

Tax Review

a publication of the West Virginia Department of Tax & Revenue

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Tax Commissioner to revamp tax system, analyze current structure

Scheduling his upcoming years around plans to revamp the tax system, reevaluating the property tax structure and keeping up with daily local governmental issues, Tax Commissioner Rich Boyle is hopeful that he will be remembered for streamlining his position and the Department as a whole.

Facing extensive administrative challenges in one of the largest state governmental departments, Boyle is largely concerned about the future of the Department of Tax and Revenue -- how it gathers and disseminates tax information and revenue, how it retains a competent and content work force and in so doing continues to provide a viable service for the people of West Virginia.

“The biggest challenge facing the Department is focus,” Boyle said. “We must focus on our problems, explore all possible solutions, convince the Legislature or administration what the solutions ought to be, implement them (solutions) and move on to the next problem,” he said. “As it is now, we can’t see the forest for the trees.”

Since taking office in April, Boyle seems to be primarily “putting out fires”, and because of these “fires”, has not had the opportunity to concentrate on many areas of the Department which he believes need direction or clarification. For instance, he would like to review the responsibilities of the Criminal Investigation Division as it was

for your information...

Cecil H. Underwood, Governor
Robin C. Capehart, Secretary
Rich Boyle, Tax Commissioner
Urita K. Lanham, Taxpayer Service
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This publication is designed to keep taxpayers, tax practitioners and the general public informed of developments, problems, questions and matters of general interest concerning West Virginia tax law, policy and procedure. The articles in this newsletter are not designed to address complex issues in detail, and they are not a substitute for West Virginia tax laws and/or regulations.

Jill Ridenour, Editor

Property Tax Division, Assessors boast new computer system

by Barbara Brunner

On Friday, April 30, 1999, all 55 assessors' offices and the Property Tax Division (PTD) will use a new valuation and assessment administration system. This new system will provide additional valuation and reporting capabilities to the counties and PTD and will solve several problems inherent in the current systems. The several current systems installed in the early 80's and designed by different vendors in the 70's provide limited valuation capabilities and are not Year 2000 compliant.

In the 1997 session of the Legislature the Property Tax Division of the Department of Tax and Revenue received partial funding for a new Valuation and Assessment Administration System for the Counties and State of West Virginia. The effort to obtain funds for a new system has been a joint effort by the Division and the County Assessors Association for several years.

In 1993, the Association of County Assessors (Association) commissioned an independent review of the assessors' needs and current tools with specific emphasis on computer support. The consultants recommended the creation of several teams of assessors and State members to arrive at joint solutions to problems. In the Fall of 1993, the Secretary of Tax and Revenue met with representatives of the Association and agreed to work with the Association in establishing the teams and providing support.

Reader Reminder

The articles in this publication are provided for your general information. They are not a substitute for tax laws or regulations.

f.y.i.

In the Fall of 1993, two teams, the "general team" and the "technical team", were created. Each team has ten members, five members are assessors and five members represent the State. The Technical Team initially wrote a Request for Information (RFI) to gain knowledge of the availability and costs of a new system. After the information was received from vendors, the same team has written a Request for Proposal (RFP) which was released by the Purchasing Division on June 13, 1997.

The Pre-Bid Conference scheduled for July 10, 1997, was attended by representatives from 12 companies. The vendor proposals are due on August 13, 1997, and the technical evaluations will be completed by the Technical Team on August 28, 1997. We anticipate final vendor selection after evaluation of oral presentations and review of the cost proposals by Monday, September 29, 1997.

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IF YOU'RE RED, YOU'RE DEAD"

By Thomas P. Raynes

The Excise Unit of the Auditing Division began inspecting the fuel supply tanks of motor vehicles for dyed diesel fuel on the highways of West Virginia full time as of July 7, 1997. Excise Unit personnel are working in conjunction with West Virginia Public Service Commission Motor Carrier Safety Inspectors and Department of Transportation Weight En-

forcement Officers throughout West Virginia. During the first week of operation, dyed diesel fuel violations were found in approximately 5% of the vehicles inspected resulting in citations being issued for \$6,650.

Dyed diesel fuel inspections are part of the federal/state motor fuel tax compliance project and are funded by a

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Assessment of Interest and Additions to Tax

When the full amount of tax is not paid when due, interest is imposed from the due date of the return until the tax is paid. Interest shall be determined without regard to any extension of time to file, and **it accrues daily**.

The West Virginia Code requires the Tax Commissioner to establish interest rates for tax underpayments based on the adjusted prime rate. This rate shall not be less than eight (8) percent per annum and the adjusted rate is determined every six months.

The interest rates on underpayments of tax are as follows:

January 1, 1997	through December 31, 1997	-	8%
January 1, 1996	through December 31, 1997	-	9%
July 1, 1992	through December 31, 1995	-	8%
January 1, 1992	through June 30, 1992	-	9%
July 1, 1990	through December 31, 1991	-	10%
July 1, 1989	through June 30, 1990	-	11%
January 1, 1988	through June 30, 1989	-	9%
July 1, 1978	through December 31, 1987	-	8%

The purpose of imposing penalties (Additions to Tax) is to encourage voluntary compliance with West Virginia's tax laws by penalizing only those taxpayers whose action, inaction, or delayed action warrants imposition of a penalty. Additions to tax penalties are imposed as a percentage of tax with the exception of failure to renew a business registration certificate, which is imposed at a fixed rate and shall not exceed \$50.00.

