

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 550

BY SENATORS WOODRUM, ROBERTS, ROMANO, AND

LINDSAY

[Introduced March 3, 2021; referred
to the Committee on Government Organization; and
then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §7-28-1 and §7-28-2; and to amend and reenact §11-10-11c of said code, all
 3 relating generally to the authorization and administration of county sales and use taxes;
 4 setting forth legislative intent; providing counties with authority to impose a county sales
 5 and use tax of up to one percent under certain circumstances; clarifying that a county
 6 sales and use tax does not apply to incorporated areas of the county; requiring counties
 7 imposing a county sales tax to use the services of the Tax Commissioner to administer
 8 the tax; and setting forth administrative procedures for the collection and administration of
 9 such taxes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 28. LOCAL CONTROL AND ACCOUNTABILITY ACT.

§7-28-1. Legislative intent; authority to impose county sales tax; applicability; administration.

1 (a) Legislative intent. - The Legislature hereby finds and declares that county commissions
 2 today face numerous challenges managing their budgets and other resources and that it is in the
 3 public's best interest to provide counties with the local control, flexibility, and accountability to
 4 address the financial demands that increasing regional jail bills, infrastructure repairs, and other
 5 expenses place on our county government, while also ensuring that counties remain good
 6 stewards of taxpayer funds. Therefore, it is the intent of the Legislature in enacting this article to
 7 provide counties with the local control and monetary flexibility necessary to meet their financial
 8 needs and plan for unexpected events in the future.

9 (b) Authority to impose county sales tax. - On and after July 1, 2021, any county may
 10 impose and collect, by a majority vote of its county commission, a county sales and use tax of up
 11 to one percent: *Provided*, That a county commission must conduct a public hearing prior to any

12 consideration of the proposed one percent sales and use tax. Notice of the public hearing shall
13 be given at least seven days before the date of the hearing by the publication of a notice in at
14 least one paper of general circulation in such county.

15 (c) Applicability. - In no event shall the county sales and use tax authorized by this
16 section be applicable to an incorporated area within the county. The sales and use tax authorized
17 by this section may not apply to the sale of motor fuel or motor vehicles.

§7-28-2. State administration of county sales and use taxes.

1 (a) Administration. - Any county that imposes a county sales tax pursuant to §7-28-1 of
2 this code shall use the services of the Tax Commissioner to administer, enforce, and collect the
3 tax in the same manner as the state consumer sales and service tax and use tax under the
4 provisions of §11-15-1 et seq., §11-15A-1 et seq., and §11-15B-1 et seq. of this code.

5 (b) Notification to Tax Commissioner. - Any county that imposes a sales and use tax
6 pursuant to §7-28-1 of this code, or otherwise changes the rate of such taxes, shall notify the Tax
7 Commissioner at least 180 days before the effective date of the imposition of the taxes or the
8 change in the rate of the taxes.

9 (c) Application of state sales tax law. -- The state consumers sales and service tax law,
10 as set forth in §11-15-1 et seq. of this code, and the amendments to that article and the rules of
11 the Tax Commissioner relating to the laws shall apply to a county sales and use tax imposed
12 pursuant to §7-28-1 of this code to the extent the rules and laws are applicable.

13 (d) Application of state use tax law. -- The state use tax law, set forth in §11-15A-1 et seq.
14 of this code, and the amendments to that article and the rules of the Tax Commissioner relating
15 to the laws shall apply to a county sales and use tax imposed pursuant to §7-28-1 of this code to
16 the extent the rules and laws are applicable.

17 (e) Definitions incorporated. -- Any term used in this article or in an ordinance adopted
18 pursuant to this article that is defined in the provisions of §11-15-1 et seq., §11-15A-1 et seq.,
19 and §11-15B-1 et seq. of this code, as amended, shall have the same meaning when used in this

20 article or in an ordinance adopted pursuant to this article, unless the context in which the term is
 21 used clearly requires a different result.

22 (f) Automatic updating. -- Any amendments to §11-9-1 et seq., §11-10-1 et seq., §11-15-
 23 1 et seq., §11-15A-1 et seq., and §11-15B-1 et seq. of this code shall automatically apply to a
 24 sales or use tax imposed pursuant to this article, to the extent applicable.

25 (g) Fee for services. -- The Tax Commissioner may retain from collections a fee not to
 26 exceed the lesser of the cost of the service provided or one percent of the amount of taxes
 27 imposed pursuant to this article that are collected by the Tax Commissioner during any fiscal year.
 28 Any such fees collected shall be deposited in the Local Sales Tax and Excise Tax Administration
 29 Fund pursuant to §11-10-11C of this code.

