

WEST VIRGINIA FIREWORKS SAFETY FEE REPORT

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TABLE OF CONTENTS

Introduction 1
Fireworks Safety Fee Distributions 1
 Year-Over-Year Analysis 2
State Sales Tax Collections on Fireworks 3
Other Considerations 4
Conclusion 4

TABLE OF TABLES

Table 1 – Fireworks Safety Fee Distributions by Fund July 2016 – December 2017	1
Table 2 – Six-Month Analysis of Year-Over-Year Distributions	2
Table 3 – Estimated Fireworks Sales Tax Collections July 2016 – December 2017	3

INTRODUCTION

The West Virginia Legislature enacted the Enrolled Committee Substitute for House Bill 2852 (HB 2852) during the 2016 Regular Session. This bill legalized¹ the sale of fireworks in the State effective June 1, 2016 and levied a fee, called the Fireworks Safety Fee, on such purchases in addition to the imposition of State and local sales taxes on sales of fireworks as applicable. Per Section 29-3E-7(a) et seq. of the West Virginia Code, this fee is equal to 12 percent of the sale price of consumer fireworks sold in the State. The Bill designated 75 percent of revenues² to be distributed to the Veterans' Facility Support Fund and the remaining 25 percent to the Fire Protection Fund.³ Pursuant to Section 29-3E-14 of the West Virginia Code, this report details the Fireworks Safety Fee and State sales tax revenues received from its enactment.

FIREWORKS SAFETY FEE DISTRIBUTIONS

The passage of HB 2852 made sales of fireworks in West Virginia legal effective June 1, 2016. Due to a statutory lag, Fireworks Safety Fees collected by retailers in each month are remitted to the Tax Department the following month. (For example, fees collected in June representing June sales are typically remitted to the Tax Department in July.) Table 1 illustrates distributions by month to each fund along with the administrative fee reserved for the Tax Department from July 2016 through December 2017.

Table 1 – Fireworks Safety Fee Distributions by Fund July 2016 – December 2017

Month	Veterans' Facility Support Fund	Fire Protection Fund	Administrative Fees	Total
2016 - July	\$ 100,100	\$ 33,367	\$ 1,348	\$ 134,814
2016 - August	449,911	149,970	6,059	605,941
2016 - September	5,219	1,740	70	7,029
2016 - October	1,839	613	25	2,477
2016 - November	2,260	753	30	3,044
2016 - December	927	309	12	1,248
2017 - January	2,969	990	40	3,998
2017 - February	3,211	1,070	43	4,325
2017 - March	320	107	4	431
2017 - April	1,216	405	16	1,638
2017 - May	1,171	390	16	1,577
2017 - June	9,114	3,038	123	12,274
2017 - July	177,916	59,305	2,396	239,618
2017 - August	262,557	87,519	3,536	353,612
2017 - September	13,545	4,515	182	18,242
2017 - October	46,447	15,482	626	62,555
2017 - November	7,859	2,620	106	10,585
2017 - December	802	267	11	1,081
Total	\$ 1,087,383	\$ 362,461	\$ 14,645	\$ 1,464,489

Amounts rounded to nearest dollar.

¹ Prior to the passage of this Bill, only sales of novelty fireworks, such as sparklers, were allowed.

² Revenues represent distribution of total collections received from the Fee less the administrative fee reserved by the Tax Department and any refunds or adjustments that occurred during the period.

Registration and public display fees imposed by the State Fire Marshal are not included in this report.

³ See W. Va. Code §9A-1-11 for more information on the Veterans' Facility Support Fund and W. Va. Code §33-3-33 for more information on the Fire Protection Fund.

In total, Fireworks Safety Fee distributions totaled nearly \$1.5 million from July 2016 through December 2017. Nearly \$1.1 million in revenues benefitted the Veterans' Facility Support Fund, and more than \$362,000 in revenues benefitted the Fire Protection Fund. The Tax Department retained approximately \$14,600 in administrative fees to offset the costs of administering and monitoring the fee.

It is important to note this report only considers the Tax Department's monthly distributions based on the month in which Fireworks Safety Fees were collected by the Department.⁴ The Tax Department distributes Fireworks Safety Fee collections to the Veterans' Facility Support Fund directly and the Fire Protection Fund via the West Virginia State Treasurer's Office each month. The Treasurer's Office distributes the latter to volunteer fire departments quarterly; some Tax Department distributions noted in this report may have not yet been remitted by the Treasurer given this difference in distribution scheduling.

YEAR-OVER-YEAR ANALYSIS

The time elapsed since enactment of the Fireworks Safety Fee statute provides some capacity for year-over-year (y/y) analysis of fees and consumer activity to date. This section examines trends over the 18 months of distribution activity available, but some caution must be exercised in reviewing these data. The 18-month period is a fairly limited collection of data, and while some conclusions may be drawn it is important to note that the Fireworks Safety Fee is still a very new program. Unless otherwise specified, analysis of data in this section focuses on total fees distributed.

Considering the six-month period from July through December 2016, nearly all of the distributions (98.2 percent) occurred in July and August 2016. By comparison, July and August 2017 distributions comprised a smaller majority (86.5 percent) of the six-month period spanning July through December 2017. This appears to be primarily driven by August 2017 distributions, which lagged prior year by roughly 41.6 percent. Despite some y/y gains in four of the six months, particularly for the month of October, the six-month period from July through December 2017 fell 9.1 percent below the same period in 2016. Monthly changes of July through December distributions are provided in Table 2.