The additions to tax for failure to timely file and for failure to timely pay tax due may be imposed concurrently; however, the total penalty may not exceed 5% per month and the maximum of both penalties may not exceed 50%.

Additions to Tax

Additions to tax may be waived only if the taxpayer can prove that failure to pay 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.

Publications Available for Tax Information

Orders which weigh in excess of one pound are considered bulk orders and will be shipped UPS C.O.D. to a street mailing address. Bulk orders cannot be shipped to Post Office boxes. The receiver will be responsible for all UPS C.O.D. charges. Orders which are in excess of five pounds will also be charged a \$5.00 handling fee. The Department of Tax & Revenue cannot accept checks as advanced payment for delivery fees. All UPS charges must be paid on delivery. Please call (304) 558-3333 or 1-800-982-8297 for more information or to place an order.

TSD-2	Tax Division Telephone Listing	TSD-366	Sales & Use Tax: Operators of Night Clubs, Bars, Restaurants & Similar Businesses
TSD-3	Current Mailing Addresses	TSD-367	How the Accounts Receivable System Operates
TSD-100	W.Va. Business Taxes	TSD-368	Sales & Use Tax: Veterinarians
TSD-102	Instructions for Obtaining Forms & General Tax Information	TSD-369	Use Tax & Your Business
TSD-110	W.Va. Tax Credits	TSD-370	Sales & Use Tax: Samples - Manufacturer/ Retailer
TSD-200	W.Va. Business Franchise Tax	TSD-371	Sales & Use Tax: Agricultural Producers
TSD-210	Coal Processing & Severance Tax	TSD-372	Sales & Use Tax: Radio & Television Broadcasters
TSD-211	Timber & Severance Tax	TSD-372A	Broadcasters Notification of Agency Relationship with Out-Of-State Advertisers
TSD-300	Sales & Use Tax Exemptions	TSD-373	Sales & Use Tax: Attorneys
TSD-301	Sales & Use Tax: Local Governments	TSD-374	Sales & Use Tax: Dentists
TSD-310	Sales & Use Tax: Capital Improvement Rule and the Construction Trades	TSD-375	Sales & Use Tax: Summer Camps
TSD-312	Sales & Use Tax: Public Schools	TSD-376	Sales & Use Tax: Travel Agents
TSD-312A	Sales & Use Tax: Private Elementary & Secondary Schools	TSD-377	Sales & Use Tax: Doctors
TSD-314	Sales & Use Tax: Funeral Directors	TSD-379	Special Exemption for Nonprofit Organizations Providing Low-Income Housing & Shelters
TSD-315	Sales & Use Tax: Mobile Home Dealers	TSD-380	Requirements for Rehabilitated Building Investment Credit
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TSD-317	Transient Vendors	TSD-382	Commonly Asked Questions About the New Special Tax on Coal
TSD-320	Sales & Use Tax: Nonprofit Organizations	TSD-383	Sales & Use Tax: Pharmacies
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TSD-330	Sales & Use Tax: Non-resident Contractors	TSD-390	Income Tax Withholding by Partnerships, S Corporations, Estates & Trusts - § 11-21-71a
TSD-335	Sales & Use Tax: Changes Affecting Service Businesses	TSD-391	Income Tax Withholding Under § 11-21-71a: Nonresident Partners, S Corporation Shareholders, or Beneficiaries of Estates or Trusts
TSD-345	Sales & Use Tax: Collection & Recordkeeping Rules	TSD-392	Corporation Net Income Tax: Non-Business Income
TSD-355	The Integrated Manufacturer/ Contractor Rule	TSD-393	Estate Tax & Intestate Succession Law
TSD-356	Sales & Use Tax: Motion Picture Theaters	TSD-396	Colin Anderson Credit for Employers
TSD-358	Direct Use Concept	TSD-397	Business Franchise & Corporation Net Income Tax: Financial Organizations
TSD-360	Registration Procedures for Business	TSD-398	Reduced Severance Tax Rate for Thin Seam Coal Produced From New Mines
TSD-364	Sales & Use Tax: Auctioneers	TSD-399	Corporate License Tax
TSD-365	How Interest & Additions to Tax are Assessed	TSD-400	Consumers Sales Tax: Entertainers and Artists
		TSD-401	Dyed Diesel Fuel and IFTA Status of Mobile Equipment

changes

Corporate License Tax - TSD 399

In 1992, the State of West Virginia repealed the previous corporate charter tax and adopted the current corporate license tax which became effective July 1, 1993.

The corporate license tax year runs from July 1 through June 30 of the following year. Every corporation must file the return and remit payment on or before July 1 of every year.

How much is the corporate license tax for a domestic corporation?

The tax ranges from \$20.00 to \$2,500 depending on the authorized capital stock of the corporation. If the authorized capital stock is \$5,000 or less, the corporate license tax will be \$20 per year. Many domestic corporations will only pay \$20 or \$30 per year.

What can a domestic corporation do to stop receiving the corporate license tax returns?

The only way to stop receiving corporate license tax returns is to dissolve the corporation.

How can I dissolve a corporation?

