

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 275

SENATORS CLEMENTS, AZINGER, BEACH, JEFFRIES,

MARONEY, PREZIOSO, ROMANO, UNGER, TAKUBO,

STOLLINGS, AND CLINE, *original sponsors*

[Passed March 10, 2018; in effect 90 days from passage]

1 AN ACT to amend and reenact §11-10-5d of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §60-3-9d of said code; and to amend and reenact §60-3A-21 of said
3 code, all relating to the excise tax on sales of intoxicating liquors and wine; defining terms;
4 providing that tax collected on sales sourced within the corporate limits of a municipality
5 be remitted to the municipality; providing that the tax collected on sales sourced outside
6 the corporate limits of a municipality be remitted to the county; providing rule-making
7 authority; providing sourcing rules for determining whether tax is collected within or outside
8 of the corporate limits of a municipality; permitting counties to inspect and make copies of
9 certain Tax Commissioner records relating to the collection of tax within the county and
10 the municipalities in the county or the remittance of tax to such county or municipalities;
11 and permitting municipalities to inspect and make copies of certain Tax Commissioner
12 records relating to the collection of tax within the municipality and within the county in
13 which the municipality is located, but outside of the corporate limits of another municipality,
14 and the remittance of tax to such municipality and county.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

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

1 (a) *General rule.* — Except when required in an official investigation by the Tax
2 Commissioner into the amount of tax due under any article administered under this article or in
3 any proceeding in which the Tax Commissioner is a party before a court of competent jurisdiction
4 to collect or ascertain the amount of such tax and except as provided in §11-10-5d(d) through
5 §11-10-5d(n) of this code, it shall be unlawful for any officer, employee, or agent of this state or
6 of any county, municipality, or governmental subdivision to divulge or make known in any manner
7 the tax return, or any part thereof, of any person or disclose information concerning the personal

8 affairs of any individual or the business of any single firm or corporation, or disclose the amount
9 of income, or any particulars set forth or disclosed in any report, declaration, or return required to
10 be filed with the Tax Commissioner by any article of this chapter imposing any tax administered
11 under this article or by any rule of the Tax Commissioner issued thereunder, or disclosed in any
12 audit or investigation conducted under this article. For purposes of this article, tax returns and
13 return information obtained from the Tax Commissioner pursuant to an exchange of information
14 agreement or otherwise pursuant to the provisions of §11-10-5d(d) through §11-10-5d(n) of this
15 code which is in the possession of any officer, employee, agent, or representative of any local or
16 municipal governmental entity or other governmental subdivision is subject to the confidentiality
17 and disclosure restrictions set forth in this article: *Provided*, That such officers, employees, or
18 agents may disclose the information in an official investigation, by a local or municipal
19 governmental authority or agency charged with the duty and responsibility to administer the tax
20 laws of the jurisdiction, into the amount of tax due under any lawful local or municipal tax
21 administered by that authority or agency, or in any proceeding in which the local or municipal
22 governmental subdivision, authority, or agency is a party before a court of competent jurisdiction
23 to collect or ascertain the amount of the tax. Unlawful disclosure of the information by any officer,
24 employee, or agent of any local, municipal, or governmental subdivision is subject to the sanctions
25 set forth in this article.

26 (b) *Definitions*. — For purposes of this section:

27 (1) *Background file document*. — The term “background file document”, with respect to a
28 written determination, includes the request for that written determination, any written material
29 submitted in support of the request and any communication (written or otherwise) between the
30 state Tax Department and any person outside the state Tax Department in connection with the
31 written determination received before issuance of the written determination.

32 (2) *Disclosure*. — The term “disclosure” means making known to any person in any
33 manner whatsoever a return or return information.

34 (3) *Inspection.* — The terms “inspection” and “inspected” means any examination of a
35 return or return information.

36 (4) *Return.* — The term “return” means any tax or information return or report, declaration
37 of estimated tax, claim, or petition for refund or credit or petition for reassessment that is required
38 by, or provided for, or permitted under the provisions of this article (or any article of this chapter
39 administered under this article) which is filed with the Tax Commissioner by, on behalf of, or with
40 respect to any person and any amendment or supplement thereto, including supporting
41 schedules, attachments, or lists which are supplemental to, or part of, the filed return.

