

# **FIFTY-FIFTH BIENNIAL REPORT**

## **West Virginia Tax Laws**



**Tax Commissioner of West Virginia**

**October 2023**



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**PART I**  
**STATE TAX DEPARTMENT ORGANIZATION**

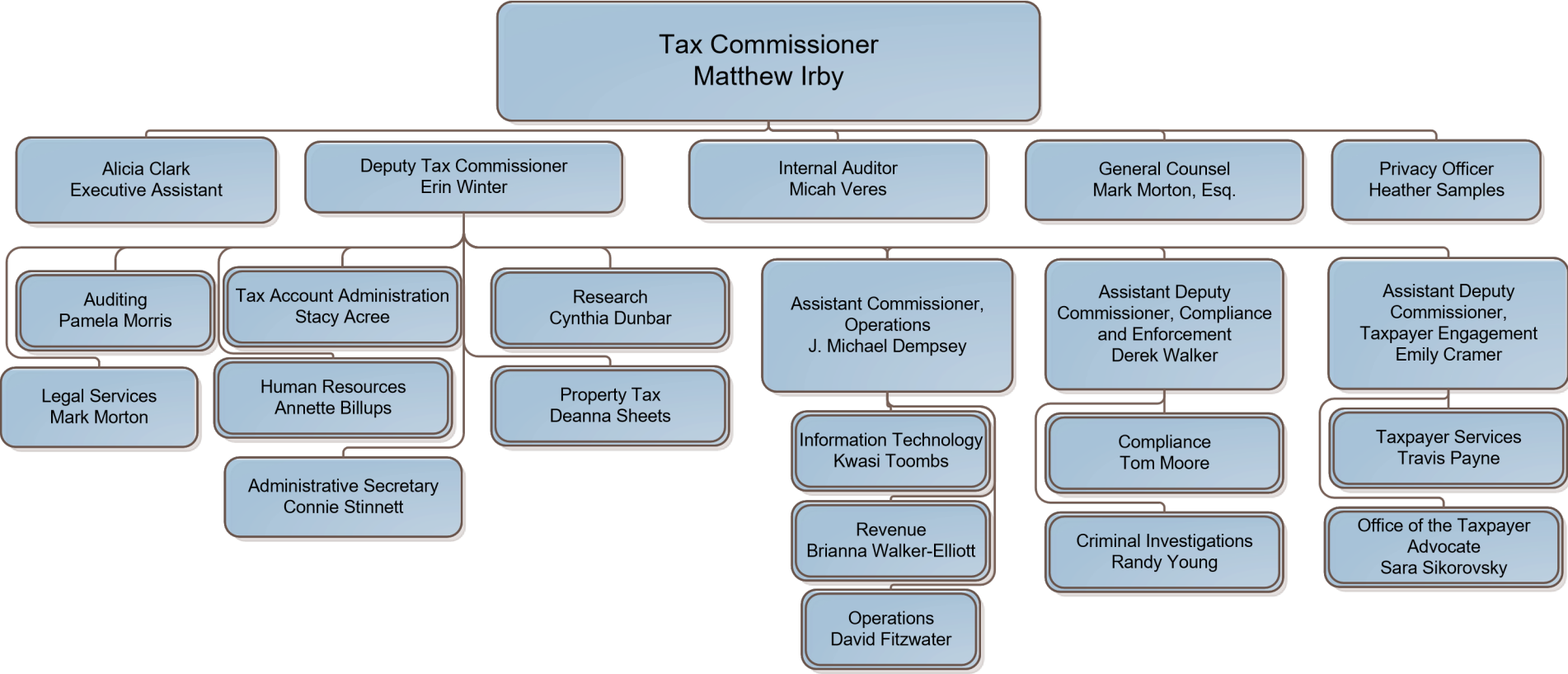
## State Tax Commissioners

Commissioner	Dates of Service
Charles W. Dillon	November 28, 1904 to March 31, 1907
Albert B. White	April 1, 1907 to December 31, 1908
Thomas C. Townsend	January 1, 1909 to February 28, 1911
Fred O. Blue	March 1, 1911 to February 27, 1917
Walter S. Hallanan	February 28, 1917 to May 3, 1923
Grant P. Hall	May 4, 1923 to April 13, 1929
Thomas C. Townsend	April 14, 1929 to March 7, 1933
Fred L. Fox	March 8, 1933 to December 31, 1936
Ernest K. James	January 1, 1937 to March 31, 1941
Geo P. Alderson	April 1, 1941 to February 9, 1947
C. H. Koontz	February 11, 1947 to February 28, 1953
M. M. Ferguson	March 1, 1953 to July 31, 1955
William R. Laird III	August 1, 1955 to March 19, 1956
Joseph S. Soto	March 19, 1956 to March 11, 1957
John A. Field, Jr.	March 11, 1957 to August 19, 1959
Donald C. Carman	August 20, 1959 to February 28, 1961
C. Howard Hardesty, Jr.	March 1, 1961 to October 14, 1962
Thomas G. Battle	October 15, 1962 to April 14, 1968
Clifford G. Lantz	April 15, 1968 to January 31, 1969
Charles H. Haden II	February 1, 1969 to June 25, 1972
Richard L. Dailey	June 27, 1972 to January 17, 1977
Thomas R. Goodwin	January 18, 1977 to September 18, 1977
David C. Hardesty, Jr.	September 19, 1977 to December 31, 1980
Herschel H. Rose III	January 1, 1981 to November 18, 1984
John M. Farmer	November 19, 1984 to February 18, 1985
Michael E. Caryl	February 25, 1985 to December 9, 1988
John Marlow, Jr. (Acting)	December 12, 1988 to December 30, 1988
Brad A. Crouser (Acting)	December 30, 1988 to January 13, 1989
Charles O. Lorensen	January 16, 1989 to July 31, 1990
Alan L. Mierke (Acting)	August 1, 1990 to February 4, 1991
L. Fred Williams	February 5, 1991 to December 13, 1991
Alan L. Mierke (Acting)	December 16, 1991 to March 16, 1992
James H. Paige III	March 17, 1992 to February 9, 1997
Robin Capehart	February 10, 1997 to April 15, 1997
Richard E. Boyle	April 16, 1997 to October 30, 1998
Joseph M. Palmer	December 7, 1998 to January 17, 2001
Ronald C. Stone (Acting)	January 18, 2001 to September 27, 2001
Rebecca Melton Craig	September 28, 2001 to August 31, 2004
Dale W. Steager (Acting)	August 31, 2004 to January 31, 2005
Virgil T. Helton	February 1, 2005 to October 15, 2007

Christopher. G. Morris	October 16, 2007 to March 28, 2010
Craig A. Griffith	March 29, 2010 to January 31, 2013
Charles O. Lorensen (Acting)	February 1, 2013 to May 14, 2013
Mark W. Matkovich (Acting)	May 15, 2013 to January 15, 2014
Mark W. Matkovich	January 16, 2014 to January 13. 2017
Dale W. Steager	January 16, 2017 to January 29, 2021
Matthew R. Irby (Acting)	January 29, 2021 to June 28, 2021
Matthew R. Irby	June 29, 2021 to present



**West Virginia State Tax Department  
Organizational Chart  
September 2023**



**PART II**  
**TAX OVERVIEW**

## TAX OVERVIEW

Taxes are levied at the state, county, and municipal levels in West Virginia. Counties administer and collect property taxes although property tax rates reflect levies for State government, county governments, county boards of education, and municipalities. Counties may also impose a hotel occupancy tax on lodging places not located within the city limits of any municipality that levies such a tax and an economic opportunity district sales tax when the tax is authorized by the Legislature. In addition, counties may impose an excise tax on the privilege of transferring property of up to \$1.65 per \$500. Municipalities may levy license and gross receipts taxes on businesses located within or doing business in the city limits and a hotel occupancy tax on lodging places in the city. Additionally, a municipality may levy a sales tax and pursuant to authorization by the Legislature impose an economic opportunity sales tax. Any local sales tax, however, must be administered by the State Tax Commissioner.

At the State level, taxes are levied on businesses and individuals. All resident individuals and nonresident individuals with West Virginia source income are subject to West Virginia Personal Income Tax.

A business must first apply for a Business Registration Certificate to do business in West Virginia. All business registration certificates or renewals issued on or after July 1, 2010 are permanent registration certificates. If the business is incorporated in this State, it must register with the Secretary of State and pay an annual fee. Out-of-state businesses doing business in West Virginia may also be required to register with the Secretary of State. In addition, some businesses must apply for specific permits or licenses (e.g., a Contractor License through the Department of Labor). Businesses with employees in this State must also register with WorkForce West Virginia and pay unemployment taxes.

All corporations, except Subchapter S Corporations, are subject to the Corporation Net Income Tax. Certain types of businesses are also subject to other privilege taxes. Certain natural resource producers must pay the Severance Tax while public utilities, electric power producers, and gas storage businesses are subject to the Business and Occupation Tax. Insurance companies must pay the Insurance Premium Tax. Certain health care providers are subject to the Health Care Provider Tax.

Although the Consumers Sales and Service Tax and the Use Tax are paid by the consumer, businesses registered with the West Virginia State Tax Department as vendors must collect and remit these taxes to the West Virginia State Tax Department unless the consumer presents a direct pay permit, or an exemption certificate issued by the Department. West Virginia has adopted economic nexus rules pursuant to which out-of-state sellers without a physical presence in this State, and marketplace facilitators must collect West Virginia State and local sales and use taxes.

Besides the taxes listed above, the State also levies excise taxes on motor fuels, tobacco products, soft drinks, nonintoxicating beer, alcohol, and other products.

## West Virginia State Tax Overview

Tax Type	Tax Base	Calendar Year 2023 Tax Rate
Business Registration	Fee per business location	\$30
Corporation Net Income	Federal taxable income with modifications apportioned and allocated to WV	6.5%
Severance	Gross receipts attributable to natural resource production	Coal (various rates); oil, gas, coalbed methane (5.0%)
Business and Occupation	Public utility services	Water (4.4%); natural gas (4.29%); other (2.86%)
Business and Occupation	Natural gas storage	\$0.05 per net dekatherm
Business and Occupation	Electric power production	\$20.70 to \$22.78 per kilowatt
Health Care Provider	Gross receipts	1.75% - 5.50%
Managed Care Organization	Number of members of a plan for each month on a graduated scale	Variable rates
Acute Care Hospital	Gross receipts	0.88%
Insurance	Gross premiums	3.0% - 5.5%
Consumers Sales & Use	Sales of tangible personal property and certain services	6.0%
Local Sales and Use <sup>1</sup>	Same as State	Up to 1.0% (in addition to State rate)
Personal Income	Federal adjusted gross income with WV	2.36%-5.12% graduated
Motor Fuel Excise	Gallon	20.5 cents per gallon
Motor Fuel Sales	5% of average wholesale price	16.7 cents per gallon
Beer	Barrel	\$5.50 per barrel
Cigarettes	Pack of 20	\$1.20 per pack
E-cigarettes liquid	Milliliter	7.5 cents
Other Tobacco Products	Gross invoice price	12.0%
Soft Drinks	Half-liter	1 cent
Wine Liter	Liter	\$0.26406 per liter
Cider Tax	Gallons	\$0.226 per gallon

<sup>1</sup> Currently 84 municipalities impose a local sales and use tax.

## General Revenue Fund Sources – Fiscal Year 2023

### Revenue Source

Major Taxes	Collections	% of Total
Personal Income Tax	\$2,663,568,030	41.08%
Sales and Use Tax	1,750,433,512	27.00%
Severance Tax	946,486,026	14.60%
Corporation Net Income Tax	419,965,001	6.48%
<b>Subtotal</b>	<b>\$5,780,452,569</b>	<b>89.16%</b>

### Minor Taxes

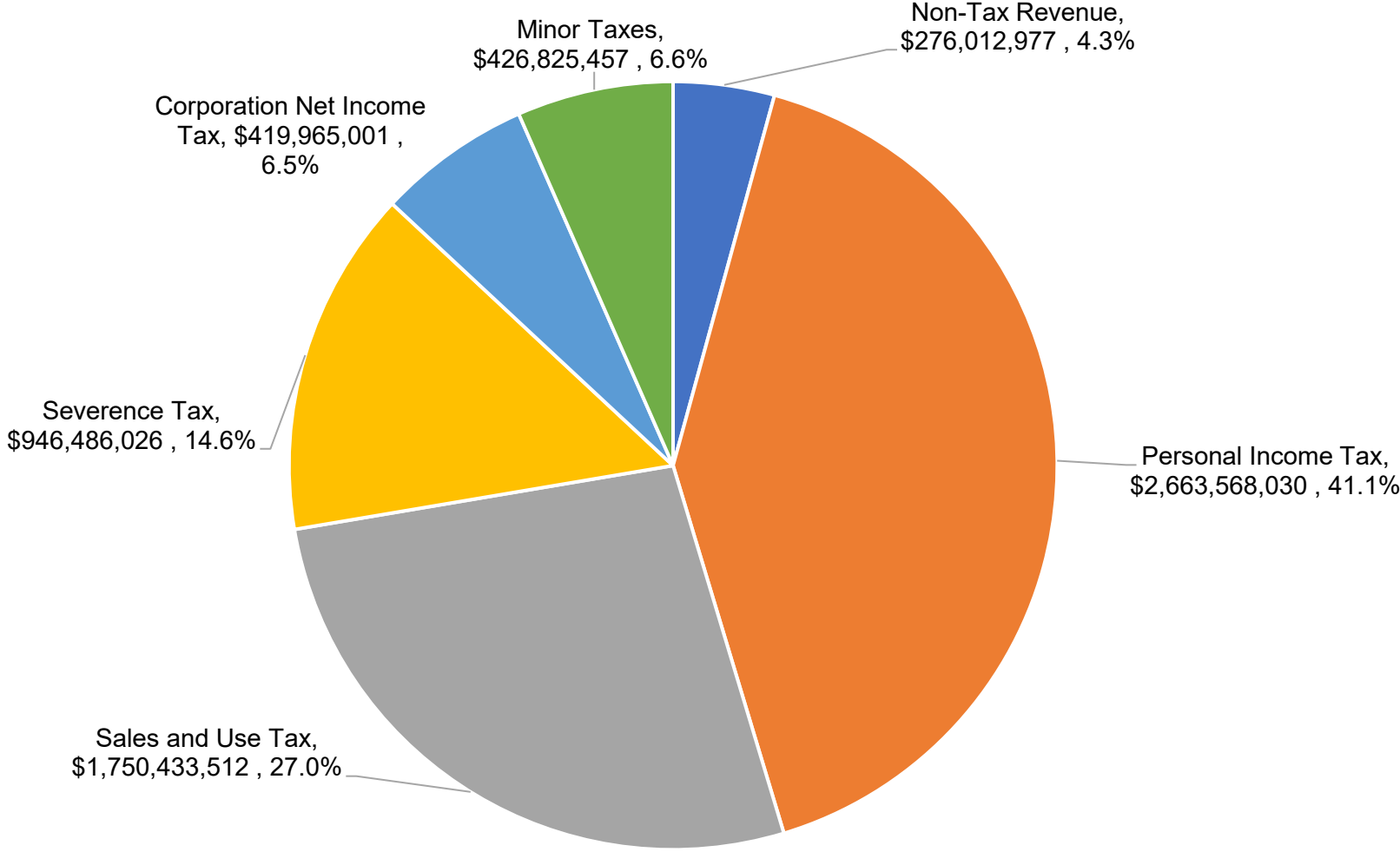
Tobacco Products Tax and E-Cigarette Excise Tax	\$155,459,301	2.40%
Business and Occupation Tax	116,746,978	1.80%
Insurance Tax	112,168,251	1.73%
Soft Drink Tax	13,765,539	0.21%
Property Transfer Tax	12,706,304	0.20%
Property Tax	7,702,241	0.12%
Beer Tax and License	7,261,851	0.11%
Business Registration Tax	1,011,179	0.02%
Charter Tax	3,813	0.00%
<b>Subtotal</b>	<b>\$426,825,457</b>	<b>6.58%</b>

### Other Non-Tax Revenue

Interest Income	\$132,455,578	2.04%
Lottery Transfer	65,000,000	1.00%
Liquor Profit Transfer	32,312,817	0.50%
Departmental Collections	26,887,526	0.41%
Refundable Credit Reimbursement	10,000,000	0.15%
Miscellaneous	8,424,469	0.13%
Liquor License Renewal	932,587	0.01%
<b>Subtotal</b>	<b>\$276,012,977</b>	<b>4.26%</b>

**Total** **\$6,483,291,002**

# General Revenue Fund Sources FY2023 (In Millions)



**Selected West Virginia Tax Sources Administered by the State Tax Commissioner  
Fiscal Years 2000 – 2023**

	<b>Personal Income Tax</b>	<b>State Sales and Use Tax</b>	<b>Severance Tax</b>	<b>Corporation Net Income &amp; Business Franchise Taxes</b>	<b>Business &amp; Occupation</b>	<b>Tobacco/E- Cigarette* Taxes</b>	<b>Total</b>
2023	2,693,598,030	1,813,140,107	968,424,001	419,965,001	116,746,978	155,459,301	6,167,333,418
2022	2,547,828,097	1,715,486,057	790,748,745	366,315,709	110,502,166	165,066,361	5,693,947,135
2021	2,328,788,399	1,592,643,846	296,191,839	320,487,005	133,128,055	171,186,917	4,842,426,061
2020	1,954,945,588	1,434,064,553	288,996,182	151,988,008	137,346,516	168,749,565	4,136,090,412
2019	2,138,807,292	1,423,626,576	484,512,602	198,031,543	124,522,937	171,223,757	4,540,724,707
2018	1,955,570,132	1,310,075,177	367,167,962	110,068,206	115,003,005	177,839,164	4,035,723,646
2017	1,843,866,721	1,279,737,116	357,217,628	116,305,568	111,884,545	194,646,681	3,903,658,259
2016	1,842,711,004	1,280,987,331	370,946,253	145,755,086	119,174,498	100,274,076	3,859,848,248
2015	1,932,456,422	1,288,688,227	562,876,424	190,401,080	120,521,715	102,163,206	4,197,107,074
2014	1,770,466,171	1,221,981,551	621,145,508	207,808,473	120,142,546	101,779,776	4,043,324,025
2013	1,795,947,272	1,255,369,626	528,239,697	242,429,821	127,111,826	107,021,658	4,056,119,900
2012	1,784,363,133	1,277,328,113	585,701,352	192,385,447	121,031,382	109,609,465	4,070,418,892
2011	1,688,568,829	1,210,253,342	558,502,784	307,277,776	127,591,014	110,760,444	4,002,954,189
2010	1,542,252,095	1,156,522,173	516,734,971	236,159,163	133,386,079	114,128,347	3,699,182,828
2009	1,652,803,317	1,170,553,246	510,433,270	287,537,027	150,292,700	115,094,599	3,886,714,159
2008	1,614,146,238	1,164,889,725	487,827,992	400,167,410	150,822,471	114,668,779	3,932,522,615
2007	1,413,911,071	1,167,139,564	447,155,165	368,388,437	180,748,060	111,392,726	3,688,735,023
2006	1,344,720,394	1,161,231,652	383,050,307	347,569,611	185,456,897	112,027,627	3,534,056,488
2005	1,171,987,478	1,095,339,835	275,687,402	280,788,003	182,460,781	102,824,768	3,109,088,267
2004	1,074,912,080	1,051,461,638	211,724,610	181,515,211	177,395,094	107,608,566	2,804,617,199
2003	1,060,522,753	1,008,337,161	188,952,296	181,178,243	178,415,433	49,689,480	2,667,095,366
2002	1,038,431,204	990,518,918	193,688,325	220,158,497	173,712,450	34,436,409	2,650,945,803
2001	1,020,689,767	955,681,158	190,536,592	214,296,629	177,362,771	31,838,476	2,590,405,393
2000	972,345,790	942,262,361	175,710,993	217,793,467	167,994,888	32,344,669	2,508,452,168

\* The excise tax on e-cigarette liquids went into effect July 1, 2016.

**PART III**  
**STATE TAXES COLLECTED**  
**BY THE STATE TAX COMMISSIONER**



## BEER BARREL TAX

The West Virginia Beer Barrel Tax (W.Va. Code §11-16) is an excise tax levied upon the in-state sale, use, handling, or distribution of nonintoxicating beer whether manufactured within or outside West Virginia. The tax was originally levied in 1933 at a rate of \$1.00 for each barrel of beer whether sold in barrels or other containers. The tax rate was increased to \$1.375 per barrel in 1937 and to \$2.75 per barrel in 1947. In 1951, to aid in the payment of veterans' bonus bonds, the tax was raised to \$5.50 per barrel, and license fees and bonding requirements were added to the statute. In 1966, the Legislature repealed the dedication of the tax to the veterans' bonus bonds but kept the rate at \$5.50 per barrel.

### Beer Barrel Tax and Licenses Revenue Fiscal Years 2019 – 2023

Fiscal Year	Collections
2019	\$7,627,625
2020	\$7,336,077
2021	\$7,877,098
2022	\$7,571,090
2023	\$7,261,851

### Taxpayers

Every individual who manufactures, distributes, or sells beer products within West Virginia must first obtain an annual license to conduct these activities. The license period starts on July 1 of each year and ends on June 30 of the following year. The following license fees apply:

Place of Business	Annual License Fee
Manufacturer (brewer) of Beer	
• 12,500 barrels or less	\$250
• 12,501 to 25,000 or less barrels	\$1,000
• More than 25,001 barrels	\$1,500
• Out of State Brewer <sup>2</sup>	\$1,500
Distributor of Beer	\$1,000
Brewpub	\$500
Fairs and Festivals	\$250
Retailers	\$150
Social, Fraternal and Private Clubs Not Operating for Profit	\$150
Railroad Cars	\$10

Caterers and party supply stores are included in the same category as retail grocery stores with respect to the sale of nonintoxicating beer.

Every applicant for a license must also post a bond. The amount of the bond shall be set by the Alcohol Beverage Control Commissioner.

<sup>2</sup>Out of State Brewers with production less than 25,000 barrels may choose to apply, in writing, to the Commissioner to be subject to the variable license fees.

## **Tax Rates**

The tax is levied at a rate of \$5.50 on each barrel of 31 gallons and, in like ratios, on each part barrel manufactured or sold within the State.

The term "nonintoxicating beer" refers to products of the brewing industry. These products include all cereal malt beverages, beer, lager beer, ale, malt coolers, and other similar items. The maximum amount of alcohol allowed in "nonintoxicating beer" is 11.9 percent by weight and 15 percent by volume, whichever is greater.

## **Exemption**

The Beer Barrel Tax does not apply to non-intoxicating beer manufactured by a brewpub.

## **Disposition of Revenue**

All revenue from the Beer Barrel Tax is deposited into the General Revenue Fund.

## **Comparison with Other States**

The tax rates listed on this table are the excise tax rates in effect on January 1, 2023. In all the states listed except Maryland, sales of beer are also subject to the state's sales tax. In Maryland, unlike sales of other types of tangible personal property and taxable services that are taxed at a 6.0 percent rate, the sales and use tax is imposed at a 9.0 percent rate on the taxable price of alcoholic beverages.

### **Comparison of Beer Tax Rates (per gallon)**

<b>State</b>	<b>Tax Rate</b>
Kentucky	\$0.0800
Maryland	\$0.0900
Ohio	\$0.1800
Pennsylvania	\$0.0800
Virginia	\$0.2565
West Virginia	\$0.1800

## BUSINESS AND OCCUPATION TAX

The West Virginia Business and Occupation Tax (W.Va. Code, Chapter 13) was first enacted in 1921. The original Business and Occupation Tax applied to all persons, corporations, partnerships, and associations doing business in West Virginia. Over the years, this statute has often been amended.

Enactment of the “Tax Reform Act of 1985” altered the scope of the Business and Occupation Tax. Today, the tax is imposed only on certain public utilities and electric power producers. As of 1989, natural gas storage facility operators are subject to a per unit tax under the Business and Occupation Tax statutes. Since 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.” For taxable periods beginning on or after July 1, 2021, owners and operators of a coal-fired generating unit placed in operation before January 1, 1995, could elect to recompute the taxable generating capacity of those coal-fired generating units. The owners or operators of those generating units could make an irrevocable election to reduce the taxable generating capacity of those units to 45 percent of the official capability of the generating unit, for taxable periods beginning on and after July 1, 2021, provided the owner agrees to keep the generating units in operation until at least January 1, 2025. 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.

During Fiscal Year 2023, total collections for State Business and Occupation Tax were roughly \$116.7 million.

### Business and Occupation Tax Revenue Fiscal Years 2019 – 2023

<u>Fiscal Year</u>	<u>Collections</u>
2019	\$124,522,937
2020	\$137,346,516
2021	\$133,128,056
2022	\$110,502,166
2023	\$116,746,978

### Taxpayers

The Business and Occupation Tax applies only to public utilities, electric power producers, gas storage businesses, and producers of synthetic fuel from coal.

### Tax Rates

The following table shows the tax rates as of July 1, 2023.

### Business and Occupation Tax Rates

<b>Taxpayer Type</b>	<b>Activity and West Virginia Code Citation</b>	<b>Tax Base</b>	<b>Tax Rate</b>
Electric power company	Generating or producing electricity for sale, profit or commercial use (§11-132o(b)(1))	Generating Capacity	\$22.78 per KW
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	\$22.70 per KW
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
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
Natural gas storage operator	Withdrawal and/or injection of natural gas from/into storage reservoirs (11-13-2e)	Net Dekatherms (maximum base = 1990-1994 average)	\$0.05 per dekatherm
Natural gas utility	Natural gas companies (§11-132d(a)(4))	Gross Income	4.29 percent
Water utility	Public service or utility business (§11-132d(a)(2))	Gross Income	4.40 percent
Toll bridge companies	Public service or utility business (§11-132d(a)(5))	Gross Income	4.29 percent
All other public service or utility business	All other public service or utility business	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

Note: KW refers to kilowatt while KWH refers to kilowatt-hour.

## **Exemptions**

Nonprofit water and sewer companies governed by the West Virginia Public Service Commission that are organized and operated for the exclusive benefit of their members are exempt from the Business and Occupation Tax. In addition, gross income of a nonprofit homeowners' association received from assessment on its members for community services, such as road maintenance, common area maintenance, water service, sewage service, and security service, is exempt from Business and Occupation Tax. Sales of natural gas are exempt if separately metered and used by the purchaser to derive hydrogen and carbon monoxide for use in the manufacture of chemicals in West Virginia.

Effective January 1, 2020, qualified merchant coal-fired power plants are exempt from tax if the owners of such plant are unable to recover operating costs through a rate regulated environment.

## **Special Taxable Generating Capacity**

If a new generating unit, other than a peaking unit, is placed into service after March 10, 1995, that unit's taxable generating capacity equals 40 percent of its nameplate capacity. If a peaking unit is placed in service after March 10, 1995, that unit's taxable generating capacity equals 5 percent of its nameplate capacity. A peaking unit is a unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements. The taxable generating capacity of a wind-power generating unit is equal to 12 percent of the official capability of the unit, except for county-owned units. The taxable generating capacity of a generating unit utilizing solar photovoltaic methods is equal to 8 percent of the official capability of the unit. The taxable generating capacity of a county or municipally owned generating unit is 0 percent of the official capability of the unit.

## **Credits Against Tax Liability**

An annual tax credit of \$500 is provided for each business engaged in activities in this State that are subject to the Business and Occupation Tax. The West Virginia Code provides for a variety of other tax credits that may be applied against Business and Occupation Tax liability in some cases. These include the Economic Opportunity Tax Credit, the Industrial Expansion or Revitalization Credit for Electric Power Producers, the Natural Gas Industry Jobs Retention Credit, the Credit for Reducing Utility Charges to Low-Income Families. Explanations of these credits may be found in the Tax Credits section.

## **Disposition of Revenue**

All revenue from the Business and Occupation Tax is deposited into the General Revenue Fund.

## BUSINESS REGISTRATION TAX

The West Virginia Business Registration Tax (W.Va. Code §11-12) was first enacted in 1863. From 1863 to 1969, the tax was known as the General License Tax. From 1970 to 1986, the tax was entitled the Business Franchise Registration Tax. Since July 1, 1971, Business Registration Tax collections are deposited into the State General Revenue Fund. Prior to that, the collections were used to fund free schools in the State and deposited to the general school fund.

### Business Registration Tax Revenue Fiscal Years 2019 – 2023

<u>Fiscal Year</u>	<u>Collections</u>
2019	\$766,943
2020	\$697,445
2021	\$796,584
2022	\$1,076,453
2023	\$1,011,172

The Business Registration Certificate is a permit to conduct business in the State and must always be displayed at the place of business. A separate business registration certificate is required for each fixed business location in this State from which property or services are offered for sale or lease to the public as a class, or to a limited portion of the public, or at which customer accounts may be opened, closed, or serviced. 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.

Contractors must have a copy of their Business Registration Certificate available at each of their construction sites until the work at that site is completed. Businesses that sell tangible personal property or services from or out of one or more vehicles must carry a copy of their Business Registration Certificate in each vehicle and publicly display it while business is conducted from or out of the vehicle.

A business registration certificate may not be assigned to any other person. If the name, location, address, or ownership of the business changes, or if there are changes in the real parties of interest in the business, the business must apply for a new business registration certificate. A new business registration certificate is not required when there are changes of partners or members of firms or changes in officers of corporations.

### **Taxpayers**

Persons or corporations intending to do business in West Virginia, including individuals who are self-employed, must first apply for a Business Registration Certificate. The Business Registration Tax is important, not because of the revenue it produces directly, but because registration for this tax requires the taxpayer to describe his business so that the West Virginia State Tax Department can correctly identify the various taxes the business is subject to or that the business must collect and remit to the State. Once a Business Registration Certificate is issued, the taxpayer will receive all tax forms and information necessary to pay State taxes before the due dates.

Churches and nonprofit organizations are not considered to be "businesses" or engaged in business or subject to any other tax laws by the mere completion of an application for a Business Registration Certificate.

### **Fee**

There is a one-time fee for obtaining a Business Registration Certificate of \$30. A separate certificate is required for each fixed business location from which property or services are offered for sale or lease or at which customer accounts may be opened, closed, or serviced. Additionally, any registered DBA<sup>3</sup> must likewise obtain a separate certificate.

### **Penalty**

Any person who engages in business in this State without having a required business registration certificate is guilty of a misdemeanor and, upon conviction, may be fined not less than \$1,000 nor more than \$10,000.

### **Organizations Not Required to Register**

Persons engaged in the following activities are not required to register if they engage solely in these activities:

1. judicial sales directed by law or court order,
2. sales for delinquent taxes on real or personal property,
3. the conduct of a charitable bingo occasion licensed under W.Va. Code §47-20 or a charitable raffle licensed under W.Va. Code §47-21,
4. the conduct of a horse or dog race meeting by any racing association licensed under W.Va. Code §19-23,
5. the operation or maintenance of the pari-mutuel system of wagering during the conduct of a licensed horse or dog race meeting,
6. the sale of any commodity during the conduct of a licensed horse or dog race meeting,
7. the services of owners, trainers, or jockeys which are essential to the effective conduct of a licensed horse or dog race meeting, or
8. occasional or casual sales of property or services by persons not engaged in a business activity.

In addition, any person engaging in a business activity who meets the following three conditions is not required to obtain a Business Registration Certificate. This condition is limited to any person engaging in a business activity who:

1. is not required by law to collect any tax or withhold a tax, and
2. does not claim exemption from payment of the West Virginia Consumers Sales and Service Tax or Use Tax, and
3. had gross income from business activity of \$4,000 or less from operations in all states during the income tax year most recently completed.

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<sup>3</sup> DBA stands for "doing business as", indicating entities that conduct business under a different operating name.

## **Organizations Not Required to Pay**

Although any person who is engaging in any business activity in this State is required to obtain a Business Registration Certificate, not all persons are required to pay the \$30 fee. The following are exempt from the \$30 fee:

1. a nonprofit organization that qualifies, or would qualify, for exemption from federal income taxes under section 501 of the Internal Revenue Code of 1986, as amended,
2. this State, 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,
3. the United States, or any agency or instrumentality thereof, which is exempt from taxation by the states,
4. any person engaged in the business of agriculture or farming,
5. an out-of-state company that does not have nexus in West Virginia and employs a West Virginia resident (the company must register for a 'withholding only' account), and
6. a West Virginia private household employing domestic help (taxpayer must register for a 'withholding only' account),

## **Special Filing Requirements**

Some businesses must register with other State agencies, which may levy additional taxes or fees. The following is a list of types of businesses that must meet special registration requirements before the West Virginia State Tax Department can issue a Business Registration Certificate:

1. corporations, limited partnerships, limited liability companies, and voluntary associations must first register with the West Virginia Secretary of State,
2. collection agencies must file an approved surety bond of \$5,000 with the West Virginia State Tax Department for each West Virginia location,
3. employment agencies must first obtain a letter of approval from the Division of Labor of the West Virginia Department of Commerce,
4. transient vendors must, in addition to filing the Application for Registration Certificate and paying the \$30 fee, file an Application for Transient Vendor's License and post a \$500 bond with the West Virginia State Tax Department,
5. businesses selling drug paraphernalia must obtain a special Drug Paraphernalia License from the West Virginia State Tax Department. The cost of the license is \$150 for each location. In addition, Drug Paraphernalia Affidavits must be completed for each employee that will be selling drug paraphernalia,
6. all contractors must obtain a contractor's license from the Division of Labor of the West Virginia Department of Commerce,
7. nonresident contractors must also register with the West Virginia State Tax Department under the Consumers Sales and Use Tax laws prior to engaging in the performance of a contract in West Virginia and must file a cash bond or corporation surety bond for each contract or an Umbrella Corporate Surety Bond,
8. telemarketers must file an approved bond of \$100,000.

## **Disposition of Revenue**

All revenue from the Business Registration Tax is deposited into the General Revenue Fund.



## CONSUMERS SALES TAX AND USE TAX

The West Virginia Consumers Sales and Service Tax (W.Va. Code §11-15 and 15A) was first enacted in 1933, and the complementary Use Tax (W.Va. Code §11-15B) was enacted in 1951. The Consumers Sales and Service Tax Act has been amended several times, the rates, exemptions, and credits have changed over the years. The Consumers Sales and Service Tax and Use Tax is the State’s second largest source of revenue. During Fiscal Year 2023, total collections were roughly \$1.8 billion. Of that amount, \$1.7 billion was deposited in the State General Revenue Fund, representing 27% percent of the total revenue in that fund.

### Consumers Sales and Service Tax and Use Tax Revenue (in millions)

#### Fiscal Years 2019 – 2023

Fiscal Year	General Revenue Fund	Special Revenue	Sales Tax Increment Financing	Total Receipts
2019	\$1,370.2	\$33.8	\$19.7	\$1,423.6
2020	\$1,386.6	\$33.9	\$17.6	\$1,438.1
2021	\$1,537.2	\$34.1	\$21.3	\$1,592.6
2022	\$1,655.5	\$34.2	\$25.8	\$1,715.5
2023	\$1,750.4	\$34.3	\$28.4	\$1,813.1

## CONSUMERS SALES TAX

### Taxpayers

Consumers Sales Tax is to be paid by the ultimate consumer; retailers engaging in business in West Virginia collect the tax and remit their collections to the West Virginia State Tax Department. The definition of “retailer engaging in business” includes those entities that are subsidiaries of, related to, or unitary with a retailer that:

1. maintains an office, distribution house, sales house, warehouse, or other place of business in West Virginia; or
2. directly, or by agent or representative, performs services in West Virginia in connection with tangible personal property or services sold by the retailer; or
3. by agent or representative, solicits business in West Virginia for or on behalf of the retailer or any related entity, related member, or part of the unitary business.

Out-of-state retailers who do not have a physical presence in West Virginia and who deliver more than \$100,000 of goods and services into West Virginia or have 200 or more separate transactions for the delivery of goods and services into West Virginia during calendar year 2018 are required to collect and remit Consumers Sales Tax. This determination is made annually for the next calendar year based on transactions during the then current calendar year.

In addition, marketplace facilitators must collect and remit West Virginia sales tax on sales of good and services they facilitate if they have more than \$100,000 of sales of goods and services into West Virginia or have 200 or more separate transactions for the delivery of goods and services into West Virginia during the preceding or current calendar year. A “marketplace facilitator” is defined as a person that contracts with one or more sellers to facilitate for consideration,

regardless of whether deducted as fees from the transaction, the sale of the seller's products through a physical or electronic marketplace operated by the facilitator and engages:

1. directly or indirectly through one or more affiliated persons in any of the following:
  - a. transmitting or otherwise communicating the offer or acceptance between the buyer and the seller,
  - b. owning or operating the electronic or physical infrastructure or technology that brings buyers and sellers together,
  - c. providing a virtual currency that buyers are allowed or required to use to purchase products from the seller, or
  - d. software development or research and development activities related to a marketplace if such activities are directly related to physical or electronic marketplace operated by the person or an affiliated person, and
2. in any of the following activities with respect to the seller's products:
  - a. payment processing services,
  - b. fulfillment or storage services,
  - c. listing products for sale,
  - d. setting prices,
  - e. branding sales as those of the marketplace facilitator,
  - f. order taking,
  - g. advertising or promotion, or
  - h. providing customer service or accepting or assisting with returns and exchanges.

The retailer collects the tax due from the purchaser at the time of sale unless the purchaser presents the retailer with a properly executed exemption certificate or a direct pay permit number. The tax collected is remitted to the West Virginia State Tax Department.