Table 2 – Six-Month Analysis of Year-Over-Year Distributions

Month	Total	Month	Total	Change
2016 - July	\$ 134,814	2017 - July	\$ 239,618	77.7%
2016 - August	605,941	2017 - August	353,612	-41.6%
2016 - September	7,029	2017 - September	18,242	159.5%
2016 - October	2,477	2017 - October	62,555	2425.1%
2016 - November	3,044	2017 - November	10,585	247.7%
2016 - December	1,248	2017 - December	1,081	-13.4%
Total	\$ 754,554	Total	\$ 685,692	-9.1%

The 9.1 percent decline in fiscal year-to-date distributions may have been reflective of an initial spike in fireworks sales when first legalized. As expected, data available to date indicate increases in Fireworks Safety Fee distributions in months following major holidays (i.e., New Year's, Memorial Day, Independence Day, and Labor Day) and seasonally during warmer months. Over

⁴ Distributions typically occur early in the following month. For example, Fireworks Safety Fees collected by retailers in June were remitted to the Tax Department in July and represent July distributions in this report. However, these monies were not transferred to the respective funds until early August.

this 18-month period, the single month with the largest distribution was August 2016 and the single month with the smallest distribution was March 2017.

STATE SALES TAX COLLECTIONS ON FIREWORKS

State sales tax remittances on sales of fireworks in West Virginia are lagged in the same manner as the Fireworks Safety Fee. However, since the West Virginia Sales and Use Tax return does not itemize most commodities (e.g., fireworks), the Tax Department relies on Fireworks Safety Fee collections to estimate State sales taxes based on approximate net fireworks sales.⁵ It is important to note that sales tax estimates provided in this report reflect State sales taxes only and do not include any municipal sales taxes collected.

Table 3 illustrates estimated State sales tax collections by month resulting from the legal sale of fireworks in West Virginia. In total, an estimated \$732,100 in State sales taxes have been collected as a result of the legalization of fireworks purchases in West Virginia. These estimates follow a similar pattern as Fireworks Safety Fee distributions. Timing of filing monthly Consumer Sales Tax returns relative to Fireworks Safety Fee returns may alter actual collection trends.

Table 3 – Estimated Fireworks Sales Tax Collections July 2016 – December 2017

Month	State Sales Taxes*
2016 - July	\$ 67,400
2016 - August	303,000
2016 - September	3,500
2016 - October	1,200
2016 - November	1,500
2016 - December	600
2017 - January	2,000
2017 - February	2,200
2017 - March	200
2017 - April	800
2017 - May	800
2017 - June	6,100
2017 - July	119,800
2017 - August	176,800
2017 - September	9,100
2017 - October	31,300
2017 - November	5,300
2017 - December	500
Total	\$ 732,100

* Estimated collections
Amounts rounded to nearest hundred dollars.

As noted previously, these sales tax collection estimates do not include sales taxes collected at the municipal level. Municipal sales tax returns do not itemize commodities, and the Fireworks Safety Fee return does not require retailers to identify the location of sales. These limitations

⁵ It is plausible that an unknown portion of sales tax gains from fireworks purchases may occur at the expense of other taxable goods. Therefore, the net gain to the State from fireworks sales is likely less than those estimated in this report.

make accurate estimation of the municipal sales taxes attributable to fireworks purchases impossible.

OTHER CONSIDERATIONS

It is plausible that a number of factors could have influenced the 18-month trends of Fireworks Safety Fee distributions covered in this report. As noted in the January 2017 report, competition has likely played a large role in consumer fireworks activity in West Virginia since the fee was enacted. Even after 18 months, the West Virginia Fireworks Safety Fee is still a relatively new program that focuses heavily on a transient and seasonal business. Nearby states that had approved fireworks legalization laws prior to the passage of HB 2852 have an established customer base and business locations, unlike the temporary locations set-up in West Virginia since June 2016.

In addition, many nearby states impose a lower fee – if any fee at all – on sales of fireworks. States such as Georgia,⁶ Indiana,⁷ and Michigan⁸ impose fees between 5 and 6 percent on a similar structure, while neighboring states such as Kentucky⁹ and Ohio¹⁰ only impose sales taxes on fireworks purchases. Compared to an effective rate of between 18 and 19 percent in West Virginia – inclusive of the 12 percent Fireworks Safety Fee, 6 percent State sales tax, and up to 1 percent municipal sales tax where applicable – the weight of the West Virginia tax is undoubtedly impacting consumer behavior for this commodity.

CONCLUSION

In the 18 months since enactment, the Fireworks Safety Fee has resulted in the collection of more than \$1.4 million that benefits veterans and volunteer fire departments in the State. Recent trends indicate that proceeds from the Fee are unlikely to rise in the near term. Potential increases in future collections will largely hinge on changes to consumer behavior in purchasing fireworks in the State and whether retailers set up more permanent locations to sell fireworks year-round. Some factors, such as competition resulting from disparities in effective rates, may continue to impact collections.

⁶ See <https://dor.georgia.gov/fireworks-excise-tax-faq>.

⁷ See <http://www.in.gov/dor/3989.htm>.

⁸ See http://www.michigan.gov/lara/0,4601,7-154-42271_59975---,00.html.

⁹ See KSR 227.715.

¹⁰ The State of Ohio levies sales taxes on the purchase of fireworks, but does not expressly state this in statute (see OCR 5739). Ohio residents are prohibited from using fireworks in State borders without appropriate permits and other requirements.