2013:	Charleston
October 2013:	Wheeling
July 2015:	Charles Town, Martinsburg, Milton, Nitro, Parkersburg, Ranson, Vienna

# In WV, Municipal Sales Tax Does Not Replace B&O Tax

## U.S. Average for Municipalities: Sales Tax Share is 17%

Budgeted FY2016 Tax Collections Per WV State Auditor-Local Government Services Division  
\$ Millions



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Questions?