The Secretary of State will provide you with the proper form. The form is very simple and must be filed with the Secretary of State's office. Forms may be requested by calling (304) 558-8000.

When I file to dissolve a domestic corporation, will I still be liable for the corporate license tax?

The corporate license tax contained two major changes. First, the protections afforded to taxpayers under the West Virginia Tax Procedure and Administration Act were specifically extended to the corporate license tax. In effect, if a taxpayer objects to a corporate license tax assessment, then the taxpayer has a right to an informal administrative hearing. Under the previous law, the taxpayer could only voice his objections in circuit court.

Second, the corporate license tax established two different standards for domestic corporations (corporations organized in West Virginia) and foreign corporations (all other corporations). The distinctions are outlined below:

Is every domestic corporation required to file a corporate license tax return and pay the tax?

Yes. As long as a domestic corporation exists as a legal entity, it must file the return and pay the corporate license tax on time. Every domestic corporation must file the return and pay the tax even if it does not conduct any business activity at all.

No. The Tax Commissioner will not impose the corporate license tax after the day you file with the Secretary of State.

For example, the corporate license tax return is due on or before July 1 for the upcoming tax year. If you file the Statement of Intent to Dissolve with the Secretary of State on or before June 30, then you will not be liable for the corporate license tax for the new year beginning July 1.

Is every foreign corporation required to file a corporate license tax return? Yes.

Is every foreign corporation required to pay the corporate license tax?

No. A foreign corporation is not required to pay

Changes

Corporate License Tax (cont.)

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the corporate license tax if it will not conduct any business activity in West Virginia during the upcoming tax year. For example, XYZ Corporation is a construction company. XYZ, a foreign corporation, will construct a building for a national retailer. Construction will begin on March 1, 1997 and is scheduled for completion by May 31, 1997. XYZ Corporation must file the corporate license tax return and pay the tax for the 1997 tax year which runs from July 1, 1996, through June 30, 1997. If the project is completed on time and XYZ leaves the State of West Virginia on or before June 30, 1997, then XYZ Corporation will not be required to pay the corporate license tax for the new tax year which begins on July 1, 1997.

However, if the project is delayed and XYZ Corporation does not leave the State until July 1, 1997, or later, then XYZ Corporation must pay the corporate license tax for the next tax year.

Why must a foreign corporation file the corporate license tax return when it will not owe the tax for the new tax year?

The corporate license tax return is automatically mailed every year to every corporation registered with the Secretary of State. If a corporation does not file the return on time, then the Tax Commissioner will assume that a corporation is avoiding a lawful tax.

How can a foreign corporation notify the Tax Commissioner that it does not owe the tax?

The foreign corporation must file the return on time, indicate on the return the date the foreign corporation stopped all business activity in West

Are there any other fees associated with the corporate license tax?

Yes. Every domestic corporation and every foreign corporation must pay a \$10 fee every year for the Secretary of State to act as attorney-in-fact. Every foreign corporation must pay the \$10 annual fee even if the foreign corporation is not required to pay the corporate license tax.

Virginia, and indicate on the return that the foreign corporation does not reasonably anticipate conducting any business activity in West Virginia during the upcoming tax year.

How can a foreign corporation stop receiving corporate license tax returns?

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Property Tax Division *-cont. from p. 2-*

We expect the new system to provide all capabilities of the current systems and provide these additional benefits:

1. More efficient use of county assessor staff.
2. More efficient use of PTD staff, especially programmers and user services staff.
3. Less dependence on PTD staff by counties.
4. Better appraisals and appraisal defense through system support of the three approaches to value.
5. Less expensive to operate for counties and PTD.
6. Better delineation of county and PTD work.
7. Increased ability to monitor county and PTD appraisal accuracy.
8. The new system will be Year 2000 compliant.

Tax Department Now in Cyberspace

Tax Man on Hand to Help

by Ronald C. Stone

The Department of Tax and Revenue has made the transition to cyberspace. With the advent of a Web site on the Internet, the Department is making services available to the public electronically.

The Department's new Internet site is <http://www.wvweb.net/taxdiv>. On the site, taxpayers can view, and even download and print, tax forms, publications, telephone numbers, mailing addresses, technical assistance advisories, administrative notices and the division's newsletter. In addition, the division has now placed the entire text of all proposed new Legislative Rules on the site. "For the first time in history interested taxpayers can now have electronic access to the Legislative rules we are proposing," said Rich Boyle, Tax Commissioner.

"We have placed virtually every tax form a taxpayer should need on the Internet," said Robin Capehart, Secretary of Tax and Revenue. "I think the first thing people will notice about our

site is that it is user friendly," added Capehart. The tax site uses a theme of "Taxman" to convey information to taxpayers and a site where you can find "POW"erful documents, "ZAP" your tax problems, and "FIND ANYTHING". "With the Tax Division site we have attempted to utilize a light hearted approach to a serious matter, information related to the compliance with tax laws," continued Capehart. The site contains links to other Internet sites that a taxpayer might need to access tax information. There are links to the Internal Revenue Service and to the tax agencies of the surrounding states of West Virginia -- Kentucky, Maryland, Ohio, Pennsylvania and Virginia.



This site is in response to the concerns expressed by tax administrators and taxpayers alike about the availability of tax policy information," said Ron Stone, Director of Operations for the Department and coordinator of the site. "Taxpayers will find a wealth of tax policy information on this site," added Stone.