Only one collection of Consumers Sales Tax should occur from production to ultimate consumption for any consumer good or service. Any seller who fails to collect the Consumers Sales Tax must pay the tax himself unless the sale is exempt, or the seller receives a direct pay permit number for the purchase. Exempt sales are of three main types:

1. exemption because of the nature of the buyer to whom the sale is made,
2. exemption because of the nature of the article sold, and
3. exemption because of the nature of the sale.

## **Tax Base**

The tax is imposed on the sale or lease of tangible personal property and the furnishing of certain services. Services rendered by an employee to his employer, services subject to regulation by the West Virginia Public Service Commission and professional and personal services are exempt from Consumers Sales Tax. Most rentals, excluding those of real estate, are taxable as though they were sales. The tax is also imposed on persons producing for sale, profit, or commercial use any natural resource or manufacturing product who also use or consume that product in a contracting activity. Purchases of prepaid wireless calling services, such as wireless airtime cards, prepaid cellular phone cards, prepaid cellular rechargeable minute cards and prepaid wireless ring tone download cards, are subject to the Consumers Sales Tax.

All motor vehicle sales to West Virginia residents are subject to a special motor vehicle sales tax in lieu of the Consumers Sales and Service Tax. The tax applies to all motor vehicles, regardless of whether purchased in or outside of West Virginia. The Division of Motor Vehicles is required to collect the tax, and the revenue from the tax is dedicated to the State Road Fund. A new resident establishing domicile in West Virginia is exempt from paying the tax on vehicles titles previously in the former state in his or her own name.

The term “motor vehicle” is broadly defined in the law and means every propellable device in or upon which any person or property is or may be transported or drawn upon a highway including, but not limited to automobiles, buses, motor homes, motorcycles, motorboats, all-terrain vehicles, snowmobiles, low-speed vehicles, trucks, truck tractors and road tractors having a weight of less than 55,000 pounds; trailers, semitrailers, full trailers, pole trailers and converter gear having a gross weight of less than 2,000 pounds, and motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor homes. Exceptions to this broad definition are also included in the law.

### **Tax Rates**

The State tax rate on the sale or lease of tangible personal property and the furnishing of certain services is 6.0 percent of gross proceeds of sale. Municipalities may impose a municipal sales and service tax at a rate not to exceed 1.0 percent. As of July 1, 2023, the following municipalities impose a municipal sales tax.

Alderson	Fairmont	New Cumberland	Shinnston
Ansted	Fayetteville	New Martinsville	Sistersville
Athens	Follansbee	Nitro	Smithers
Barboursville	Grafton	Nutter Fort	Sophia
Beckley	Harpers Ferry	Oak Hill	South Charleston
Bluefield	Harrisville	Paden City	Spencer
Bolivar	Hundred	Parkersburg	St. Albans
Bridgeport	Huntington	Paw Paw	Summersville
Bruceeton Mills	Hurricane	Pennsboro	Sylvester
Buckhannon	Kingwood	Petersburg	Terra Alta
Capon Bridge	Lewisburg	Pine Grove	Thomas
Chapmanville	Logan	Princeton	Tunnelton
Charles Town	Man	Quinwood	Vienna
Charleston	Mannington	Ranson	Wardensville
Chester	Martinsburg	Ravenswood	Wayne
Clarksburg	Masontown	Reedsville	Weirton
Davis	Milton	Ripley	West Union
Dunbar	Montgomery	Romney	Weston
Elizabeth	Moorefield	Rowlesburg	Wheeling
Elkins	Morgantown	Rupert	White Hall
Ellenboro	Moundsville	Shepherdstown	Williamstown

The State Tax Commissioner is responsible for collecting, enforcing, and administering municipal sales and service tax and municipal use tax in the same manner as the State Consumers Sales and Service Tax and the State Use Tax.

## Exemptions

Exempt sales are of three main types:

1. exemption because of the nature of the buyer to whom the sale is made,
2. exemption because of the nature of the article sold, and,
3. exemption because of the nature of the sale.

There are several distinct methods by which the exemptions must be claimed. Based on the method by which the exemption must be claimed, exemptions are categorized into three classifications: per se exemptions, exemptions for which exemption certificates are required, and refundable exemptions.

"Per se" exemptions are those for which no separate exemption document is required as proof of the exempt status. The following sales and services are exempt "per se" from Consumers Sales Tax:

1. Advertising--sales of radio and television broadcasting time, preprinted circulars and outdoor advertising space, and newspaper and magazine advertising space for the advertisement of goods and services,
2. Artistic Services or Performances--the charges to the owner or operator of an entertainment facility for the artistic performances of an entertainer or performing artist pursuant to a contract if the contract amount does not exceed \$3,000,
3. Burial Expenses--charges for the services of opening and closing burial lots,
4. Child Care Services--charges for babysitting services provided by individuals who babysit for profit if the gross income of the individual from babysitting services does not exceed \$5,000 in a taxable year (all charges or fees over the \$5,000 limit are taxable),
5. Clothing Sold by Tax Exempt Organizations--sales of clothing and clothing accessories by organizations that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the proceeds from such sales are used for exempt purposes, the clothing was donated or acquired without cost, and the annual revenue from the sales is less than \$40,000,
6. Clothing Vouchers--purchases made with the clothing vouchers issued by West Virginia Department of Health & Human Resources for low-income school-aged children,
7. College Room and Board--sales of room and board by public or private colleges or universities if the sale is for more than thirty consecutive days and is on a contract basis to students enrolled at the school,
8. Contracting--the construction, alteration, repair, improvement, or decoration of real property when the work done results in a "capital improvement" to the real property (all other construction activities are subject to the tax unless otherwise exempt),
9. Day Care Centers--sales and services performed by licensed day care centers,
10. Educational Summer Camp Tuition--charged for attending educational summer camps (sales of tangible personal property or food by the camps are taxable),
11. Employee Services--provided by an employee to his or her employer if the services are within the scope of the employment contract,
12. Environmental Testing Services--the service of providing technical evaluations for compliance with federal and State environmental standards by environmental and

- industrial consultants who are certified by the West Virginia Department of Environmental Protection or the West Virginia Bureau of Health,
13. Farm Products--sales of livestock, poultry, and other farm products in their original state by producers of those products or members of their immediate family when the producer is not otherwise engaged in making retail sales,
  14. Federal and State Law--sales to or sales by certain organizations, including federal or state-chartered credit unions, regional transit authorities, county ambulance authorities and nonprofit health care corporations,
  15. Flags--sales of regulation size United States and West Virginia flags for display,
  16. Food for Home Consumption--sales, purchases and uses of food and food ingredients intended for human consumption, not including sales, purchases and uses by consumers of prepared food, food sold through vending machines and soft drinks,
  17. Food Stamps--sales of food lawfully purchased with federal food stamps or with drafts issued by the West Virginia special supplemental food program for Women, Infants and Children (WIC),
  18. Fraternities and Sororities--charges of room and meals by fraternities or sororities to their members,
  19. Fundraising Sales--fundraising sales by:
    - a. churches,
    - b. elementary and secondary schools,
    - c. organizations that receive more than half their support from gifts, grants, direct or indirect-charitable contributions or membership fees,
    - d. organizations that have no paid employees and whose gross income from fundraising is donated to an organization that is exempt from federal income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code,
    - e. youth organizations, such as the Girl Scouts, Boy Scouts or YMCA Indian Guide/Princess Program, which are operated exclusively for charitable purposes and whose primary purpose is character development and citizenship training for its members if the organization has a current Business Registration Certificate and the organization is exempt from federal income taxes under sections 501(c)(3) or (c)(4) of the Internal Revenue Code and these fundraising events are limited to six events per year and each event lasts no more than eighty-four hours, and
    - f. not-for-profit volunteer school support groups for elementary or secondary schools located in West Virginia, whether the group has or does not have a 501(c)(3) or (c)(4) determination provided that the organization is a bona fide, not-for-profit volunteer charitable or public organization eligible for exemption under 501(c)(3) or (c)(4) if it were to seek an exemption determination letter and that these fundraising events are limited to eighteen events per year and each event lasts no more than eighty-four consecutive hours,
  20. Governmental Services and Materials--sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks, or circuit clerks in the normal course of local governmental operations,
  21. Health and Fitness Organizations--sales of membership or services provided by health and fitness organizations for personalized fitness programs,
  22. Homeowners' Associations--dues, fees, and assessments paid by members to homeowners' associations when used for payment of common expense,
  23. Intangible Property--sales of intangibles, such as copyrights, royalties, notes, and bonds,

24. Investment Metal Bullion or Coins--sales after June 30, 2019, of any precious metal which has been put through the process of smelting or refining, including gold, silver, platinum, and palladium and which is in such a state or condition that its value depends on content, not form,
25. Isolated Transactions--sales of tangible personal property or taxable services by persons who are not in the business of making such sales, such as individuals selling their used furniture, if the person or business holding the sale holds no more than four in one year and each sale lasts no more than forty-eight hours, and sales of taxable services by persons who are not routinely engaged in the business of providing taxable services, such as teenagers who occasionally mow lawns, babysit or do odd jobs (persons who routinely sell odd items at yard sales, flea markets or along the roadside are engaged in the business of selling and must register with the West Virginia State Tax Department as a business),
26. Leases of Heavy Equipment or Machinery--leases of heavy equipment or machinery among corporations, partnerships, or limited liability companies when entities are members of the same controlled group or are related taxpayers as defined in Section 27 of the Internal Revenue Code of 1986, as amended,
27. Libraries--sales of services by public libraries, libraries at academic institutions, or libraries at institutions of higher learning,
28. Livestock--sales of livestock sold at public sales sponsored by the breeder's or registry associations or at livestock auction markets,
29. Lodging Franchise Fees--lodging franchise fees, including royalties, marketing fees, reservation system fees or other fees that may have been imposed by a lodging franchiser as a condition of the franchise agreement,
30. Lottery Tickets--sales of West Virginia lottery tickets and materials by authorized lottery retailers,
31. Magazines Sold by State Agencies--direct or subscription sales by the Division of Natural Resources of Wonderful West Virginia magazine and by the Division of Culture and History of Goldenseal magazine and the West Virginia History journal,
32. Manufacturer's Representatives--commissions received by a manufacturer's representative,
33. Membership Organizations--charges to a member by a membership organization that is exempt from paying federal income taxes under sections 501(c)(3) or (c)(6) of the Internal Revenue Code for:
  - a. membership in the association or organization,
  - b. newsletters prepared by the association or organization primarily for distribution to members, and
  - c. continuing education seminars, workshops, conventions, lectures, or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker for use during the continuing education seminar, workshop, convention, lecture or course, not including separate charges for meals, lodging, entertainment or transportation,
34. Mortgage Brokers--brokerage fees, additional charges and finance charges imposed by licensed mortgage brokers, lenders, and loan originators,
35. Music Instructional Services--sales of music instructional services by a music teacher,
36. Newspapers--sales of newspapers when delivered to consumers by route carriers (other newspaper sales are taxable),

37. Nonprofit Organizations--sales of otherwise taxable services by 501(c)(3) organizations if the organization meets the following criteria:
  - a. the corporation or organization must be organized and operated primarily for charitable or educational purposes,
  - b. the activities and programs of the organization must contribute to promoting the general welfare of youth, families and the aged, improving health or fitness and providing recreational opportunities to the public,
  - c. the corporation or organization must offer membership or participation in its programs and activities to the public,
  - d. the charges, fees and dues of the organization must be arranged so that its programs and activities are accessible by a reasonable cross section of the community, and
  - e. the corporation or organization must offer financial assistance on a regular and ongoing basis to individuals who are unable to afford the organizations membership dues or fees,
38. Personal Services--personal services, such as barbering, hairstyling, manicuring and massages,
39. Prepared Food Sales--exempt food sales are as follows:
  - a. food sold by public or private schools, school sponsored student organizations or school-sponsored parent-teacher organizations to students enrolled in such school or to employees of the school during normal school hours,
  - b. sales of food by public or private colleges or universities or by officially recognized student organizations to students enrolled at such college when such sales are made on contract basis,
  - c. sales of food by a nonprofit organization or a governmental agency to low-income persons at or below cost,
  - d. food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, or by a religious organization if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue so obtained is expended for that purpose, and
  - e. sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters or other school or athletic booster organizations supporting activities for grades kindergarten through twelve and similar types of organizations, including scouting groups and church youth groups, if the purpose of the sale is to obtain revenue for the functions of the organization and the revenue so obtained is used for such functions,
40. Prescriptions--sales of drugs, sales of durable medical goods, mobility-enhancing equipment, including sales, installation and repairs of mobility enhancing equipment installed in a new or used motor vehicle, and prosthetic devices dispensed upon for prescription for home use, and sales of insulin to consumers for medical purposes,
41. Primary Opinion Research Services--sales of primary research opinion services when such services are provided to an out of state client by means of interstate commerce for use by the client outside West Virginia,
42. Professional Services--sales of professional services performed by licensed professionals, such as doctors, lawyers, engineers, architects, certified public accountants, and licensed auctioneers,
43. Public Services--sales of services that are subject to regulation by the West Virginia Public Service Commission, including sales of gas, steam or water delivered to

- consumers through mains or pipes, sales of electricity, most telephone services and services provided by regulated public or common carriers, and bus or taxi services (mobile telephone and paging services that may not be regulated are taxable),
44. Real Property--sales of real property (land, houses, buildings, and other structures attached to the land) and leases or rentals of real property to the same person for thirty or more consecutive days (rentals of less than thirty days are taxable),
  45. Sales Incentive Program--payments received by a vendor of tangible personal property as part of a sales incentive program, cooperative advertising agreement, or similar type of program,
  46. School Activities--sales of tickets for activities sponsored by elementary and secondary schools located in West Virginia,
  47. Small Arms and Ammunition--sales of small arms and small arms ammunition,
  48. State Military Training Facility--sales of goods by a canteen or snack bar facility on a state reservation or state training facility under the jurisdiction of the adjutant general (i.e., Camp Dawson),
  49. Textbooks--sales of textbooks required to be used in any of the schools of the State whether the books are sold directly to the school or to students, including written course materials and audio and video materials if they are a required text of the school,
  50. Transportation--charges for transporting passengers in interstate commerce, such as airline and bus tickets, if the trip begins or ends outside the State,
  51. Travel Agents--commissions received by a travel agency from an out-of-state vendor, and
  52. Volunteer Fire Departments--sales of tangible personal property and services by volunteer fire departments for fundraising purposes.

Some exemptions must be claimed by using a current tax exemption certificate. If a vendor fails to obtain a properly completed exemption certificate from the purchaser or if the purchaser refuses to provide a certificate, the vendor must collect the tax and purchaser must pay the tax. The following is a list of the exemptions for which an exemption certificate is required:

1. Aircraft Repair--aircraft repair, remodeling, and maintenance services; sales of component parts affixed or attached to such aircraft during repair, remodeling, and maintenance services; and sales of tools and equipment directly used to complete such services,
2. Certain Aircraft Sales--sales of aircraft sold in this state and removed from the state within 60 days,
3. Car Wash Soap--sales of soap to be used at car wash facilities,
4. Certain Computer Hardware and Software--certain sales of computer hardware and software, including:
  - a. sales of computer hardware and software to be directly incorporated into a manufactured product, including licensing fees,
  - b. sales of computer hardware and software directly used in communication,
  - c. sales of electronic data processing services,
  - d. sales of educational software required to be used in any public school or institution in this State that is subject to the requirements of the Department of Education or the Higher Education Policy Commission,
  - e. sales of internet advertising of goods and services,
  - f. sales of high technology business services to high technology businesses that enter contracts with State and federal governmental agencies, and



- g. sales of prewritten software, computers, computer hardware, servers and building materials and tangible personal property to be installed in a building or facility for direct use in a high technology industry or an Internet advertising business.
- 5. Controlled Groups--purchases of services by one corporation, limited liability company or partnership from another corporation, limited liability company or partnership from another corporation limited liability company or partnership when both entities are members of the same controlled group,
- 6. Electronic Data Processing Services--sales of electronic data processing services and software related to such purchases to another company (sales of data processing equipment, material and supplies are taxable),
- 7. Food--purchased by a nonprofit organization or governmental agency that provides meals to low-income persons at or below cost,
- 8. Motion Picture Films--sales of motion picture films to motion picture exhibitors when the sales of tickets or the charge to view the film are taxable,
- 9. Purchases for BUILD WV Housing--purchases of building materials, tangible personal property, and services by a construction contractor or construction subcontractor directly used in the construction of a certified BUILD WV project,
- 10. Purchases by Certain Nonprofit Organizations--purchases by a corporation or organization that has a current registration certificate and is exempt from federal income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code and:
  - a. receives more than half its support from gifts, grants, direct or indirect charitable contributions and membership fees, or
  - b. is a youth organization, such as the Girl Scouts and the Boy Scouts, or
  - c. is an organization with no paid employees whose gross income from fundraisers is donated to a 501(c)(3) or (c)(4) organization,
- 11. Purchases by Churches--purchases of services, equipment, supplies, food for meals and material directly used or consumed by churches that make no charge at all for the services they render,
- 12. Purchases for Commercial Agriculture--purchases of tangible personal property or taxable services for use or consumption in the commercial production of an agricultural product, including the purchase of fencing and nails used for the construction of fencing, and purchases of propane for use in heating poultry houses,
- 13. Purchases by Governments--purchases by the federal government and governmental units of West Virginia or another state if that state grants a sales tax exemption to governmental units of West Virginia (purchases by employees while on government business are not exempt unless such purchases are directly billed to and paid for by the government entity),
- 14. Purchases for New or Expanded Warehouse or Distribution Facility--purchases of computers and computer software, primary material handling equipment, racking and racking systems and components thereof, building materials and tangible personal property installed into or directly used or consumed in the construction, addition, alteration or improvement of a qualified new or expanded warehouse or distribution facility provided that the investment is at least \$50 million and at least 300 full-time West Virginia equivalent jobs are created,
- 15. Purchases by Producers of Materials Used in the Production of Certain Value-Added Products from Raw Agricultural Products--sales of property or services to persons for direct use in the production of a "value added product" for a period of no more than five years by such persons engaged exclusively in such production activity for the following:
  - a. the conversion of lumber into furniture, toys, collectibles, and home furnishings,
  - b. the conversion of fruit into wine,

- c. the conversion of honey into wine,
  - d. the conversion of wool into fabric,
  - e. the conversion of raw hides into semi-finished or finished leather products,
  - f. the conversion of milk into cheese,
  - g. the conversion of fruits or vegetables into dried, canned, or frozen products,
  - h. the conversion of feeder cattle into commonly acceptable slaughter weights,
  - i. the conversion of aquatic animals into dried, canned, cooked, or frozen products, and
  - j. the conversion of poultry into dried, canned, cooked, or frozen products.
16. Purchases for Resale--purchases of tangible personal property intended for resale in the form of tangible personal property,
  17. Purchases by Schools--purchases by an elementary or secondary school in this State or by a school that has its principal campus in this State and has approval from the Higher Education Policy Commission or Council for Community and Technical College Education to award degrees,
  18. Video Arcade Games--sales of coin-operated video arcade machines or video arcade games to a person who provides such machines to the public for a charge upon which the tax is imposed, and
  19. Video Lottery Terminals and Games--purchases of video lottery terminals and video lottery games by persons holding a current operator's license or a current limited video lottery operator's license issued under W.Va. Code §29-22-1 et. seq. and consideration paid by a patron of a restricted access adult only facility to play video lottery games.

For purchases for which there are no per se exemptions or for which no exemption certificate may be issued, the purchaser must pay the Consumers Sales Tax and Use Tax unless the purchaser has a direct pay permit number from the West Virginia State Tax Department. Each business with a direct pay permit must keep a record of taxable and exempt purchases and remit any tax due directly to the West Virginia State Tax Department. Those without a direct pay permit may either credit the tax paid for items that qualify for a refundable exemption against sales or use tax due and owed on nonexempt purchases or apply for a refund of the tax paid. Refundable exemptions are allowed for the following classifications:

1. Charitable Organizations--purchases by bona fide charitable organizations that make no charge at all for the services they render,
2. Direct Use--purchases of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service, the operation of a utility service, or the operation of a utility business,
3. Fraternal or Social Organizations--purchases by nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work,
4. Housing--sales of building materials or building supplies to organizations that are exempt from federal income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code when such are to be installed in buildings or structures used as permanent low-income housing, transitional housing, emergency homeless shelters, domestic violence shelters or emergency children and youth shelters if the shelter is owned, managed, developed or operated by such qualified organization,

5. Prescription Drugs and Medical Goods--sales of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices are exempt when purchased by the following:
  - a. hospitals,
  - b. medical clinics,
  - c. nursing homes,
  - d. providers of inpatient hospital services,
  - e. providers of outpatient hospital services, physician services, nursing services, ambulance services or surgical services, and
  - f. veterinarians, provided that these items are dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease.
6. Research and Development Activities--purchases of tangible personal property and services that directly used or consumed in the activity of research and development, and
7. Volunteer Fire Departments--purchases of firefighting or station house equipment, construction and automotive equipment by volunteer fire departments organized and incorporated under the laws of the State of West Virginia.

### **Direct Use Pass-Through Exemption**

Purchases by contractors constructing, altering, repairing, or improving a new or existing building or structure for businesses in the manufacturing, transportation, production of natural resources or utilities industries will be exempt if utilized directly in the activities of manufacturing, transportation, production of natural resources, or public utilities. The contractor receives a pass-through exemption for tax-exempt direct use purchases.

In addition, purchases by contractors of services, building materials and tangible personal property to be installed in a building or facility or directly used or consumed in the construction, alteration, repair, or improvement of a new or existing building or structure if the purchaser of the contracting service is a nonprofit youth organization that would be entitled to claim a Consumers Sales Tax exemption had the organization made the purchases are exempt. The contractor receives a pass-through exemption for such purchases. A special contractor exemption certificate must be completed by the contractor.

### **Direct Pay Permit**

The State Tax Commissioner may, at his discretion, authorize a person who is a user, consumer, distributor, or lessee to pay Consumers Sales Tax and Use Tax directly to the West Virginia State Tax Department and waive the collection of tax by that person's vendors, including out-of-state vendors. No such authority is granted or exercised except upon application to the State Tax Commissioner and after issuance by the State Tax Commissioner of a direct pay permit number. To avoid paying the tax or presenting an exemption certificate at the time of each transaction, the direct pay permit number issued to a specific taxpayer may be used when making taxable or exempt purchases. A direct pay permit number does not apply to purchases of gasoline or special fuel. The permit is valid until it is surrendered by the taxpayer or cancelled. When using a direct pay permit, the holder of the permit must notify each specified vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct pay permit number and that any tax thereon will be paid directly to the West Virginia State Tax

Department. Vendors must maintain records identifying the purchase by name, permit number and the amount of the sale for which the direct pay permit was accepted.

Upon the cancellation or surrender of the direct pay permit, the holder must promptly notify, in writing, the specified vendors from whom tangible personal property is purchased or leased or by whom services are rendered of the cancellation or surrender.

### **Mobile Homes**

Sales of mobile homes to be used by purchasers as their principal year-round residence are taxed at 50 percent of the sale price.

### **Sales Tax Holiday**

Beginning in 2021, a Sales Tax Holiday starts on the Friday before the first Sunday in August and ends the following Monday. In 2023, the Sales Tax Holiday was from 12:00 a.m. on Friday, August 4, through 11:59 p.m. on Monday, August 7.

During the Sales Tax Holiday, purchases of the following items are exempt from Sales and Use Tax:

1. certain clothing with a purchase price of \$125 or less,
2. certain school supplies with a purchase of \$50 or less,
3. certain school instruction material with a purchase of \$20 or less,
4. certain laptop and tablet computers with a purchase price of \$500 or less, and
5. certain sports equipment with a purchase price of \$150 or less.

There is no limit on the amount of the total purchase. The qualification is determined by each individual item.

Items purchased for use in a trade or business are not exempt under the Sales Tax Holiday.

### **Credits Against Tax Liability**

Purchasers who pay Consumers Sales Tax or Use Tax on items that qualify for a refundable exemption may credit such tax overpayment against their monthly or quarterly remittances of Consumers Sales Tax and Use Tax.

### **Special District Excise Tax**

Counties and municipalities may levy a special district excise tax of 6.0 percent on sales and services made within a defined economic opportunity development district. The economic opportunity district and the special district excise tax must be authorized by the Legislature. When the special district excise is imposed, the tax is collected in lieu of the State sales tax. Generally, the special district excise tax acts as a sales tax increment financing tool to benefit the economic opportunity development districts. Since the base and rate of the special district excise tax are the same as that of the Consumers Sales and Service Tax, sales in these districts are not subject to the Consumers Sales and Service Tax. Currently, the only special districts levying a special district excise tax are The Highlands district in Ohio County, the Charles Pointe district in Harrison County, the University Towne Center district in Monongalia County, the Park Place district in South Charleston, the Top House Hotel District in Jefferson County, and the Ridges district in Mercer County.

## USE TAX

The Use Tax is imposed upon the use within West Virginia of tangible personal property and services bought or leased outside West Virginia for use or consumption within this State. The State Tax is levied at the rate of 6.0 percent of the purchase price. The Use Tax complements the Consumers Sales Tax and Use Tax due is remitted on the same form as the Consumers Sales Tax.

In addition to the State Tax, municipalities may impose an additional tax at a rate of 1.0 percent. A list of the municipalities imposing a municipal sales tax can be found in the Consumers Sales Tax section. The State Tax Commissioner is responsible for collecting, enforcing, and administering municipal sales and service tax and municipal use tax in the same manner as the State Consumers Sales and Service Tax and the State Use Tax.

Out-of-state vendors engaging in business in this State are required to collect Use Tax from their West Virginia customers. The State Tax Commissioner is empowered to authorize certain foreign retailers to collect Use Tax at the time a sale is made. Collected tax must be remitted along with the Consumers Sales Tax. Any person who used tangible personal property purchased outside West Virginia upon which the tax has not been paid to the seller is personally liable for such tax and is required to remit quarterly the tax imposed upon all such property directly to the West Virginia State Tax Department. Additional information on the economic nexus rules for out-of-state vendors and marketplace facilitators that do not have a physical presence in West Virginia can be found in the Consumers Sales Tax section.

The use in West Virginia of the following tangible personal property is exempt from the tax:

1. articles of tangible personal property brought into the State by a nonresident individual for his or her enjoyment while in the State,
2. tangible personal property and services that are exempt from Consumers Sales Tax,
3. tangible personal property and services upon which the Consumers Sales Tax has been paid,
4. tangible personal property and services that are not subject to the Consumers Sales Tax, and
5. tangible personal property purchased outside West Virginia for use outside this State by a nonresident person or business who later brings such property into this State in connection with his establishment of a permanent resident or business in West Virginia.

### **Credits Against Use Tax**

A credit is allowed against a taxpayer's Use Tax liability for sales tax lawfully paid to another state, but the amount of the credit allowed may not exceed the amount of Use Tax imposed on the use of property in West Virginia.

### **Disposition of Revenue**

During Fiscal Year 2023, \$1,750.4 million (96.5 percent) of the revenue from the Consumers Sales and Service Tax and Use Tax was deposited in the State General Revenue Fund. Special revenue funds received \$34.3 million (1.9 percent) in deposits, and \$28.4 million was from the sales tax increment financing.

## Comparison with Other States

The tax rates listed in this section are as of July 1, 2023.

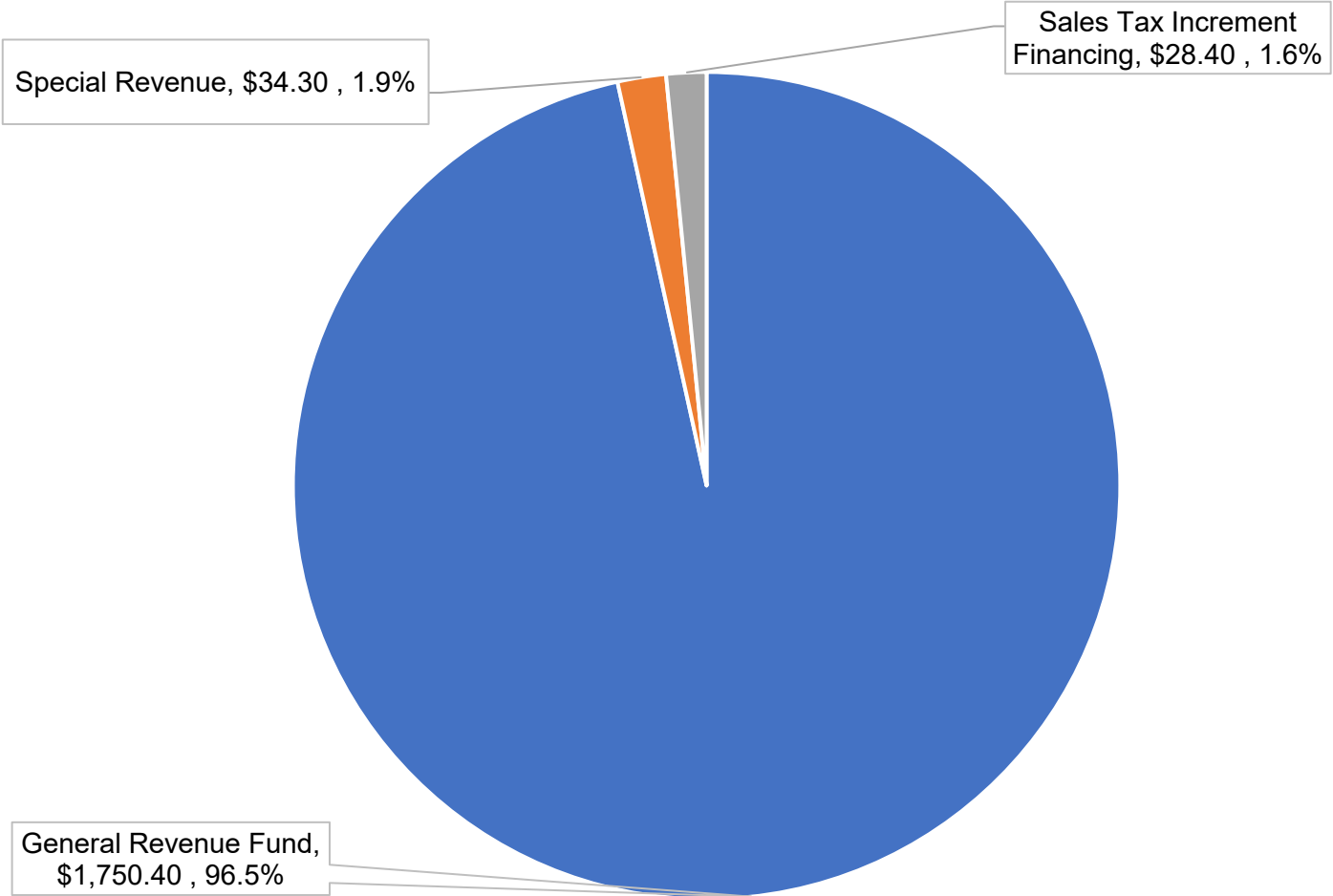
### Comparison of State Sales Tax Rates

State	State Tax Rate	Maximum Local Rate	Total Maximum Rate
Kentucky	6.00%	0.00%	6.00%
Maryland	6.00%	0.00%	6.00%
Ohio	5.75%	2.25%	8.00%
Pennsylvania	6.00%	2.00%	8.00%
Virginia	4.30%	2.70%	7.00%
West Virginia	6.00%	1.00%	7.00%

## Tables and Charts

The following provides information on distribution of revenue from the West Virginia Consumers Sales and Service Tax and Use Tax and data on local sales taxes.

# Distribution of Revenue from Consumers Sales and Service Tax and Use Tax FY2023



## Local Sales Tax Distributions by Fiscal Year (In thousands)

Municipality	Start Date	Fiscal Year										
		2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	
Alderson	Jul-22											\$77.5
Ansted	Jul-22											\$50.2
Athens	Jul-18						\$33.5	\$62.7	\$75.6	\$76.8		\$87.8
Barboursville	Jul-20								\$2,824.8	\$4,815.3	\$4,975.2	
Beckley	Jul-16				\$3,547.2	\$5,638.9	\$5,892.9	\$5,896.3	\$5,958.1	\$6,845.6	\$7,056.0	
Bluefield	Jul-17					\$608.7	\$998.8	\$1,078.1	\$988.3	\$1,203.8	\$1,303.1	
Bolivar	Jul-15			\$19.6	\$38.4	\$35.0	\$44.9	\$61.6	\$123.8	\$105.8	\$97.7	
Bridgeport	Jul-16				\$2,510.2	\$4,092.0	\$5,387.0	\$4,300.6	4,108.3	\$4,991.4	\$5,035.9	
Bruceton Mills	Jul-22											\$83.0
Buckhannon	Jan-20							\$231.2	\$1,799.1	\$2,010.8	\$2,102.4	
Capon Bridge	Jul-20								\$66.2	\$108.2	\$114.8	
Chapmanville	Jul-22											\$204.5
Charles Town	Jul-15			\$521.5	\$888.8	\$933.1	\$953.6	\$1,176.9	\$1,391.3	\$1,543.0	\$1,762.3	
Charleston*	Oct-13	\$2,832.0	\$7,302.2	\$12,296.6	\$14,923.9	\$14,645.9	\$15,393.2	\$15,530.0	\$15,269.7	\$17,801.7	\$18,749.9	
Chester	Jul-21									\$210.8	\$340.6	
Clarksburg	Jul-16				\$2,539.8	\$4,035.6	\$4,498.0	\$4,452.2	\$4,388.2	\$4,796.4	\$5,045.2	
Davis	Jul-18						\$73.6	\$128.0	\$187.4	\$228.8	\$230.3	
Dunbar	Jul-16				\$439.2	\$724.9	\$798.3	\$873.0	\$961.9	\$1,063.8	\$1,002.6	
Elizabeth	Jul-18						\$70.2	\$95.5	\$138.8	\$140.3	\$142.7	
Elkins	Jul-18						\$748.6	\$1,150.5	\$1,296.0	\$1,471.6	\$1,466.9	
Ellenboro	Jul-20								\$68.9	\$125.4	\$140.9	
Fairmont	Jul-16				\$1,231.8	\$1,907.9	\$2,205.4	\$2,281.1	\$2,383.3	\$2,629.1	\$2,857.1	
Fayetteville	Jul-22											\$636.8
Follansbee	July-17					\$224.5	\$364.4	\$431.8	\$459.9	\$501.8	\$456.6	
Grafton	Jul-16				\$367.5	\$576.7	\$595.7	\$604.1	\$714.9	\$777.7	\$785.9	
Harpers Ferry	Jul-16				\$90.8	\$140.4	\$181.0	\$191.0	\$201.7	\$267.7	\$294.5	
Harrisville	Oct-13	\$51.8	\$157.7	\$156.3	\$171.5	\$161.3	\$177.0	\$183.2	\$206.0	\$209.9	\$203.0	
Hundred	Jan-20							\$2.0	\$52.5	\$30.5	\$27.4	



Huntington	Jan-12	\$6,894.5	\$6,379.2	\$6,153.1	\$6,499.2	\$6,598.6	\$6,744.9	\$7,236.4	\$7,425.8	\$8,657.6	\$9,313.2
Hurricane	Jul-20								\$1,064.6	\$1,755.9	\$1,818.4
Kingwood	Jul-19							\$254.6	\$460.4	\$524.8	\$478.3
Logan	Jul-20								\$947.1	\$1,672.9	\$1,772.9
Man	Jul-21									\$120.6	\$179.8
Martinsburg	Jul-15			\$2,352.5	\$4,131.8	\$4,196.0	\$4,410.6	\$4,692.7	\$5,501.8	\$6,293.9	\$6,976.7
Masontown	Jul-21									\$56.7	\$92.8
Milton	Jul-15			\$270.7	\$449.1	\$479.9	\$507.6	\$549.9	\$584.9	\$660.1	\$708.0
Montgomery	Jul-20								\$103.4	\$190.3	\$218.7
Moorefield**	Jul-16				\$316.7	\$483.9	\$499.5	\$535.8	\$903.7	\$1,256.4	\$1,368.8
Morgantown	Jul-20								\$5,457.0	\$9,541.9	\$9,464.9
Moundsville	Jul-17					\$1,132.4	\$1,945.4	\$1,906.8	\$1,849.8	\$1,980.9	\$2,155.6
New Cumberland	Jul-17					\$61.4	\$103.2	\$118.9	\$152.2	\$152.5	\$148.4
New Martinsville	Jul-20								\$935.4	\$1,709.3	\$1,731.0
Nitro	Jul-15			\$1,070.1	\$1,748.5	\$1,578.6	\$1,776.1	\$1,833.7	\$1,905.5	\$2,052.6	\$2,098.6
Nutter Fort	Jan-22									\$38.4	\$267.7
Oak Hill	Jul-22										\$647.4
Paden City	Jul-21									\$70.4	\$118.9
Parkersburg	Jul-15			\$3,718.6	\$5,771.3	\$6,029.7	\$6,208.1	\$6,307.0	\$6,539.2	\$7,277.5	\$7,524.3
Paw Paw	Jul-21									\$30.6	\$51.5
Pennsboro	Jul-16				\$124.9	\$181.2	\$349.3	\$367.7	\$214.8	\$223.9	\$227.3
Pine Grove	Jul-22										\$25.4
Princeton	Jul-17					\$713.8	\$1,175.6	\$1,278.4	\$1,517.7	\$1,680.8	\$1,766.6
Quinwood	Oct-13	\$2.5	\$7.7	\$18.6	\$11.8	\$9.9	\$13.8	\$14.8	\$16.5	\$16.7	\$14.7
Ranson	Jul-15			\$641.4	\$1,308.2	\$1,328.5	\$1,429.5	\$1,537.0	\$1,731.7	\$1,875.3	\$2,102.7
Ravenswood	Jul-20								\$247.9	\$423.2	\$431.6
Reedsville	Jul--22										\$57.5
Ripley	Jul-20								\$891.0	\$1,538.9	\$1,577.4
Romney	Jul-16				\$169.6	\$232.7	\$236.4	\$277.3	\$345.7	\$363.4	\$399.7
Rowlesburg	Jul-21									\$10.4	\$16.6
Rupert	Apr-13	\$16.1	\$21.6	\$41.5	\$48.9	\$42.0	\$35.5	\$58.8	\$62.4	\$61.8	\$69.0
Shepherdstown	Jul-17					\$147.6	\$299.8	\$404.6	\$355.1	\$467.7	\$532.7

Shinnston									\$213.9	\$356.4	\$355.2
Sistersville	Jul-17			\$70.5	\$115.4	\$127.0		\$147.0		\$158.9	\$159.1
Smithers	Jul-21									\$81.6	\$109.2
Sophia	Jul-21									\$145.3	\$243.5
South Charleston	Jul-16			\$2,881.1	\$4,439.7	\$4,610.9	\$4,833.7	\$4,662.3		\$5,440.5	\$5,727.8
Spencer	Jul-21									\$462.6	\$768.4
St. Albans	Jul-17			\$844.1	\$1,342.2	\$1,413.6		\$1,540.0		\$1,735.1	\$1,802.1
Sylvester	Jul-22										\$10.6
Terra Alta	Jul-21									\$85.0	\$146.2
Thomas	Jul-15		\$34.5	\$76.0	\$67.5	\$71.6	\$78.5	\$88.8		\$110.9	\$128.3
Tunnelton	Jan-22									\$5.7	\$39.1
Vienna	Jul-15		\$2,141.7	\$3,463.7	\$3,506.6	\$3,502.7	\$3,677.6	\$3,575.5		\$4,374.2	\$4,483.1
Wardensville	Jul-20							\$53.6		\$97.3	\$106.1
Wayne	Jan-18				\$40.4	\$315.6	\$342.7	\$407.1		\$386.2	\$409.5
Weirton	Jul-16			\$1,543.9	\$2,693.1	\$2,770.0	\$2,894.2	\$3,093.8		\$3,473.7	\$3,487.9
West Union	Jul-22										\$87.5
Weston	Jan-18				\$52.6	\$549.5	\$544.6	\$568.3		\$643.0	\$646.6
Wheeling*	Oct-13	\$793.2	\$2,273.9	\$3,811.2	\$4,639.5	\$4,981.7	\$5,009.7	\$5,234.1	\$5,352.6	\$5,628.0	\$5,842.9
White Hall***	Jan-18					\$71.2	\$591.2	\$663.2	\$1,201.6	\$1,336.6	\$1,405.6
Williamstown	Oct-11	\$266.7	\$295.1	\$326.3	\$310.7	\$281.3	\$327.2	\$352.8	\$391.1	\$391.0	\$391.0
<b>Total</b>		<b>\$10,856.8</b>	<b>\$16,437.4</b>	<b>\$33,574.2</b>	<b>\$60,244.0</b>	<b>\$73,989.8</b>	<b>\$83,357.4</b>	<b>\$86,266.2</b>	<b>\$104,173.8</b>	<b>\$127,573.6</b>	<b>\$136,037.6</b>

\*Tax rate – 0.5% from 10/1/2013 to 6/30/2015; 1% from 7/1/2015 to present

\*\*Tax rate – 0.5% from 1/1/2018 to 12/31/2019; 1% from 1/1/2020 to present

\*\*\* Tax Rate – 0.5% from 7/1/2016 to 6/30/2021; 1% from 7/1/2021 to present

## **CORPORATION NET INCOME TAX**

The West Virginia Corporation Net Income Tax (W.Va. Code §11-24) was first enacted in 1967. The West Virginia Corporation Net Tax has adopted many provisions of the laws of the United States Internal Revenue Code relating to the determination of income for federal tax purposes. Annually, the Corporation Net Income Tax is updated to reflect changes in the federal tax code.