42 (5) *Return information.* — The term “return information” means:

43 (A) A taxpayer’s identity; the nature, source, or amount of his or her income, payments,
44 receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld,
45 deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or
46 will be examined or subject to other investigation or processing, or any other data received by,
47 recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a
48 return or with respect to the determination of the existence, or possible existence, of liability (or
49 the amount thereof) or by any person under the provisions of this article (or any article of this
50 chapter administered under this article) for any tax, additions to tax, penalty, interest, fine,
51 forfeiture, or other imposition or offense; and

52 (B) Any part of any written determination or any background file document relating to such
53 written determination. “Return information” does not include, however, data in a form which cannot
54 be associated with or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the
55 preceding sentence, or in any other provision of this code, shall be construed to require the
56 disclosure of standards used or to be used for the selection of returns for examination or data
57 used or to be used for determining such standards.

58 (6) *Tax administration.* — The term “tax administration” means:

59 (A) The administration, management, conduct, direction, and supervision of the execution
60 and application of the tax laws or related statutes of this state and the development and
61 formulation of state and local tax policy relating to existing or proposed state and local tax laws
62 and related statutes of this state; and

63 (B) Includes assessment, collection, enforcement, litigation, publication, and statistical
64 gathering functions under the laws of this state and of local governments.

65 (7) *Taxpayer identity.* — The term “taxpayer identity” means the name of a person with
66 respect to whom a return is filed, his or her mailing address, his or her taxpayer identifying
67 number, or a combination thereof.

68 (8) *Taxpayer return information.* — The term “taxpayer return information” means return
69 information as defined in §11-10-5d(b)(5) of this code which is filed with, or furnished to, the Tax
70 Commissioner by or on behalf of the taxpayer to whom such return information relates.

71 (9) *Written determination.* — The term “written determination” means a ruling,
72 determination letter, technical advice memorandum, or letter or administrative decision issued by
73 the Tax Commissioner.

74 (c) *Criminal penalty.* — Any officer, employee, or agent (or former officer, employee, or
75 agent) of this state or of any county, municipality, or governmental subdivision who violates this
76 section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more
77 than \$1,000, or imprisoned for not more than one year, or both, together with costs of prosecution.

78 (d) *Disclosure to designee of taxpayer.* — Any person protected by the provisions of this
79 article may, in writing, waive the secrecy provisions of this section for any purpose and any period
80 as he or she states in the written waiver. The Tax Commissioner may, subject to such
81 requirements and conditions as he or she may prescribe, thereupon release to designated
82 recipients such taxpayer’s return or other particulars filed under the provisions of the tax articles
83 administered under the provisions of this article, but only to the extent necessary to comply with
84 a request for information or assistance made by the taxpayer to such other person. However,

85 return information shall not be disclosed to such person or persons if the Tax Commissioner
86 determines that such disclosure would seriously impair administration of this state's tax laws.

87 (e) *Disclosure of returns and return information for use in criminal investigations.* —

88 (1) *In general.* — Except as provided in §11-10-5d(e)(3) of this code, any return or return
89 information with respect to any specified taxable period or periods shall, pursuant to and upon the
90 grant of an ex parte order by a federal district court judge, federal magistrate, or circuit court judge
91 of this state, under §11-10-5d(e)(2) of this code, be open (but only to the extent necessary as
92 provided in such order) to inspection by, or disclosure to, officers and employees of any federal
93 agency, or of any agency of this state, who personally and directly engaged in:

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

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

98 (C) Any state or federal grand jury proceeding pertaining to enforcement of such a criminal
99 statute to which this state, the United States, or such agency is or may be a party. Such inspection
100 or disclosure shall be solely for the use of such officers and employees in such preparation,
101 investigation, or grand jury proceeding.

102 (2) *Application of order.* — Any United States attorney, any special prosecutor appointed
103 under Section 593 of Title 28, United States Code, or any attorney in charge of a United States
104 justice department criminal division organized crime strike force established pursuant to Section
105 510 of Title 28, United States Code, may authorize an application to a circuit court judge or
106 magistrate, as appropriate, for the order referred to in §11-10-5d(e)(1) of this code. Any
107 prosecuting attorney of this state may authorize an application to a circuit court judge of this state
108 for the order referred to in §11-10-5d(e)(1) of this code. Upon the application, the judge or
109 magistrate may grant such order if he or she determines on the basis of the facts submitted by
110 the applicant that:

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

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

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

118 (3) The Tax Commissioner may not disclose any return or return information under §11-
119 10-5d(e)(1) of this code if he or she determines and certifies to the court that the disclosure would
120 identify a confidential informant or seriously impair a civil or criminal tax investigation.