30 (h) Administrative procedures. -- Each and every provision of the West Virginia Tax
 31 Procedure and Administration Act set forth in §11-10-1 et seq. of this code applies to the taxes
 32 imposed pursuant to §7-28-1 of this code, except as otherwise expressly provided in this article,
 33 with like effect as if that act were applicable only to the taxes imposed by this article and were set
 34 forth in extenso in this article.

35 (i) Criminal penalties. -- Each and every provision of the West Virginia Tax Crimes and
 36 Penalties Act set forth in §11-9-1 et seq. of this code applies to the taxes imposed pursuant to §7-
 37 28-1 with like effect as if that act were applicable only to the taxes imposed pursuant to this article
 38 and were set forth in extenso in this article.

CHAPTER 11. TAXATION

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-11c. State administration of local sales and use taxes and excise taxes; jurisdiction and standing before the office of tax appeals; rule-making authority.

1 (a) The Tax Commissioner has exclusive responsibility for administering, collecting and
 2 enforcing all local sales and use taxes and excise taxes imposed pursuant to §7-22-1 et seq., §7-

3 28-1, §8-1-5a, §8-13C-1 *et seq.* and §8-38-1 *et seq.* of this code.

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

10 (c) Notwithstanding any other provision of this code to the contrary, the Tax Commissioner
11 may assess a fee, to be established by legislative rule pursuant to the provisions of §29A-3-1, *et*
12 seq. of this code, to be retained from collections authorized by §8-1-5a of this code, and §8-13C-
13 6 of this code: *Provided*, That the fee may not exceed five percent of such collections in total
14 including any fee otherwise authorized by this code or any duly enacted ordinance.

15 (d) Establishment of special revenue account.

16 (1) There is created in the State Treasury a special revenue revolving fund account known
17 as the "Local Sales Tax and Excise Tax Administration Fund". Expenditures from the fund shall
18 be for the purposes set forth in this section and are not authorized from collections but are to be
19 made only in accordance with appropriation by the Legislature and in accordance with the
20 provisions of §12-3-1, *et seq.* of this code: *Provided*, That for the fiscal year ending June 30, 2014,
21 expenditures are authorized from collections rather than pursuant to appropriation by the
22 Legislature. The fund shall consist of:

23 (A) Any funds collected pursuant to section (c) of this section; and

24 (B) Any funds received on and after July 1, 2013, from fees retained by the Tax
25 Commissioner pursuant to §8-13C-6 of this code; and

26 (C) Amounts deducted and retained by the Tax Commissioner under subsection (e),
27 section eleven-a of this article; and

28 (D) Any future funds appropriated by the Legislature or transferred by any public agency

29 as contemplated or permitted by applicable federal or state law; and

30 (E) Any accrued interest or other return on the moneys in the fund.

31 (2) On July 1, 2013, all moneys in the Tax Department “Municipal Sales and Use Tax
32 Operations Fund” established under §8-13C-6 of this code shall be transferred to the Local Sales
33 Tax and Excise Tax Administration Fund established in this section.

34 (3) On July 1, 2013, all moneys in the “Special District Excise Tax Administration Fund”
35 established under section eleven-b of this article of this code shall be transferred to the Local
36 Sales Tax and Excise Tax Administration Fund established in this section.

37 (4) Amounts deposited in the Local Sales Tax and Excise Tax Administration Fund may
38 be expended by the Tax Commissioner for the general administration, collection and enforcement
39 of all local sales and use taxes and excise taxes imposed pursuant to §7-22-1 *et seq.*, §7-28-1,
40 §8-1-5a, §8-13C-1 *et seq.* and §8-38-1 *et seq.* of this code.

41 (e) Notwithstanding the provisions of section eleven-b of this article. The Tax
42 Commissioner may prescribe by rule the schedule and manner for deposits of moneys into the
43 Local Sales Tax and Excise Tax Administration Fund and any other administrative and procedural
44 requirements as may be useful or necessary for the management and handling of the fund.

45 (f) Effective Date - The provisions of this section enacted in ~~2013~~ 2021 are effective on
46 and after July 1, ~~2013~~ 2021.

NOTE: The purpose of this bill is to allow counties to implement a consumer sales tax of up to one percent in certain circumstances.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.