"This new venture is clear evidence of Governor Underwood's commitment to using technology to help government work smarter," said Secretary Capehart.

Changes

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Corporate License Tax (cont.)

The only way to stop receiving corporate license tax returns is to withdraw the Certificate of Authority to Transact Business in West Virginia. The Secretary of State will provide you with the proper form and instructions. The telephone number is (304) 558-8000.

How much is the corporate license tax for a foreign corporation?

The corporate license tax for a foreign corporation ranges from a minimum of \$250 to \$4,375 per year.

Are non-profit corporations subject to the corporate license tax?

Certain nonprofit corpo-

rations are exempt from paying the corporate license tax. However, every non-profit corporation must file the returns on time and pay the \$10 fee for the Secretary of State.

The income tax has made more liars out of American people than golf has.

- Will Rogers -

Technology 2000

Site policy on computer security - Establishing Official Site Policy on Computer Security

by Bill James

This is the second in a series of articles which discusses establishing the official site policy on computer security. The first article covered organizational issues involved in formulating the policy. This article covers risk assessment and what is at risk.

2 Risk Assessment

One of the most important reasons for creating a computer security policy is to ensure that efforts spent on security yield cost effective benefits. Although this may seem obvious, it is possible to be misled about where the effort is needed. As an example, there is a great deal of publicity about intruders on computer systems; yet, most surveys of computer security show that for most organizations, the actual loss from "insiders" is much greater.

Risk analysis involves determining what you need to protect, what you need to protect it from, and how to protect it. It is the process of examining all of your risks, and ranking those risks by level of severity. This process involves making cost-effective decisions on what you want to protect. The old security adage says that you should not spend more to protect something than it is actually worth.

A full treatment of risk analysis is outside the scope of this document. However, there are two elements of a risk analysis that will be briefly covered in the next two sections:

- 1 Identifying the assets
- 2 Identifying the threats

For each asset, the basic goals of security are availability, confidentiality, and integrity. Each threat should be examined with an eye to how the threat could affect these areas.

2.1 Identifying the Assets

One step in a risk analysis is to identify all the things that need to be protected. Some things are obvious, like all the various pieces of hardware, but some are overlooked, such as the people who actually use the systems. The essential point is to list all things that could be affected by a security problem. One list of categories is suggested by

IF YOU'RE RED, YOU'RE DEAD"

-cont. from p. 3-

federal grant under the Intermodal Surface Transportation Efficiency Act (ISTEA).

The Gasoline/Special Fuel Tax Act (WV Code 11-14) states, "No dyed diesel on highways." Inspectors may stop, inspect and issue citations to operators of motor vehicles for violations. Any vehicles inspected and containing visible evidence of dye is subject to a fine of \$10 per gallon of the fuel tank(s) capacity or \$1,000, whichever is greater. Violators may also be subject to similar penalties under Internal Revenue Service code and regulations as enforced by the West Virginia Public Service Commission.

Fuel taxes are ultimately used for highway construction and maintenance. Dyed diesel fuel used on the highway is cheating our West Virginia highway fund, costing your state jobs, roads and federal matching funds. Should you have information on dyed diesel fuel used on the highway, please call from West Virginia, Ohio, Pennsylvania, Maryland, Virginia or Kentucky (1-800-438-3571). We need your information, not your name.

**"The best way to predict the future
is to create it."**

- Peter F. Drucker -

-cont. on next page-

Technology 2000

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Pfleeger [PFLEEGER, page 459]; this list is adapted from that source:

- 1 Hardware: CPUs, boards, keyboards, terminals, workstations, personal computers, printers, disk drives, communication lines, terminal servers, routers.
- 2 Software: source programs, object programs, utilities, diagnostic programs, operating systems, communication programs.
- 3 Data during execution, stored on-line, archived off-line, backups, audit logs, databases, in transit over communication media.
- 4 People: users, people needed to run systems.
- 5 Documentation: on programs, hardware, systems, local administrative procedures.
- 6 Supplies: paper, forms, ribbons, magnetic media.

2.2 Identifying the Threats

Once the assets requiring protection are identified, it is necessary to identify threats to those assets. The threats can then be examined to determine what potential for loss exists. It helps to consider from what threats you are trying to protect your assets.

The following sections describe a few of the possible threats.

2.2.1 Unauthorized Access

A common threat that concerns many sites is unauthorized access to computing facilities. Unauthorized access takes many forms. One means of unauthorized access is the use of another user's logon to gain access to a system. The use of any computer resource without prior permission may be considered unauthorized access to computing facilities.

The seriousness of an unauthorized access will vary from site to site. For some sites, the mere act of granting access to an unauthorized user may cause irreparable harm by negative media coverage. For other sites, an unauthorized access opens the door to other security threats. In addition, some sites may be more frequent targets than others; hence, the risk from unauthorized access will vary from site to site. The Computer Emergency Response Team has observed that well-known universities, government sites, and military sites seem to attract more intruders.

2.2.2 Disclosure of Information

Another common threat is disclosure of information. Determine the value or sensitivity of the information stored on your computers. Disclosure of a password file might allow for future unauthorized accesses. A glimpse of a proposal may give a competitor an unfair advantage. A technical paper may contain years of valuable research.