121 (f) *Disclosure to person having a material interest.* — The Tax Commissioner may,
122 pursuant to legislative rules promulgated by him or her, and upon such terms as he or she may
123 require, disclose a return or return information to a person having a material interest in the return
124 or return information: *Provided*, That such disclosure shall only be made if the Tax Commissioner
125 determines, in his or her discretion, that the disclosure would not seriously impair administration
126 of this state's tax laws.

127 (g) *Statistical use.* — This section shall not be construed to prohibit the publication or
128 release of statistics classified to prevent the identification of particular returns and the items
129 thereof.

130 (h) *Disclosure of amount of outstanding lien.* — If notice of lien has been recorded
131 pursuant to §11-10-12 of this code, the amount of the outstanding obligation secured by such lien
132 may be disclosed to any person who furnishes written evidence satisfactory to the Tax
133 Commissioner that such person has a right in the property subject to the lien or intends to obtain
134 a right in such property.

135 (i) *Reciprocal exchange.* — The Tax Commissioner may, pursuant to written agreement,
136 permit the proper officer of the United States, or the District of Columbia, or any other state, or

137 any political subdivision of this state, or his or her authorized representative, who is charged by
138 law with responsibility for administration of a similar tax, to inspect reports, declarations, or returns
139 filed with the Tax Commissioner or may furnish to such officer or representative a copy of any
140 document, provided any other jurisdiction grants substantially similar privileges to the Tax
141 Commissioner or to the Attorney General of this state: *Provided*, That pursuant to written
142 agreement the Tax Commissioner may provide to the assessor of any county, sheriff of any
143 county, or the mayor of any West Virginia municipality the federal employer identification number
144 of any business being carried on within the jurisdiction of the requesting assessor, sheriff, or
145 mayor. The disclosure shall be only for the purpose of, and only to the extent necessary in, the
146 administration of tax laws: *Provided, however*, That the information may not be disclosed to the
147 extent that the Tax Commissioner determines that such disclosure would identify a confidential
148 informant or seriously impair any civil or criminal tax investigation.

149 (j) *Exchange with municipalities and counties.* —

150 (1) The Tax Commissioner shall, upon the written request of the mayor or governing body
151 of any West Virginia municipality, allow the duly authorized agent of the municipality to inspect
152 and make copies of the state business and occupation tax return filed by taxpayers of the
153 municipality and any other state tax returns (including, but not limited to, consumers sales and
154 service tax return information and health care provider tax return information) that is reasonably
155 requested by the municipality. Such inspection or copying shall include disclosure to the
156 authorized agent of the municipality for tax administration purposes of all available return
157 information from files of the tax department relating to taxpayers who transact business within the
158 municipality. The Tax Commissioner shall be permitted to inspect or make copies of any tax return
159 and any return information or other information related thereto in the possession of any
160 municipality, or its employees, officers, agents, or representatives, that has been submitted to or
161 filed with the municipality by any person for any tax including, but not limited to, the municipal
162 business and occupation tax, public utility tax, municipal license tax, tax on purchases of
163 intoxicating liquors, license tax on horse racing or dog racing, and municipal amusement tax.

164 (2) The Tax Commissioner shall, upon the written request of the county commission of a
165 West Virginia county, allow the duly authorized agent of the county to inspect and make copies
166 of the following records related to tax on the sale of intoxicating liquor and wine:

167 (A) All records of the Tax Commissioner, including available return information, related to
168 the collection of tax in the county or the remittance of tax to the county pursuant to §60-3-9d or
169 §60-3A-21 of this code; and

170 (B) All records of the Tax Commissioner, including available return information, related to
171 the collection of tax within the corporate limits of a municipality within the county or the remittance
172 of tax to a municipality within the county pursuant to §60-3-9d or §60-3A-21 of this code.

173 (3) The Tax Commissioner shall, upon the written request of the mayor or governing body
174 of a West Virginia municipality, allow the duly authorized agent of the municipality to inspect and
175 make copies of the following records related to tax on the sale of intoxicating liquor and wine:

176 (A) All records of the Tax Commissioner, including available return information, related to
177 the collection of tax within the corporate limits of the municipality or the remittance of tax to the
178 municipality pursuant to §60-3-9d and §60-3A-21 of this code;

179 (B) All records of the Tax Commissioner, including available return information, related to
180 the collection of tax within the county in which the municipality is located but outside the corporate
181 limits of another municipality pursuant to §60-3-9d and §60-3A-21 of this code; and

182 (C) All records of the Tax Commissioner, including available return information, related to
183 the remittance of tax to the county in which the municipality is located pursuant to §60-3-9d and
184 §60-3A-21 of this code.