The following table shows the revenue for this tax for the past five fiscal years.

### **Corporation Net Income Tax Fiscal Years 2019 – 2023**

<u>Fiscal Year</u>	<u>Collections</u>
2019	\$198,031,543
2020	\$151,998,009
2021	\$320,487,005
2022	\$366,315,709
2023	\$419,965,001

### **Taxpayers**

Domestic and foreign corporations doing business in West Virginia or deriving income from property, activity or other sources within the State are subject to the Corporation Net Income Tax (CNIT). This includes limited liability companies taxed as corporations for federal income tax purposes. Certain insurance companies and mutual companies, certain trusts, S corporations, certain production credit associations and nonprofit corporations are exempt from tax. However, the tax is applicable to the unrelated business income of nonprofit corporations. Pass-through entities, such as S corporations, partnerships, and LLC's, must file an information return.

### **Tax Base**

CNIT is imposed on taxable corporation income as defined by federal law and as adjusted by State law. Some adjustments that can increase taxable income are as follows:

1. interest or dividends on U.S. government obligations or securities that are exempt from federal income tax but not from state income tax,
2. interest or dividends from all state or local bonds or securities excluded from federal taxable income,
3. all taxes imposed on or measured by net income that are expensed on the federal corporate income tax return,
4. the amount of unrelated business taxable income of a corporation that because of its purposes is generally exempt from federal income tax,
5. the federal net operating loss deduction,
6. the amount of foreign taxes deducted in determining federal taxable income,
7. net operating loss from sources outside the United States,
8. dividend paid deduction otherwise allowed by federal law in computing net income of certain real estate investment trusts (REIT) or of certain regulated investment companies, and

9. federal deduction for charitable contributions to Neighborhood Investment Programs if claiming the West Virginia Neighborhood Investment Program Tax Credit.

Modifications that can decrease taxable income are as follows:

1. state income tax refunds or credits for overpayment included in federal taxable income,
2. interest expense incurred to purchase or carry obligations or securities of states or their political subdivisions, if disallowed in determining federal taxable income,
3. the amount of dividends received from a foreign (non-United States) corporation to the extent the dividends were added to federal taxable income by a corporation claiming a foreign tax credit,
4. that portion of salary expenses disallowed as a deduction for federal income tax purposes due to the claiming of the federal jobs credit,
5. the amount received from a foreign corporation as dividend income to the extent included in federal taxable income,
6. foreign source income to the extent included in federal taxable income,
7. employer contributions to medical savings accounts included in federal taxable income less amounts withdrawn for non-medical purposes, and
8. the amount equal to that portion of net income directly derived from a qualified opportunity zone business located in a qualified opportunity zone which is in West Virginia.

CNIT law also provides for the elective adjustment to taxable income for expenditures for water and air pollution control facilities as defined by sections 48(h)(12)(B) and (C) of the Internal Revenue Code with the addition to taxable income of depreciation and amortization allowances taken on such facilities.

A decreasing adjustment is allowed for certain government obligations and obligations secured by residential property. The deduction is equal to the average monthly percentage of total corporate assets represented by tax-exempt federal obligations, West Virginia obligations and mortgages on residential property located within the State multiplied by taxable income.

A taxpayer may claim its aggregated West Virginia net operating loss carry-overs plus the net operating loss carrybacks. However, no more than \$300,000 of the net operating loss from any taxable year may be carried back to prior tax years. Net operating losses may be carried back for up to two years (subject to the \$300,000 limitation) and then excess losses may be carried forward for up to twenty years. Under the provisions of the CARES Act, net operating losses generated in 2018, 2019 or 2020 can offset up to 100 percent of taxable income. In addition, net operating losses associated with those three years may be carried back to the prior years for purposes of offsetting prior year taxable income.

Corporations subject to taxation in West Virginia and one or more other states must use an apportionment formula to determine West Virginia income subject to tax. For tax years beginning on or after January 1, 2022, West Virginia businesses will use a single sales factor formula. Under this formula, the numerator includes sales occurring in West Virginia and the denominator includes sales occurring everywhere. Prior to tax year 2022, West Virginia apportioned the income of multi-state corporations through use of a four-factor formula consisting of a property factor, a payroll factor and double-weighted sales factor.

Beginning on January 1, 2022, sales on which a corporation does not pay tax in any state should not be included in the numerator but remains in the denominator of the sales factor. Prior to tax year 2022, sales on which a corporation does not pay tax in any state were not included in either the numerator or the denominator of the sales factor.

West Virginia has adopted market-based sourcing for services and certain intangible property starting on January 1, 2022. Under a “market-based sourcing” rule, sales of services go into the numerator of the sales factor based on whether the service was delivered to a customer in this state. Intangible property that is rented or licensed, or a contract right or government license, should also be included in the numerator of the sales factor if they were used in West Virginia.

Special apportionment rules apply to motor carriers and financial organizations. Motor carriers with West Virginia nexus apportion business income by use of the ratio of total vehicle miles in West Virginia to total vehicle miles everywhere. Multi-state financial organizations apportion business income by a special gross receipts factor. The gross receipts factor is the ratio of receipts attributable to West Virginia customers to receipts attributable to all customers. A financial organization has nexus in West Virginia if it obtains or solicits business from twenty or more persons within the State or if total West Virginia receipts equal at least \$100,000.

While most business income of multi-state corporations is subject to the apportionment formula mentioned above, some types of income are directly allocated to the State when the income is non-business income. Certain income not gained in the regular course of the taxpayer’s business, and which comes from:

1. rents and royalties from real or tangible personal property, and/or
2. capital gains and losses from sales of real property located within this State, and/or
3. interest and dividends if the taxpayer's commercial domicile is in the State, and/or
4. patent or copyright royalties,

is allocated to West Virginia and becomes West Virginia taxable income to the extent that these sources of non-business income are owned, used, or otherwise represent taxable activity in West Virginia.

If the changes enacted in 2021 to the Corporation Net Income tax apportionment and allocation formula, which are effective for tax years beginning on or after January 1, 2022, result in an aggregate increase to a publicly traded Corporate Taxpayer's net deferred tax liability or an aggregate decrease to the Taxpayer's net deferred tax assets, or an aggregate change from a net deferred tax asset to a net deferred tax liability, the Taxpayer is entitled to a modification. For the ten-year period beginning on or after January 1, 2033, the Taxpayer is entitled to a modification equal to one-tenth of the amount necessary to offset the aggregate change, as computed in accordance with generally accepted accounting principles. Any taxpayer intending to claim the modification must file a statement with the Tax Commissioner on or before July 1, 2024, specifying the total amount the Taxpayer is claiming.

## **Tax Rate**

The rate of tax is 6.5 percent.

## **Combined Reporting**

A combined income method of reporting for unitary groups is required when filing the Corporation Net Income Tax Return. Under this method, the West Virginia taxable business income of a taxable member of the group is its proportionate share of the combined business income of all members of the unitary group. Members of a combined group that are taxable in West Virginia are required to file separate returns unless they elect to designate one member as surety to file a single return on behalf of the taxable members of the combined group. This is annual election which does not change the tax liability of any member of the combined group that makes this election. The election merely simplifies reporting by the taxable members of the combined group.

## **Credits Against Tax Liability**

The West Virginia Code provides a variety of tax credits that may be applied against CNIT liability in some cases. These include the Economic Opportunity Tax Credit, the Downstream Natural Gas Manufacturing Investment Tax Credit, the Manufacturing Investment Tax Credit, the Post-Coal Mine Site Business Credit, the West Virginia Tax Credit for Federal Excise Tax Imposed Upon Small Arms and Ammunition Manufacturers, the Apprenticeship Training Tax Credit, the High-Wage Growth Business Tax Credit, the Jumpstart Savings Program Credit, the Military Incentive Credit, the Tax Credits for Employers Providing Childcare for Employees, the Credit for Reducing Utility Charges to Low-Income Families, the Manufacturing Property Tax Adjustment Credit, the Natural Gas Liquids Property Tax Adjustment Credit, the Environmental Agricultural Equipment Credit, the Neighborhood Investment Program Credit, the Historic Rehabilitated Buildings Investment Credit, the Farm to Food Bank Tax Credit, the Tax Credit for Donation or Sale of Vehicle, the Innovative Mine Safety Technology Tax Credit, and the West Virginia Film Industry Investment Credit. Explanations of these credits may be found in the Tax Credits section.

## **Disposition of Revenue**

During Fiscal Year 2023, collections for the Corporation Net Income Tax were \$420 million. All the revenue from the Corporation Net Income Tax was deposited into the General Revenue Fund.

## HEALTH CARE PROVIDER TAXES

The State of West Virginia imposes certain special taxes on taxpayers who provide health care related services within the State; broad-based Health Care Provider (W.Va. Code §11-27), Acute Care Hospital (W.Va. Code §§11-27-38 and 39), and Managed Care Organizations (W.Va. Code §11-27-10a). The following table shows the revenue from these taxes for the past five years.

### Health Care Provider Taxes Revenue (in millions) Fiscal Years 2019 – 2023

Fiscal Year	Broad Based Health Care Provider	Acute Care Hospital	Managed Care Organizations	Total Collections
2019	\$199.7	\$32.9		\$232.6
2020	\$199.2	\$34.6		\$238.8
2021	\$220.6	\$37.1	\$40.2	\$297.9
2022	\$235.5	\$44.2	\$45.9	\$325.6
2023	\$250.4	\$46.4	\$49.0	\$345.8

### BROAD-BASED HEALTH CARE PROVIDER TAX

#### Taxpayers

The Health Care Provider Taxes are imposed on the provisions of selected types of health care services provided in West Virginia.

#### Tax Rates

The following is a list of taxable health care services and respective tax rates as of July 1, 2023:

Ambulatory Surgical Center	1.75%
Independent Laboratory or X-ray Services	5.00%
Inpatient Hospital Services	2.50%
Intermediate Care Facility Services for the Intellectually Disabled	5.50%
Nursing Facilities other than Intermediate Care Facility Services for the Intellectually Disabled	5.50%
Outpatient Hospital Services	2.50%

The Health Care Provider Taxes are measured by the application of a rate to the gross receipts received from providing the 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. No expenses are to be deducted. Gross receipts that are not related to providing 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.

## **Deductions**

The following deductions can be made from gross receipts before the calculation of the tax:

1. Accrual-based taxpayers may deduct bad debts from their gross receipts to the extent that the amount of the bad debt was included previously in gross receipts upon which the Health Care Provider Taxes were paid.
2. Accrual-based taxpayers, except nursing homes, can reduce gross receipts by the amount of their contractual allowances to the extent included in the amount of gross receipts upon which taxes were previously paid. Contractual allowances are the differences between revenue or gross receipts at established rates and the amounts realized from third party providers under contractual agreements.

## **ACUTE CARE HOSPITAL TAXES**

### **Taxpayers**

The Acute Care Hospital Taxes are imposed on providers of inpatient and outpatient hospital services in addition to the Health Care Board Base Tax.

### **Tax Rates**

The Acute Care Hospital Tax in W.Va. Code §11-27-38 imposes an additional gross receipt tax on certain acute care hospital that provides inpatient or outpatient hospital services in this State through a Medicaid upper payment limit program. This tax is in addition to the 2.5 percent tax imposed on gross receipts derived from providing inpatient and outpatient hospital services. The tax rate varies over time with a rate of 0.75 percent in place during 2022.

The Acute Care Hospital Tax in W.Va. Code §11-27-39 imposes an additional gross receipt tax on certain acute care hospitals to increase practitioner payment fee schedules. Beginning July 1, 2023, the tax rate may be increased annually to the maximum amount allowed by the Centers for Medicare and Medicaid Services. Effective October 1, 2023, the tax rate will increase to 0.449 percent.

Gross receipts are the amount received or receivable, whether in cash or in kind, from patients, third-party payers and others for inpatient hospital services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payers, without any deduction for expenses.

### **Deductions**

The following deductions can be made from gross receipts before the calculation of the tax:

1. Accrual-based taxpayers may deduct bad debts from their gross receipts to the extent that the amount of the bad debt was included previously in gross receipts upon which the Acute Care Hospital Tax was paid.
2. Accrual-based taxpayers can reduce gross receipts by the amount of their contractual allowances to the extent included in the amount of gross receipts upon which taxes were previously paid.



## **MANAGED CARE ORGANIZATION TAX**

### **Taxpayers**

The Managed Care Organization Tax is imposed on Health Maintenance Organizations.

### **Tax Rates**

Beginning July 1, 2020, a Health Care Provider Tax is imposed on managed care organizations. The tax rates are based upon the number of members or nonmembers of a plan for each month or part of a month on a graduated scale. The following rates apply beginning on and after July 1, 2022.

- Tier I - \$36.26 for each Medicaid member-month under 250,000
- Tier II - \$20.72 for each Medicaid member-month between 250,000 and 500,000
- Tier III - \$1.036 for each Medicaid member-month greater than 500,000
- Tier IV - 25.9 cents for each non-Medicaid member-month under 150,000
- Tier V - 10.36 cents for each non-Medicaid member-month of 150,000 or more

### **Disposition of Revenue**

All revenues from the Health Care Provider Taxes are dedicated to the Medicaid State Share Fund.

## MOTOR FUEL EXCISE TAX

The West Virginia Motor Fuel Excise Tax (W.Va. Code §§11-14C-15-18b and 11-14C-15A-13a) was enacted by the 2003 Regular Session of the Legislature and became effective January 2004. The Motor Fuel Excise Tax replaced the Gasoline and Special Fuel Excise Tax, which was enacted in 1923.

The Motor Fuel Excise Tax is the largest source of revenue for the State Road Fund. During Fiscal Year 2023, total collections were \$432.4 million, or 48.3 percent of all State Road Fund collections.

### Motor Fuel Excise Tax Revenue Fiscal Years 2019 – 2023

<u>Fiscal Year</u>	<u>Collections</u>
2019	\$443,427,743
2020	\$427,272,653
2021	\$399,541,633
2022	\$419,593,109
2023	\$432,441,501

### General Provisions

The Motor Fuel Excise Tax is a combination of a flat rate tax of 20.5 cents per invoiced gallon and a variable rate tax, which is 5.0 percent of the average wholesale price of each motor fuel determined annually by the State Tax Commissioner. The average wholesale price is determined in November of the calendar year based on sales data gathered for the preceding period of July 1 through October 31. Notice of the variable rate is published in the State Register. Changes in the variable rate take effect on January 1 of the next calendar year. The average wholesale price of conventional fuels may never be less than \$3.04 per gallon; therefore, the variable component of the tax may not be less than 15.2 cents per gallon. Additionally, the average wholesale price of conventional fuels cannot vary by more than 10 percent from the average wholesale price for the previous calendar year.

The Use Tax for interstate carriers including aircraft, barge or other watercraft or railroad locomotives, 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 inside and outside 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

- 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.

Both the flat rate of the motor fuel excise tax and the variable rate are imposed on alternative fuel based on a gasoline gallon equivalent basis. Alternative fuels include butane, propane, compressed natural gas, liquefied natural gas, liquefied petroleum gas, and natural gas hydrocarbons and derivatives.<sup>4</sup> The gasoline gallon equivalents for alternative fuel are as follows:

#### **Gasoline Gallon Equivalents of Alternative Fuels**

<b>Alternative Fuel</b>	<b>Measure of Fuel with Energy Equal to One Gallon of Gasoline</b>
Compressed Natural Gas (CNG)	126.67 cubic feet
Compressed Natural Gas (CNG)	5.66 pounds
Liquefied Natural Gas (LNG)	1.554 gallons
Liquefied Petroleum Gas (LPG--Propane)	1.367 gallons

#### **Exemptions**

The following sales of motor fuel are exempt per se from the flat rate component of tax:

- all motor fuel exported from West Virginia to any other state or nation, provided the destination state tax is collected,
- sales of aviation fuel,
- sales of dyed special fuel, and
- sales of propane unless sold for use in a motor vehicle.

Refundable exemptions are also available. The following entities may apply for a refund of the flat rate component and the variable rate component of the tax:

- the United States government,
- any county government or agency thereof,
- any municipal government or agency thereof,
- county boards of education,
- any urban mass transportation authority,
- any municipal, county, state or federal civil defense or emergency service program, and
- any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service.

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<sup>4</sup> Sales of field gas are exempted from the flat and variable rate components of the Motor Fuel Excise Tax per W. Va. Code §11-14C-9a, et seq.

Also refundable are flat rate taxes for certain non-highway uses:

1. all gallons of motor fuel used and consumed in stationary off-highway turbine engines,
2. all gallons of special fuel used for heating any public or private dwelling, building or other premises,
3. all gallons of special fuel used for boilers,
4. all gallons of motor fuel used as a dry-cleaning solvent or commercial or industrial solvent,
5. all gallons of motor fuel used as lubricants, ingredients or components of any manufactured product or compounds,
6. all gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft,
7. all gallons of special fuel sold for use or consumed in railroad diesel locomotives,
8. all gallons of motor fuel purchased in quantities of 25 gallons or more for use as a motor fuel for internal combustion engines not operated upon the highways of West Virginia,
9. all gallons of motor fuel purchased in quantities of 25 gallons or more and used to power a power take-off unit on a motor vehicle,
10. motor fuel used by 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 the amount purchased is 25 gallons or more (amount refunded is equal to 6 cents per gallon), and
11. all gallons of motor fuel that are purchased and used by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service.

Propane sold to consumers for poultry house heating purposes is exempt from the variable rate tax.

Effective January 1, 2018, motor fuel sold for use or consumed in railroad diesel locomotives is eligible for a refundable exemption from the variable rate component. However, the amount of the refundable exemption is limited to \$4.3 million per year in the aggregate among all claimants.

The Motor Fuel Excise Tax law allows the seller of tax-paid motor fuel to the federal government to claim a refund for the variable rate components of the Motor Fuel Excise Tax and the flat rate component of the Motor Fuel Excise Tax when the federal government does not pay these taxes.

All motor fuel exported from West Virginia to another state or nation is exempt per se from the flat rate and the variable rate component of the tax, provided that the destination state tax is collected. In addition, an exemption is provided for field gas use contingent upon the payment of royalties according to any existing leases.

## **Licensing**

The following classifications have been established for motor fuel licensing:

1. suppliers which include refiners,
2. permissive suppliers (out-of-state supplier who is licensed to collect the Motor Fuel Excise Tax and remit the tax to the State),
3. importers,
4. exporters,
5. terminal operators,

6. blenders,
7. motor fuel transporters,
8. distributors,
9. producers/manufacturers,
10. alternative fuel bulk end users,
11. providers of alternative fuel, and
12. retailers of alternative fuel.

Persons who are engaged in more than one activity for which a license is required must have a separate license for each activity.

### **Motor Carrier Provisions**

Most interstate motor carriers pay motor fuel excise tax according to the provisions of the International Fuel Tax Agreement (IFTA). Intrastate motor carriers pay the excise tax according to the provisions of the Motor Carrier Road Tax (MCRT). A description of both the IFTA and MCRT provisions follows.

#### *International Fuel Tax Agreement*

The International Fuel Tax Agreement is a fuel tax reciprocity agreement among states of the United States and provinces of Canada to simplify the reporting and payment of all fuel use taxes by interstate motor carriers for all IFTA qualified vehicles. Qualified motor vehicles are the only vehicles taxed under IFTA and, for purposes of fuel tax reporting, are described as vehicles used, designed, or maintained for transportation of persons or property having:

1. two axles and gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds,
2. three or more axles regardless of weight, or
3. when used in combination, when the weight of such combination exceeds 26,000 pounds gross vehicle weight or registered gross vehicle weight.

All West Virginia based motor carriers who travel in at least one other IFTA jurisdiction and operate one or more qualified vehicles must obtain IFTA credentials. IFTA credentials, consisting of a license and decals, are issued by the West Virginia Department of Transportation.

All IFTA licensees based in West Virginia must file a single tax return to the West Virginia State Tax Department on a quarterly basis. This tax return will contain detailed information about vehicle operations in each IFTA member jurisdiction. West Virginia will then distribute both taxes and carrier information to the other IFTA jurisdictions on behalf of the carrier. The types of fuel that can be reported on an IFTA return include gasoline, diesel, gasohol, propane, LNG, CNG, ethanol, methane, E-85, M-85, A55, and biodiesel. Not all states require that all types of fuel be reported.

West Virginia will receive its portion of fuel taxes due from motor carriers based in other IFTA jurisdictions from the carrier's base jurisdiction. If the motor carrier does not operate in any other IFTA jurisdiction, the motor carrier will file the Motor Carrier Road Tax return described below.

### *Motor Carrier Road Tax*

The Motor Carrier Road Tax (MCRT), which is very closely related to the IFTA Motor Fuel Excise Tax, is imposed on any vehicle used, designed or maintained for the transportation of persons or property having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds, or having three or more axles regardless of weight, or is used in combination when the weight of such combination exceeds 26,000 pounds gross vehicle weight or registered gross vehicle weight. Recreational vehicles are not subject to the Motor Carrier Road Tax. This tax must be paid on each gallon of motor fuel used in motor carrier operations within West Virginia.

Exemptions from Motor Carrier Road Tax are granted for the following vehicles:

1. motor carriers operated or caused to be operated by or for any agency of the federal government, any state government, or any political subdivision of any state,
2. school buses operated or caused to be operated by or for this State or any of its political subdivisions, and
3. school buses of private schools.

### **Filing and Payment Dates**

The tax is due on or before the last day of the month for the preceding month.

### **Disposition of Revenue**

During Fiscal Year 2023, \$432.45 million was collected in Motor Fuel Excise Tax and deposited into the State Road Fund. Revenue deposited into the State Road Fund is to be used only for the purpose of construction, reconstruction, maintenance, and repair of highways, matching federal funds available for highway purposes and payment of interest, and sinking fund obligations on State highway bonds.

### **Comparison with Other States**

The tax rates listed in this section are as of July 1, 2023.

#### **Comparison of Total State Taxes/Fees (Cents per Gallon)**

<b>State</b>	<b>Gasoline</b>	<b>Diesel</b>
Kentucky <sup>5</sup>	30.10	27.10
Maryland	47.00	47.75
Ohio	38.50	47.00
Pennsylvania	61.10	78.50
Virginia	29.80	30.80
West Virginia	37.20	37.20

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<sup>5</sup> In Kentucky, the tax on gasoline is 28.70 cents per gallon with a surcharge of 1.40 cents for a total of 31.10 cents per gallon. The tax on diesel is 25.70 cents per gallon with a surcharge of 1.40 cents for a total of 27.10 cents per gallon.

## Tables and Charts

The following table provides the current rates for Motor Fuel Excise Tax. The tax rates listed in this section are as of July 1, 2023.

### Motor Fuel Excise Tax Rates

<b>Fuel Type</b>	<b>Flat Rate</b>	<b>Variable Rate</b>	<b>Combined Rate</b>
Gasoline	\$0.205	\$0.167	\$0.372
Diesel	\$0.205	\$0.167	\$0.372
Gasohol	\$0.205	\$0.167	\$0.372
Liquid Propane	\$0.150	\$0.060	\$0.210
Liquid Natural Gas	\$0.132	\$0.051	\$0.183
Compressed Natural Gas*	\$0.205	\$0.079	\$0.284
Ethanol	\$0.205	\$0.167	\$0.372
Methanol	\$0.205	\$0.167	\$0.372
E8 - E-85	\$0.205	\$0.167	\$0.372
M8 - M-85	\$0.205	\$0.167	\$0.372
A5 - A55	\$0.205	\$0.167	\$0.372
BD - Biodiesel	\$0.205	\$0.167	\$0.372

\* All fuel tax rates noted are per gallon except for Compressed Natural Gas (CNG), which is taxed per cubic foot.

## PERSONAL INCOME TAX

The West Virginia Personal Income Tax Act (W.Va. Code §, Chapter 11, Article 21) was first enacted by the 1961 Regular Session of the Legislature on February 10, 1961 and signed by the Governor on February 14, 1961. The Personal Income Tax Act has been amended several times. Over the years, the rates, deductions, and exemptions have changed. The statute has also been amended various times to include several tax credits, generally expiring within a defined period.

The Personal Income Tax is the State's largest source of revenue. During Fiscal Year 2023, total collections were roughly \$2.69 billion. Of that amount, \$2.66 billion was deposited in the State General Revenue Fund, representing 41.5 percent of the total revenue in that fund.

### Personal Income Tax Revenue (in millions) Fiscal Years 2019 – 2023

Fiscal Year	General Revenue Fund	Refund Reserve Fund	Other Post Employment Benefits	Total Receipts
2019	\$2,096.8	\$12.0	\$30.0	\$2,138.8
2020	\$1,947.5	\$(23.0)	\$30.0	\$1,954.5
2021	\$2,253.8	\$45.0	\$30.0	\$2,328.8
2022	\$2,502.8	\$15.0	\$30.0	\$2,547.8
2023	\$2,663.6	\$0.0	\$30.0	\$2,693.6

### Taxpayers

State Personal Income Tax is imposed on the West Virginia taxable income of resident individuals, estates, and trusts wherever their income is earned. Nonresident individuals, estates and trusts are also subject to this tax on income from West Virginia sources. Corporations, partnerships (but not partners), other entities treated like partnerships for federal income tax purposes, and certain trusts and associations are exempt from West Virginia Personal Income Tax. Individuals, estates, and trusts that are required to file a federal individual income tax return or that have West Virginia adjusted gross income in excess of their total personal exemptions must file a West Virginia return. Individuals, estates, and trusts are also required to file West Virginia returns even though they may be exempt from filing a federal return or may have correctly reported zero federal tax liability.

A partnership (or other entity treated like a partnership for federal income tax purposes) that is subject to the new federal audit rules may have additional West Virginia filing obligations and may owe West Virginia income tax a result of federal audit adjustments.

### Filing Status

There are five filing status categories for state income tax purposes, which determine the rate used to calculate to the income tax liability. The categories are:

1. Single
2. Head of Household
3. Married Filing Jointly



4. Married Filing Separately
5. Widow(er) with a dependent child

### Tax Base

Computation of West Virginia taxable income begins with federal adjusted gross income. West Virginia adjusted gross income is determined by application of various State modifications increasing or decreasing federal adjusted gross income. Modifications include, among others, decreasing adjustments for interest from U.S. savings bonds and an \$8,000 income exclusion for those age 65 and older. Individuals with federal adjusted gross income below \$10,000 (\$5,000 for married filing separate taxpayers) may exclude up to 100 percent of earned income from tax.

West Virginia taxable income is determined by subtraction of a value related to personal exemption allowances from West Virginia adjusted gross income. Taxpayers are generally allowed a \$2,000 personal exemption for each allowable personal exemption. The exemption for an estate or trust is \$600. Persons claimed as dependents on another's return are allowed a \$500 exemption.

### Tax Rates

For tax years beginning on or after January 1, 2023, Personal Income Tax rates are graduated from 2.36 percent to 5.12 percent. Two rate schedules are provided: one for joint returns, individuals, heads of household, estate, and trusts; and one for married taxpayers filing separate returns. Taxpayers with income at or below 100 percent of the annual federal poverty income guideline based upon household size are exempt from payment of State personal income tax through a family tax credit program.

### West Virginia Tax Rate Schedule

#### All Taxpayers Excluding Married Filing Separately

TAXABLE INCOME		TAX LIABILITY		
Over	Not Over	Base Tax	Plus	Over
\$0	\$10,000	\$0.00	2.36%	\$0
\$10,000	\$25,000	\$236.00	3.15%	\$10,000
\$25,000	\$40,000	\$708.00	3.54%	\$25,000
\$40,000	\$60,000	\$1,239.50	4.72%	\$40,000
\$60,000		\$2,183.50	5.12%	\$60,000

#### Married Filing Separately Only

TAXABLE INCOME		TAX LIABILITY		
Over	Not Over	Base Tax	Plus	Over
\$0	\$5,000	\$0.00	2.36%	\$0
\$5,000	\$12,500	\$118.00	3.15%	\$5,000
\$12,500	\$20,000	\$354.25	3.54%	\$12,500
\$20,000	\$30,000	\$619.75	4.72%	\$20,000
\$30,000		\$1,091.75	5.12%	\$30,000

There are provisions for future personal income tax reductions. Beginning on August 15, 2024, and every August 15th thereafter, the Secretary of Revenue will determine whether the total fiscal year General Revenue Fund collections less the amount of Severance Tax collected from the immediately preceding fiscal year are in excess of inflation adjusted base year revenues less base year Severance Tax collected. If the total fiscal year adjusted General Revenue Fund collections are more than the inflation adjusted base year revenues, then there will be a reduction in the personal income tax rates beginning in the next taxable year. The reduction in personal income tax rates for a tax year may not be greater than 10 percent.

## **Exemptions**

While a taxpayer can no longer claim personal exemptions on their federal income tax return, West Virginia has retained personal exemptions under the same rules applicable under federal law in prior years. The West Virginia personal exemption allowance is \$2,000 per allowable exemption. A husband and wife who file a joint federal return, but separate West Virginia returns may each claim only the exemptions to which they would have been entitled as individuals if they had filed separate federal returns. A surviving spouse is allowed one additional \$2,000 exemption for two taxable years following the year of the death of his or her spouse. Those claimed as dependents on another's return are entitled to a \$500 exemption. Estates and trusts are allowed only one \$600 exemption.

## **Increasing and Decreasing Modifications**

### *Increasing Modifications*

West Virginia modifications that increase federal adjusted gross income are as follows:

1. interest income on State and local obligations other than those of West Virginia and its political subdivisions,
2. interest or dividend income from obligations or securities of any United States authority, commission or agency that are, by federal law, exempt from federal income tax but not from State income tax,
3. interest on money borrowed to purchase obligations that earn income exempt from State income tax,
4. certain other elements of income received from partnership or fiduciary roles primarily those of the types described above,
5. the amount of lump sum distributions for which the taxpayer has elected to be separately taxed for federal income tax purposes under Section 402(e) of the Internal Revenue Code,
6. the amount withdrawn from a tuition pre-payment plan not used for payment of qualified expenses, and
7. the amount withdrawn from a Jumpstart Savings account not used for qualified expenses.

### *Decreasing Modifications*

West Virginia modifications that decrease federal adjusted gross income are as follows:

1. the first \$2,000 of benefits received under the West Virginia Public Employees' Retirement System or the West Virginia Teachers' Retirement System or federal civil service retirement benefits received to the extent included in federal taxable income,

2. annual military retirement income, including survivorship annuities,
3. all benefits received under the West Virginia Department of Public Safety Death, Disability, and Retirement Fund or retirement income received as pensions or annuities from any qualified West Virginia or local police, deputy sheriffs' or firefighters' retirement system or from any Federal retirement fund where the duties of the position were similar to police or firefighters,
4. income from any source received by persons who are sixty-five years of age or older or who are totally and permanently disabled or received by their surviving spouses, regardless of age, to the extent included in federal taxable income, if the deduction does not exceed \$8,000 for a single return or a maximum of \$8,000 per person for a joint return,
5. income of up to \$8,000 for a surviving spouse of a person who was age 65 or older or was totally and permanently disabled,
6. interest on United States obligations to the extent included in federal adjusted gross income,
7. interest or dividends on obligations or other securities of any United States authority; commission or agency, which is included in federal adjusted gross income but is exempt by federal law from State income taxation except for dividends from national bank stock, but including federal interest and dividends paid to shareholders of a regulated investment company under section 852 of the Internal Revenue Code,
8. interest or dividend income from bonds issued by the State of West Virginia or its authorities, commissions, or instrumentalities where the interest is subject to federal taxation but exempt by West Virginia law from State taxation,
9. shareholder modifications related to distributive shares of ownership in an S corporation,
10. the amount of any refund or credit for overpayment of income taxes imposed by West Virginia or any other taxing jurisdiction to the extent included in federal adjusted gross income,
11. contributions to medical savings accounts established pursuant to W.Va. Code §33-16-15 to the extent included in federal adjusted gross income,
12. qualified payments made toward West Virginia SMART529 plans during the tax year,
13. qualified payments made toward Jumpstart Savings account during the year,
14. an amount equal to a distribution from a Jumpstart Savings Account received by a distributee that is used to pay for qualified expenses,
15. certain other income which this State is prohibited from taxing under federal law that is included in federal adjusted gross income, specifically Railroad Retirement benefits,
16. premiums that are paid for long-term care insurance that provides coverage for the taxpayer, the taxpayer's spouse, parent or dependent if the amount of the premiums is not allowable as a deduction when determining the taxpayer's federal adjusted gross income,
17. active-duty military pay received by West Virginia National Guard or reserve forces members who are called to active duty because of a call out under the authority of the President of the United States for domestic security duty,
18. contributions to a qualified trust maintained for the benefit of a child with autism by the parent or guardian of a child with autism to the extent the amount is not allowable as a deduction when arriving at federal adjusted gross income up to a maximum of \$1,000 per year for single filers and persons who are married but filing separately and \$2,000 per year for persons who are married and filing jointly,
19. active-duty military pay of a West Virginia resident who was on active duty for thirty or more consecutive days and who has separated from active military duty to the extent included in federal adjusted gross income,

20. shareholders' proportional share of all items of income, loss, deduction, or credit of the S corporation for shareholders of S corporations in the banking business for tax years beginning on or after January 1, 2018,
21. amount equal to that portion of net income directly derived from a qualified opportunity zone business located in a qualified opportunity zone which is in West Virginia,
22. amount equal to the difference between the amount that would have been received had the plan not been terminated and the amount received from the guarantor for retirees who retire under an employer-provided defined benefit plan that terminated prior to or after retirement and is covered by a guarantor whose maximum benefit guarantee is less than the maximum to which the retiree was entitled through the 2027 tax year,
23. for taxable years beginning on and after January 1, 2022, certain individuals may deduct the social security payments they receive, which are included in federal adjusted gross income,
24. contributions by a designated beneficiary to an Achieving a Better Life Experience (ABLE) account, and
25. amount equal to the West Virginia gaming and gambling losses allowable as an itemized deduction under the United States Internal Revenue Code, not to exceed the amount of West Virginia gaming and gambling winnings.