2.2.3 Denial of Service

Computers and networks provide valuable services to their users. Many people rely on these services in order to perform their jobs efficiently. If these services are not available when called upon, a loss in productivity results.

Denial of service comes in many forms and might affect users in a number of ways. A network may be rendered unusable by a rogue packet, jamming, or by a disabled network component. A virus might slow down or cripple a computer system. Each site should determine which services are essential, and for each of these services determine the affect to the site if that service were to become disabled.

The next article will review "Policy Issues".

***Finance, like time, devours
its own children.
- Honore' De Balzac -***

Outsourcing boosts tax roles

by James E. Dixon

Historically, there has been a common perception in West Virginia that out-of-state businesses and individuals who derive income from West Virginia sources do not pay their fair share of West Virginia state taxes. The Discovery Section of the Compliance Division develops and implements programs to discover individuals and businesses who are subject to West Virginia taxes but have not filed the required tax returns. We have five employees in our Discovery Section who concentrate their efforts almost entirely on in-state businesses and individuals. During the past few years, the Discovery Section has added over 2,000 new taxpayers to the tax roles.

While it is difficult to measure out-of-state compliance, the Department of Tax and Revenue decided to address this concern of its constituents. In 1995, the Compliance Division advertised for proposals from private sector contractors to develop programs to discover out-of-state businesses and individuals who derived income from West Virginia sources and

were not in compliance with West Virginia state tax laws. Ten private sector businesses expressed an interest in developing these programs for the department and attended a pre-bid vendor conference. In 1996, contracts were awarded to three vendors that had considerable experience and successful results in developing and executing these types of programs.

To date, programs have been approved and are underway to ensure that the following businesses and/or individuals are in compliance with our state's tax laws.

The Discovery Section of the Compliance Division develops and implements programs to discover individuals and businesses who are subject to West Virginia taxes but have not filed the required tax returns.

* Out-of-state companies that are doing business with or performing contracts for federal government agencies located in West Virginia.

* Out-of-state businesses and individuals who have an interest in commercial and rental property or mineral rights in West Virginia.

-cont. on next page-

Legal Division awaits network

by Bob Hoffman

Legal Division is anxiously awaiting the research tools and communication options available through computer networking. Bob Hoffman, Division Director, expects the network to be operational this year. Case docketing, research services and policy decisions can now be available to our staff without leaving their office.

Legal Division is included in the West Wing network plan that has been high on Commissioner Boyle's automation priority list.

The Legal Division provides support to the Tax Commissioner in two primary areas. Administrative litigation, under the immediate control of Jan Mudrinich, provides attorneys to represent the agency before the Office of Hearings and Appeals as well as local county tribunals. Research and technical writing is supported by legal staff under the control of John Montgomery.

Both areas will benefit with the coming increase in computerization. These benefits should allow quicker responses to our customers.

CNIT credited with raising General Revenue Fund collections -- GRF collections above estimate

by Suzanne Dobson

Fiscal Year 1996-97 General Revenue Fund collections were \$16,842,739 (0.7%) above the revised estimate and \$91 million (3.9%) above prior year receipts. The surplus was largely attributable to higher than anticipated receipts from the Corporation Net Income Tax, Severance Tax and Business Franchise Tax. These taxes were collectively \$23.7 million above estimates and 8.6% above prior year collections. Collections for all other General Revenue Fund components increased by roughly 2.9% from the prior year. An acceleration of economic growth increased total revenue growth from 3.0% in FY 1995-96 to roughly 4.8% in FY 1996-97.

Outsourcing Boosts Tax Roles

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* Out-of-state businesses and individuals who have security interest in property through the filing of UCC1 statements in West Virginia.

* Out-of-state commercial trucking companies that make deliveries to or from West Virginia destinations.

While many of these projects are in their initial states, over 1,600 out-of-state companies have been contacted and several non-compliant businesses have been added to our tax roles resulting in the collection of almost \$50,000 in new tax revenue. It is also interesting to note that the initial result of these projects indicate that non-compliance with West Virginia state tax laws by out-of-state businesses and individuals is comparatively low when measured by the results generated by similar projects conducted for other taxing jurisdictions.

The outsourcing of out-of-state compliance projects to private vendors allows the Compliance Division to leverage its resources without increasing the cost of its operations. These projects will bring non-complaint out-of-state entities who benefit from the state's economy into compliance with West Virginia State tax laws and will also increase voluntary compliance by out-of-staters doing business in West Virginia.

Corporation Net Income Tax and Business Franchise Tax receipts grew by higher than expected rates of 2.8% and 14.9% respectively in FY 1996-97. Steady growth in corporate profits contributed to the year-over-year gain for both taxes. Due to record coal production in 1996, Severance Tax receipts grew by 10.5%. A significant rise in natural gas prices during 1996 contributed to the increase in coal production. Higher natural gas prices led to a shift from natural gas to coal as a fuel of choice for electric power generation. U.S. coal-fired electric power generation rose by 5% in 1996 while natural gas-fired generation declined by 14.3%. Following the record year in 1996, coal production declined by 2.5% during the first half of 1997. Mild weather patterns slowed demand for electricity and coal during the first half of this year.