185 (k) *Release of administrative decisions.* — The Tax Commissioner shall release to the
186 public his or her administrative decisions, or a summary thereof: *Provided,* That unless the
187 taxpayer appeals the administrative decision to a circuit court or waives in writing his or her rights
188 to confidentiality, any identifying characteristics or facts about the taxpayer shall be omitted or
189 modified to an extent so as to not disclose the name or identity of the taxpayer.

190 (I) *Release of taxpayer information.* — If the Tax Commissioner believes that enforcement
191 of the tax laws administered under this article will be facilitated and enhanced thereby, he or she
192 shall disclose, upon request, the names and address of persons:

193 (A) Who have a current business registration certificate;

194 (B) Who are licensed employment agencies;

195 (C) Who are licensed collection agencies;

196 (D) Who are licensed to sell drug paraphernalia;

197 (E) Who are distributors of gasoline or special fuel;

198 (F) Who are contractors;

199 (G) Who are transient vendors;

200 (H) Who are authorized by law to issue a sales or use tax exemption certificate;

201 (I) Who are required by law to collect sales or use taxes;

202 (J) Who are foreign vendors authorized to collect use tax;

203 (K) Whose business registration certificate has been suspended or canceled or not
204 renewed by the Tax Commissioner;

205 (L) Against whom a tax lien has been recorded under §11-10-12 of this code (including
206 any particulars stated in the recorded lien);

207 (M) Against whom criminal warrants have been issued for a criminal violation of this state's
208 tax laws; or

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

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

211 (1) *State return information.* — The Tax Commissioner may, upon written request, disclose
212 to the child support enforcement division created by §48A-2-1 *et seq.* of this code:

213 (A) Available return information from the master files of the tax department relating to the
214 Social Security account number, address, filing status, amounts, and nature of income and the
215 number of dependents reported on any return filed by, or with respect to, any individual with
216 respect to whom child support obligations are sought to be enforced; and

217 (B) Available state return information reflected on any state return filed by, or with respect
218 to, any individual described in §11-10-5d(m)(1)(A) of this code relating to the amount of the
219 individual's gross income, but only if such information is not reasonably available from any other
220 source.

221 (2) *Restrictions on disclosure.* — The Tax Commissioner shall disclose return information
222 under §11-10-5d(m)(1) of this code only for purposes of, and to the extent necessary in, collecting
223 child support obligations from and locating individuals owing such obligations.

224 (n) *Disclosure of names and addresses for purposes of jury selection.* — The Tax
225 Commissioner shall, at the written request of a circuit court or the chief judge thereof, provide to
226 the circuit court within 30 calendar days a list of the names and addresses of individuals residing
227 in the county or counties comprising the circuit who have filed a state personal income tax return
228 for the preceding tax year. The list provided shall set forth names and addresses only. The request
229 shall be limited to counties within the jurisdiction of the requesting court.

230 The court, upon receiving the list or lists, shall direct the jury commission of the appropriate
231 county to merge the names and addresses with other lists used in compiling a master list of
232 residents of the county from which prospective jurors are to be chosen. Immediately after the
233 master list is compiled, the jury commission shall cause the list provided by the Tax Commissioner
234 and all copies thereof to be destroyed and shall certify to the circuit court and to the Tax
235 Commissioner that the lists have been destroyed.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-9d. Tax on purchases of intoxicating liquors inside and outside corporate limits of municipalities.

1 (a)(1) For the purpose of providing financial assistance to and for the use and benefit of
2 the various counties and municipalities of this state, there is hereby levied a tax upon all