Various credits are allowed against Personal Income Tax liability.

1. A credit is granted to taxpayers in an amount equal to the West Virginia Personal Income Tax already withheld from their wages or salaries.
2. A credit is granted to taxpayers for their payments of estimated taxes. Estimated taxes must be paid by each resident and nonresident taxpayer whose West Virginia adjusted gross income, except for any part of that income from which West Virginia income tax is withheld, can reasonably be expected to exceed \$400 plus the sum of the personal exemption allowances to which the taxpayer is entitled.
3. A one-time credit is allowed for non-family adoptions. The credit is equal to \$5,000, which may be taken in the year of the adoption of each non-family child whose age at adoption is under eighteen. This credit may be taken over a period of three years. A nonfamily adoption is the adoption of a child by a taxpayer or taxpayers who are not the father, mother, or stepparent of the child.
4. Low-income taxpayers who are eligible for the Homestead Exemption for property tax purposes are eligible for the Senior Citizen Tax Credit for Property Tax Paid. The tax credit is based on the amount of ad valorem property taxes paid on the first \$20,000, or portion thereof, of the taxable assessed value over the \$20,000 Homestead Exemption.
5. Homeowners with income of not more than 300 percent of federal poverty guidelines may be eligible to take the Homestead Excess Property Tax Credit for owner-occupied residential property taxes paid more than 4 percent of total gross income. The maximum credit is \$1,000. The Homestead Excess Property Tax Credit is to be equal to the amount by which the difference between real property taxes paid for the tax year on owner occupied residential property minus the amount of credit calculated for the Senior Citizen Tax Credit for Property Tax paid exceeds 4 percent of the taxpayer's gross household income for the tax year.
6. Any taxpayer who seeks a license to carry a concealed deadly weapon and completes a training course in the handling and firing of a handgun is eligible for a credit against

their Personal Income Tax liability of the amount of the fee for the training course, up to \$50. If the training was free or cost less than \$50, then the credit may be applied to the fees associated with the initial application for the license.

7. Families meeting certain income criteria are eligible for the Family Tax Credit. The credit is based on family size and the federal poverty guidelines.
8. Several additional tax credits may be available to some taxpayers. These include the Economic Opportunity Tax Credit, the Downstream Natural Gas Manufacturing Investment Tax Credit, the Post-Coal Mine Site Business Credit, the West Virginia Tax Credit for Federal Excise Tax Imposed Upon Small Arms and Ammunition Manufacturers, the Apprenticeship Training Tax Credit, the High-Wage Growth Business Tax Credit, the Jumpstart Savings Program Credit, the Military Incentive Credit, the Environmental Agricultural Equipment Credit, the Neighborhood Investment Program Credit, the Historic Rehabilitated Buildings Investment Credit, the Credit for Rehabilitated Residential Buildings Investment, the Farm to Food Bank Tax Credit, the Tax Credit for Donation or Sale of Vehicle, and the West Virginia Film Industry Investment Credit.

## **Special Provisions**

### *Military*

If the taxpayer is a member of the United States military forces and was domiciled in West Virginia at the time of entering military service, then assignment to duty outside the State does not change his or her West Virginia domicile. Such a taxpayer must file a West Virginia return and pay any tax owed in the same manner as any other resident individual unless both of the following conditions were met:

1. had no permanent place of abode in West Virginia during the taxable year, and
2. did not spend more than thirty not necessarily consecutive days in West Virginia during the taxable year.

If the military taxpayer met both conditions listed above but had income from some West Virginia sources, then he or she may be required to file an income tax return as a nonresident depending on the nature of the income. If the taxpayer has separated from active military service but was on active duty for thirty or more continuous days outside of West Virginia, the active military pay is exempt for the year of separation from the service. Members of the United States military forces whose domicile is outside West Virginia are not taxed by this State on their military compensation, even though they may be stationed in West Virginia and maintain a permanent place of abode in the State.

Spouses of military service members may be exempt from Personal Income Tax on wages received from services performed in West Virginia if all three of the following conditions are met:

1. the service member is present in West Virginia in compliance with military orders,
2. the spouse is in West Virginia solely to be with the service member, and
3. the spouse maintains domicile in another state.

### *Reciprocal Agreements*

A credit may be granted to West Virginia residents because of income tax imposed by another state but not for taxes imposed by any city, township, borough, or political subdivision of a state. Currently, credit is allowed for income tax imposed by thirty-six states and the District of Columbia. Taxpayers who are residents for income tax purposes of one of the other states or of Pennsylvania or Virginia may also become residents for tax purposes of West Virginia under certain conditions. The West Virginia State Tax Department cannot grant this credit unless the taxpayer's domicile is in West Virginia. In the cases of five of these states, Kentucky, Maryland, Ohio, Pennsylvania and Virginia, credit is allowed only on taxable income from some source other than salaries or wages.

Some credit may be granted to nonresident West Virginia taxpayers when income they receive from West Virginia sources is also subject to income taxation by their state of residence, provided their state has entered into a written reciprocal agreement with this State.

### *Residency*

For Personal Income Tax purposes, a resident is a person who:

1. has his domicile in West Virginia, even though he maintains a permanent place of abode outside the State and does not maintain a permanent place of abode in West Virginia if he spends more than thirty (not necessarily consecutive) days of the taxable year here, or
2. has his domicile outside West Virginia but maintains a permanent place of abode in West Virginia and spends more than 183 (not necessarily consecutive) days of the taxable year here unless the person involved is a member of the United States military forces.

A taxpayer who changes his or her residence either from West Virginia to another state or from another state to West Virginia during the tax year is required to file a tax return as a nonresident or part-year resident.

### **Special Accruals**

The taxpayer who changes from being a resident of West Virginia to being a nonresident or from being a nonresident to being a resident of West Virginia is subject to special accrual rules regardless of his or her method of accounting for federal income tax purposes. This means, for example, that if a taxpayer sold property in West Virginia while still a resident and agreed to accept payment for it on an installment basis, the taxpayer must include in federal adjusted gross income for the year of the sale all future payments as though the taxpayer received the future payments prior to taxpayer's change of residency. This special accrual rule does not apply if the taxpayer files a bond or other security acceptable to the State Tax Commissioner to secure taxpayer's filing of West Virginia income tax returns as payments are received in subsequent tax years. A taxpayer in this situation needs to follow the rules in W.Va. Code §11-21-44.

## **Elective Pass-Through Entity Tax**

Legislation passed in the 2023 Regular Session created an elective pass-through entity tax retroactive to Tax Year 2022. The elective pass-through entity tax is a tax imposed directly upon the income of the entity, defined as the resident pass-through entity owners' income plus the apportioned nonresident pass-through entity owners' income. The pass-through entity tax is filed and paid instead of the nonresident withholding. The rate of tax imposed on an electing pass-through entity would be equal to the top marginal Personal Income Tax rate and would be imposed on the apportioned West Virginia income of the entity.

A credit is allowed against a taxpayer's aggregate Personal Income Tax liability for a taxpayer who is an owner of an electing pass-through entity. The credit is equal to the owner's proportionate share of the tax levied and remitted by the owner's electing pass-through entity for the taxable year. The credit is claimed in the taxpayer's taxable year that includes the last day of the electing pass-through entity's taxable year for which the tax was paid. Credit in excess of the aggregate amount of tax otherwise due may be carried forward by the taxpayer for up to five taxable years.

### **Filing Dates**

#### *For Individuals, Estates and Trusts*

The annual income tax return is due by April 15 for taxpayers without an extension of time to file the return. Taxpayers who have extensions of time to file their federal income tax returns have automatic extensions of time to file the West Virginia returns. An extension to file a return is not an extension of time to pay the tax shown to be due on the return when it is filed.

#### *Estimated Tax Payments*

Taxpayers whose West Virginia adjusted gross income other than wages are expected to exceed \$600 plus the amount allowed for the personal exemptions must file quarterly returns and pay estimated tax. Taxpayers who fail to remit quarterly estimated tax payments may be subject to penalties. The annual return of a farmer will be treated as his declaration of estimated tax if the annual return is filed on or before March 1 of the succeeding year and the tax shown to be due on the return is paid in full at the time of filing.

#### *For Employers*

An employer who is required to file a withholding return for 50 or more employees must file all data by electronic media. Taxpayers who withhold less than \$600 annually or who employ certain domestic and/or household employees can file an annual return. The annual employer withholding tax return is due January 31 following the close of the calendar year. The annual return requires reconciliation of employer withholding taxes remitted for the closed calendar year.

### **Disposition of Revenue**

During Fiscal Year 2023, \$2.66 billion (98.9 percent) from the Personal Income Tax was deposited in the State General Revenue Fund. \$30 million (1.1 percent) went to the West Virginia Retiree Health Benefit Trust Fund to benefit Other Post-Employment Benefits (OPEB).

## Comparison with Other States

The tax rates listed in this section are for Tax Year 2023 and for individuals. In some states, rate schedules vary according to filing status. In addition to the state income tax, local income taxes are imposed in Kentucky, Maryland, Ohio, and Pennsylvania.

### Comparison of State Tax Rates Tax Year 2023<sup>6</sup>

Kentucky	Flat rate of 4.5%
Maryland	Rates range from 2% on the first \$1,000 of taxable income to 5.75% on incomes exceeding \$250,000
Ohio	Rates range from 2.75% of taxable income over \$26,050 to 3.75% of taxable income over \$115,300
Pennsylvania	Flat rate of 3.07%
Virginia	Rates range from 2% on the first \$3,000 of taxable income to 5.75% percent on taxable income of \$17,001 and above
West Virginia	Rates range from 2.36% on taxable income not over \$10,000 to \$2,183.50 + 5.12% of taxable income in excess of \$60,000

## Tables and Charts

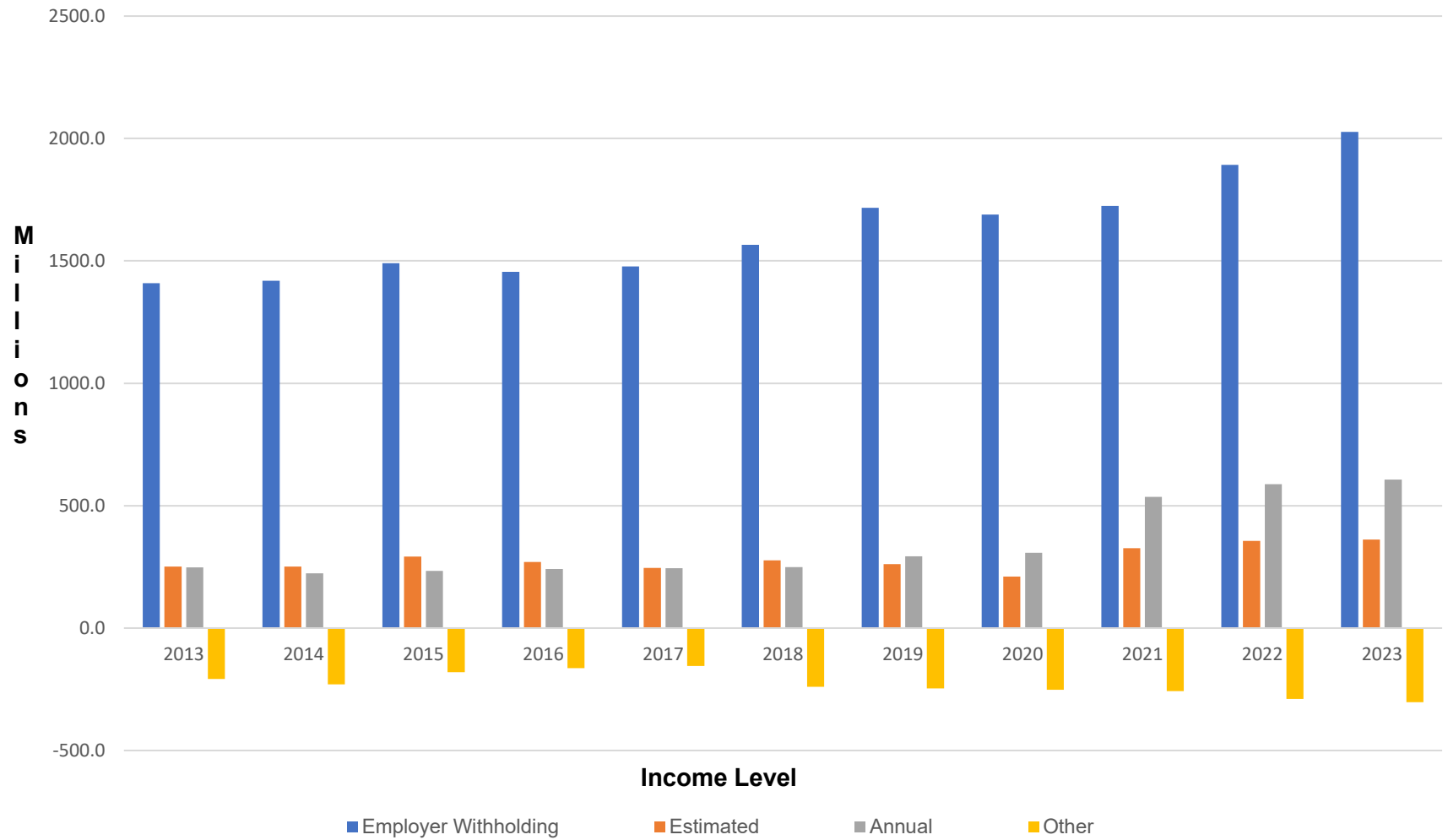
The following tables and charts provide a variety of statistical information from West Virginia Personal Income Tax returns, including distribution of revenue, source of revenue and data compiled on individual tax returns.

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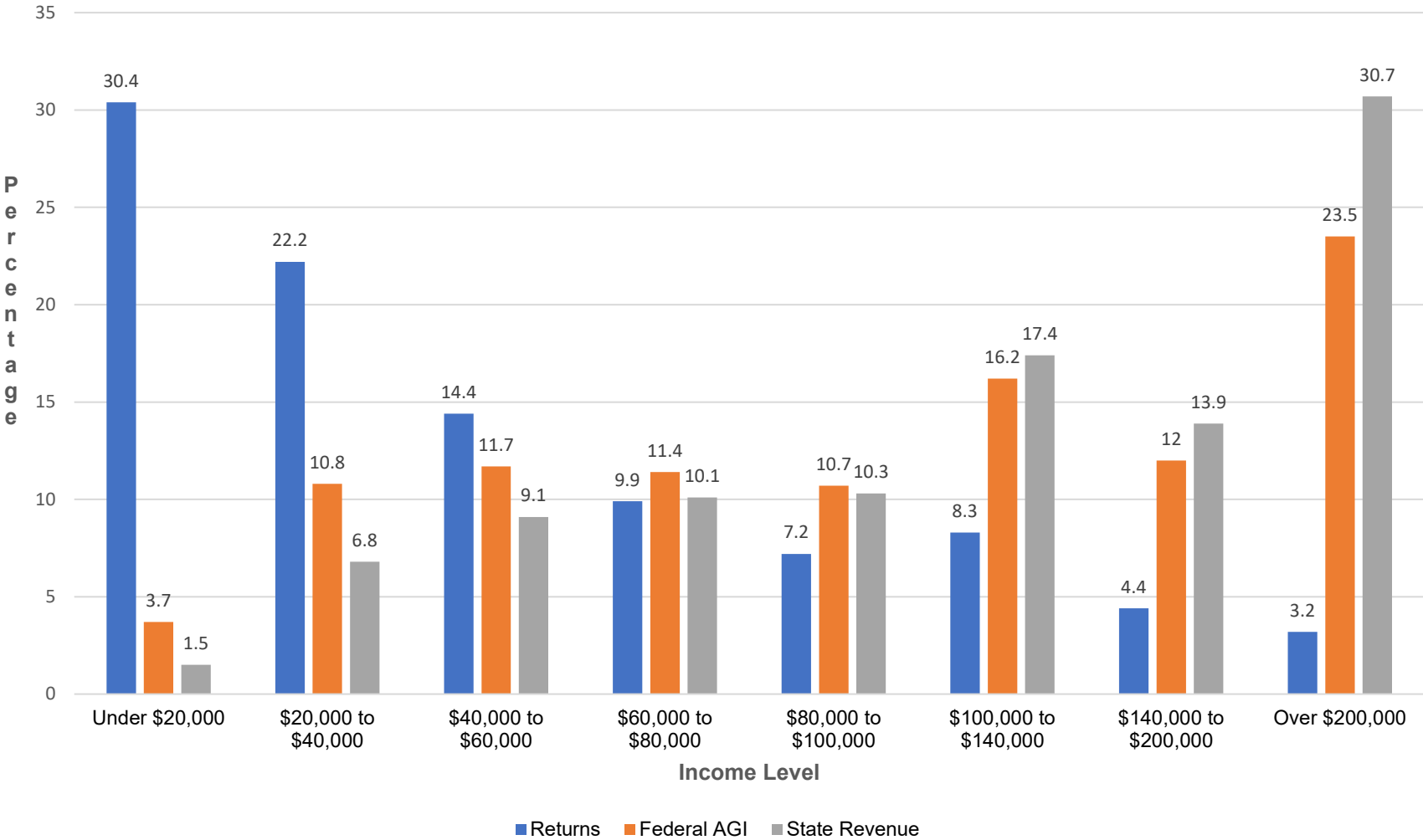
<sup>6</sup> Additional local income or wage taxes apply in Kentucky, Maryland, Ohio, and Pennsylvania. These local taxes that are not reflected in this table.



## Personal Income Tax by Type of Payment



### Personal Income Tax Resident Returns Total Returns, Income and Tax by Income Level Tax Year 2021



## Income Tax Summary for Tax Year 2021 – Total Resident Returns

Adjusted Gross Income Level	Total Returns	Single, Head of Household, Joint, Other	Married Filing Separately	Federal Adjusted Gross Income	Exemptions	Taxable Income	State Revenue
Under \$20,000	232,397	228,671	3,726	\$1,709,551,041	305,598	\$1,035,475,241	\$33,130,232
\$20,000 to \$40,000	169,322	164,293	5,029	4,979,318,029	290,624	3,985,805,239	146,032,126
\$40,000 to \$60,000	109,649	105,343	4,306	5,405,883,166	206,640	4,643,958,180	194,366,978
\$60,000 to \$80,000	75,308	73,110	2,198	5,228,496,470	161,752	4,572,446,884	215,616,717
\$80,000 to \$100,000	54,836	53,888	948	4,904,223,655	129,970	4,339,636,462	221,388,271
\$100,000 to \$120,000	38,339	37,798	541	4,191,596,551	96,829	3,822,525,766	205,737,315
\$120,000 to \$140,000	25,196	24,887	309	3,258,346,099	66,225	3,008,607,186	167,395,872
\$140,000 to \$160,000	16,266	16,118	148	2,428,440,409	43,682	2,260,626,536	128,699,326
\$160,000 to \$180,000	10,522	10,399	123	1,780,059,502	28,270	1,666,325,481	96,530,922
\$180,000 to \$200,000	6,973	6,889	84	1,319,504,421	18,561	1,242,379,609	72,939,164
Over \$200,000	24,756	24,480	276	10,827,121,590	65,513	10,545,907,745	657,447,074
<b>Total</b>	<b>763,564</b>	<b>745,876</b>	<b>17,688</b>	<b>\$46,032,540,933</b>	<b>1,413,664</b>	<b>\$41,123,694,329</b>	<b>\$2,139,283,997</b>

## Comparison of 2020 and 2021 Personal Income Tax Returns – All Returns with Tax Liability

Adjusted Gross Income Level	Number of Returns		Federal Adjusted Gross Income*		Taxable Income*		State Revenue	
	2020	2021	2020	2021	2020	2021	2020	2021
Under \$20,000	124,964	115,208	\$1,753,322,061	\$1,640,898,085	\$1,198,962,884	\$1,113,323,296	\$37,213,818	\$34,478,760
\$20,000 to \$40,000	186,431	177,504	\$5,456,690,382	5,221,462,746	4,433,721,021	4,239,641,360	157,164,577	150,469,784
\$40,000 to \$60,000	116,912	116,232	\$5,766,837,863	5,732,956,187	5,004,116,599	4,961,462,395	201,498,434	200,020,845
\$60,000 to \$80,000	79,866	80,946	\$5,543,919,542	5,621,119,539	4,907,853,971	4,940,681,533	221,310,883	222,193,357
\$80,000 to \$100,000	57,228	59,325	\$5,117,208,439	5,306,346,154	4,600,935,522	4,710,974,542	223,402,501	228,062,835
\$100,000 to \$120,000	39,748	41,918	\$4,344,714,338	4,584,109,922	3,969,185,702	4,187,556,747	200,849,657	212,128,620
\$120,000 to \$140,000	25,512	27,996	\$3,296,638,539	3,621,387,274	3,050,281,683	3,348,181,665	157,462,109	173,117,347
\$140,000 to \$160,000	16,344	18,472	\$2,437,160,355	2,758,599,514	2,271,549,089	2,571,105,157	118,434,366	133,802,368
\$160,000 to \$180,000	10,604	12,326	\$1,796,265,357	2,086,430,405	1,685,909,754	1,956,649,744	87,745,039	101,222,245
\$180,000 to \$200,000	7,224	8,345	\$1,366,940,399	1,579,785,023	1,291,914,351	1,489,888,008	67,208,961	76,927,994
Over \$200,000	31,183	39,396	\$40,301,070,652	74,137,072,387	40,001,582,111	74,099,923,399	557,431,011	774,628,653
<b>Total</b>	696,016	697,658	\$77,180,767,927	\$112,290,167,236	\$72,416,012,687	\$107,619,387,846	\$2,029,721,356	\$2,307,052,808

\* Includes income of non-resident taxpayers from all sources and locations prior to apportionment to West Virginia.

## Comparison of 2020 and 2021 Personal Income Tax Returns – Residents Only

Federal Adjusted Gross Income Level	Number of Returns with Tax Liability		WV Income Tax	
	2020	2021	2020	2021
Under \$20,000	117,053	107,720	\$35,870,467	\$33,130,232
\$20,000 to \$40,000	176,135	167,399	152,863,024	146,032,126
\$40,000 to \$60,000	109,870	109,085	196,374,221	194,366,978
\$60,000 to \$80,000	74,508	75,099	215,717,410	215,616,717
\$80,000 to \$100,000	53,015	54,760	217,646,984	221,388,271
\$100,000 to \$120,000	36,398	38,314	195,254,790	205,737,315
\$120,000 to \$140,000	22,957	25,181	152,577,260	167,395,872
\$140,000 to \$160,000	14,445	16,257	114,151,490	128,699,326
\$160,000 to \$180,000	9,144	10,518	84,105,050	96,530,922
\$180,000 to \$200,000	6,119	6,971	64,174,101	72,939,164
Over \$200,000	19,848	24,747	484,046,881	657,447,074
Totals	639,492	636,051	\$1,912,881,678	\$2,139,283,997

## 2021 Personal Income Tax Returns by County

	Number of Returns	Federal Adjusted Gross Income	WV Personal Income Tax Liability		Number of Returns	Federal Adjusted Gross Income	WV Personal Income Tax Liability
Barbour	6,058	\$300,819,595	\$13,036,511	Mineral	11,521	656,506,799	29,380,130
Berkeley	54,064	3,404,811,806	157,825,543	Mingo	6,429	289,211,921	12,172,121
Boone	6,988	347,701,893	14,693,058	Monongalia	37,970	3,122,342,289	159,611,890
Braxton	4,942	234,819,787	10,109,751	Monroe	5,169	255,764,475	10,941,160
Brooke	9,275	549,257,673	24,653,029	Morgan	7,510	415,499,599	18,232,429
Cabell	35,505	2,199,495,591	103,852,794	Nicholas	9,332	483,591,330	21,474,254
Calhoun	2,330	111,561,421	4,778,887	Ohio	19,466	1,520,022,480	75,811,002
Clay	2,790	126,687,389	5,180,766	Pendleton	2,975	141,147,774	6,026,996
Doddridge	2,365	130,653,938	5,763,004	Pleasants	2,897	180,888,157	8,323,394
Fayette	15,022	732,809,736	31,540,903	Pocahontas	3,499	165,503,040	7,116,125
Gilmer	2,144	117,255,018	5,370,001	Preston	13,171	711,021,612	31,300,075
Grant	5,141	265,694,240	11,692,782	Putnam	23,896	1,751,188,126	85,141,290
Greenbrier	13,787	742,057,471	33,111,571	Raleigh	28,374	1,596,495,264	77,415,233
Hampshire	9,206	485,808,218	21,306,335	Randolph	11,413	614,250,013	27,599,144
Hancock	12,980	747,097,139	33,700,104	Ritchie	4,018	230,356,947	10,363,844
Hardy	5,992	287,434,839	12,525,670	Roane	4,958	235,376,752	10,122,680
Harrison	29,081	1,925,635,431	91,875,907	Summers	4,053	190,969,898	7,822,541
Jackson	11,501	683,967,551	31,555,747	Taylor	6,911	411,017,004	18,660,034
Jefferson	24,133	1,937,456,951	95,820,882	Tucker	2,935	160,331,836	7,153,857
Kanawha	75,742	4,938,818,865	234,792,079	Tyler	3,536	286,866,315	14,409,013
Lewis	7,106	389,469,915	17,556,745	Upshur	9,513	503,724,828	22,450,285
Lincoln	6,390	306,006,609	12,840,673	Wayne	13,844	732,398,142	32,015,981
Logan	10,394	539,079,976	23,639,939	Webster	2,823	164,002,973	7,765,626
McDowell	4,564	187,386,614	7,294,678	Wetzel	6,048	358,597,075	16,276,801
Marion	25,019	1,478,259,332	67,424,367	Wirt	2,155	103,570,034	4,401,000
Marshall	11,794	706,317,946	32,409,990	Wood	35,466	2,180,340,485	101,002,770
Mason	9,781	506,646,245	22,065,361	Wyoming	6,325	294,890,924	12,367,668
Mercer	22,227	1,112,489,505	48,179,975	<b>State Total</b>	<b>712,528</b>	<b>\$43,251,376,786</b>	<b>\$2,009,954,395</b>

## Rank of Counties by Average Federal Adjusted Gross Income as Reported on 2021 Personal Income Tax Returns

County	Average	% of State Average	Rank
Barbour	\$49,657	81.8%	40
Berkeley	\$62,977	103.7%	8
Boone	\$49,757	82.0%	39
Braxton	\$47,515	78.3%	47
Brooke	\$59,219	97.6%	16
Cabell	\$61,949	102.1%	10
Calhoun	\$47,880	78.9%	46
Clay	\$45,408	74.8%	53
Doddridge	\$55,245	91.0%	24
Fayette	\$48,782	80.4%	42
Gilmer	\$54,690	90.1%	26
Grant	\$51,681	85.1%	37
Greenbrier	\$53,823	88.7%	29
Hampshire	\$52,771	86.9%	33
Hancock	\$57,558	94.8%	19
Hardy	\$47,970	79.0%	44
Harrison	\$66,216	109.1%	6
Jackson	\$59,470	98.0%	14
Jefferson	\$80,282	132.3%	3
Kanawha	\$65,206	107.4%	7
Lewis	\$54,809	90.3%	25
Lincoln	\$47,888	78.9%	45
Logan	\$51,865	85.4%	34
McDowell	\$41,058	67.6%	55
Marion	\$59,085	97.3%	17
Marshall	\$59,888	98.7%	12
Mason	\$51,799	85.3%	36
Mercer	\$50,051	82.5%	38

County	Average	% of State Average	Rank
Mineral	\$56,983	93.9%	21
Mingo	\$44,986	74.1%	54
Monongalia	\$82,232	135.5%	1
Monroe	\$49,480	81.5%	41
Morgan	\$55,326	91.1%	23
Nicholas	\$51,821	85.4%	35
Ohio	\$78,086	128.6%	4
Pendleton	\$47,445	78.2%	49
Pleasants	\$62,440	102.9%	9
Pocahontas	\$47,300	77.9%	50
Preston	\$53,984	88.9%	28
Putnam	\$73,284	120.7%	5
Raleigh	\$56,266	92.7%	22
Randolph	\$53,820	88.7%	30
Ritchie	\$57,331	94.4%	20
Roane	\$47,474	78.2%	48
Summers	\$47,118	77.6%	51
Taylor	\$59,473	98.0%	13
Tucker	\$54,628	90.0%	27
Tyler	\$81,127	133.7%	2
Upshur	\$52,951	87.2%	31
Wayne	\$52,904	87.2%	32
Webster	\$58,095	95.7%	18
Wetzel	\$59,292	97.7%	15
Wirt	\$48,060	79.2%	43
Wood	\$61,477	101.3%	11
Wyoming	\$46,623	76.8%	52
<b>Average State Income</b>	<b>\$ 60,701</b>		

## SEVERANCE TAX

The West Virginia Severance Tax (W.Va. Code §11-13A) was first enacted during the 1985 Legislative Session as part of the reform of the business tax structure and went into effect in 1987. The Severance Tax was enacted to apply to businesses that sever or extract natural resources.

### State Severance Tax Revenue (in millions) Fiscal Years 2019 – 2023

Fiscal Year	General Revenue Fund	Infrastructure Bond Fund	Timber Severance Tax <sup>7</sup>	Department of Environmental Protection Fund	All State Severance Taxes
2019	\$462.5	\$20.5	\$1.5		\$484.5
2020	\$267.1	\$21.9	(\$0.0)		\$289.0
2021	\$274.3	\$21.9	(\$0.0)		\$296.2
2022	\$768.8	\$22.0	(\$0.0)	\$1.9	\$792.7
2023	\$946.5	\$21.9	(\$0.0)	\$3.6	\$972.0

### Taxpayers

The Severance Tax is a gross receipts tax levied on businesses that sever, extract, and/or produce natural resource products within West Virginia. The Severance Tax base includes the processing and treatment of natural resource products as part of the production process. However, a person subject to the Severance Tax who purchases raw natural resources and processes them into commercially usable products, only pays tax on the value added in the processing and not on the total value of the product. The processing tax provision does not apply to oil or natural gas. The tax under these natural resource categories is levied only on the value of the product immediately after severance from the earth and before processing.

### Tax Rates

The tax rates on natural resources are generally 5.0 percent of gross receipts. The following is a list of natural resources and their respective tax rates:

Natural Resource <sup>8</sup>	Tax Rate
Coal mined and produced, average underground 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%
Steam coal sold directly to electric power generators	3.00%
Waste coal	2.50%
Oil	5.00%

<sup>7</sup> Severance Tax on timber was dedicated to the Division of Forestry Fund; this tax was repealed as of July 1, 2019.

<sup>8</sup> Reduced Severance Tax rates for “thin-seam” coal production apply only to new underground mines (mines first opened on or after April 11, 1997) with average seam thickness of less than 45 inches.



Oil from wells producing between one-half barrel and 10 barrels per day	2.50%
Natural gas and coalbed methane	5.00%
Gas from wells producing between 5,000 and 60,000 cubic feet of gas per day	2.50%
Other natural resource products	5.00%

\* Tax rates on the severance of coal are inclusive of the 0.35 percent local coal severance tax rate.

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 75 cents per ton of coal produced by a taxpayer for sale, profit or commercial use applies to all coal except for thin-seam coal and waste coal.

### **Exemptions for Natural Gas Severance Tax**

The gross receipts attributable to the following activities are excluded from the Severance Tax on natural gas and oil:

1. free natural gas provided to the surface owner;
2. natural gas from any well which produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately preceding the given tax year;
3. oil from any well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding the given tax year, and
4. for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produced marketable quantities of natural gas or oil.<sup>9</sup>

### **Credits Against Tax Liability**

An annual tax credit of \$500 is provided for each business engaged in activities in this State that are subject to the Severance Tax. The West Virginia Code provides for other tax credits that may be applied against Severance Tax liability in some cases. These include the Manufacturing Investment Tax Credit, the Coal-Loading Facilities Credit and the Coal Severance Tax Rebate Program. Explanations of these credits may be found in the Tax Credits section.

### **Additional Tax on the Severance, Extraction and Production of Coal**

Section 11-13A-6 of the West Virginia code levies an additional tax on the severance, extraction, and production of coal for the benefit of local governments at the rate of \$0.35 per \$100. This additional tax is collected for counties and municipalities by the West Virginia State Tax Department. Therefore, the tax rate for the coal classification on the Severance Tax return in the table on the preceding page is the total of the State rate and the additional tax for the benefit of local governments. The revenue from the additional severance tax is then distributed to local governments quarterly. The amount to be distributed is calculated without application of any credits against the Severance Tax that are otherwise authorized.

Revenue produced by the additional severance tax is divided into two funds: 75 percent goes into the County Coal Revenue Fund and the remaining 25 percent goes into the All Counties and

<sup>9</sup> Effective July 1, 2013, this exemption was eliminated for horizontally drilled wells.

Municipalities Revenue Fund. All counties and municipalities must create a coal severance tax revenue fund that shall be the depository for money distributed to any county or municipality.

#### *County Coal Revenue Fund*

A share of the County Coal Revenue Fund is distributed quarterly by the State Treasurer to the sheriff of each coal-producing county. Each coal-producing county receives as payment a fraction of this fund that is the same fraction that the coal produced in that county is of the total amount of coal produced in West Virginia. The amount of each quarterly payment is based on production data for the previous quarter. In counties with population over 200,000, at least 75 percent of the funds received from the County Coal Revenue Fund shall be apportioned to and expended within the coal-producing area or areas of the county.

#### *All Counties and Municipalities Revenue Fund*

Money from this smaller fund is distributed proportionately based on population to every municipality and county on a quarterly basis. Based on the population data from the most recent decennial U.S. Census of Population, the State Treasurer divides the smaller fund into shares for each of the fifty-five counties. Each county's share is then divided into two parts: rural and municipal. The rural part is equal to the fraction of the county's population that lives in unincorporated or rural areas, and this part is distributed to the sheriff of each county. The municipal part is equal to the fraction of the county's population that lives in incorporated towns or cities. The municipal part is further divided among the cities and towns based on their population in relation to the total municipal population of the county. Payments from the municipal portion are distributed to the treasurers of each incorporated city or town.

#### *Oil and Gas County Revenue Fund*

A share of the Oil and Gas County Revenue Fund is distributed annually by the State Treasurer to each oil or gas producing county. The amount allocated to each county is determined as follows:

1. For gas, the total amount available for distribution derived from Severance Tax on gas is divided by the total volume of cubic feet of gas extracted in West Virginia during the preceding year. This quotient is multiplied by the number of cubic feet of gas taken from the ground in each county during the preceding year.
2. For oil, the total amount available for distribution derived from Severance Tax on oil is divided by the total number of barrels of oil extracted in West Virginia during the preceding year. This quotient is multiplied by the number of barrels of oil taken from the ground in each county during the preceding year.

#### *All Counties and Municipalities Oil and Gas Revenue Fund*

Money from this smaller fund is distributed proportionately based on population to every municipality and county on an annual basis. Based on the population data from the most recent decennial U.S. Census of Population, the State Treasurer divides the smaller fund into shares for each of the 55 counties. Each county's share is then divided into two parts: rural and municipal. The rural part is equal to the fraction of the county's population that lives in unincorporated or rural areas, and this part is distributed to the sheriff of each county. The municipal part is equal to the fraction of the county's population that lives in incorporated towns or cities. The municipal part is further divided among the cities and towns based on their population in relation to the total

municipal population of the county. Payments from the municipal portion are distributed to the treasurers of each incorporated city or town.

#### *Department of Environmental Protection Distributions*

Beginning January 1, 2020, the Severance Tax rate on vertical wells with average daily natural gas production between 5,000 cubic feet and 60,000 cubic feet or average daily oil production between one-half barrel and 10 barrels is taxed at a rate of 2.5 percent. Ninety percent of the net proceeds from such reduced tax rate is deposited annually in the Department of Environmental Protection Oil and Abandoned Well Plugging Fund (DEP Fund). If the balance in the DEP Fund equals or exceeds \$6 million as of June 1, 2023, or on June 1<sup>st</sup> of any succeeding year, the 2.5 percent tax rate falls to zero percent the following calendar year.

Effective July 1, 2023, and every year thereafter, 0.75 percent of the net proceeds from Severance Taxes on oil and natural gas production, not to exceed \$1.2 million per year, shall be transferred to the Oil and Gas Operating Permit and Processing Fund for the purpose of regulating the oil and natural gas industry.

#### **Additional Dedication of the Severance Tax Attributable to Coal**

Five percent of the State Severance Tax on coal is to be shared with producing counties. Beginning FY2020 and thereafter, the minimum amount of this distribution will be at least the amount distributed in FY2019. The maximum amount of Severance Tax attributable to the severance of coal to be distributed to the coal-producing counties cannot exceed \$20 million in any fiscal year.