For the year, total business tax (i.e., Business and Occupation Tax, Corporation Net Income Tax, Business Franchise Tax, Severance Tax and Telecommunications Tax) collections rose by 4.0% while Personal Income Tax collections were 6.1% above the prior year. The largest component of the Personal Income Tax, withholding tax, increased by 4.3% above prior year collection levels. Withholding tax collection growth over the past year reflected both State employment growth of roughly 1.5% and State personal income growth in excess of 4.0%. Withholding tax growth would have been at least 0.5 percentage points higher if not for a prolonged labor dispute involving Wheeling Pittsburgh Steel Corporation.

Following an increase of 3% in FY 1995-96 and 4.8% in FY 1996-97, General Revenue Fund tax collection growth is forecast to slow to roughly 2.6% in FY 1997-98. The anticipated slowdown in collection growth will be partially attributable to tax law changes (e.g., reduction in Business Franchise Tax rate to 0.7% as of July 1, 1997.) Also, a smaller anticipated increase in corporate profits, an anticipated slowdown in employment growth, an anticipated slowdown in construction activities and slower growth in energy production activities all will contribute to slower tax collection growth trends in FY 1997-98.

TAA Technical Assistance Advisories

Note: TAAs are issued under W.Va. Code § 11-10-5r. They state the position of the Tax Commissioner on the tax consequences of a stated transaction or event under existing statutes, rules or policies. TAAs must be released to the public after identifying characteristics of facts are omitted or modified to not disclose the name or identity of the taxpayer. A TAA has no precedential value except to the taxpayer requesting the advisory unless it is specifically stated otherwise in the advisory. Any modification of an advisory may only be prospective.

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Every Month

Returns and payments that fall due on the same date in each and every month of the calendar year are as follows:

Tax Calendar

Taxpayers incurring a B & O Tax, Severance Tax, Minimum Coal Severance Tax or Telecommunications Tax liability in excess of \$1,000 per month are required to file monthly returns; forms are due the last day of each month for a prior month with the exception of the May return which is due on June 15. Taxpayers whose tax liability is \$1,000 per month or less must file quarterly returns on or before the last day of the month following close of the quarter.

Persons incurring a tax liability of more than \$50 per month are required to file monthly Severance and Business Privilege Tax returns. The returns are due the last day of the following month with the exception of May which is due on June 15.

State Gasoline Tax reports and taxes due for preceding month. Forms 501, 507 and 508 due 25th of each month for prior month.

State Beer Barrel Tax \$5.50 per 31 gal bbl. due 10th of each month for preceding month.

15th

Last day to file monthly Solid Waste Tax Report for preceding month. (Form SWA-1)

Last day to file Monthly Cigarette Tax Report for preceding month. (Form 7.09)

Last day to file report and pay Monthly Soft Drinks Tax for preceding month. (Form 20.15)

Last day to file return and pay State Consumers Sales Tax due for preceding month. Taxpayers whose collections are less than \$50 per month have the privilege of filing quarterly returns but quarters must end on March 31, June 30, September 30 and December 31.

Last day to file returns and pay direct-pay Consumers Sales Tax and Use Tax due for the preceding month. (Form WV/CST-210 and WV/CST-230) Taxpayers whose tax liability is \$100 or less per month must file a quarterly return. Quarters must end on March 31, June 30, September 30 and December 31.

Last day to pay Health Care Provider Tax returns. Taxpayers incurring a tax liability of more than \$50 per month are required to file monthly returns.

20th

Last day for employers to remit for previous month Personal Income Tax which exceeds \$100. If amount does not exceed \$100, a quarterly Form IT-101 return must be filed.

31st

Last day to file returns and pay tax on the Special 2 cents a Ton Tax on Producers of Coal. Exception: Tax that accrues for the month of May must be remitted each year by the 15th day of June rather than the 30th day of June.

TECHNICAL ASSISTANCE ADVISORY 97-004**TECHNICAL ASSISTANCE ADVISORY 97-002**

SUBJECT: SEVERANCE TAX -- Reduced Tax Rate -- W. Va. Code § 11-13A-3(f)(ii), allowing a reduced severance tax rate for the underground mine production of coal seams forty-five inches thick or less in the one hundred and eighty days immediately preceding April 11, 1997. The reduced tax shall apply at the beginning of the tax reporting year which first commences subsequent to April 11, 1997.

SUBJECT: CONSUMERS SALES AND SERVICE TAX AND USE TAX -- Company A requests assistance with respect to the sales tax exemption for certain purchases of materials, machinery and equipment to be installed as part of the construction of company B's new facility. Company A requests an allowance to act as purchasing agent for Company B after facility is complete.

Tax Commissioner plans to revamp tax system *(cont. from p. 1)*

originally created to investigate state tax fraud and oversee bingo and raffle regulations. Currently, investigations have been necessary in many local government oversight cases -- situations in which they may or may not have jurisdiction. Boyle plans to define these roles if none have been already outlined.

Also, he would like to delve into issues involving state tax policy and the backlog of cases pending in our office of hearings and appeals.

Boyle realizes that dissemination of tax information is a problem, and he thinks the Internet is one key to solving this issue. Using another mode of communication, Boyle would like to use the Tax Review newsletter, and specifically the front page, to delve into special tax issues and offer it as an avenue for debate and/or proposals.