3 purchases of intoxicating liquor from state stores or other agencies of the Alcohol Beverage
4 Control Commissioner, of wine from any person licensed to sell wine at retail under the provisions
5 of §60-8-1 *et seq.* of this code, and of wine from distributors licensed to sell or distribute wine
6 under the provisions of §60-8-1 *et seq.* of this code. The tax shall be five percent of the purchase
7 price and shall be added to and collected with the purchase price by the commissioner, by the
8 person licensed to sell wine at retail, or by the distributor licensed to sell or distribute wine, as the
9 case may be: *Provided*, That the tax may not be collected on the intoxicating liquors sold by or
10 purchased from holders of a license issued under the provisions of §60-7-1 *et seq.* of this code:
11 *Provided, however*, That the tax may not be collected on purchases of intoxicating liquors or wine
12 in the original sealed package for the purpose of resale in the original sealed package if the final
13 purchase of such intoxicating liquors or wine is subject to the tax imposed under this section,
14 under §8-13-7 of this code, or under §60-3A-21 of this code. This section may not be interpreted
15 to authorize a purchase for resale exemption in contravention of §11-15-9a of this code. For
16 purposes of this article, the term “original sealed package” means an original sealed package as
17 defined in §8-13-7 of this code.

18 (2) (A) All such tax collected within one mile of the corporate limits of any municipality
19 within the state shall be remitted to such municipality; all other tax collected shall be remitted to
20 the county in which it was collected: *Provided*, That where the corporate limits of more than one
21 municipality is within one mile of the place of collection of such tax, all such tax collected shall be
22 divided equally among each of said municipalities: *Provided, however*, That such mile is
23 measured by the most direct hard surface road or access way usually and customarily used as
24 ingress and egress to the place of tax collection.

25 (B) Effective January 1, 2019, all such tax collected on sales sourced within the corporate
26 limits of any municipality within the state shall be remitted to that municipality. All such tax
27 collected on sales sourced outside the corporate limits of any municipality shall be remitted to the
28 county in which the sale is sourced.

29 (C) When determining whether the tax is collected within the corporate limits of any
30 municipality, a seller shall use the sourcing rules provided in §11-15B-1 *et seq.* of this code.

31 (3) *Rulemaking.* — (A) The Tax Commissioner shall propose rules for promulgation in
32 accordance with the requirements of §29A-3-1 *et seq.* of this code to provide for the collection of
33 the tax required by this section. The Tax Commissioner may promulgate emergency rules in
34 accordance with §29A-3-15 of this code, as necessary, to carry out the requirements of this
35 section.

36 (B) The West Virginia Alcohol Beverage Control Commissioner may propose rules for
37 promulgation in accordance with the requirements of §29A-3-1 *et seq.* of this code to provide for
38 the collection of the tax required by this section. The West Virginia Alcohol Beverage Control
39 Commissioner may promulgate emergency rules in accordance with §29A-3-15 of this code, as
40 necessary, to carry out the requirements of this section.

41 (b) For purposes of this section, terms have the same meaning as provided in §8-13-7(b)
42 of this code.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-21. Tax on purchases of liquor.

1 (a) For the purpose of providing financial assistance to and for the use and benefit of the
2 various counties and municipalities of this state, there is hereby levied tax upon all purchases of
3 liquor from retail licensees. The tax shall be five percent of the purchase price and shall be added
4 to and collected with the purchase price by the retail licensee.

5 (b) (1) All such tax collected within the corporate limits of a municipality in this state shall
6 be remitted to such municipality; all such tax collected outside of but within one mile of the
7 corporate limits of any municipality shall be remitted to such municipality; and all other tax so
8 collected shall be remitted to the county in which it was collected: *Provided,* That where the
9 corporate limits of more than one municipality is within one mile of the place of collection of such
10 tax, all such tax collected shall be divided equally among each of such municipalities: *Provided,*

11 *however*, That such mile is measured by the most direct hard surface road or access way usually
12 and customarily used as ingress and egress to the place of tax collection.

13 (2) Effective January 1, 2019, all such tax collected on sales sourced within the corporate
14 limits of any municipality within the state shall be remitted to that municipality. All such tax
15 collected on sales sourced outside the corporate limits of any municipality shall be remitted to the
16 county in which the sale is sourced.

17 (3) When determining whether the tax is collected on sales within the corporate limits of
18 any municipality, a seller shall use the sourcing rules provided in §11-15B-1 *et seq.* of this code.

19 (c) The Tax Commissioner, by appropriate rule promulgated pursuant to §29A-3-1 *et seq.*
20 of this code, shall provide for the collection of such tax upon all purchases from retail licensees,
21 separation or proration of the same, and distribution thereof to the respective counties and
22 municipalities for which the same shall be collected. Such rule shall provide that all such taxes
23 shall be deposited with the state Treasurer and distributed quarterly by the state Treasurer upon
24 warrants of the Auditor payable to the counties and municipalities.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2018.

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Governor