#### **Dedication of Oil and Gas Severance Tax Revenue**

Ten percent of Severance Tax revenue from the production of gas or oil in West Virginia is dedicated for distribution to counties and municipalities annually. The dedicated Severance Tax revenue is divided into two funds. Seventy-five percent goes into the Oil and Gas County Revenue Fund, and the remaining 25 percent goes into the All Counties and Municipalities Oil and Gas Revenue Fund. Distributions to any county or municipality are deposited into the general revenue fund of the entity and may be expended for any purpose, except that no more than 25 percent of the amount received may be spent for personal services. Also, in oil and gas-producing counties with a population more than 200,000, 75 percent of the monies received from the Oil and Gas County Revenue Fund must be spent in the oil and gas-producing areas of the county.

#### **Dedication of Coalbed Methane Severance Tax Revenue**

The first \$4 million of Severance Tax attributable to coalbed methane collected each fiscal year is dedicated to counties and county economic development authorities. Subject to proportional adjustments, 75 percent of the dedicated revenue is set aside for producing counties and allocated based upon production levels while the remaining 25 percent is set aside for all other counties and allocated in equal amounts. A proportional adjustment is required if the initial allocation to a county with coalbed methane production is less than the allocation to a non-producing county. The final county allocations for each fiscal year are distributed to county commissions if the amount is \$10,000 or less while final allocations that are greater than \$10,000 are distributed to county economic entities designated by the county commission of the county receiving the funds.

## **Dedication of Waste Coal Severance Tax Revenue**

Revenues collected from the annual privilege tax on waste coal are dedicated to the county commissions of the counties from which the sources of waste coal are located. These proceeds are collected in a special fund and distributed annually.

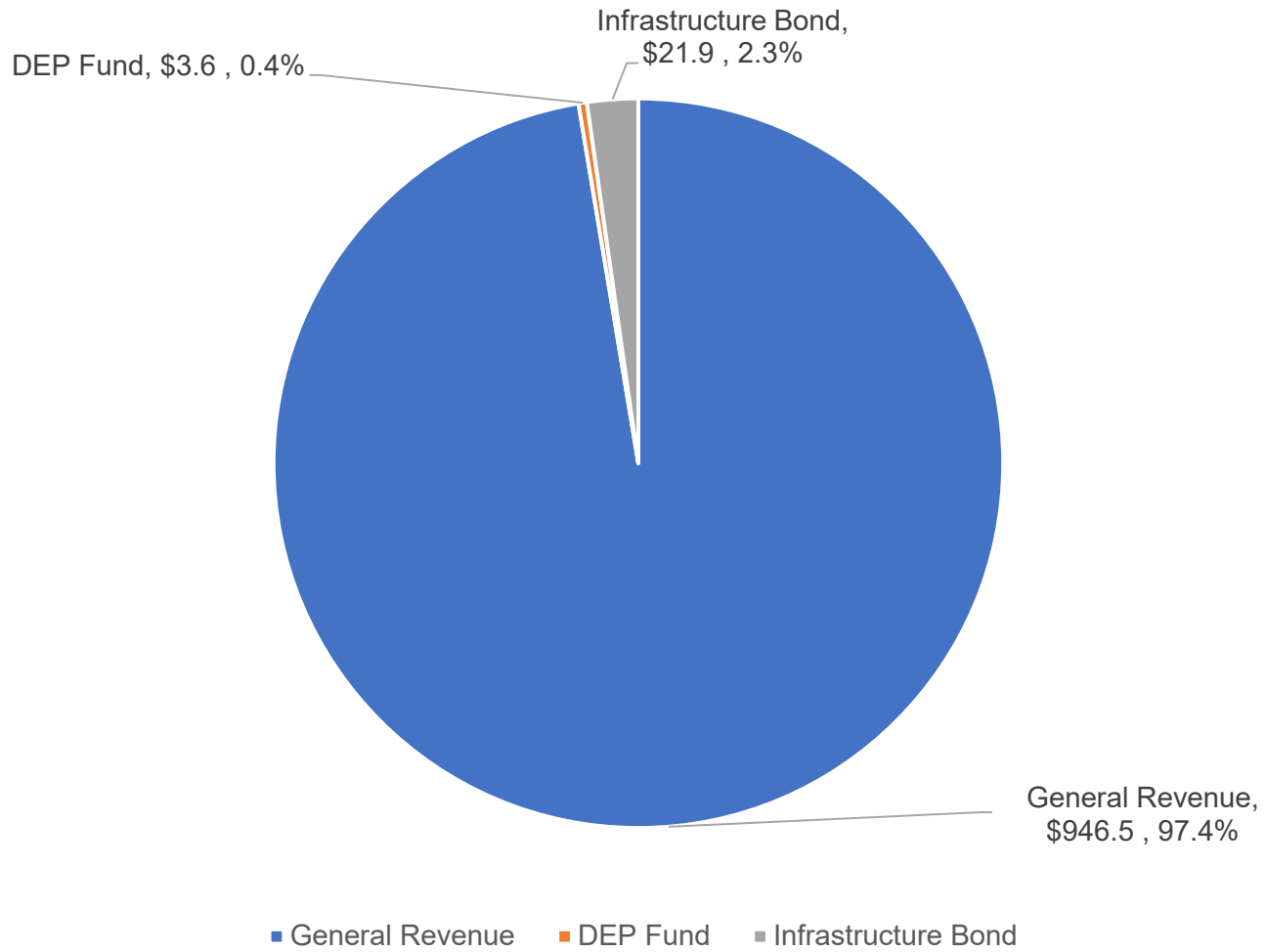
## **Disposition of Revenue**

During Fiscal Year 2023, \$946.5 million (97.7 percent) of the revenue from State Severance Taxes was deposited in the State General Revenue Fund and \$21.9 million (2.3 percent) went to the Infrastructure Bond Fund.

## **Tables and Charts**

The following chart and tables provide a variety of statistical information on West Virginia Severance Taxes.

### Distribution of Revenue from Severance Taxes FY2023 (in Millions)



## Distribution of the Additional Tax on the Severance, Extraction, and Production of Coal<sup>10</sup>

<u>Fiscal Year</u>	<u>Gross Yield (in millions)</u>
2014	\$19.2
2015	26.9
2016	20.0
2017	16.9
2018	20.1
2019	21.5
2020	23.1
2021	13.0
2022	22.8
2023	34.7

## Distribution of the Additional Dedication of Severance Tax Attributable to Coal

<u>Fiscal Year</u>	<u>Gross Yield (in millions)</u>
2014	\$4.9
2015	7.6
2016	7.9
2017	8.8
2018	11.1
2019	12.0
2020	12.0
2021	12.0
2022	12.0
2023	16.1

## Distribution of Dedicated Oil and Gas Severance Tax<sup>11</sup>

<u>Fiscal Year</u>	<u>Gross Yield (in millions)</u>
2014	\$0.0
2015	13.5
2016	15.9
2017	10.3
2018	9.7
2019	15.6
2020	17.6
2021	11.8
2022	13.2
2023	41.7

<sup>10</sup> For calendar quarters ending prior to July 1, 2013, the quarterly distributions were made in the first month of the following quarter. Beginning after June 30, 2013, the quarterly distributions are made in the first month of the second quarter. This change resulted in the only three distributions being made in FY2014.

<sup>11</sup> For calendar years ending prior to January 1, 2013, the annual distributions were made in June of the following year. Beginning after December 31, 2013, the annual distributions are made in October of the following year. This change resulted in the no distribution being made in FY2014.

### Distribution of Dedicated Coalbed Methane Severance Tax

<b>Fiscal Year</b>	<b>Gross Yield (in millions)</b>
2014	1.0
2015	1.4
2016	1.4
2017	0.4
2018	1.7
2019	1.1
2020	0.7
2021	0.6
2022	0.0
2023	1.6

## **SOFT DRINKS TAX**

The West Virginia Soft Drinks Tax (W.Va. Code §11-19) went into effect in 1951. The Soft Drinks Tax is an excise tax levied upon the sale, use, handling or distribution of bottled soft drinks, syrups and powder bases prepared for mixing soft drinks whether manufactured within or outside West Virginia.

### **Soft Drinks Tax Revenue Fiscal Years 2019 – 2023**

<u>Fiscal Year</u>	<u>Collections</u>
2019	\$13,802,504
2020	\$13,588,217
2021	\$13,868,872
2022	\$14,576,351
2023	\$13,765,539

### **Taxpayers**

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.

### **Tax Rates**

The tax is paid through the purchase of tax stamps or tax crowns by manufacturers, distributors, wholesale or retail dealers or any other person who is the original consignee of the soft drinks. The rates of the tax are as follows:

1. on bottled soft drinks: 1 cent on each 16.9 fluid ounces or any fraction of that amount, or 1 cent on each ½ liter or any fraction of that amount,
2. on soft drinks syrup (single strength): 80 cents on each gallon and, on each fractional part of a gallon, the same fractional part of 80 cents, or 84 cents on each 4 liters and, on any fractional part of 4 liters, the same fractional part of 84 cents, or 0.625 cents per ounce,
3. on dry mixture used for making soft drinks: 1 cent on each ounce or any fraction of that amount 1 cent on each 28.35 grams or any fraction of that amount.

The tax must be paid in advance when the stamps are bought. Stamp discounts from the face value of the stamps are as follows:

1. on sales under \$25, no discount,
2. on sales of at least \$25 but less than \$50, 5 percent, and
3. on sales of \$50 or more, 10 percent.

When crowns are bought, payment of tax may be made either in advance or on credit bound by the terms of an appropriate surety bond. Both cash and credit buyers of tax crowns are granted a discount of 12.5 percent from the face value of the crowns.



### **Disposition of Revenue**

Prior to FY2023, the revenue from Soft Drinks Tax was deposited in a special medical school fund. Effective July 1, 2022, revenue from the Soft Drinks Tax is deposited in the General Revenue Fund until the tax is eliminated on July 1, 2024.

### **Comparison with Other States**

In addition to West Virginia, only Arkansas and Virginia have a special excise tax on soft drinks. Tennessee imposes a gross receipts tax on soft drinks and Alabama has special licenses for soft drinks.

## **TOBACCO PRODUCTS TAX AND E-CIGARETTE EXCISE TAX**

The West Virginia Tobacco Products Tax and E-Cigarette Excise Tax (W.Va. Code §11-17) was formerly known as the Cigarette Tax. It was renamed on April 13, 2001.

The Cigarette Tax Act was originally enacted by the 1947 Legislature. It imposed a tax of 0.50 cents upon the sale of 10 cigarettes. The code was amended many times with rates being raised in small increments and portions of the proceeds being dedicated to veterans' bonds and the general school fund. In 1966, the Legislature repealed dedication to the veterans' bonds. In 1978, the Legislature repealed dedication of the tax to the school fund.

In 1978 the Cigarette Tax rate was raised to 0.17 cents per package of 20 cigarettes. The rate did not increase again until the 2003 Legislative Session when it was raised to 0.55 cents per package of 20 cigarettes.

In 2001, the Cigarette Tax Act was amended to include all tobacco products, not just cigarettes, and renamed the Tobacco Products Excise Tax. Other tobacco products include pipe tobacco, cigars, snuff, chewing tobacco, and tobacco products meant to be consumed by means other than smoking. These products were taxed at a rate of 7.0 percent of the wholesale price.

Effective July 1, 2016, the tax on cigarettes increased to \$1.20 per pack of 20 cigarettes and the tax on other tobacco products increased to 12 percent of wholesale price. Additionally, an excise tax was imposed on the sale of e-cigarette liquids at the rate of 7.5 cents per milliliter or fraction thereof. This tax is also imposed on e-cigarette mixing kits and mixing kit components based on the volume of e-cigarette liquids that can be produced by or from the kit or components.

### **Tobacco Products Tax and E-Cigarette Excise Tax Revenue Fiscal Years 2019 – 2023**

<b>Fiscal Year</b>	<b>Collections</b>
2019	\$171,223,757
2020	\$168,749,566
2021	\$171,186,918
2022	\$165,066,361
2023	\$155,459,301

#### **Taxpayers**

The Tobacco Products Tax is paid by the purchase of stamps or impressions, which must be affixed to the cigarette package. The stamps or impressions are purchased by the wholesaler. The tax on other tobacco products and on e-cigarette liquids and mixing kits is paid by the wholesaler, sub-jobber, or vending machine operator.

#### **Tax Base**

The Tobacco Products Tax is imposed on every wholesaler, sub jobber, sub jobber 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.

Other tobacco products are taxed at the wholesale price. Products to be taxed include cigars, snuff, chewing tobacco, and other non-cigarette tobacco products. The wholesale price is the gross invoice price, including all federal excise taxes, at which the tobacco products are sold to distributors or wholesalers and excludes all trade discounts and other reductions in the manufacturer's price.

The excise tax imposed on sales of e-cigarette liquids and mixing kits is 7.5 cents per milliliter or fraction thereof sold or that can be produced by or from the mixing kit.

### **Tax Rates**

The tax rate on cigarettes is \$1.20 on each pack of twenty cigarettes. Tobacco products other than cigarettes are taxed at the rate of 12.0 percent of the wholesale price. E-cigarette liquids are taxed at the rate of 7.5 cents per milliliter.

### **Discounts**

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.

### **Disposition of Revenue**

All revenue from the Tobacco Products Tax and E-Cigarette Excise Tax is to be deposited into the General Revenue Fund and appropriated by the Legislature.

## Comparison with Other States

The tax rates listed in this section are for as of January 1, 2023.

### Comparison of Cigarette and Other Tobacco Products Tax Rates

State	Cigarette Tax (per pack of 20)	Other Tobacco Products Tax
Kentucky	\$1.10	Snuff (moist only), \$0.19 per unit less than 1.5oz
Maryland	\$3.75	53% of wholesale price for tobacco/snuff, 70% of wholesale price for Cigars 30% of wholesale price for pipe tobacco and 15% of wholesale price for premium cigars
Ohio	\$1.60	17% of wholesale price, 37% of little cigars
Pennsylvania	\$2.60	\$0.55 per ounce
Virginia <sup>12</sup>	\$0.60	20% of manufacturer's price; 10% of manufacturer's price on roll-your-own tobacco; 36¢ per ounce for moist snuff; 42¢ for each unit less than 4 ounces, 80¢ for each unit that is at least 4 ounces but not more than 8 ounces, \$1.40 for each unit more than 8 ounces but not more than 24 ounces, Units that exceed 24 ounces are taxed at 42¢ per unit plus 42¢ for each 4-ounce increment that exceeds 16 ounces, Heated tobacco products - 2.25¢ per stick
West Virginia	\$1.20	12% of wholesale price

### Comparison of E-Cigarettes Tax Rates

State	E-Cigarette Excise Taxes
Kentucky	\$1.50 closed cartridge 15.00% open cartridge
Maryland	≤5mL: 60% retail price others: 12% retail price
Ohio	\$0.10 per milliliter
Pennsylvania	40.00% wholesale
Virginia	\$0.066 per milliliter
West Virginia	\$0.075 per milliliter

<sup>12</sup> Additional local taxes on cigarettes apply in Virginia.

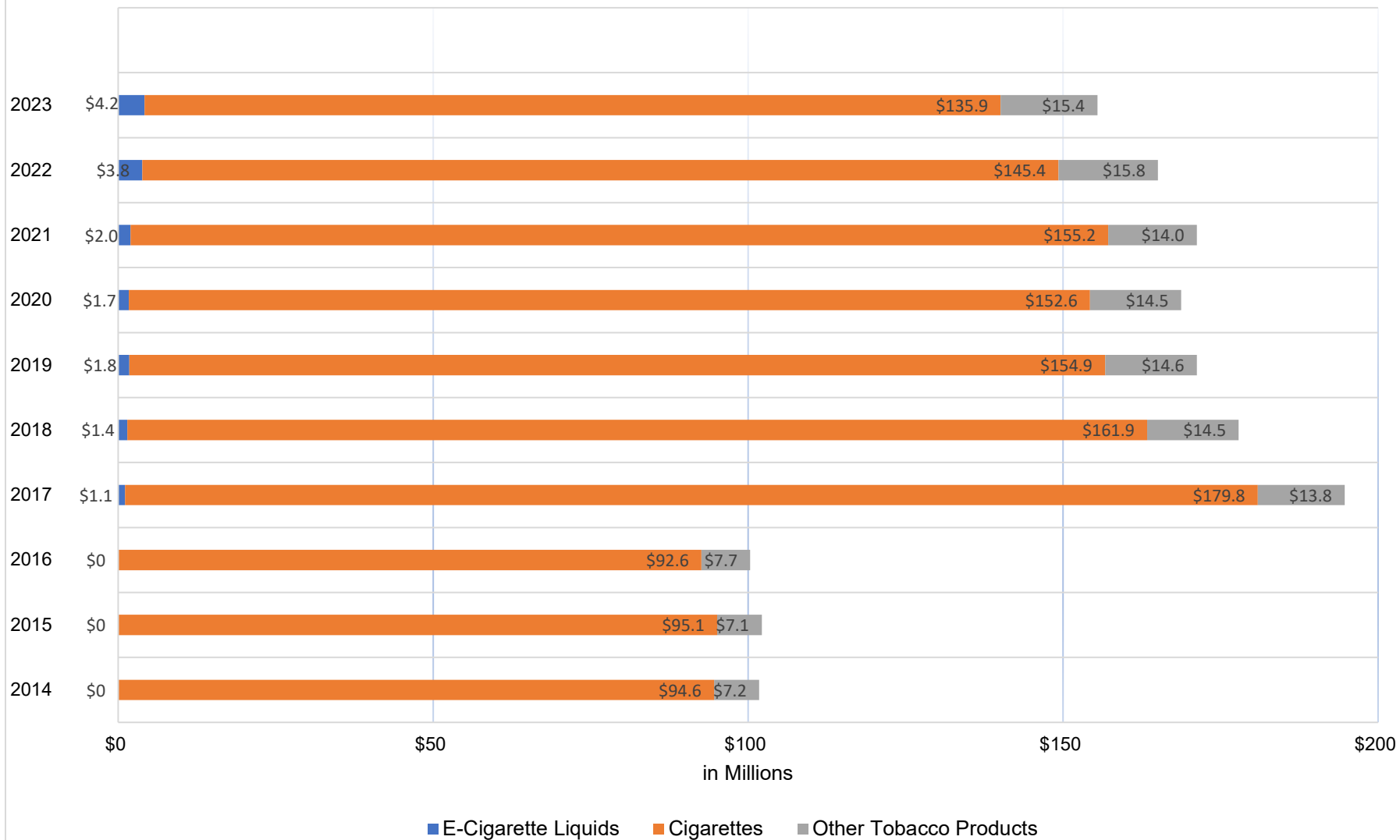
## Tables and Charts

The following tables and charts show the break-out of Tobacco Products Tax and E-Cigarette Excise Tax revenue between cigarettes, other tobacco products, and e-cigarette liquids. Total revenues for Fiscal Year 2017 are the first that include collections for the excise tax on e-cigarette liquids.

### Estimated Tobacco Products Tax and E-Cigarette Excise Tax Revenues Type

<b>Fiscal Year</b>	<b>Cigarettes</b>	<b>Other Tobacco Products</b>	<b>E-Cigarette Liquids</b>	<b>Total</b>
2002	\$32,219,157	\$2,217,252	\$0	\$34,436,409
2003	\$45,062,379	\$4,627,101	\$0	\$49,689,480
2004	\$102,876,773	\$4,731,793	\$0	\$107,608,566
2005	\$98,065,896	\$4,758,872	\$0	\$102,824,768
2006	\$107,118,357	\$4,909,270	\$0	\$112,027,627
2007	\$106,570,122	\$4,822,604	\$0	\$111,392,726
2008	\$109,152,254	\$5,516,525	\$0	\$114,668,779
2009	\$108,903,702	\$6,190,897	\$0	\$115,094,599
2010	\$110,640,447	\$3,487,899	\$0	\$114,128,346
2011	\$104,305,498	\$6,454,946	\$0	\$110,760,444
2012	\$102,650,985	\$6,958,480	\$0	\$109,609,465
2013	\$99,882,020	\$7,139,638	\$0	\$107,021,658
2014	\$94,618,301	\$7,161,465	\$0	\$101,779,766
2015	\$95,100,934	\$7,062,272	\$0	\$102,163,206
2016	\$92,551,777	\$7,722,099	\$0	\$100,273,876
2017	\$179,754,356	\$13,787,085	\$1,105,240	\$194,646,681
2018	\$161,863,740	\$14,528,200	\$1,447,224	\$177,839,164
2019	\$154,876,145	\$14,574,553	\$1,773,059	\$171,223,757
2020	\$152,594,679	\$14,470,499	\$1,684,388	\$168,749,566
2021	\$155,159,427	\$14,046,181	\$1,981,310	\$171,186,918
2022	\$145,445,098	\$15,801,912	\$3,819,352	\$165,066,362
2023	\$135,925,808	\$15,364,890	\$4,168,603	\$155,459,301

## Tobacco Products Excise Tax



**PART IV**  
**OTHER RESPONSIBILITIES ADMINISTERED BY THE**  
**STATE TAX COMMISSIONER**

## **CEMETERY REGISTRATION ACT**

The Cemetery Registration Act (W.Va. Code §35-5B) went into effect on June 1, 1993. Cemetery companies in West Virginia are required to register with the State Tax Commissioner.

### **Taxpayers**

Cemetery companies are required to register with the West Virginia State Tax Commissioner and establish trust accounts for a portion of the proceeds from certain sales. Cemetery companies required to register are persons, partnerships, firms or corporations operating a cemetery or selling property, goods or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being under certain conditions. These companies must only register if the delivery of the property or goods sold or the performance of the services may take place more than 120 days after the receipt of the initial payment on the account. The property, goods or services include but are not limited to burial vaults, mausoleum crypts, lawn crypts, memorials, marker bases and opening and closing and/or interment services. This does not include graves or incidental additions, such as dates or scrolls, representing not more than 10.0 percent of the total contract price.

### **Fee**

The registration fee set by regulation is \$200. An additional \$100 annual filing fee is due when a cemetery company reports a change in ownership or a change in the name of the compliance agent designated by the cemetery company.

### **Exemptions**

Certain companies are exempt from the requirement to register and establish trust accounts. They are as follows:

1. Cemeteries owned and operated by a county, municipal corporation, church or a non-stock corporation not operated for profit if the cemetery company:
  - a. does not compensate any officer or director, except for reimbursement of reasonable expenses incurred in the performance of official duties;
  - b. does not sell or construct or directly or indirectly contract for the sale or construction of vaults or lawn or mausoleum crypts: and
  - c. uses proceeds from the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of managing the cemetery.
2. Community cemeteries not operated for profit if the cemetery:
  - a. does not compensate any officer, owner or director except for reimbursement of reasonable expenses incurred in the performance of official duties, and
  - b. uses proceeds from the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of managing the cemetery.
3. Family cemeteries in which lots or spaces are not offered for public sale.



## **Trust Fund Requirements**

Every cemetery company or seller of pre-need goods or services used in the interring or disposing of the remains or commemorating the memory of a deceased human being shall deposit in an interest-bearing trust fund 40 percent of the receipts from the sale of property, goods or services purchased pursuant to a pre-need cemetery company contract. This includes sales of opening and closing or interment services when the delivery will be delayed more than 120 days from the initial payment of the contract.

Deposits must be made within thirty days after the close of the month in which the receipts are paid. If payment is made on an installment or deferred payment plan, the cemetery company or seller may deposit 40 percent of the payments as they are made. If the proceeds from the sale are financed through a lending institution, it is considered a cash sale. All funds deposited in the trust account must be identified in the records of the seller by the contract number and by the name of the buyer.

Within four months of the end of the cemetery company's fiscal year, the company must file an annual report with State Tax Commissioner. In addition, the cemetery company must employ an independent certified public accountant to audit the account and provide assurance that 40 percent of the cash receipts from pre-need contracts was deposited in the account within thirty days after the close of each month. Such assurance must be sent with the report to the State Tax Commissioner.

## **CHARITABLE BINGO AND RAFFLE LICENSES**

West Virginia allows bingo and raffle occasions to be held by charitable organizations. A charitable organization is defined as a tax-exempt, nonprofit, benevolent, educational, philanthropic, humane, patriotic, civic, religious or fraternal organization or a volunteer fire department, rescue unit or other such volunteer service organizations. It does not include any nonprofit organizations organized mainly to influence legislation or support a public office candidate. An organization is tax exempt if it has a certain status with the Internal Revenue Service.

### **Charitable Bingo License (West Virginia Code §47-20)**

#### **Taxpayers**

Bingo licenses can be issued to charitable organizations that have been in existence in West Virginia for two years. The West Virginia State Fair Board may also apply for a bingo license and conduct bingo occasions at the State Fair.

#### **Fees**

License fees are as follows:

- Annual License: \$500
- Annual License (bingo occasions grossing less than \$20,000 annually): \$200
- Annual License (bona fide senior citizen organizations): \$50
- Limited Occasion License: \$100
- State Fair License: \$500
- Super Bingo License: \$5,000

An annual bingo occasion license is valid for one year and entitles the licensee to hold no more than two bingo occasions per week. No bingo occasion held pursuant to an annual license may exceed six hours in duration.

A limited occasion license is valid only for the time period specified in the application and entitles the licensee to hold a bingo occasion once every twenty-four hours for a time period not to exceed two weeks. No bingo occasion held pursuant to a limited occasion license may exceed twelve hours in duration. Only three limited occasion licenses per year in the aggregate may be granted to an applicant not holding an annual license. No licensee which holds an annual license may obtain more than one limited license.

Any charitable or public service organization, including those organizations already holding a regular or limited occasion license, may apply for an annual Super Bingo license. A Super Bingo licensee may hold one Super Bingo occasion every month during the license year. No more than \$50,000 in prizes may be awarded to persons playing Super Bingo during each Super Bingo occasion.

## **Exemption**

All organizations intending to conduct bingo occasions must complete an application. However, if the charge per card is \$0.05 cents or less and the prizes per game do not exceed \$10, the organization is exempt from obtaining a license.

## **Rules**

No bingo occasions may be held until sixty days after an application for a bingo license has been filed and approved by the State Tax Commissioner. All bingo occasions must be open to the public. No individual under the age of eighteen may play in any bingo game. Except for junior volunteer firefighters who are sixteen years of age or older and under the supervision of a senior member of the same volunteer fire department, no individual under the age of eighteen may participate in the operation of any bingo game. Licensees may receive and cash personal checks in an amount not to exceed \$100 per person during the normal operation of a bingo game.

Gross proceeds mean all moneys collected or received from the conduct of bingo at all bingo occasions held by the licensee during a license period. No gross proceeds from any bingo operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction or acquisition of real or personal property except that which is used exclusively for one or more charitable or public service purposes or used as equipment or supplies necessary to conduct bingo occasions.

Prizes may be merchandise or money but may not be any type of alcoholic beverage. The value of prizes awarded at a single bingo occasion (excluding Super Bingo) shall not exceed an average of \$10,000 for all bingo occasions held under the license. The value assigned to merchandise awarded as prizes is the fair market value at the time of purchase or acquisition.

The reasonable, necessary, and actual expenses incurred in connection with the conduct of bingo occasions, not to exceed 40 percent of the gross proceeds collected during a license period, may be paid from the gross proceeds of the conduct of bingo. Net proceeds are all moneys left after deducting prize payouts and allowable expenses from gross proceeds. All net proceeds from the bingo operation must be distributed either to a qualified recipient organization or to support a charitable or public service activity or endeavor that the licensee sponsors.

Effective April 10, 2021, the definition of bingo was changed to include the use of virtual cards. In addition, bingo may be operated and played virtually over the internet using an online bingo software system or web application.

## **Charitable Raffle License (West Virginia Code §47-21)**

### **Taxpayers**

Charitable raffle licenses can be issued to qualified charitable or public service organizations, including the State Fair Board, that have been in existence in West Virginia for two years.

## **Fees**

License fees are as follows:

- Annual License: \$500
- Limited License: \$50
- State Fair License: \$500

An annual license is valid for one year from the date of issuance. A limited occasion license is valid only for the time specified in the application and entitles the licensee to hold two raffle occasions during the specified time period which may not exceed six months from the date of issuance of such limited occasion license. An applicant may be granted only three limited occasion licenses per year in the aggregate.

## **Exemption**

If the gross proceeds of the organization from raffles for a calendar year do not exceed \$15,000 and the value of any one prize does not exceed \$4,000, the organization is exempt from obtaining a license but is still required to maintain applicable records for three years.

## **Rules**

All licensees may receive and cash personal checks in an amount not to exceed \$100 per person during the normal operation of a raffle game. Charitable raffle occasions may be open to the general public or may be restricted to members of the licensee organizations.

Gross proceeds means all moneys collected or received from the conduct of raffles at all raffle occasions held by the licensee during a license period. No gross proceeds from any raffle operation may be devoted or in any manner used by any licensee or qualified recipient organization for the construction or acquisition of real or personal property except that which is used exclusively for one or more charitable or public service purposes or used as equipment or supplies necessary to conduct raffle occasions.

Prizes may be merchandise or money but may not be any type of alcoholic beverage. The value assigned to merchandise awarded as prizes is the fair market value at the time of purchase or acquisition. There is no value limitation on charitable raffle prizes.

The reasonable, necessary and actual expenses incurred in connection with the conduct of raffle occasions, not to exceed 25 percent of the gross proceeds collected during a license period, may be paid from the gross proceeds of the conduct of raffles. Net proceeds are all moneys left after deducting prize payouts and allowable expenses from gross proceeds. All net proceeds from the raffle operation must be distributed either to a qualified recipient organization or to support a charitable or public service activity or endeavor that the licensee sponsors.

All raffle boards and games must be purchased from a licensed wholesaler, distributor, or manufacturer. All raffle boards and games sold in West Virginia must have some identification as to the manufacturer of the product and a unique serial number printed on each ticket. In addition, the seller is required to provide an original invoice to the purchaser showing the serial numbers of all games purchased and that the "retail value" fee has been paid on those games. Any games in the possession of the purchaser for which the State Tax Commissioner cannot verify through

the original invoice that the tax has been paid, will be considered contraband and may be seized and destroyed by the State Tax Commissioner.

Effective April 10, 2021, raffles include the use of virtual tickets, and the definition of raffle is not interpreted to prevent the use of an online software system, web application, method, or process for the purpose of conducting online raffles over the internet.

### **Raffle Board Wholesalers and Distributors Fees (West Virginia Code §47-23)**

#### **Taxpayers**

Wholesalers, distributors and manufacturers of raffle boards and games must pay an annual license fee.

#### **Fees**

Wholesalers, distributors, and manufacturers must pay an annual license fee of \$500. The sale of raffle boards and games to West Virginia retailers is subject to a "retail value" fee of 20 percent. This "retail value" fee is in addition to any Consumers Sales Tax due. However, if a charitable or public service organization qualifies to conduct exempt raffle occasions under W.Va. Code §47-21-3, it is exempt from paying the "retail value" fee on its purchases of raffle boards and games.

All raffle boards and games sold in West Virginia are required to have identification as to the manufacturer of the product and a unique game serial number printed on each ticket. The seller of the games is required to provide an original invoice to the purchaser showing that the fee has been paid on the games.

Any charitable raffle boards and games subject to the "retail value" fee imposed by the Code and upon which the fee has not been paid are deemed to be contraband and may be seized without a warrant by the State Tax Commissioner, or any of his deputies or employees authorized by him, or any peace officer of this state and destroyed. Persons found in possession of contraband games may also be subject to fines or imprisonment.

## **COAL MINE RECLAMATION TAX**

The West Virginia Surface Coal Mining and Reclamation Act (W.Va. Code §22-3-11) was enacted by the 2009 Regular Session of the Legislature on April 10, 2009, and became effective on July 1, 2009. The Act imposes a special reclamation tax.

### **Taxpayers**

The Coal Mining Reclamation Tax is imposed on all clean tons of coal mined in West Virginia.

### **Tax Rates**

The current fee is 0.279 cents per clean ton mined.

### **Disposition of Revenue**

Revenues attributable to 0.15 cents out of the total 0.279 cents are deposited into the Special Reclamation Water Trust Fund, and the remainder is deposited in the Special Reclamation Fund. These funds are utilized by the Department of Environmental Protection to pay for expenses associated with reclamation of post 1977 coal mines in the State.

## **SPECIAL TWO CENTS TAX**

The Special Two Cents Tax (W.Va. Code §22-3-32) became effective after September 30, 1991.

### **Taxpayers**

The special tax applies to all producers of coal in this State. For purposes of this tax, producers of coal are persons who own the coal immediately after its severance from the ground. The measure of this tax is "tons of clean coal" sold during the reporting period produced by the seller of the coal. The person who produces and sells unprocessed coal must convert raw tonnage sold to "tons of clean coal" and pay tax on the lower number. Persons who process coal they produce, and coal produced by another producer, must keep records to prove the accuracy of their tax returns.

### **Tax Rates**

The rate is 0.02 cents per ton of clean coal.

### **Disposition of Revenue**

The tax proceeds are deposited into the Mining and Reclamation Operations Fund for use in mine reclamation projects.

## COLLECTION AGENCY ACT

The West Virginia Collection Agency Act (W.Va. Code §47-16-1, et, seq.) was passed in 1973 by the West Virginia Legislature. The Act provides for the regulation and bonding of persons who engage directly or indirectly in the business of operating a collection agency in West Virginia.

### Taxpayers

The Collection Agency Act is very broad and inclusive in its definition of the business of operating a collection agency. "Collection agency" means and includes all persons, firms, corporations, and associations:

1. that are directly or indirectly engaged in the business of soliciting from or collecting for others any account, bill or indebtedness originally due or asserted to be owed or due another and all persons, firms, corporations and associations directly or indirectly engaged in asserting, enforcing or prosecuting those claims;
2. that uses fictitious names or names other than their own names when attempting to collect or when collecting his or her own accounts; that attempts to or does give away or sell to others any system or series of letters or forms for use in the collection of accounts or claims which assert or indicate directly or indirectly that the claims or accounts are being asserted or collected by any person, firm, corporation or association other than the creditor or owner of the claim or account, or
3. that are directly or indirectly engaged in the business of soliciting, or who holds himself or herself out as engaged in the business of soliciting, debts of any kind owed or due, or asserted to be owed or due, to any solicited person, firm, corporation or association for fee, commission, or other compensation.

Specific persons not considered collection agencies are as follows:

1. regular employees of a single creditor or a collection agency licensed under the Act,
2. banks,
3. trust companies,
4. savings and loan associations,
5. building and loan associations,
6. industrial loan companies,
7. small loan companies,
8. abstract companies doing escrow business,
9. properly licensed real estate brokers or agents when claims and/or accounts they handle are related to or are part of their regular real estate businesses,
10. express and telegraph companies subject to public regulation,
11. attorneys-at-law when they handle claims and/or collections in their own names as attorneys,
12. any individual or organization which acts under the order of any court of competent jurisdiction, and
13. any person collecting a debt owed to another person only where:
  - a. both persons are related by wholly owned, common ownership or affiliated by wholly owned corporation control,



- b. the person collecting the debt acts only on behalf of persons related as described in (a), and
- c. debt collection is not the principal business of the person collecting the debt.

Out-of-state collection agencies without an office in West Virginia and whose only contact with residents of this State is by letter or telephone call are required to designate a resident agent upon whom notice of orders may be served. The West Virginia Secretary of State may be designated as the resident agent for service of process pursuant to W.Va. Code §56-3-33.

### **Bonds**

Individuals and organizations that are not exempt and which conduct the business of a collection agency in West Virginia must file separate approved surety bonds of \$5,000 with the State Tax Commissioner. A separate bond must be filed for the principal office and each branch office. These bonds must be renewed annually during the operation of the agency.

## **CONSUMER CREDIT AND PROTECTION ACT**

The West Virginia Consumer Credit and Protection Act (W.Va. Code, Chapter, 46A) was passed on March 5, 1974, by the West Virginia Legislature and became effective on June 9, 1974. The Act requires every person who is in the business of making consumer credit sales or consumer loans in West Virginia to file notification with the State Tax Department.

### **Taxpayers**

Persons who are in the business of making consumer credit sales or consumer loans in West Virginia or who maintain a place of business in this State and take assignment of debts that arise from such sales and then undertake direct collection of payments or enforcement of rights against the debtor are required to register.

### **Registration**

Initial registration must be made within thirty days of the start of business in West Virginia; subsequent annual notification must be made before January 31 of each year in which business is conducted. The following conditions must be satisfied to meet the provisions of the Consumer Protection Act:

1. credit must be granted either by a seller who regularly engages as a seller in credit transactions of the same kind or by a seller under provisions of a seller credit card;
2. the buyer must be an individual or individuals and not an organization;
3. the real property, personal property or services must be purchased primarily for personal, family, household or agricultural purposes;
4. either the debt must be payable in installments or finance charges must be made, and
5. either the principal amount must not exceed \$25,000 or the debt must be secured by an interest in land.

Government agencies and national banks are subject to the provisions of this Act as are providers of professional services who include finance charges in their payment schedules.

## MEDICAL CANNABIS ACT

The West Virginia Medical Cannabis Act (W.Va. Code, Chapter 16A) provides for the legal consumption of cannabis to be used for certified medical use by a West Virginia resident with a serious medical condition and is limited by law to the following forms: pill; oil; topical forms including gels, creams or ointments; a form medically appropriate for administration by vaporization or nebulization, excluding dry leaf or plant form unless dry leaf or plant forms become acceptable under rules adopted by the Bureau for Public Health, West Virginia Department of Health and Human Resources; tincture; liquid; or dermal patch.