Another major factor he would like to address is the consolidation of tax forms and the simplification of the internal tax processing systems. "My first prerogative is to modernize the computer driven tax systems," he said, "encompassing everything from the way that we record tax information, to the way we disseminate returns, to the way those returns are filed and processed. For instance, currently we use a computer-driven microfilm system that doesn't allow us to accumulate data with regard to any one taxpayer over a period of time."

The upcoming legislative session is not far from his mind as he expects the Department to be very active. "We have many enhancements that we plan to submit," he said. Among those are tax technical correction measures, and the allowance

of taxpayers to file electronic returns and pay electronically.

Boyle does not believe the Department has the luxury of being proactive in the way it approaches legislation. "We're a reactive agency," he said, "and we respond to legislative requirements. We respond to complaints and needs.

"My first prerogative is to modernize the computer driven tax system encompassing everything from the way that we record tax information, to the way we disseminate returns, to the way those returns are filed and processed." - Rich Boyle -

That's how we change. Whatever we are asked to do, we do it. We have never said, 'No, we can't administer a new tax; we don't have the budget or personnel.' We hope the Legislature will realize we're working with the same number of employees that we have had for the last ten years."

Along those lines, Boyle is concerned about the capabilities of the Department to do what is expected of it. "The Department is losing its best people," he said. "Morale is low; there are budgetary problems with current pay scales. We will concentrate on making an impression on our legislature about our budgetary problems. It (the budgetary problem) has been neglected for a variety of reasons. We hope to correct that quickly so we can concentrate on "the big picture".

ADMINISTRATIVE NOTICE 97-02

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement for the Determination of the Capitalization Rates for Producing Coal, Oil and Gas, Other Mined Minerals, and Managed Timberland for Property Tax Purposes for Tax Year 1997, Pursuant to CSR §§ 110-1H-8, 110-II-4.1.9, 110-IJ-4.7 and 110-1K-4.1.8

On July 1, 1996, the Department of Tax and Revenue filed valuation variables to be used in conjunction with legislative regulations for the appraisal of producing natural resource properties. (See: CSR §§ 110 1-H, 1-I, 1-J, and 1-K) This notice addresses one of the variables, the capitalization rate, setting forth the generally accepted appraisal procedures used in developing the respective rates and in applying the rates to income streams generated by natural resource properties. To this end, this notice discusses development of industry capitalization rates for producing coal, oil and gas, other mined minerals, and managed timberland.

Administrative Notices

ADMINISTRATIVE NOTICE 97-03

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement for the Determination of Royalty Rates for Producing Coal and Other Mined Minerals for Property Tax Purposes for Tax Year 1997, Pursuant to § 110-II-4.1.6 and § 110-1K-4.1.6.

On July 1, 1996, the Department of Tax and Revenue filed valuation variables to be used in conjunction with legislative regulations for the appraisal of natural resource properties. (See: §§ 110 CSR 1-H, 1-I, 1-J, and 1-K) This notice addresses one of the variables, royalty rate(s), setting forth the procedures used in developing the rate(s) for tax year 1997.

ADMINISTRATIVE NOTICE 97-04

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement for the Determination of Production Decline Rates for Producing Oil and Gas Properties for Property Tax Purposes for Tax Year 1997, Pursuant to § 110-IJ-4.6.

On July 1, 1996, the Department of Tax and Revenue filed valuation variables to be used in conjunction with legislative regulations for the appraisal of oil and gas properties. (See: § 110 CSR 1J-1 et seq.)

This notice will address one of the variables, the production decline rate(s), setting forth the procedures used in developing the rate(s) for tax year 1997.

ADMINISTRATIVE NOTICE 97-05

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement Concerning Primary Reliance on the Income Approach to Value for Appraisals of Producing Coal, Oil and Gas, and Other Mined Minerals Pursuant to § 110-II-4, § 110-IJ-4 and § 110-1K-4.

ADMINISTRATIVE NOTICE 97-06

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement for the Determination of Oil and Gas Operating Expenses for Property Tax Purposes for Tax Year 1997, Pursuant to § 110-IJ-4.5.

ADMINISTRATIVE NOTICE 97-07

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement for the Determination of the Soil Productivity Maps for Managed Timberland, Pursuant to § 110-1H-4.

ADMINISTRATIVE NOTICE 97-08

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement for the Determination of the In-Place Tonnage Per Acre-Foot of Producing Coal and Other Mined Minerals.

ADMINISTRATIVE NOTICE 97-09

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement Concerning Primary Reliance on the Market Comparable Approach for Appraising Reserve Coal and Other Mined Minerals Pursuant to CSR § 110-II-4 and CSR § 110-1K-4.

ADMINISTRATIVE NOTICE 97-10

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement Concerning Primary Reliance on the Income Approach for Appraising Reserve Oil and Gas Property Pursuant to CSR § 110-IJ-4.

ADMINISTRATIVE NOTICE 97-11

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement for Sales Analysis of Reserve Coal Properties Pursuant to CSR § 110-II-4.1.9.2.

ADMINISTRATIVE NOTICE 97-12

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement Concerning Primary Reliance on the Cost Approach to Value for Appraisals of Industrial Personal Property i.e. Machinery, Equipment, Furniture, Fixtures, and Leasehold Improvements Pursuant to CSR § 110-1P-2.5.3.1.