### Taxpayers

Every applicant that wants to participate in the West Virginia Medical Cannabis Program as a grower, processor, and dispensary must first obtain the necessary permits through an application process established by the Bureau of Public Health. The following application and permit fees apply for each applicant:

Permit/Application	Fee
Grower or Processor Application	\$5,000
Initial Grower or Processor Permit	\$50,000
Renewal Grower or Processor Permit	\$5,000
Dispensary Application	\$2,500
Dispensary Permit	\$10,000
Renewal Dispensary Permit	\$2,500

### Tax Rates

Dispensaries are subject to a privilege tax equal to 10 percent of the gross receipts from the sale of medical cannabis to patient or caregiver. It should also be noted that the State of West Virginia reserves the right to regulate the price of medical cannabis if it is deemed the prices are unreasonable or excessive (W.Va. Code §16A-7-5).

### Comparison with Other States

The following table shows information on medical cannabis in the surrounding states.

#### Comparison of State Tax Rates

Kentucky	Legislation passed in March 2023, but is not effective until January 1, 2025
Maryland	9% Sales and Use Tax
Ohio	5.75% of Sales from Dispensary to Customer (municipalities tax can raise it to 8%)
Pennsylvania	5% on gross receipts from grower to dispensary
Virginia	Adult-use stores, to open in 2024, will collect a 21% cannabis excise tax in addition to statewide 5.3% sales tax. An extra 3% tax may be added by local municipality
West Virginia	10% on Sales from Dispensary to Customer

## SOLID WASTE ASSESSMENT FEES

Several Solid Waste Assessment Fees (W.Va. Code §§22-15-11, 22-15A-19, 22-16-4 and 22C-4-30) 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.

### Solid Waste Fee Clearing Fund Fiscal Years 2019 – 2023

<u>Fiscal Year</u>	<u>Collections</u>
2019	\$15,109,411
2020	\$18,435,514
2021	\$13,215,510
2022	\$11,962,744
2023	\$11,896,640

### Fees

The following table shows the Solid Waste Assessment Fees by West Virginia Code as of July 1, 2023:

<b>Fee</b>	<b>West Virginia Code</b>	<b>Fee Per Ton</b>
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)	\$2.90 <sup>13</sup>
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.

Effective July 1, 2021, an additional Solid Waste Assessment Fee is levied on the disposal of solid waste at any solid waste landfill disposal facility in West Virginia. The fee shall be 20 cents per ton beginning on July 1, 2021; 40 cents per ton beginning on July 1, 2022; 60 cents per ton beginning on July 1, 2023; 80 cents per ton beginning on July 1, 2024, and \$1.00 per ton beginning on July 1, 2025. Twenty-five percent of the additional fee shall be distributed equally to each county or regional solid waste authority, and 75 percent shall be distributed on a per capita bases to each county or regional solid waste authority based on the most recent population projections from the United States Census Bureau. Also, effective July 1, 2021, the rates for the State Solid Waste Assessment Fee will be reduced. The fee shall be \$3.30 per ton beginning on July 1, 2021; \$3.10 per ton beginning on July 1, 2022; \$2.90 per ton beginning on July 1, 2023; \$2.70 per ton beginning on July 1, 2024, and \$2.50 per ton beginning on July 1, 2025.

<sup>13</sup> This rate is reduced to \$2.70 beginning on July 1, 2024, and to \$2.50 beginning on July 1, 2025.

The Horizontal Drilling Waste Assessment Fee is levied upon the disposal of drill cuttings and drilling waste generated by horizontal well sites.

## **FIREWORKS SAFETY FEE**

The sale of fireworks was legalized in West Virginia effective June 1, 2016. The Fireworks Safety Fee (W.Va. Code §29-3E-7) is levied on sales of fireworks in the State and local sales taxes.

### **Fireworks Safety Fee Fiscal Years 2019 – 2023**

<b>Fiscal Year</b>	<b>Collections</b>
2019	\$687,035
2020	\$722,485
2021	\$1,430,536
2022	\$1,549,418
2023	\$1,543,843

### **Fee**

The Fireworks Safety Fee is equal to 12 percent of the sale price of consumer fireworks sold in the State.

### **Disposition of Revenue**

Seventy-five percent of revenues are distributed to the Veterans' Facility Support Fund, and the remaining 25 percent goes to the Fire Protection Fund.

**PART V**  
**PROPERTY TAXES**

## PROPERTY TAX

The West Virginia Property Tax (W.Va. Code §§11-1C to 8, 11A and 18-9A) was first enacted in 1863. The Property Tax is administered by county officials and officials of several State government agencies. Although the West Virginia State Tax Department plays a major role in the administration of this tax, less than 0.50 percent of the Property Tax collected goes to State government. The primary beneficiaries of the Property Tax are county boards of education.

### Property Tax General Revenue Fund Fiscal Years 2019 – 2023

<u>Fiscal Year</u>	<u>Collections</u>
2019	\$7,038,597
2020	\$7,392,105
2021	\$8,121,252
2022	\$7,908,368
2023	\$7,702,241

### Taxpayers

It is the responsibility of each property owner to pay property taxes. Property taxes are paid to the sheriff of each of the fifty-five counties. Each county and municipality can impose its own rates of property taxation within the limits set by the West Virginia Constitution. The West Virginia Legislature sets the current regular school levy rate of tax 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, bond levies or public improvement levies.

### Tax Base

Property can be divided into two categories: real and personal. Although there are many practical and legal distinctions involved, real property is, in general, land and anything permanently attached to land, and personal property is, in general, 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. West Virginia law defines the following classes of property for tax purposes:

1. Class I Property:
  - a. all tangible personal property used exclusively in agriculture, including horticulture and grazing.
  - b. all products of agriculture, including livestock, while owned by the producer.
  - c. all notes, bonds, bills, and accounts receivable, stocks, and any other intangible personal property.
2. Class II Property:
  - a. all property owned, used, and occupied by the owner exclusively for residential purposes.
  - b. all farms, including land used for horticulture and grazing, which are occupied and cultivated by their owners or bona fide tenants.
3. Class III Property: all real and personal property situated outside of municipalities, exclusive of Classes I and II.



4. Class IV Property: all real and personal property situated inside of municipalities, exclusive of Classes I and II.

Although the West Virginia Constitution defines Class I property, all the property that falls in this class is exempt from Property Tax. Beginning with Tax Year 2003, all intangible personal property was exempted from taxation. Personal property used on a farm or farming operation was exempted by the Legislature beginning in Tax Year 2008. The significance of the classes of property is that the applicable levy rates vary by class.

## **Property Values**

Property is assessed according to its use, location and value as of July 1 of each year. The amount of tax paid on property depends upon the following:

1. the assessed value of the property as determined by a county assessor, and
2. the rate of tax levied against each \$100 of assessed valuation.

The assessed value of property must be 60 percent of the property's true and actual value. In most cases, that value is defined as the amount of money the property would be worth in a sale between a willing buyer and a willing seller.

In order to have property in West Virginia fairly and equally valued, all real property is to be visited once every three years, and annual adjustments are to be made to the assessments for those properties for which a change in value is determined. All property, except farms and managed timberland property, is to be assessed annually at 60 percent of its current fair market value.

Farmland that is used, occupied and cultivated by the owner or a bona fide tenant is to be valued at the fair and reasonable value of such property for farmland use, regardless of what the value of the property would be if it was used for another purpose.

Managed timberland is to be valued based on the use and productive potential of such timberland. Managed timberland is defined to be any surface real property of not less than ten contiguous acres that is devoted primarily to forest use and which, in consideration of its size, has sufficient numbers of commercially valuable species of trees that are well distributed over the growing site and that is managed pursuant to a plan provided in W.Va. Code §11-1C-10. In order for property to qualify as managed timberland, the owner must annually certify in writing to the Division of Forestry that the property meets the definition of managed timberland and is managed according to the plan provided for in W.Va. Code §11-1C-10. Timberland that does not qualify as managed timberland is to be valued at its market value.

Each assessor is required to maintain current values on the real and personal property within the county by having a member of his staff visit each parcel of real property in repeating three-year cycles to determine if any changes have occurred in the value of the property. The assessor must make any adjustments that are necessary to maintain accurate current valuations of all real and personal property.

The State Tax Commissioner is required to determine the fair market value of all industrial property and all natural resource property in the State. The State Tax Commissioner values these properties according to rules approved by the West Virginia Legislature and special methods given in W.Va. Code §§11-6A, 11-6E and 116K.

The State Tax Commissioner also is responsible for determining the tentative assessed values of public utility property that is considered operating property of a public utility. Only real and personal property that is an integral part of the public utility's function as a utility is to be included as operating property. Final assessed values are determined by the Board of Public Works. Cell towers constructed on or after July 1, 2019, are also valued by the Board, even when the cell tower is not owned by a public utility.

The State Tax Commissioner is required to develop an inventory of all natural resource properties, except managed timberland, on a county-by-county basis. Special methods for appraising natural resource property can be found in W.Va. Code §11-6K.

Special methods are used for appraising dealer inventories. The value of vehicle, motorboat, factory-built home, house trailer and farm equipment inventories are based upon average monthly sales in lieu of actual value of inventory in place on July 1 of each year. The value of rental car inventories is the gross value of all rental cars on the first day of each month of the preceding calendar year divided by twelve. Information on these methods can be found in W.Va. Code §11-6C.

### *Reduced Assessment Property*

The following types of property may qualify for a special reduced property valuation:

1. pollution abatement facilities;
2. molds, jigs, dies and templates directly used in manufacturing;
3. certified capital additions to manufacturing facilities;
4. all aircraft owned or leased by commercial airlines, charter carriers, private carriers, private companies or private firms;
5. servers or tangible personal property directly used in a high-technology business or an internet advertising business;
6. the value of a tower used for transmitting cellular or wireless signals for communications purposes or for computing purposes for five years immediately following the date of its erection, and
7. qualified farmland per Legislative Rule Title 110, Series 1A.

These properties are appraised at salvage value. In addition, each wind turbine installed at a wind power project and each tower upon which the turbine is affixed shall be considered personal property that is a pollution control facility and appraised at its salvage value. No more than 79 percent of the total value of the facility shall be accorded salvage value. Personal property at a wind power project other than a wind turbine and the tower shall not be accorded salvage value.

In addition, property belonging to qualified continuing care retirement communities, which are defined as being:

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

is classified and taxed as Class II property.

## Tax Rates

The West Virginia Legislature sets the current regular school rate of tax for county boards of education. This rate is used by all county boards of education Statewide. The West Virginia State Tax Department and the State Auditor's Office supervise and otherwise assist counties and municipalities in their work of assessment and tax rate determination. The first step toward determination of tax rates for county commissions and municipalities is the preparation of tentative budgets by county and municipal governments. These tentative budgets show not only estimated expenditures and receipts but also the tax rates necessary to produce the receipts. Budgets and tax rates must then be approved by the Chief Inspector Division of the State Auditor's Office, and public hearings must be held before the final budgets and tax rates can be adopted. The State Auditor reports the approved tax rates for each taxing authority to the county assessor. County boards of education must adopt a budget that details the expenditures to be made from revenues generated by the Property Tax rate approved by the West Virginia Legislature and other revenues. Each assessor then applies these tax rates to all items of taxable property listed in the county's real and personal property books. When this process is complete, each assessor must deliver copies of these books with their new tax rates to the sheriff of the county enabling the sheriff to begin the process of tax collection.

Maximum tax rates are shown in the table below for each of the taxing authorities and are given in terms of each of the four classes of property.

### Maximum Property Tax Rates (in cents per \$100)

Taxing Authority	Class I	Class II	Class III	Class IV
State	0.25¢	00.50¢	1.00¢	1.00¢
County	14.30¢	28.60¢	57.20¢	57.20¢
Schools	22.95¢	45.90¢	91.80¢	91.80¢
Municipal	12.50¢	25.00¢	n/a	50.00¢
<b>Total</b>	<b>50.00¢</b>	<b>100.00¢</b>	<b>150.00¢</b>	<b>200.00¢</b>

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. The average actual tax rates per \$100 of assessed valuation for the 2022 tax year, expressed in rounded dollars, are shown in the following table.

### Statewide Average 2022 Property Tax Rates (in dollars per \$100 of assessed valuation)

	Average
Class I	\$0.00
Class II	\$1.20
Class III	\$2.20
Class IV	\$2.95

Statewide, the average rate for all property was \$1.90 per \$100 of assessed valuation.

When an annual appraisal or general valuation of property would result in an increase in total projected Property Tax revenues for county commissions and municipalities of 1.0 percent or more, the rate of levy is to be reduced proportionately for all classes of property for the forthcoming

tax year so that the new levy rate will produce no more than 101.0 percent of the previous year's projected Property Tax revenues plus an additional amount to fund the on-going work of the assessor. Additional property value due to new construction or improvements to existing real property are not to be included when considering increases in projected revenue and calculating the new levy rate. Special levies are not to be included in this reduced levy rate calculation. The governing body of a county or municipality may increase the tax rate resulting from the reduced levy rate calculation above as long as a public hearing is conducted before such action. Any such increase cannot have the effect of exceeding the prior year's tax revenue by more than 10.0 percent.

When any appraisal of general valuation of property would produce a statewide aggregate assessment that would cause an increase of 2.0 percent or more in the total Property Tax revenue for county boards of education, the levy is to be reduced uniformly Statewide and proportionately for all classes of property for the forthcoming year to produce no more than 102 percent of the previous year's projected Statewide aggregate Property Tax revenues plus an additional amount to fund the on-going work of the assessor. However, the Legislature may take action to increase the reduced rate by holding a public hearing.

### **Exemptions**

Although all property is presumed to be taxable unless shown otherwise, there are many 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. A partial list of types of properties that may be exempt from ad valorem property taxation follows:

1. property that belongs to the United States government unless the United States government permits the State to tax it;
2. property that belongs exclusively to the State;
3. property that belongs exclusively to any county, district, city, village or town in this State when it is used for public purposes;
4. property that belongs exclusively to any political subdivision of any other state when it is used exclusively for public purposes;
5. property used exclusively for divine worship or used exclusively for divine worship and the operation of a pre-K school, primary school, middle school, secondary school, daycare center, or church camp for children, which school, daycare center, or church camp is operated by the church which owns the property or is operated by another not-for-profit organization or entity;
6. parsonages and the household goods and furniture pertaining thereto;
7. mortgages, bonds and other evidence of indebtedness 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 used exclusively for divine worship or for the purpose of paying indebtedness thereon;
8. cemeteries, except for certain personal property of commercial cemeteries, including any sites of unmarked graves certified as such by the Division of Culture and History;
9. property that belongs to, or which is held in trust for, colleges, seminaries, academies and free schools when it is used for the educational, literary or scientific purposes, including books, apparatus, annuities and furniture;
10. property that belongs to, or which is held in trust for, colleges or 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;
11. public and family libraries;
  12. property used for charitable purposes and not held or leased out for profit;
  13. property used for the public purposes of distributing electricity, water or natural gas or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit;
  14. property used for area economic development purposes by nonprofit corporations when such property is not leased out for profit;
  15. all real estate not exceeding one acre in extent, and the buildings thereon, 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, when the property is used as residential accommodations, or as a dormitory, for members of the organization;
  16. all property belonging to benevolent associations, not conducted for private profit;
  17. property belonging to any public institution for the education of the deaf, intellectually disabled or blind, or any hospital not held or leased out for profit;
  18. houses of refuge and mental health facilities or orphanages;
  19. homes for children or for the aged, friendless or infirm, not conducted for private profit;
  20. fire engines and implements for extinguishing fires, and the property used exclusively for the safekeeping thereof, and for the meeting of fire companies;
  21. all property to be used for the subsistence of livestock on hand at the beginning of the assessment year;
  22. household goods to the value of \$200 whether or not they are held or used for profit;
  23. bank deposits and money;
  24. household goods (personal property and goods commonly found within the house and items to care for the house and its surrounding property);
  25. personal effects (articles and items of personal property commonly worn on or about the body or carried and normally associated with the person) when they are not held or used for profit;
  26. non-living items of food reserved by a family for its own use;
  27. property acquired by lease purchase agreement by the State, a county, district, city, village, town or other political subdivision, or state college or university as long as title to the leased property rests in the name of the lessee;
  28. all implements, equipment, machinery, vehicles, supplies, crops and livestock used to engage in commercial farming;
  29. property owned by a nonprofit organization whose primary purpose is youth development by means of adventure, educational or recreational activities for young people, at nonprofit constructed facility built with the expenditure of not less than \$100 million, which is leased or used to generate revenue for the nonprofit organization whether or not the property is used by the nonprofit organization for its nonprofit purpose; and
  30. tangible personal property that is moving in interstate commerce through West Virginia, or which was consigned from a point of origin outside the State to a warehouse within the State for storage in transit to a destination outside the State.

The preceding list is not an exhaustive list of exemptions; it shows only some of the possible types of exemptions.

In addition, the Wayport Authority is not required to pay any Property Taxes on any project, or any property acquired and used by that Authority as a wayport. A wayport is defined as an airport where passengers and cargo are transferred between flights that is not located in a major metropolitan area. In lieu of the payment of Property Taxes to local governments, the Wayport Authority is required to make an annual payment equal to the amount of Property Taxes otherwise payable.

### **Homestead Exemption**

This program provides for a \$20,000 exemption against the total assessed value of a single-family dwelling, including mobile or manufactured homes, owned and occupied as a residence by any person who is at least 65 years old or totally and permanently disabled and who has legally resided in and paid taxes on a homestead in this State for two consecutive taxable years before filing for this exemption. However, if an owner receives a similar exemption for a homestead in another state, then the owner is ineligible for the Homestead Exemption in West Virginia. Homeowners who, as a result of illness, accident, or infirmity, reside with a family member or are residents of a nursing home, personal care home, rehabilitation center or similar facility retain a Homestead Exemption and Class II property designation for their property as long as the property is not used for any other purposes.

If a resident of West Virginia establishes a residence in another state or country and returns to West Virginia within five years, then the resident may be allowed a Homestead Exemption in West Virginia if the person was a resident of this State for two calendar years out of the ten calendar years immediately preceding the tax year for which the Homestead Exemption is sought.

When a member of the United States military forces maintains West Virginia as his state of residence throughout his military service and returns to this State and purchases a homestead upon his retirement or separation from the military service due to permanent and total physical or mental disability, that person is deemed to satisfy the residency test and shall be allowed a Homestead Exemption if the person otherwise qualifies.

Only one exemption can be granted for each owner-occupied residence. Elderly homeowners may apply for this exemption at the office of their county assessor from July 1 through December 1 provided that the applicant will be at least sixty-five years old by June 30 of the following year. A person who is totally and permanently disabled may also apply for the Homestead Exemption from July 1 through December 1. Once the application of a person sixty-five years of age or older is approved, registration in later years is unnecessary. A person who is permanently and totally disabled does not need to refile in subsequent years if he signs a statement that he will notify the assessor within thirty days if he ceases to be eligible for the exemption based on such disability.

### **Payment Dates**

For each tax year, Property Taxes are due on all personal property you own as of July 1 of the prior year. Property Taxes are also due on all real property that you own in West Virginia on July 1 prior to the tax year. The tax payments are divided into a first half and second-half payment schedule. The first half is due by September 1 of that year and the second half is due by March 1 of the following year.

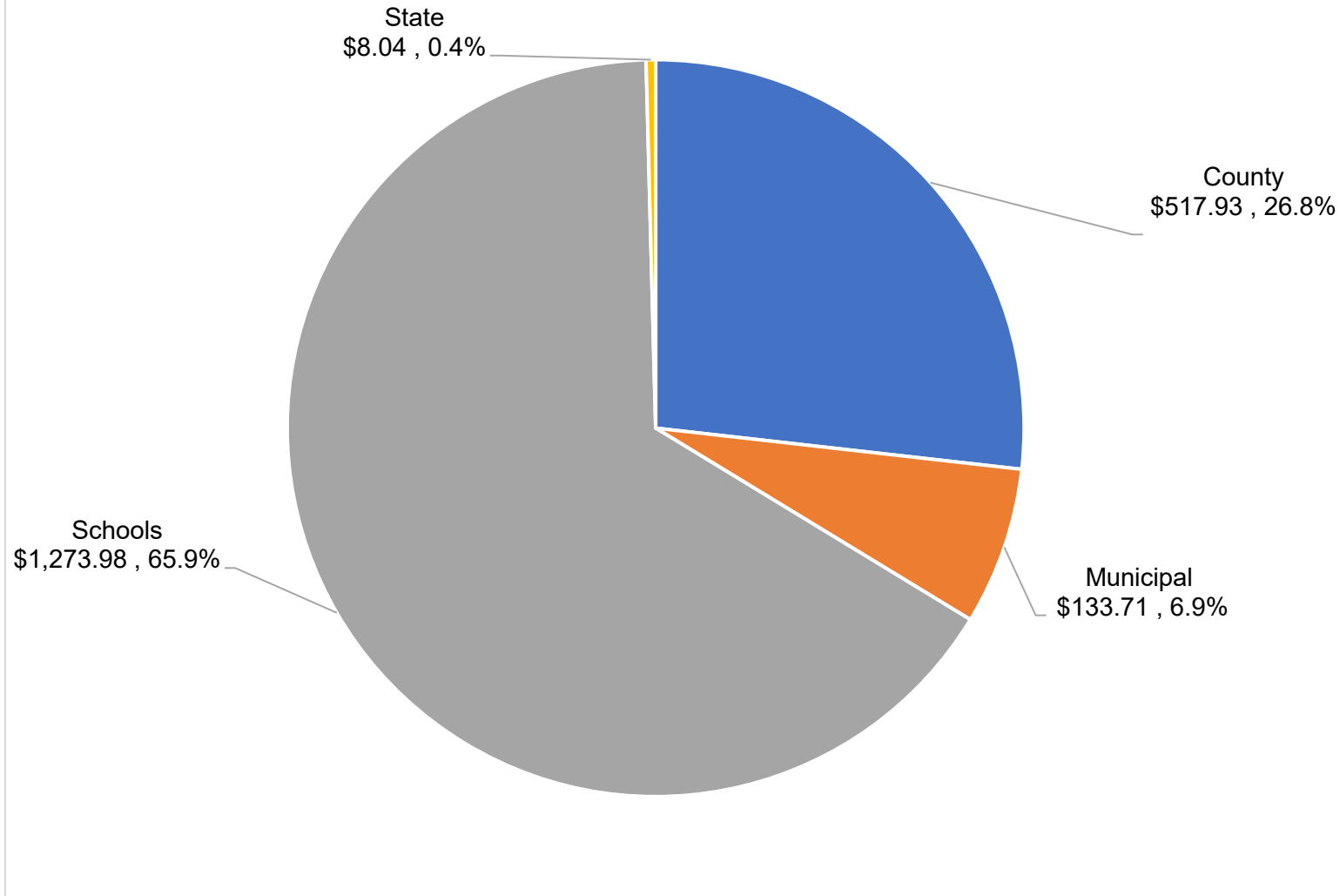
## **Disposition of Revenue**

For tax year 2022, \$1.3 billion (65.9 percent) of the Property Taxes levied went to benefit county boards of education, the primary beneficiaries of Property Tax collections. County commissions levied \$517.9 million dollars in taxes, which represents 26.8 percent of the taxes levied. Municipal levies account for \$133.7 million (6.9 percent) of the taxes levied, and the State receives 0.4 percent of the Property Taxes levied.

## **Tables and Charts**

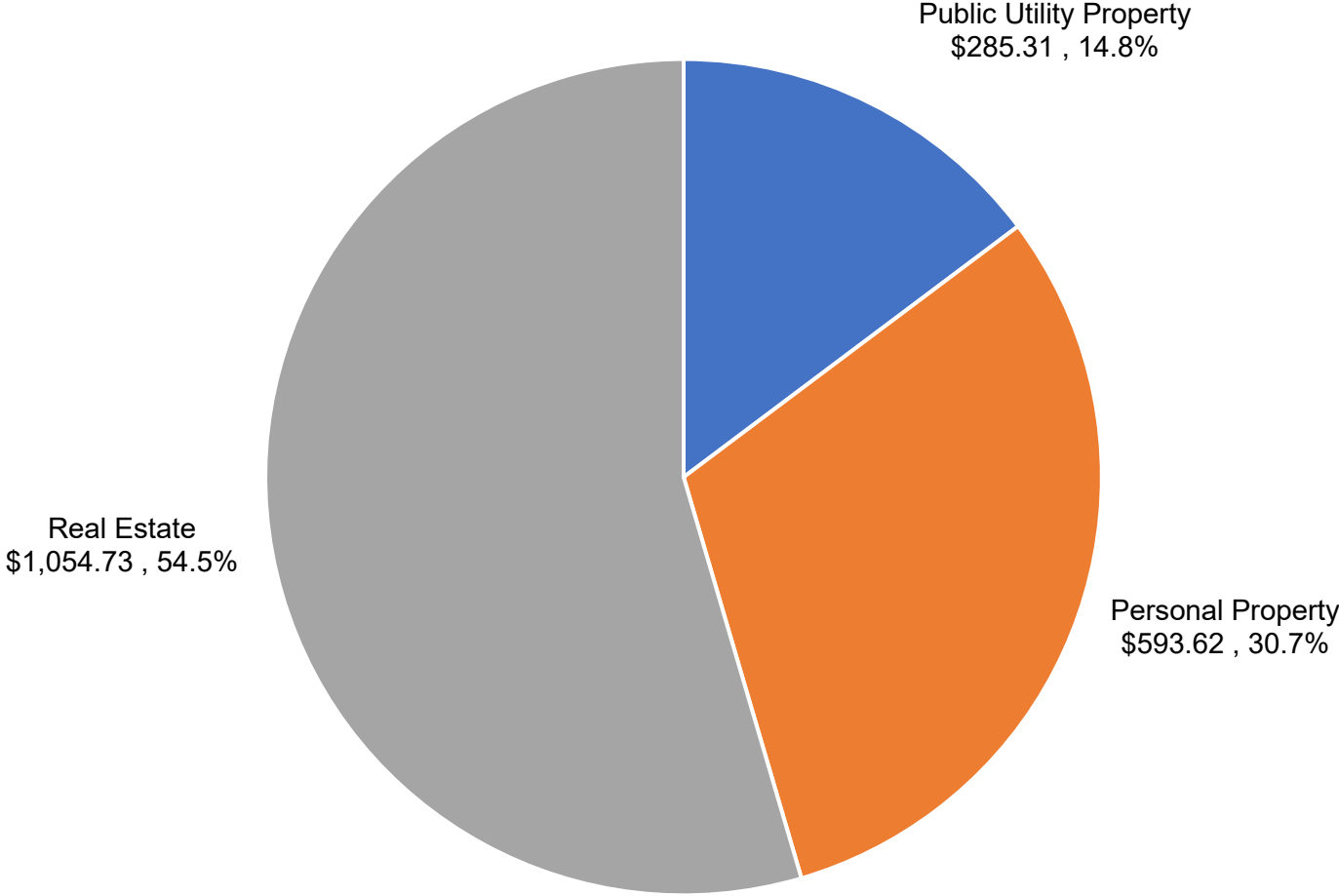
The following tables and charts provide a variety of statistical information on West Virginia Property Taxes.

**Distribution of Property Taxes Levied by Purpose  
Tax Year 2022  
(In Millions)**





**Distribution of Property Taxes Levied  
Tax Year 2022  
(In Millions)**



**Distribution of Property Taxes Levied by Tax Year<sup>18</sup>**

<b>Tax Year</b>	<b>For the State</b>	<b>For Counties</b>	<b>For School Boards</b>	<b>For Municipalities</b>	<b>Total</b>
2012	\$6,262,238	\$398,867,977	\$989,885,613	\$102,052,748	\$1,497,068,576
2013	\$6,675,579	\$421,381,573	\$1,048,140,348	\$106,210,093	\$1,582,407,593
2014	\$6,763,028	\$427,943,271	\$1,060,323,290	\$114,742,034	\$1,609,771,623
2015	\$7,101,572	\$451,667,378	\$1,112,862,839	\$115,300,456	\$1,686,932,245
2016	\$7,331,082	\$468,108,037	\$1,142,098,247	\$117,964,445	\$1,735,501,811
2017	\$7,148,195	\$458,660,607	\$1,114,318,926	\$120,173,101	\$1,700,300,829
2018	\$7,229,615	\$466,043,977	\$1,119,904,486	\$122,042,535	\$1,715,220,613
2019	\$7,574,445	\$488,161,393	\$1,202,263,893	\$125,829,554	\$1,823,829,285
2020	\$8,065,538	\$516,794,297	\$1,271,672,567	\$129,720,383	\$1,926,252,785
2021	\$8,038,460	\$519,469,578	\$1,278,086,460	\$130,212,840	\$1,935,807,338
2022	\$8,040,208	\$517,927,785	\$1,273,979,986	\$133,711,794	\$1,933,659,773

**Distribution of Property Taxes Levied for Tax Year 2022<sup>14</sup>**

	<b>By the State</b>	<b>By Counties</b>	<b>By School Boards</b>	<b>By Municipalities</b>	<b>Total</b>
On Real Estate	\$4,385,595	\$282,507,811	\$694,902,471	\$72,934,157	\$1,054,730,034
On Personal Property	2,468,283	158,999,906	391,102,204	41,048,508	593,618,901
On Public Utility Property	1,186,330	76,420,068	187,975,311	19,729,129	285,310,838
<b>Total</b>	<b>\$8,040,208</b>	<b>\$517,927,785</b>	<b>\$1,273,979,986</b>	<b>\$133,711,794</b>	<b>\$1,933,659,773</b>

<sup>14</sup> These amounts reflect the total amount of taxes billed.

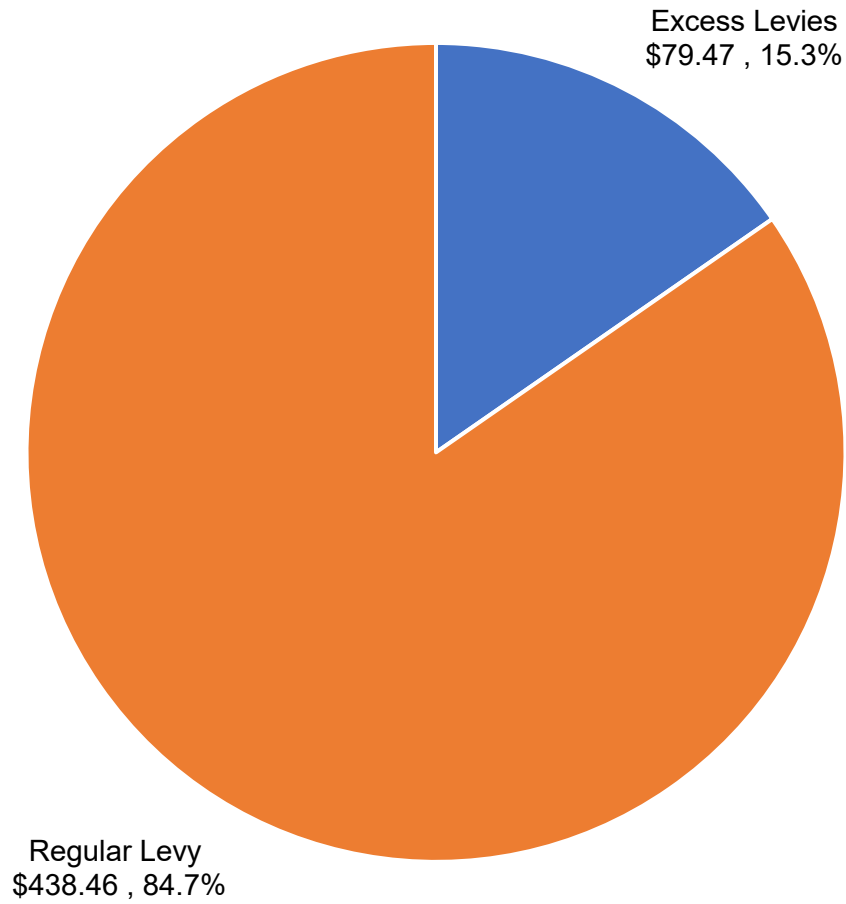
**Distribution of Property Taxes Levied by Percentages<sup>15</sup>**

<b>Tax Year</b>	<b>On Real Estate</b>	<b>On Personal Property</b>	<b>On Public Utilities Property</b>	<b>Total</b>
2012	54.62%	32.29%	13.08%	100.00%
2013	53.58%	33.63%	12.79%	100.00%
2014	54.32%	32.85%	12.83%	100.00%
2015	53.61%	33.68%	12.71%	100.00%
2016	53.12%	33.92%	12.96%	100.00%
2017	54.77%	31.35%	13.88%	100.00%
2018	55.35%	30.55%	14.10%	100.00%
2019	54.21%	31.74%	14.05%	100.00%
2020	52.40%	32.77%	14.83%	100.00%
2021	53.55%	31.67%	14.78%	100.00%
2022	54.55%	30.70%	14.75%	100.00%

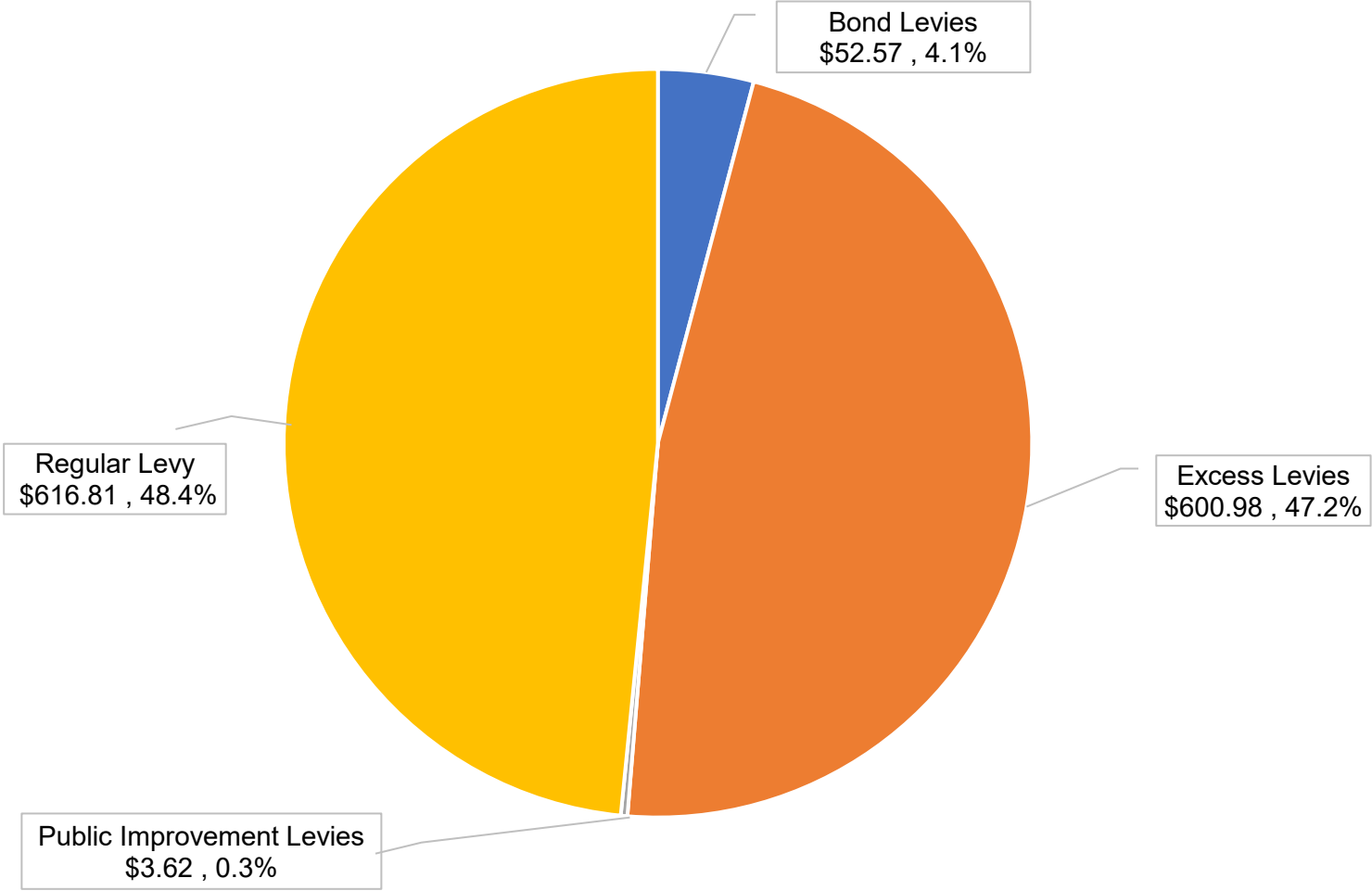
<b>Tax Year</b>	<b>For the State</b>	<b>For Counties</b>	<b>For School Boards</b>	<b>For Municipalities</b>	<b>Total</b>
2012	0.42%	26.64%	66.12%	6.82%	100.00%
2013	0.42%	26.63%	66.24%	6.71%	100.00%
2014	0.42%	26.58%	65.87%	7.13%	100.00%
2015	0.42%	26.77%	65.97%	6.84%	100.00%
2016	0.42%	26.97%	65.81%	6.80%	100.00%
2017	0.42%	26.97%	65.54%	7.07%	100.00%
2018	0.42%	27.17%	65.29%	7.12%	100.00%
2019	0.42%	26.77%	65.91%	6.90%	100.00%
2020	0.42%	26.83%	66.02%	6.73%	100.00%
2021	0.42%	26.83%	66.02%	6.73%	100.00%
2022	0.42%	26.78%	65.88%	6.91%	100.00%

<sup>15</sup> These amounts reflect the total amount of taxes billed.

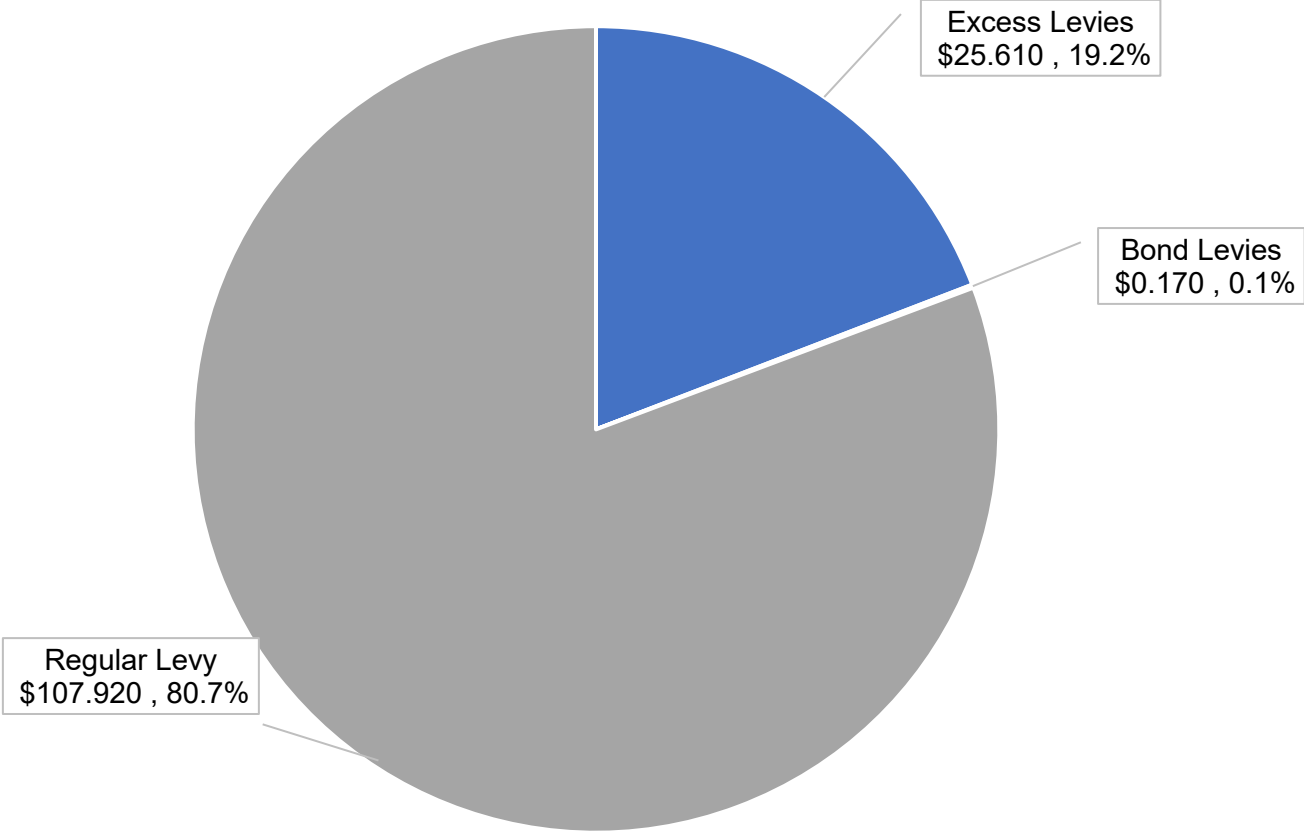
**Property Taxes Levied for County Governments  
Tax Year 2022  
(In Millions)**



**Property Taxes Levied for County School Boards  
Tax Year 2022  
(In Millions)**



**Property Taxes Levied for Municipalities  
Tax Year 2022  
(In Millions)**



## PROPERTY TRANSFER TAX

The Excise Tax on the Privilege of Transferring Real Property (W.Va. Code §11-22) was first enacted in 1859. The tax, commonly known as the Property Transfer Tax, is administered by the West Virginia State Tax Department and by the county clerks and consists of an excise tax paid to the State and an excise tax paid to the treasury of the county where the transfer is to be recorded. Excise stamps purchased from the county clerk are to be affixed to all documents, such as deeds, which transfer rights to, or interests in rights to, real property from one person to another prior to recording. "Person" also means an association or corporation.

### Property Transfer Tax – General Revenue Fund Fiscal Years 2019 – 2023

<u>Fiscal Year</u>	<u>Collections</u>
2019	\$12,852,830
2020	\$12,186,810
2021	\$15,942,799
2022	\$17,855,845
2023	\$12,706,304

### Taxpayers

The tax must be paid either by the person who transfers the property or by the person to whom the transfer is made. Transfers from trustees of estates or from county clerks for real estate sold for delinquent taxes must be paid by the person to whom the transfer is made.

### Tax Rates

The State portion of this tax is levied at the rate of \$1.10 for each \$500 of value or any fraction of that amount. The county portion of the tax is a minimum of 55 cents on each \$500 of value or any fractional part of that amount. Prior to July 6, 2017, county commissions could increase that rate to \$1.10 per \$500 or any fractional part of that amount. Effective July 6, 2017, counties may increase the county excise tax rate to \$1.65 per \$500. A \$20 fee, in addition to the Property Transfer Tax, will be assessed on the transfer of title to real estate. The money collected from this fee is to be deposited by the respective county assessors in the West Virginia Affordable Housing Trust Fund.

Beginning July 1, 2021, 10.0 percent of Property Transfer Tax collections will be retained by the county where the tax was collected for county purposes. Beginning July 1, 2022, 20 percent of State Property Transfer Tax collections will be retained by the county where the tax was collected for county purposes. Beginning July 1, 2023, 30.0 percent of State Property Transfer Tax collections will be retained by the county where the tax was collected for county purposes. Beginning July 1, 2024, 65.0 percent of State Property Transfer Tax collections will be retained by the county where the tax was collected for county purposes. Beginning July 1, 2025, the State Property Transfer Tax would become a county Property Transfer Tax to be used by the county where the tax is collected for county purposes.

In addition to the transfer taxes discussed above, county commissions that have created a farmland protection program are authorized in W.Va. Code §8A-12-21 to impose an additional county excise tax on the privilege of transferring title to real property. This additional tax may not exceed \$1.10 per \$500 of value or fraction thereof. In counties that have exercised this option,

the combined taxes on the privilege of transferring title to real property may be as high as \$3.85 per \$500 of value or fraction thereof.

State Tax	\$1.10
County Regular Tax	\$0.55
County Additional Tax	\$1.10
<u>County Additional Tax for Farmland Preservation</u>	<u>\$1.10</u>
Total	\$3.85

If the rights to, or the interests in the rights to, the real property to be transferred constitute a gift or if they are made without consideration, then the value of the transfer document is determined by the actual monetary value of the property transferred. All other transfers require the value of the document to be determined by the full consideration paid or to be paid, including any claims against or in favor of the property.

Proportional valuations must be made when transfers of real property lie partly inside and partly outside West Virginia or when some of the transfer is made up of personal property. Tax on the transfer of property which lies in two counties must be paid only to one of the counties. Both parts of this tax are embodied in a single State-issued series of stamps or by use of another proof of purchase approved by the State Tax Commissioner.

## **Exemptions**

Transfers not subject to this tax fall into four main categories:

1. those principally for the benefit of individuals, which include:
  - a. wills,
  - b. leases,
  - c. testamentary or inter vivos trusts,
  - d. deeds of partition,
  - e. quitclaim or corrective deeds made without consideration,
  - f. mortgages or deeds of trust given as a security for a debt,
  - g. transfers between husband and wife,
  - h. transfers made between parent and child without consideration,
  - i. certain transfers made between parent and child and the spouse of the child without consideration,
  - j. certain transfers made between grandparent and grandchild and the spouse of the grandchild without consideration,
  - k. transfers in which the value transferred is \$100 or less, and
  - l. transfers made between any person and a "straw" party without consideration.
2. those principally for the benefit of corporations, which are as follows:
  - a. deeds made pursuant to corporate mergers,
  - b. deeds made from a subsidiary corporation to its parent corporation for no consideration other than surrender of stock, and
  - c. deeds made pursuant to mergers of limited liability companies, partnerships, limited partnerships, and conversions of corporations or certain other business organizations into limited liability companies.



3. transfers by gift, dedication deed or condemnation proceeding to or from the United States government or the West Virginia government, including any agencies, instrumentalities or political subdivisions of either, and gifts to or political subdivisions of either, and
4. gifts to or transfers from or between certain voluntary charitable and educational organizations.

### **Disposition of Revenue**

Beginning July 1, 2023, 30 percent of the revenue from the State portion of the Property Transfer Tax is to be deposited into the General revenue Fund and appropriated by the Legislature. The remaining 70 percent is retained by the County for county purposes. The percent retained by counties increases each fiscal year. By July 1, 2025, the State Property Transfer Tax will be a county Property Transfer Tax.

**PART VI**  
**OTHER STATE TAXES AND FEES**

## INSURANCE TAXES

The State of West Virginia collects taxes, fees, and surcharges from insurance companies in West Virginia. Taxes on insurance (W.Va. Code Chapter 33) were first enacted in 1957.

Insurance Taxes deposited into the General Revenue Fund totaled \$112.2 million in Fiscal Year 2023.

### Insurance Premium Tax Collections (in millions)

Fiscal Year	General Revenue	Municipal Pension, Teachers Retirement, & Fire Protection Funds 1% Tax	Fire Protection Surcharge	Medical School Fund	Total Insurance Premium Tax
2019	\$129.11	\$30.82	\$14.97	\$0.00	\$174.90
2020	\$129.36	\$31.60	\$14.74	\$0.00	\$175.70
2021	\$118.06	\$27.60	\$12.89	\$0.00	\$158.55
2022	\$135.85	\$33.00	\$15.30	\$0.00	\$184.15
2023	\$112.17	\$35.95	\$16.33	\$23.40	\$187.85

### Taxpayers

The Insurance Premium Tax is collected from every insurance company transacting insurance in West Virginia, based on gross premiums from business in the State, with certain exceptions. An Annuity Tax is imposed based on the gross amount of annuity considerations collected by life insurers on business transacted in West Virginia prior to January 1, 2021. Annual license fees are also collected from persons acting as insurers and transacting insurance in West Virginia and from insurance agents and brokers. In addition, fees are received for processing of reports and documents. The taxes and fees are administered by and payable to the Insurance Commissioner.

### Premium Tax

The Premium Tax is imposed on all insurance companies, except farmers' mutual fire insurance companies, annuity writers, fraternal beneficiary societies and health care corporations and health maintenance organizations. This tax is levied at the rate of 3.0 percent on gross direct premiums, including dividends, collected, and received for the previous calendar year on policies covering residents of or risks located in this State minus any premiums returned to policyholders because of cancellations. Reciprocal insurers pay the tax based upon premiums on business in West Virginia minus any premiums returnable because of cancellation and amounts returned to subscribers or credited to their accounts as savings.

The following are exempt from the Premium Tax:

1. fraternal benefit services,
2. farmers' mutual fire insurance companies,
3. health care corporations, and
4. health maintenance organizations.

## **Additional Premium Tax**

An additional premium tax of 1.0 percent of taxable premiums is levied on fire insurance and casualty insurance policies. The purpose of this additional tax is to provide revenue for municipal policemen's and firemen's pension and relief funds and the Teachers Retirement System Fund and for volunteer and part volunteer fire companies and departments.

## **Surcharge on Fire and Casualty Insurance Policies**

Every fire and casualty insurance policy holder must pay a surcharge equal to 0.55 percent of the gross direct premium paid on the policy. The surcharge is to benefit volunteer and part-volunteer fire departments. The policy surcharge will not be subject to premium taxes, agent commissions or any other assessments against premiums. Casualty insurance does not include credit life insurance or credit disability insurance. The policy surcharge is to be collected by the insurer and remitted to the Insurance Commissioner.

All monies collected are deposited in the Fire Protection Fund, a special account in the State Treasury. The State Treasurer must distribute the revenues in the Fire Protection Fund quarterly. Each volunteer fire department or company is to receive an equal share of the revenues deposited in the Fire Protection Fund.

## **License Tax and Fees**

All companies and persons acting as insurers in West Virginia are required to be licensed except those companies whose only business consists of investigating and settling losses under policies written in West Virginia while duly licensed or those companies who are not transacting new business but are only collecting premiums on policies remaining in force. The fee for an annual license for insurers is \$200. The following is a list of other fees:

- Each excess line broker: \$200
- Each licensed agent, adjuster, broker, solicitor, and service representative: \$25
- Receiving and filing annual reports: \$100
- Rating organization: \$100
- Filing certified copy of articles of incorporation: \$50
- Filing copies of charter: \$50
- Filing any additional paper required by law or furnishing copies thereof: \$1
- Each certificate of compliance, deposit, and valuation copy of report or certificate of condition of company to be filed in any other state: \$15
- Each form filing: \$50
- Each rate filing: \$75

## **Fire Marshall Tax**

Every insurance company doing business in West Virginia, except farmers' mutual fire insurance companies, must pay in addition to any other taxes, 0.50 percent of the direct net premium receipts on insurance against fire hazards.

## Minimum Tax

Any insurer licensed in West Virginia must pay a minimum tax of \$200 for any calendar year. Taxes used in calculating the minimum are those imposed by W.Va. Code §33-3. The minimum tax is to be paid annually on or before March 1.

## Disposition of Revenue

During Fiscal Year 2023, \$112.2 million (60.0 percent) of the revenue from Insurance Taxes was deposited in the State General Revenue Fund. The Municipal Pension Fund, Teachers Retirement Fund and Fire Protection Fund received a total of \$35.9 million from additional 1.0 percent tax. Revenue from the Fire Protection Surcharge was almost \$16.3 million in Fiscal Year 2023. Revenue for the Medical School Fund was \$23.4 million in Fiscal Year 2023.

## Comparison with Other States

The tax rates listed in this section are as of July 1, 2023.

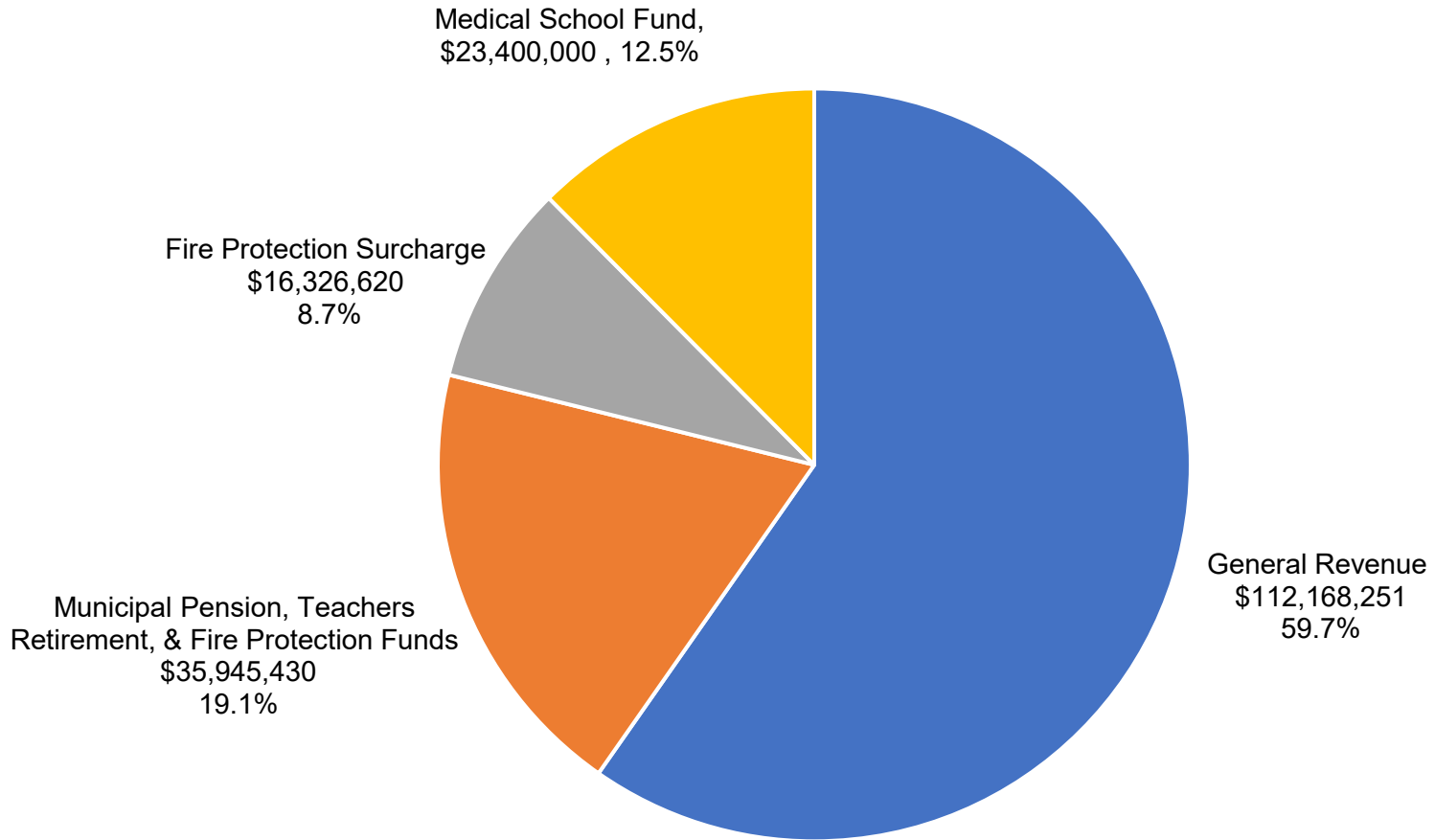
### Comparison of State Tax Rates

State	Rate
Kentucky	2.0% of gross premiums. Additionally, a 1.8% surcharge applies on premiums for Kentucky risks. Fire insurers pay an additional 0.75% on premiums
Maryland	2.0% of gross premiums
Ohio	1.4% of gross premiums. Fire insurers pay an additional 0.75% on premiums derived from fire insurance.
Pennsylvania	2.0% of gross premiums
Virginia	2.25% of gross premiums. Industrial Sick Benefit 1.0%
West Virginia	3.0%-5.5% of gross premiums. An additional 1.0% on taxable premiums for fire insurance and casualty insurance policies. A 0.55% surcharge is imposed on fire and casualty insurance policies that goes to Volunteer Fire Departments.

## Tables and Charts

The following graph provides information on distribution of revenue from West Virginia Insurance Taxes.

**Distribution of Revenue  
from Insurance Taxes  
FY 2023**



## LIQUOR TAXES

The West Virginia Liquor Profits Tax (W.Va. Code §60-1 to 8) was first enacted in 1995. Sales of alcoholic liquor at both the wholesale and retail level were controlled by the State until the early 1990s. The Legislature changed the statute during the 1990 session and later during the 2009 session. Currently, wholesale sales of liquor are controlled by the State; retail liquor is sold by licensed retail liquor stores.

### Liquor Profits – General Revenue Fund Fiscal Years 2019 – 2023

<u>Fiscal Year</u>	<u>Collections</u>
2019	\$23,039,469
2020	\$25,727,232
2021	\$25,586,585
2022	\$29,473,922
2023	\$32,312,817

### Licensees

Retail sales of liquor can only be made in West Virginia by retail licensees. Retail licensees are either freestanding liquor retail outlets or a mixed retail liquor outlet. For example, a grocery store or a drug store may have a retail liquor license. The annual license fee for a retail licensee is \$2,000.

A variety of license fees exist for those who wish to manufacture, distribute, or sell alcoholic liquor within West Virginia. The term "alcoholic liquor" includes alcohol, wine, spirits, and any other liquor or solid capable of being used as a beverage. An Operational Fee of \$100 must be added for each licensed location. A Reactivation Fee of \$150 will apply for licensees that renew late.

Class A licenses are for on-premises consumption. Annual fees are listed below:

<b>Class A</b>	<b>2022-2023</b>
Private Club Bar or Private Club Restaurant (<1,000 members - liquor, wine & beer)	\$1,150
Private Club Bar or Private Club Restaurant (>1,000 members - liquor, wine & beer)	\$2,650
Private Caterer (Private Club Restaurant license required)	\$1,000
Private Manufacturer Club (liquor, wine & beer)	\$2,150
Private Bakery	\$650
Private Food Truck	\$2,150
Private Cigar Shop	\$1,650
Private Tennis Club	\$2,150
Private Farmers Market (Private Club Restaurant license required)	\$2,150
Private Food Court	\$2,150
Private Outdoor Designated Area (PODA)	\$100
Private Professional Sports Stadium	\$2,150
Private College Sports Stadium	\$2,150
Private Multi-Sport Complex	\$2,150
Private Wedding Venue or Barn	\$1,650

<b>Class A</b>	<b>2022-2023</b>
Private Coliseum or Center	\$2,150
Private Resort Hotel (1 to 5 areas)	\$7,650
Private Resort Hotel (6 to 10 areas)	\$12,650
Private Resort Hotel (11 to 15 areas)	\$17,650
Private Resort Hotel (16 to 20 areas)	\$22,650
Private Hotel	\$2,150
Private Golf Course (9 holes)	\$2,150
Private Golf Club (18 holes)	\$2,150
Fraternal Club (Non-Profit - liquor, wine & beer)	\$900
Fraternal Club (Non-Profit) - beer	\$150
Private Wine Restaurant - wine only	\$250
Private Wine Restaurant - wine & beer only	\$400
Private Wine Spa - wine only	\$150
Private Wine Bed & Breakfast - wine only	\$150
Tavern - non-intoxicating beer	\$150
Brew Pub (Resident Brewer/Importer License Required)	\$500
*Special Events (Fairs/Festivals - liquor, wine & beer)	\$500
*Special Events (Fairs/Festivals - wine & beer)	\$500
*Special Events (Fairs/Festivals) - wine	\$250
*Special Events (Fairs/Festivals) - beer	\$250
*One Day Charitable Rare Liquor Auction (Private Club required)	\$150
*One Day Charitable Wine with Auction	\$0
*One Day Charitable Beer	\$0
*Private Multi-Vendor Fair or Festival (liquor, wine & beer)	\$500
*Nonintoxicating Beer or Nonintoxicating Craft Beer Floorplan Extension	\$50
*Private Club Bottle Sale	\$1,000
*Pre-Mixing Permit (Type of private club required)	\$0
Nonintoxicating Beer or Nonintoxicating Craft Beer - Outdoor Dining	\$0
Nonintoxicating Beer or Nonintoxicating Craft Beer - Outdoor Street Dining	\$0
Wine - Private Wine Outdoor Dining	\$0
Wine - Private Wine Outdoor Street Dining	\$0
Liquor - Private Outdoor Dining	\$0
Liquor - Private Outdoor Street Dining	\$0
Private Outdoor Dining Area	\$100

\*\$100.00 Operational Fee Does Not Apply

Because of Covid 19, the fees were reduced in 2020-2021 by approximately two thirds and in 2021-2022 by approximately one third to assist businesses.



Class B Licenses are issued for off-premises consumption. Annual fees are listed below:

<b>Class B</b>	<b>2020-2021</b>	<b>2021-2022</b>	<b>2022-2023</b>
*Beer Growler	\$100	\$100	\$100
*Wine Growler	\$100	\$100	\$100
*Craft Cocktail Growler	\$100	\$100	\$100
*Grocery - Curbside Beer	\$250	\$250	\$250
*Grocery - Curbside Wine	\$250	\$250	\$250
*Class A-beer, with food, Beer Delivery	\$0	\$0	\$0
*Class A-wine, with food, Private Wine Delivery	\$0	\$0	\$0
*Class A-Craft Cocktail Growler, with food, Delivery	\$0	\$0	\$0
*Class B-beer, with food, Delivery	\$0	\$0	\$0
*Class B-wine, may have food, Private Wine Delivery	\$0	\$0	\$0
*Liquor Bottle Delivery (retail liquor outlet, may have food)	\$0	\$0	\$0
*Third Party Delivery Class A - beer with food	\$200	\$200	\$200
*Third Party Delivery Class A - wine with food	\$200	\$200	\$200
*Third Party Delivery Class A - craft cocktail growler with food	\$200	\$200	\$200
*Third Party Delivery Class B - beer with food	\$200	\$200	\$200
*Third Party Delivery Class B - wine may have food	\$200	\$200	\$200
*Third Party Delivery Liquor Bottle Delivery - may have food	\$200	\$200	\$200
*Wine Specialty Shop Delivery with Gift Basket	\$250	\$250	\$250
*Nonintoxicating Beer or Nonintoxicating Craft Beer Retail	\$0	\$0	\$0
Transportation Permit			
*Private Wine Retail Transportation Permit (1st vehicle/others)	\$10, \$1	\$10, \$1	\$10, \$1
*Private Cocktail Delivery Permit (1st vehicle/others)	\$10, \$1	\$10, \$1	\$10, \$1
*Private Liquor Bottle Delivery Permit (1st vehicle/others)	\$10, \$1	\$10, \$1	\$10, \$1
*Class A or Class B - Curbside in-person/in-vehicle pickup (Class B that is a grocery store - see Grocery-Curbside)	\$0	\$0	\$0
*Off-Premises Wine Sales - Private Clubs & Private Wine Restaurants only	\$100	\$100	\$100

\*\$100.00 Operational Fee Does Not Apply

Municipalities may also impose license fees. These fees may equal the State fee amount except for the license fee for private clubs for which the limit is 50 percent of the State fee.

### **Tax Rates**

There is a 5.0 percent tax imposed on the purchase price of retail sales of liquor and wine in addition to the 6.0 percent Consumers Sales Tax.<sup>16</sup> The retailer must collect the tax, which is deposited in the State Treasury and distributed quarterly to counties and municipalities. A municipality receives the taxes collected within that municipality's municipal boundaries, and the county receives the tax collected by a retail liquor store located in the county in unincorporated areas.

<sup>16</sup> When the retail store is located within a municipality that imposes a municipal sales and use tax, the retailer also collects the municipal sales and use tax.

In addition, liquor and wine sold to private clubs by private retail liquor stores are subject to a 6.0 percent excise tax. State revenue generated by this tax is deposited in the Drunk Driving Prevention Fund. Sales by private clubs to their members are also subject to the 6.0 percent Consumers Sales Tax.

### **Wine Liter Tax**

The Wine Liter Tax is levied on all wine sold by suppliers to distributors, except wine sold to the Alcohol Beverage Control Commissioner, and on all wine sold to West Virginia adult residents from direct shippers. The tax is levied at a rate of 26.406 cents per liter. Collections of the Wine Liter Tax are deposited into the General Revenue Fund.

#### **Wine Liter Tax - General Revenue Fund Fiscal Years 2019 – 2023**

<b>Fiscal Year</b>	<b>Collections</b>
2019	\$2,243,674
2020	\$2,268,704
2021	\$2,425,688
2022	\$2,336,303
2023	\$1,980,574

### **Hard Cider Tax**

All hard cider sold by wineries, farm wineries, and suppliers to distributors is taxed at a rate of 22.6 cents per gallon, in like ratio for any partial gallon or other unit of measure. Also taxed at this rate is all hard cider sold and sent to West Virginia adult residents from direct shippers.

“Hard Cider” means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12.5 percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

### **Comparison with Other States**

The below table lists the excise tax rates in effect January 1, 2023. In all the states listed except Maryland, sales of beer are also subject to the state’s sales tax. In Maryland, unlike sales of other types of tangible personal property and taxable services that are taxed at a 6.0 percent rate, the sales and use tax is imposed at a 9.0 percent rate on the taxable price of alcoholic beverages.

**Comparison of Taxes on Liquor  
as of January 2023**

<b>State</b>	<b>Beer Tax Rate</b>
Kentucky	8 cents per gallon
Maryland	9 cents per gallon
Ohio	18 cents per gallon Beer in barrels: \$5.58, containers of 12 oz or less: 0.14 cents per oz or any fraction, containers above 12 oz and less than 128 oz: 0.84 cents per 6 oz interval or any fraction
Pennsylvania	8 cents per gallon
Virginia	26 cents per gallon
West Virginia	18 cents per gallon
<b>State</b>	<b>Wine Tax Rate</b>
Kentucky	50 cents per gallon
Maryland	40 cents per gallon
Ohio	30 cents per gallon Wine (containing alcohol 4%-14% by volume): 32 cents per gallon Wine (containing alcohol 14%-21% by volume): \$1.00 per gallon
Pennsylvania	\$2.50 per gallon on direct wine shipments (Except direct shipments of wine)
Virginia	\$1.51 per gallon
West Virginia	\$1.00 per gallon \$0.262 per liter
<b>State</b>	<b>Liquor Tax Rate</b>
Kentucky	\$1.92 per gallon Distilled spirits placed in containers for resale under 6% - \$0.25/gallon; \$0.05/case and 11% wholesale tax
Maryland	\$1.50 per gallon
Ohio	Vermouth: \$1.10 per gallon Sparkling & carbonated wine & champagne: \$1.50 per gallon Cider: \$0.24 per gallon Mixed Beverages: \$1.20 per gallon
Pennsylvania	Alcoholic beverages, including malt or brewed beverages (containing more than 5%): 18% of net price
Virginia	Government directly controls liquor sales. Revenue is generated from various taxes, fees, price mark-ups and net liquor profits.
West Virginia	Government directly controls liquor sales. Revenue is generated from various taxes, fees, price mark-ups and net liquor profits.

**PART VII**  
**TAX CREDITS**

# TAX CREDITS

Several West Virginia tax credits can be taken against one or more taxes. Explanations of certain credits can be found in this section rather than in the various sections of this report dealing with specific taxes.

## Economic Development Tax Credits

### Economic Opportunity Tax Credits

The Economic Opportunity Tax Credit (EOTC) is available to qualified businesses that make a qualified investment in a new or expanded business in West Virginia and, as a result of this investment, create at least ten new West Virginia jobs. Qualified businesses include only those businesses engaged in the activities of manufacturing, information processing, warehousing, non-retail goods distribution, qualified research and development, the relocation of a corporate headquarters or destination-oriented recreation and tourism.

A qualified business creating at least 10 new jobs within three tax years is allowed a credit equal to 10 percent of its qualified investment. This percentage increases with the number of new jobs created. A business creating at least 20 new jobs is allowed a credit equal to 20 percent of its qualified investment, a business creating at least 280 new jobs is allowed a credit equal to 25 percent of its qualified investment, and a business creating at least 520 new jobs can claim 30 percent of its qualified investment. The applicable jobs percentage for most taxpayers ranges as follows:

<b>Minimum New West Virginia Jobs</b>	<b>Applicable Percentage<sup>17</sup></b>
520	30%
280	25%
20	20%
10	10%
15 (corporation headquarters relocation only)	10%

The Economic Opportunity Tax Credit is applied against taxes in a pro-rated amount over a ten-year period at a rate of 10 percent per year.

The calculation of qualified investment is determined by multiplying the net cost of eligible property by its applicable useful life percentage based on the projected actual economic useful life of the asset. The percentages shown in the following table apply.

<b>Useful Life</b>	<b>Applicable Percentage</b>
Less than 4 years	0%
4 years or more but less than 6 years	33 1/3%
6 years or more but less than 8 years	66 1/3%
8 years or more	100%

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<sup>17</sup> For projects having qualified investment of \$20 million or more that are constructed using construction labor and mechanics numbering 75 or more employees or equivalent employees who are paid at an average wage of at least the prevailing wage, the new jobs percentage is increased by five percentage points.

For example, if a taxpayer purchases a machine for \$25,000 for use in a new industrial facility which has a useful life of six years, the qualified investment is equal to \$16,666.66.

The Economic Opportunity Tax Credit can offset a portion of the tax attributable to the qualified investment for the Business and Occupation Tax (electric power generation taxes only), Corporation Net Income Tax and Personal Income Tax (tax on flow-through business profits only) in the order stated.

The amount of tax attributable to qualified investment is generally determined by use of a payroll factor. The taxpayer multiplies total tax liability by a fraction, the numerator of which is the compensation paid to the employees hired as a result of the new qualified investment and the denominator of which is the compensation paid to all West Virginia employees of the taxpayer. The result of this computation is tax attributable to qualified investment.

If the annual median compensation paid by the taxpayer to qualified new employees exceeds the statewide average nonfarm payroll wage as determined annually from WorkForce West Virginia information, then the taxpayer may use the available credit to offset up to 100 percent of each of the above taxes attributable to qualified investment. All other qualified taxpayers may use the available credit to offset up to 80 percent of each of the above taxes attributable to the qualified investment.

The following is a summary of the Statewide average nonfarm payroll wages the median compensation of new jobs must exceed to obtain the 100 percent tax offset:

<b>Applicable Tax Year<sup>18</sup></b>	<b>Statewide Average Nonfarm Payroll Wage for EOTC</b>
2019	\$43,283
2020	\$46,120
2021	\$46,618
2022	\$48,741
2023	\$50,498

Excess credit remaining after application of the credit against current year taxes may be carried forward for up to 12 years following the year of the initial credit claim attributable to the placement of qualified investment into service. The year of the initial credit claim is either the tax year that the qualified investment was first placed into service or, at the election of the taxpayer, the next succeeding tax year. Credit recapture may occur when the actual useful life of the qualified investment property or the period of actual use of qualified investment property within West Virginia falls short of the projected useful life applicable percentage category used in the original credit calculations. Additional recapture provisions exist for the Economic Opportunity Tax Credit whenever the taxpayer fails to maintain the required number of new jobs upon which the credit is based.

*Economic Opportunity Tax Credit for Corporate Headquarters Relocation*

A taxpayer that moves its corporation headquarters to West Virginia from a location outside of West Virginia may be entitled to an Economic Opportunity Tax Credit if the relocation creates at least 15 new West Virginia jobs. If the relocation creates at least 15 but less than 20 new jobs,

<sup>18</sup>Annual updates may be found in the Administrative Notices Section at <https://tax.wv.gov/TaxProfessionals/AdministrativeNotices/Pages/AdministrativeNotices2022.aspx>

then the amount of the credit is equal to 10 percent of the taxpayer's adjusted qualified investment. "Adjusted qualified investment" is the qualified investment of the taxpayer in real and tangible personal property purchased for the corporate headquarters plus the cost of the reasonable and necessary expenses incurred by the taxpayer to relocate the corporation headquarters from its out-of-state location to West Virginia. Generally, the tax credit may be used to offset tax liabilities in the same manner as for the general Economic Opportunity Tax Credit.

*Tax Credit for High Technology Manufacturers*

A credit is also provided for specified high technology manufacturers. A "high technology manufacturing business" is defined as a business properly classified under the NAICS Code as manufacturers of electronic computers, computer storage devices, electron tubes, electronic capacitors, semiconductors and related devices, and semiconductor machinery. The credit is based on the qualified taxpayer's qualified investment which results in the creation of at least 20 new jobs within 12 months after placing the qualified investment in service. The credit is 100 percent of the tax attributable to the qualified investment and is allowed for each year for a 20-year credit period. The credit is to be taken beginning with the taxable year in which the qualified investment is placed in service unless the taxpayer elects to delay to the next succeeding tax year. A taxpayer who uses this credit cannot take any other credit under W.Va. Code §11-13Q-1 et seq. In order to claim or retain the credit, the median compensation of the new jobs attributable to the qualified investment must exceed inflation-adjusted values as shown in the following table:

Year <sup>19</sup>	Median Compensation or Salary
2019	\$54,750
2020	\$55,800
2021	\$56,600
2022	\$58,300
2023	\$62,750

*Jobs Creation Tax Credit*

Taxpayers that do not satisfy the new jobs percentage requirements are permitted to claim a credit of \$3,000 per year per new job created for a period of five consecutive years beginning in the tax year when the new employee is first hired if:

1. the new job pays at least \$32,000 annually (see inflation-adjusted values below);
2. health insurance and other benefits, such as childcare and retirement, are offered; and
3. the position is a full-time permanent position.

The inflation adjusted annual pay for the new jobs created for purposes of the tax credit must equal or exceed the following:

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<sup>19</sup> Annual updates may be found in the Administrative Notices section at <https://tax.wv.gov/TaxProfessionals/AdministrativeNotices/Pages/AdministrativeNotices2022.aspx>

<b>Year<sup>20</sup></b>	<b>Median Compensation or Salary</b>
2019	\$37,300
2020	\$37,950
2021	\$38,500
2022	\$39,650
2023	\$42,700

### **Downstream Natural Gas Manufacturing Investment Tax Credit**

Taxpayers that make a qualified investment in a new or expanded downstream natural gas manufacturing facility in West Virginia that results in the creation of at least five new jobs may be eligible for the Downstream Natural Gas Manufacturing Investment Tax Credit. To qualify for the tax credit, the qualified investment must have been made on or after July 1, 2020.

An eligible taxpayer creating at least five new jobs within three tax years is allowed a credit equal to 10 percent of its qualified investment. This percentage may increase with the number of new jobs created. The applicable jobs percentage for most taxpayers ranges as follows:

<b>Minimum New West Virginia Jobs</b>	<b>Applicable Percentage</b>
150	20%
50	15%
5	10%

The Downstream Natural Gas Manufacturing Investment Tax Credit is pro-rated over a 10-year period at a rate of 10 percent per year. For example, a credit of \$200,000 attributable to \$1 million of qualified investment made in 2021 is applied at a rate of \$20,000 per year for the 2021-2030 period.

The amount of qualified investment is determined by multiplying the net cost of eligible property by its applicable useful life percentage based on the projected actual economic useful life of the asset. The percentages shown in the following table apply.

<b>Useful Life</b>	<b>Applicable Percentage</b>
Less than 4 years	0%
4 years or more but less than 6 years	33 1/3%
6 years or more but less than 8 years	66 2/3%
8 years or more	100%

For example, if a Taxpayer purchases a machine for \$50,000, for use in a new downstream natural gas manufacturing facility, and the machine has a useful life of six years, the qualified investment is \$33,333.33. The \$50,000 investment is multiplied by the applicable useful life percentage of 66.66% to arrive at \$33,333.33 in qualified investment.

The credit can offset a portion of the tax attributable to the qualified investment for the Corporation Net Income Tax and Personal Income Tax, in the order stated.

<sup>20</sup> *Ibid.*



If the annual median compensation of qualified new employees exceeds the statewide average nonfarm payroll wage (as determined annually by the West Virginia Bureau of Employment Programs), the taxpayer may use the available credit to offset up to 100% of each of the above taxes attributable to qualified investment. All other qualified taxpayers may use the available credit to offset up to 80% of each of the above taxes attributable to qualified investment.

The amount of tax attributable to qualified investment is generally determined by use of a payroll factor. The taxpayer multiplies total tax liability by a fraction, the numerator of which is the compensation paid to the employees hired because of the new qualified investment, and the denominator of which is the compensation paid to all West Virginia employees of the Taxpayer. The result of this computation is tax attributable to qualified investment.

Excess credit remaining after applying the credit against current year taxes may be carried forward for up to 10 years following the end of the initial 10-year application period. If any unused credit remains after the 20<sup>th</sup> year, the amount is forfeited.

### **Manufacturing Investment Tax Credit**

Manufacturers that make qualified investments for industrial expansion or industrial revitalization may be eligible for the Manufacturing Investment Tax Credit. The tax credit is limited to businesses engaged primarily in a business activity whose first two digits of its North American Industry Classification System (NAICS) Code are 31, 32 or 33 or whose six-digit code is 211130.

Eligible investments include real property, improvements to real property, and tangible personal property constructed or purchased for use as a component part of a new, expanded, or revitalized business of a qualified industrial taxpayer. Only tangible personal property with respect to which depreciation or amortization (in lieu of depreciation) is allowable in determining the federal income tax liability of the industrial taxpayer, that has a useful life at the time the property is placed in service or use in West Virginia of four years or more will qualify for the credit. Leased property used as a component part of a new or expanded industrial facility is considered property purchased for manufacturing investment if the lease term is at least 10 years and the rent to be paid over the primary term of the lease is quantifiable. The credit is equal to 5.0 percent of the taxpayer's qualified investment pro-rated over a ten-year period at a rate of 10.0 percent per year. Effective July 1, 2021, the credit for small arms and ammunition manufacturers is increased to 50.0 percent of the taxpayer's qualified investment.

Manufacturing Investment Tax Credit may be used to offset up to 60.0 percent of the taxpayer's annual liability for Severance Tax and Corporation Net Income Tax for a period of 10 years. Any portion of a particular year's annual credit that remains after application against these taxes for the taxable year is forfeited. Credit recapture may occur when the actual useful life of the qualified investment property or the period of actual use of the qualified investment property within West Virginia falls short of the projected useful life applicable percentage category used in the original credit calculations.

### **Post-Coal Mine Site Business Credit**

Businesses that have a principal place of business in this state may be eligible for a post-coal mine site business credit if its principal place of business is located on a post-coal mine site and the business employs a minimum of 10 full-time employees at the post-coal mine site. Full-time employees are those working 32 hours a week or more.

An eligible business is allowed a tax credit in the amount of 50.0 percent of its capital expenditures at the post-coal mine site for the first five taxable years its principal place of business is located on the post-coal mine site. A “post-coal mine site” means property that has remained undeveloped for business purposes, subsequent to coal mining operations on the property within bonded area of the last issued coal mine permit.

The tax credit may be applied against the Corporation Net Income Tax and, if a pass-through entity, to the Personal Income Tax of the owners, partners, or shareholders. The claimed tax credit may not exceed 50 percent of the taxpayer’s state income tax for any single year. Any unused credit may be carried forward until used but unused credit expires after ten years.

### **West Virginia Tax Credit for Federal Excise Tax Imposed Upon Small Arms and Ammunition Manufacturers**

The West Virginia Tax Credit for Federal Excise Tax Imposed on Small Arms and Ammunition Manufactures is a State tax credit for federal excise tax imposed upon small arms manufacturers. There is currently a 10 percent federal excise tax imposed on sales of handguns and an 11 percent federal excise tax on other ammunition (shells and cartridges) and other firearms, which includes rifles, shotguns, machine guns, etc.

The amount of the credit may be taken over a 10-year period beginning with the taxable year in which the taxpayer places a qualified investment in a small arms manufacturing facility in service or use in West Virginia. The credit is allowable for property placed in service or use on or after July 1, 2021. The tax credit may be used to offset Corporation Net Income Tax and Personal Income Tax.

# Employment Tax Credits

## Apprenticeship Training Tax Credit

A tax credit is available to taxpayers for wages paid to apprentices in the construction trades. The tax credit is equal to \$2 per hour multiplied by the total number of hours worked during the tax year by the apprentice. The amount of the tax credit allowed for any tax year for each apprentice may not exceed \$2,000 or 50 percent of actual wages paid. The apprentice must be participating in a qualified apprenticeship training program, which is registered with the United States Department of Labor and consists of at least 2,000 hours but not more than 10,000 hours of on-the-job apprenticeship training. The tax credit may be used to offset Corporation Net Income Tax and Personal Income Tax. Unused credit is forfeited; carry back is not allowed.

## High-Wage Growth Business Tax Credit

The New High-Wage Job Credit is for new high-wage jobs created in West Virginia by an eligible employer on or after July 1, 2020. To be an eligible employer, the employer must be registered to do business in West Virginia and offer health benefits to all full-time eligible employees. The employer must certify that it pays at least 50 percent of the health care premiums.

New high-wage jobs are those created on or after July 1, 2020 and must be occupied for at least forty-eight weeks during the tax year by an eligible employee who is paid wages calculated to be at least 2.25 times the state median salary. The employer must maintain a net overall increase in employment. If the employer has contracts covering multiple locations, the employer must have a net overall increase of employment of at least ten new high-wage jobs. Employees holding the new high-wage jobs must be West Virginia residents. The employees cannot have been previously on the payroll of the employer or of an affiliated company and the jobs cannot have existed as of the date the employer filed the application for the credit with the Development Office.

The Development Office may authorize no more than \$5 million of the New High-Wage Job Credits during any fiscal year of the State. The total amount of the tax credit that may be awarded to a taxpayer in any taxable year may not exceed more than 10 percent of the salaries of the new high-wage jobs. The Development Office has full discretion in determining whether to award a credit and the amount of the credit.

The High-Wage Growth Tax Credit may be applied against the Corporation Net Income Tax and, if a pass-through, to the Personal Income Tax of the owners, partners, or shareholders. An eligible employer may apply for and receive the credit for up to five years. The credit is refundable, not to exceed \$100,000 per taxpayer. Unused credit may be carried forward for up to ten years after which the unused credit is forfeited.

## Jumpstart Savings Program

The West Virginia Jumpstart Savings Program allows West Virginia residents to save and invest money to help cover the costs of pursuing a trade or occupation.

An employer may claim a non-refundable tax credit against West Virginia Personal Income Tax or Corporation Net Income Tax liability for a matching contribution to a Jumpstart Savings Account. An employer cannot contribute more than the employee contributes to the savings program in a year. Contributions by an employer cannot exceed \$5,000 per employee per year.

An employer may not claim the credit for him or herself if they are the beneficiary of the account to which a contribution is made. The credit is only allowed to the extent that it is not allowed as a deduction when arriving at the taxpayer's federal adjusted gross income for the tax year in which the contribution is made.

The employer contribution credit must be used in the tax year in which the contribution is made. The credit may not be carried back to a prior tax year, nor carried forward to a subsequent tax year. Any amount of unused credit is forfeited.

### **Military Incentive Credit**

Every employer may take a credit against its Corporation Net Income or Personal Income Tax liability for hiring an economically disadvantaged veteran of the Vietnam era or Korean conflict, a disabled veteran or an unemployed member of the National Guard or reserve forces of the United States military. For hiring an economically disadvantaged Vietnam era veteran, the taxpayer may take a credit of 30 percent of the first \$5,000 paid in wages and compensation. For each disabled veteran hired, the taxpayer may take a credit in the amount of the first \$5,000 of wages and compensation paid multiplied by the percentage of disability suffered as determined by the Veterans Administration. For members of the National Guard or the reserve forces of the United States military, the tax credit is 25 percent of the first \$5,000 paid in wages and compensation.

To take a credit under this program, the taxpayer must hire veterans who have received vouchers from the WorkForce West Virginia, the West Virginia National Guard or participating Reserve forces certifying their eligibility. The employer is not eligible to take a credit if the veteran is already employed or displaces a person who is already employed, or the employer is already receiving job training payments for the veteran. A credit also cannot be taken if the veteran is employed for less than one continuous year unless the employee voluntarily resigns, becomes totally disabled or is discharged for just cause. However, if the employee is discharged, becomes totally disabled or resigns before he has worked one year, the employer can take a partial tax credit. The partial tax credit equals the amount of the tax credit the employer would have received for the full year multiplied by the ratio of the period worked to the full-year period.

### **Natural Gas Industry Jobs Retention Credit**

The Natural Gas Industry Jobs Retention Act provides a credit of \$1,000 per qualified full-time employee for businesses subject to the natural gas storage provision of the Business and Occupation Tax. A full-time employee is defined as one who works on a work site or is on paid vacation leave or other paid leave at least 1,500 hours per year. The credit is available if the qualified Taxpayer retains at least 60 percent of the number of jobs in existence with the business as of January 1, 1996. The amount of the credit may not exceed the amount of Business and Occupation Tax subject to natural gas storage activity.

### **Tax Credits for Employers Providing Childcare for Employees**

An income tax credit is available for employers who provide or sponsor childcare facilities for their employees. Eligible employers can claim a credit for qualifying capital investments made to the childcare facility and for the unreimbursed operating costs of the facility.

To qualify for the investment credit, employers must invest in property for the construction, expansion, improvement, or operation of a childcare facility used primarily by children of the taxpayer's employees and other employees, if it is a jointly owned facility. Qualified childcare

property includes expenditures on buildings and improvements, furniture and fixtures, and equipment directly related to the operation of the childcare facility. The tax credit is equal to 50 percent of the cost of the qualified childcare property, and it may be claimed at a rate of 20 percent per year over a period of five taxable years. In the case of a qualified childcare property jointly owned by two or more unaffiliated employers, each employer's credit is limited to that employer's respective investment in the qualified childcare property.

The credit is subject to recapture when there is any disposition of qualified childcare property or any other event or circumstance under which property ceases to be qualified childcare property with respect to the employer.

In addition to the tax credit for capital investments, an income tax credit is available to an employer who provides or sponsors childcare for employees for the cost of cost operating the childcare facility. The amount of the tax credit is equal to 50 percent of the cost of operation to the employer less any amounts paid for by the employees during a taxable year.

The total credit claimed from the two credits cannot exceed 100 percent of the income tax liability.

For certain non-profit corporations, which are exempt from the West Virginia corporation net income tax, the credit may be transferred, sold, or assigned to any other taxpayer subject to the Corporation Net Income Tax. Any transferred, purchaser, or assignee of credits certified to a non-profit corporation takes the transferred, purchased, or assigned credits subject to any limitations placed on the amount of credit taken in a given year by the relevant code.

## **Credits that Aid Low-Income Families**

### **Credit for Reducing Telephone Charges to Low-Income Families**

Telephone companies are required to provide a low-cost service called Tele-Assistance Service to qualified low-income customers. Telephone companies may take a credit against Corporation Net Income Tax liability in an amount equal to the certified cost of providing Tele-Assistance Service.

### **Credit for Reducing Utility Charges to Low-Income Families**

Natural gas, electric, sewer and water utility companies must grant a rate reduction of 20.0 percent to qualified low-income residential customers for the heating season of November through March. A qualified low-income resident is one who is eligible to receive electric or natural gas utility service, or both, under special reduced rates. The utility companies may take a credit against State Business and Occupation Tax liability for revenue lost by providing the reduced rates to qualified customers. Any unused portion of the credit may be taken as a credit against Corporation Net Income Tax. Businesses providing water utility services at reduced rates to qualified low-income residential customers which have not been reimbursed by other means are also eligible for the credit.

## **Miscellaneous Tax Credits**

### **Manufacturing Property Tax Adjustment Credit**

Manufacturers may claim a nonrefundable credit against Corporation Net Income Tax liabilities equal to the amount of local property taxes paid on West Virginia manufacturing inventory. For purposes of the Manufacturing Property Tax Adjustment Tax Credit, manufacturing inventory means, and is limited to, raw materials, goods in process and finished goods of a business primarily engaged in business activity classified as having a sector identifier whose first two digits of its North American Industry Classification System (NAICS) Code are 31, 32 or 33. The credit may be applied against the Corporation Net Income Tax. Unused credit is forfeited; carry back and carry forward of the credit is not allowed.

### **Natural Gas Liquids Property Tax Adjustment Credit**

Natural gas liquid storers or transporters may be allowed a tax credit in the amount of the West Virginia ad valorem property tax that it paid on the value of natural liquids inventory and equipment. Natural gas liquids inventory and equipment is limited to equipment in West Virginia that is used in the transport and storage of natural gas liquids by a natural gas liquids transporter or natural gas storer.

Taxpayers eligible to claim this tax credit are natural gas liquids storers or natural gas liquids transporters subject to West Virginia Personal Income Tax or Corporation Net Income Tax. Also, those members of an affiliated group of taxpayers engaged in a unitary business with the natural gas liquid storer or natural gas liquids transporter may be considered an eligible taxpayer. Application of the credit against the taxes is limited to the tax of the single entity, from among the affiliated group of taxpayers, that earned the credit. Application of the credit against tax is limited to that single entity's proportionate share of taxable income.

The credit can be taken against the Personal Income Tax or the Corporation Net Income Tax. The credit is applied after application of all other applicable tax credits allowed for the taxable year. Any credit remaining after application of the credit against the tax liabilities, as specified, for the current taxable year cannot be carried back to a prior taxable year but can be carried forward to a subsequent taxable year for up to three taxable years. Additionally, no credit is allowed against employer withholding taxes. No tax credit will be available for tax years beginning on and after July 1, 2030.

### **Industrial Expansion or Industrial Revitalization Credit for Electric Power Producers**

Electric power generation companies that make eligible investments for industrial expansion or industrial revitalization within West Virginia may be eligible for the Industrial Expansion or Revitalization Credit. Eligible investment for industrial expansion includes real property and improvements thereto and tangible personal property constructed or purchased for use as a part of a new or expanded electric power generation facility. Eligible investment for industrial revitalization includes replaced or refurbished facilities, equipment, machinery, and other tangible personal property used in the operation of an electric power generation facility located in West Virginia. Eligible investment may also include real or tangible personal property acquired by written lease for a primary term of ten years or longer if used as a component part of a new, expanded, or revitalized electric power generation facility. The credit is equal to 10 percent of the taxpayer's qualified investment. The calculation of qualified investment for this credit is like that

required for the Economic Opportunity Tax Credit. Industrial Expansion or Revitalization Credit may be used to offset up to 50 percent of the taxpayer's annual liability for Business and Occupation Tax for a period of 10 years. Any portion of a particular year's annual credit that remains after application against this tax for the taxable year is forfeited. Credit recapture may occur when the actual useful life of the qualified investment property or the period of actual use of qualified investment property within West Virginia falls short of the projected useful life applicable percentage category used in the original credit calculations.

### **Coal-Loading Facilities Credit**

A tax credit is granted against Severance Tax liability for qualified investment in a new, expanded, or revitalized coal-loading facility. A coal-loading facility that will qualify for the credit is limited to any building or structure specifically designed and solely used to transfer coal from a coal processing or preparation facility or from a coal storage facility, or both, or from any means of rail or barge transportation used to move coal, including such land as is directly associated with and solely used for the coal-loading facility. Only investment assets used to transfer coal to rail or barge transportation will qualify for the tax credit.

The credit is equal to 10 percent of the cost of the eligible investment made in the coal-loading facility and must be applied over a ten-year period at the rate of one-tenth of the credit per taxable year. The amount of investment that is eligible for the credit is determined by applying a prescribed percentage to the total cost of the project. The percentages shown in the following table apply:

<b>Useful Life</b>	<b>Applicable Percentage</b>
Less than 4 years	0%
4 years or more but less than 6 years	33 1/3%
6 years or more but less than 8 years	66 2/3%
8 years or more	100%

Property with a useful life of less than four years does not qualify for purposes of this credit.

The credit may reduce Severance Tax liability, but the credit cannot be over 50 percent of the total tax liability. No carry-over to a subsequent tax year or carry-back to a prior tax year is allowed for any unused portion of the allowed credit. Unused credit is forfeited. Credit recapture may occur when the actual useful life of the qualified investment property or the period of actual use of qualified investment property within West Virginia falls short of the projected useful life applicable percentage category used in the original credit calculations.

### **Environmental Agricultural Equipment Credit**

Eligible taxpayers are allowed a credit against State Income Tax (i.e., Corporation Net Income Tax or Personal Income Tax) for 25 percent of expenditures for the purchase and installation of qualified agricultural equipment and structures that protect the environment. Eligible taxpayers must purchase and install the qualified equipment for use in their agricultural operations in West Virginia.

The maximum amount of credit in any year is limited to the lesser of \$2,500 or the State Income Tax due for the year. Excess credits may be carried forward for a period not to exceed five years. Carried forward credit must be claimed before applying any new credit.



Agricultural operations include the commercial production of food, fiber or woodland products (but not timbering activity) by means of cultivation or tillage of the soil; the conduct of livestock, dairy, apiary, equine or poultry husbandry; aquacultural activity; horticultural activity; or any other plant or animal production activity. Commercial production generally consists of annual sales by the producer of at least \$1,000 of agricultural products.

"Qualified agricultural equipment" includes advanced technology pesticide and fertilizer application equipment, conservation tillage equipment, dead poultry composting facilities, nutrient management systems, streambank and shoreline protection systems, stream channel stabilization systems, stream crossing or access plans, waste management systems, waste storage facilities, and waste treatment lagoons located on or at agricultural operations in West Virginia. Qualified agricultural equipment must meet certain certification requirements to qualify for the tax credit benefit. These requirements include proof of purchase and installation and written certification by the Commissioner of Agriculture that each item is in fact qualified agricultural equipment. In lieu of written certification by the Commissioner of Agriculture, written certification from the West Virginia Division of Environmental Protection is required for advanced technology pesticide and fertilizer application equipment.

### **Neighborhood Investment Program Credit**

Eligible taxpayers are allowed a credit for 50 percent of eligible contributions made to a community-based nonprofit organization for a certified project plan (as determined by the West Virginia Development Office and the Neighborhood Investment Advisory Board) providing neighborhood assistance, community services, crime prevention, housing, education, job training and physical and environmental improvements. An eligible contribution may consist of cash, tangible personal or real property at fair market value and in-kind professional services valued at 75 percent of fair market value. "Professional services" are limited to services provided by physicians, dentists, registered nurses, practical nurses, dental hygienists, other licensed health care professionals, lawyers and licensed public accountants.

Individual contributions must have a fair market value of at least \$500 but no more than \$200,000 to qualify for a credit. In addition, no more than 25 percent of total eligible contributions made by any taxpayer to any certified project may be in-kind contributions. The maximum credit for any one taxpayer is \$100,000 per year and the aggregate amount of credits that may be granted to all taxpayers in any fiscal year is capped at \$3.0 million. The credit must be used within five years. The credit may be fully used in the first year or excess amounts may be carried over for use in the succeeding four years. Available credits may offset up to 50 percent of qualified taxpayer's liability for the Corporation Net Income or Personal Income Tax. Unused credits are forfeited.

### **Historic Rehabilitated Buildings Investment Credit**

This credit equals 25 percent of the qualified expenditures for rehabilitation of residential and non-residential buildings designated by the National Park Service, United States Department of the Interior, as "certified historic structures" and further defined as "qualified rehabilitated structures". The building or area must be located within West Virginia to be eligible for the credit, and rehabilitation expenditures must be reviewed and approved by the West Virginia Department of Culture and History to qualify for the credit.

The credit may offset up to 100 percent of the taxpayer's liability for Personal Income Tax or Corporation Net Income Tax. Taxpayers may transfer, sell, or assign any unused tax credits after

first obtaining a certificate of approval from the Division of Culture and History to transfer, sell or assign the stated amount of unused tax credit.

### **Credit for Rehabilitated Residential Buildings Investment**

The credit of Rehabilitated Residential Buildings Investment equals 20 percent of the qualified expenditures for the rehabilitation of residential homesteads designated by the West Virginia Department of Culture and History as "certified historic structures" and further defined as a "qualified rehabilitated structure". The building or area must be located within West Virginia to be eligible for the credit, and rehabilitation expenditures must be reviewed and approved by the West Virginia Department of Culture and History to qualify for credit.

The credit may offset up to 100 percent of the taxpayer's liability for Personal Income Tax. Taxpayers may transfer, sell or assign any unused tax credits after first obtaining a certificate of approval from the Division of Culture and History to transfer, sell or assign the stated amount of unused tax credit. Excess credit may be carried forward five years.

### **Farm to Food Bank Tax Credit**

A tax credit is available to farmers who make donations of edible agricultural products to one or more nonprofit food programs in West Virginia. The credit is equal to 10.0 percent of the value of the donated edible agricultural products, not to exceed \$2,500 during a taxable year. Effective for tax years beginning on and after May 29, 2020, the amount of the credit is increased to 30.0 percent of the value of the donated edible agricultural products to one or more nonprofit food programs in this state up to \$2,500 in a taxable year. The credit can be taken against Corporation Net Income Tax or Personal Income Tax. Any credit remaining after application against the taxpayer's tax liabilities for the current year may be carried forward to next four taxable years. No more than \$200,000 of tax credits may be allocated in any fiscal year. Tax credits are allocated in the order in which the donation forms are received.

### **Tax Credit for Donation or Sale of Vehicle**

A tax credit is available for taxpayers who donate vehicles after December 31, 2020, to a qualified charitable organization in this state. A person is entitled to a tax credit up to 50 percent of the value of the vehicle or \$2,000, whichever is less.

A tax credit is also available for new or used automobile dealers who sell a vehicle at a reduced price to a low-income worker through a program administered through a qualified charitable organization after December 31, 2020. The amount of the tax credit is equal to no more than 50 percent of the difference between the value of the vehicle and reduced sales price or \$2,000, whichever is less. Low-income workers are defined as those living in a household with total income at or below 200 percent of the Federal Poverty Level. Low-income worker may also include part-time workers, seasonal employees, contract workers, or an unemployed person who has been offered and has accepted employment contingent on that person's obtaining suitable transportation to the place of employment.

These tax credits may be applied against Personal Income Tax or Corporation Net Income tax. No carry-over to a future tax year is allowed for any unused portion of the credit. No more than \$300,000 of these tax credits may be authorized in any fiscal year. The State Tax Department will allocate the tax credits in the order the donation forms are received.

## **Coal Severance Tax Rebate**

The North Central Appalachian Coal Tax Rebate Act (2019) created a Coal Severance Tax rebate for companies that pay tax at the 4.65 percent state rate of tax and make qualified investment in new tangible personal property or certain improvements to real property that directly results in increased coal production. The maximum rebate amount is equal to 35 percent of the cost of the qualified investment. Up to 80.0 percent of the additional State portion of Severance Taxes payable that is attributable to the qualified investment that increases coal production may be rebated to the Taxpayer. The unused portion of the rebate amount can be carried forward, until used, for a period of ten years. The base year production for an existing coal company is either coal production in calendar year 2018 or an average of the coal production over a five-year period ending as of December 31, 2018, whichever is less. A new company will need to produce coal in this State for a period of two years prior to making investment eligible for the coal severance tax rebate. The average of coal production during this two-year period establishes the base year coal production for the new coal company. When the coal company is part of an affiliated group or a combined group of coal companies producing coal in this State, then tons of coal produced by all members of the group during the applicable base year period are used to determine whether the capital investment results in increased coal production.

The tax rebate applies to capital investment in new machinery and equipment or improvements to real property purchased on or after June 7, 2019, that are placed in service or use and result in increased coal production. An application for rebate may be filed with the taxpayer's annual Coal Severance Tax return filed for the year in which the qualified investment property is placed in service or use. When unused rebate is carried forward, an application for rebate carry forward may be filed with the annual Severance Tax return for the rebate carry forward year.

## **Innovative Mine Safety Technology Tax Credit**

A tax credit is available for qualified investment in innovative mine safety technology equipment by a coal mining company, including methane monitoring equipment. The qualified investment is equal to 50.0 percent of purchases of qualified safety equipment. The Office of Miners' Health, Safety and Training, pursuant to applications for the tax credit, may allocate no more than \$2 million of Innovative Mine Safety Technology Tax Credit per fiscal year. No one taxpayer may be allocated more than \$100,000 in credit in any given year.

The tax credit may be applied against the Corporation Net Income Tax. For pass-through entities (i.e., limited liability companies treated as a partnership, small business corporations or partnership), if any credit remains after application against the Corporation Net Income Tax, the credit can be applied against the Personal Income Tax liability of the owners of the pass-through entity. The Credit must be applied over a five-year period at the rate of one-fifth of the allowable credit per taxable year. Unused credit is forfeited and no carry forward or carry back is allowed. The tax credit terminates December 31, 2025.

## **Tourism Development Project**

The West Virginia Tourism Development Act includes tax credits for three different types of tourism development projects with each type of project requiring approval by the West Virginia Development Office.

A tax credit for a tourism development project is granted against Consumers Sales Tax liability for qualified investment in tourism development projects approved by the Development Office. An

approved company must provide the amount of approved costs that qualify for the credit and the date by which the project is to be completed and open to the public.

A tax credit is also granted against Consumers Sales Tax liability for qualified investment in tourism development expansion projects. Approved companies are allowed a credit against Consumers Sales Tax collected by the company only from the project. The maximum amount of the credit is 25.0 percent of the company's approved costs. However, if the project site is within the permit area or an adjacent area of a surface coal mine from which all coal will have been extracted prior to the commencement of the project, the credit is equal to 35 percent of the approved costs. The credit shall be taken over a ten-year period at a rate of one-tenth of the total credit amount per taxable year.

The main difference between a Tourism Development Project Credit and a Tourism Development Expansion Project Credit is that the Tourism Development Expansion Project Credit is allowed for facilities owned, managed, or controlled by the same persons or entities that have an existing Tourism Development Project Credit or have had a previous Tourism Development Project Credit at or within ten miles of a preexisting project facility.

The credit is allowed against the sales tax collected by the approved company on sales from operation of the tourism development expansion project. The credit must be taken over a ten-year period, at the rate of one tenth of the amount per year, beginning with the year in which the project is opened to the public. The approved company can make an irrevocable, one-time election to delay the beginning of the ten-year period to the next succeeding tax year. No carryback to a previous tax year is allowed; but, if any credit remains after the statutory ten-year period, then the remainder can be carried forward for up to three years. If any amount of credit remains unused after the thirteenth year, it is forfeited.

A qualified professional services destination facility is "adjacent or complementary to a historic resort hotel" that provides personal or professional services to individuals who primarily are residents of another state or a foreign country. A "historic resort hotel" is defined as "a resort hotel registered with the United States Department of the Interior on the effective date of this amendment [2014] as a national historic landmark in its National Registry of Historic Places having not fewer than five hundred guest rooms."

To qualify for the credit, an eligible company must:

- a. create at least 125 new jobs in West Virginia within 36 months of placing qualified investment into service and maintain those jobs for the entire ten-year life of the credit,
- b. pay at least 50% of health insurance premiums for its full-time employees,
- c. generate at least \$10 million of gross receipts subject to the health care provider taxes within 36 months of placing the qualified investment in service, and
- d. meet all the standards, limitations and requirements of the Development Office and the Tourism Development Act.

The credit may be applied against the Corporation Net Income Tax or the Personal Income Tax, with some limitations.

All three credits are subject to imposition of the Credit Recapture Tax plus interest and penalties. No new application will be accepted after December 31, 2025.

## **High-Tech Incentive Exemptions and Credits**

Qualified businesses located in a High-Tech Research Zone and approved by the West Virginia Development Office are eligible for credits and deferrals. A “qualified business” is:

1. a business eligible for the Economic Opportunity Tax Credit and entitled to the 20.0 percent new jobs percentage if it creates at least three new jobs in a research zone, park, or technology center,
2. an industrial taxpayer for purposes of the Manufacturing Investment Tax Credit if it is primarily engaged in manufacturing related to research and development, and
3. and is entitled to priority for approval of refundable credit for the small, qualified research and development company credit ahead of eligible taxpayers that are not qualified businesses under W.Va. Code §18B-13-1 if the qualified business otherwise meets the requirements for those credits.

The total credits and deferrals allowable are limited to \$2.5 million in any one fiscal year for all eligible businesses.

## **Concealed Weapon Safety Course Tax Credit**

Any person seeking a license to carry a concealed deadly weapon must submit an application to the sheriff of their county along with the application fee and complete a training course in the handling and firing of a handgun. Any person who pays a fee for the required training is entitled to a credit against their personal income tax in the amount of the fee, up to a maximum of \$50. If the training was free or cost less than \$50, then the credit may be applied to the fees associated with the initial application.

## **West Virginia Film Industry Investment Credit**

The Film Industry Investment Tax Credit is an incentive designed to promote the film industry in West Virginia through partial reimbursement of qualified film expenditures through marketable tax credits. The West Virginia Film Industry Investment Credit was eliminated effective January 26, 2018, and then reinstated for taxable years beginning on and after January 1, 2022 with a sunset date of December 31, 2027.

Eligible film production companies may apply for a nonrefundable tax credit for direct production and postproduction expenditures made in West Virginia on a qualified project. The Office of Economic Development determines the eligibility of the company and the qualification of each project. The base credit percentage is 27 percent with an additional 4 percent available if the film production company or its authorized payroll service company employ ten or more West Virginia residents as full-time employees or apprentices. The tax credit may be applied to Corporation Net Income Tax and Personal Income Tax liabilities. Excess credit may be carried over for two taxable years after the taxable year in which the expenditures occurred or it may be transferred or sold.

## Credit Recapture

There are special recapture provisions in the Economic Opportunity Tax Credit, Manufacturing Investment Tax Credit, Downstream Natural Gas Manufacturing Investment Tax Credit, Industrial Expansion and Revitalization Credit, Coal Loading Facilities Credit, Coal Severance Tax Rebate, and the West Virginia Natural Gas Liquid Property Tax Adjustment. Credit recapture occurs when the actual useful life of qualified investment property or the period of actual use of qualified investment property within West Virginia falls short of the projected useful life in the applicable percentage category used in the original credit calculations. Credit attributable to property that ceases to be used in West Virginia before the end of its categorized useful life must be recalculated for all tax years according to the actual useful life or period of use in West Virginia.

The tax credit for employer sponsored childcare facilities has special recapture provisions related to the credit generated through investment in the childcare facility. A “recapture event” occurs when the property ceases to be qualified childcare property with respect to the employer except under certain specified circumstances. The “recapture percentage” is based on the timeframe the qualified property was used as qualified childcare property.

Recapture provisions apply for the Economic Opportunity Tax Credit whenever the taxpayer fails to maintain the required number of new jobs upon which the credit is based. Recapture generally occurs immediately after the taxpayer's jobs re-determination year (the second tax year following the tax year when qualified investment was first placed into use or service). If the actual number of new jobs falls below the projected new job threshold, the taxpayer must file amended returns with the payment of any additional tax, interest and penalties owed due to an overutilization of credit.

**PART VIII**  
**CIVIL PENALTIES**

## CIVIL PENALTIES

### Interest

Interest is due when the tax amount is not paid in a timely manner. Interest accrues daily from the due date of the return until paid without regard to any extension of time to file. Accrued interest may not be waived by the State Tax Commissioner. The West Virginia Code requires the State Tax Commissioner to annually establish interest rates for tax underpayments and overpayments based on the adjusted prime rate. The interest rates on underpayments and overpayments of tax are as follows:

	Interest Rate for Underpayments	Interest Rate for Overpayments
July 1, 2002 – December 31, 2016	9.50%	8.00%
January 1, 2017 – December 31, 2017	8.00%	6.50%
January 1, 2018—December 31, 2018	8.75%	7.25%
January 1, 2019 – December 31, 2019	9.25%	8.25%
January 1, 2020 – December 31, 2020	9.25%	7.75%
January 1, 2021—December 31, 2021	7.75%	6.25%
January 1, 2022—December 31, 2022	7.75%	6.25%
January 1, 2023—December 31, 2023	11.50%	10.00%

### Penalties (Additions to Tax)

Penalties (Additions to tax) are imposed to encourage voluntary compliance with this State's tax laws. The penalty is only imposed on those taxpayers whose action, inaction, or delayed action warrants impositions of a penalty. Additions to tax penalties are imposed as a percentage of tax as follows:

Penalty	Rate	Measure
Failure to timely file a return	5% per month (25% maximum)	Tax due (as shown on return or as adjusted by the State Tax Department)
Failure to timely pay tax due	0.5% per month (25% maximum)	Tax due (as shown on return or as adjusted by the State Tax Department)
Failure to timely pay deficiency	0.5% per month (25% maximum)	Amount of deficiency

Additions to tax for failure to timely file and failure to timely pay tax due may be imposed concurrently; however, the total penalty may not exceed 5.0 percent per month and the maximum of both penalties may not exceed 50.0 percent. Additions to tax may be waived only if the taxpayer can prove that its failure was due to reasonable cause and not due to willful neglect. The penalty for failure to obtain a Business Registration Certificate, negligence, intentional disregard of rules and fraud is nonwaivable. Also, the costs of the additions to tax are not deductible for either Federal or State income tax purposes.

If any part of an additional tax or additional fee is due to negligence or intentional disregard of rule (without intent to defraud), there is added to the amount of tax or fee due and addition to tax equal to 5.0 percent per month or fraction thereof during which the underpayment continues. This



addition may not exceed 25 percent of the additional tax or fee due. (See W.Va. Code § 11-10-18(c))

In the case of the filing of any false or fraudulent return with intent to evade tax or in the case of willful failure to file a required return with intent to evade tax, there is added to the amount of tax or fee due an addition to tax equal to 50 percent of the amount of tax or fee due. (See W.Va. Code § 11-10-18(d))

West Virginia also imposes penalties for promoting abusive tax shelters and for failure to report listed transactions. (See W.Va. Code § 11-10-18(f))

### **Rules for Personal Income Tax Underpayments**

For Personal Income Tax purposes, additions to tax are due if the individual did not have enough West Virginia state income tax withheld from his or her income or pay enough estimated tax for the taxable year. No additions to tax for underpayment of estimated tax if the total amount of all tax withheld and estimated tax payments equals or exceeds the lesser of:

1. 100 percent of the prior year's tax, or
2. 90 percent of the current year's liability.

No addition to tax will be imposed if the tax on the return, less the credit for withheld tax, is less than \$600. Also, no additions to tax are imposed if all the following conditions are met:

1. the preceding taxable year was twelve months,
2. the taxpayer had no West Virginia Personal Income Tax liability for the preceding taxable year,
3. the taxpayer was a United States citizen or resident throughout the preceding taxable year, and
4. the West Virginia Personal Income Tax liability for the current taxable year is less than \$5,000.

If at least two-thirds of the gross income was from farming, only one estimated payment is required. The due date for this payment is January 15 of the following year. The amount of the payment is  $66 \frac{2}{3}$  percent of the tax due. The required payment is treated as the fourth estimated payment. No additions to tax for underpayment of estimated tax will be charged if the taxpayer files his or her annual Personal Income Tax return and pays the amount due on or before March 1.

### **Rules for Corporation Net Income Tax Underpayments**

In the case of any underpayment of estimated tax, there is added to the corporation net income tax due for the taxable year an addition to tax determined by multiplying the underpayment amount by the rate of interest applicable to the taxable year for the period of the underpayment, except as otherwise provided in W.Va. Code § 11-10-18a(d).

### **Addition to Tax for Failure to Pay any Other Estimated Tax**

If a person required to make monthly or quarterly installment payments of any other annual tax fails to timely remit any installment payment of the tax or remits less than the amount of the

required installment payment of tax, an addition to tax equal to the underpayment amount multiplied by the rate of interest applicable to the taxable year is added to the underpayment amount for the period of the underpayment. See W.Va. Code § 11-10-18b.

### **Other Penalties**

Any person required to collect, account for, and pay over a tax or fee who willfully fails truthfully account for and pay of such tax or fee, and any person who willfully attempts in any manner to evade payment of any tax or fee is, in addition to other penalties provided by law, liable for payment of a money penalty equal to the total amount evaded or not collected, or not accounted for and paid over. See W.Va. Code § 11-10-19(a). This money penalty is in lieu of the additions to tax imposed by W.Va. Code § 11-10-18.

Any person required to furnish an employer withholding tax statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, showing the information required to be shown on the statement, is subject to payment of a penalty equal to \$50 for each failure. See W.Va. Code § 11-10-19(b).

In the case of the filing of a false or fraudulent claim for refund or credit with the intent to defraud this State, there is added the amount erroneously refunded or credited a penalty equal to 50 percent of the amount erroneously refunded or credited. See W.Va. Code § 11-10-19(c).