ADMINISTRATIVE NOTICE 97-13

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement Concerning Primary Reliance on the Green Guide for the Appraisal of Used Heavy Equipment.

ADMINISTRATIVE NOTICE 97-14

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement for the Allocation or Separation of Values of a Pollution Control Facility Pursuant to CSR § 110-6-4.

This notice discusses the methods contained in Legislative Rules for the valuation of pollution control facilities (See CSR § 110-6-1 et seq.) employed by the Department of Tax and Revenue to allocate or separate salvage value treatment where the pollution control facility produces a profitable by-product or where a part of such facility is required for the operation of the business without regard to the requirements of state or federal air or water quality standards.

ADMINISTRATIVE NOTICE 97-15

SUBJECT: Property Tax -- State Tax Commissioner's Policy Statement Concerning Methods By Which Residential Real Estate Is Appraised Statewide.

ADMINISTRATIVE NOTICE 97-16

SUBJECT: WVCNIT -- Meaning of "federal taxable income" for West Virginia corporation net income tax purposes updated to bring it into conformity with its meaning for federal income tax purposes. Changes in federal law made after December 31, 1995, but before January 1, 1997, are adopted.

On March 28, 1997, Governor Cecil Underwood signed into law Senate Bill No. 269. This bill amends the West Virginia Corporation Net Income Tax Act by updating the meaning of "federal taxable income" which is the starting point for determining West Virginia corporation net income tax liability. This bill is in effect from its passage on March 25, 1997.

Federal changes adopted are those made after December 31, 1995, but before January 1, 1997, which affect determination of "federal taxable income." If a federal change applies to a taxable year beginning before January 1, 1997, the change similarly applies for West Virginia income tax purposes to the same extent the change is allowed for federal income tax purposes.

Changes in federal income tax law do not automatically become part of West Virginia corporation net income tax law. Therefore, any change in federal income tax law affecting the definition of "federal taxable income" made after December 31, 1995, must be adopted by the West Virginia Legislature before such change is recognized for West Virginia corporation net income tax purposes.

ADMINISTRATIVE NOTICE 97-17

SUBJECT: WVPIT -- Meaning of "federal adjusted gross income" as used in the West Virginia Personal Income Tax Act updated to bring it into conformity with its meaning for federal income tax purposes. Changes in federal income tax law made after December 31, 1995, but before January 1, 1997, are adopted.

On March 28, 1997, Governor Cecil Underwood signed into law Senate Bill No. 279. This bill amends the West Virginia Personal Income Tax Act by updating the meaning of "federal adjusted gross income" which is the starting point for determining West Virginia personal income tax liability. This bill is in effect from its passage on March 24, 1997.

Federal changes adopted are those made after December 31, 1995, but before January 1, 1997, which affect determination of "federal adjusted gross income." If a federal change applies to a taxable year beginning before January 1, 1997, the change similarly applies for West Virginia income tax purposes to the same extent the change is allowed for federal income tax purposes.

Administrative Notices

Changes in federal income tax law affecting the definition of "federal adjusted gross income" do not automatically become part of West Virginia personal income tax law. Therefore, any change in federal income tax law affecting the definition of "federal adjusted gross income" made after December 31, 1996, must be adopted by the West Virginia Legislature before such change is recognized for West Virginia personal income tax purposes.

ADMINISTRATIVE NOTICE 97-18

Notice of Adjusted Interest Rate On Tax Underpayments and Overpayments And on Public Contracts For the Period of July 1, 1997 through December 31, 1997

West Virginia Code §11-10-17a requires the Tax Commissioner to establish interest rates every six months based on the adjusted prime rate charged by banks. The interest rate shall not be less than 8 percent.

Notice is hereby given that the rate of interest on underpayments and overpayments of taxes, and on public contracts when final payment is delayed, will be 8 percent for the period beginning July 1, 1997, and ending December 31, 1997, inclusive.

Administrative Notices

ADMINISTRATIVE NOTICE 97-19

SUBJECT: Preneed Cemetery Companies - A preneed cemetery company must be registered with the Office of the Attorney General, Preneed Funeral Services Division in order to sell preneed funeral services, funeral goods and burial goods.

It was brought to the attention of the State Tax Division that some preneed cemetery companies are selling preneed funeral services as well as caskets. Please be advised that a preneed cemetery company when registered only as a preneed cemetery company may not sell preneed funeral services, funeral goods or burial goods. In order to provide those services and goods, the preneed cemetery company must be registered with the Preneed Funeral Services Division of the Office of the West Virginia Attorney General.

Preneed funeral services are regulated under Article 14, Chapter 47 of the West Virginia Code. West Virginia Code § 47-14-2 provides the following definitions:

“Funeral goods” means those items of merchandise sold or offered for sale directly to the public by any person which will be used in connection with a funeral or alternative for final disposition of human remains, but does not include those services actually performed by a cemetery acting only as

such, or the sale by a cemetery of cemetery lots, land or interest therein, services incidental thereto, or the sale by any person of markers, memorials, monuments, equipment, crypts, urns, burial vaults or vaults constructed or to be constructed in a mausoleum or columbarium.

“Funeral services” means those services usually performed by a licensed funeral establishment or director including, but not limited to, care and preparation of human remains and coordinating rites and ceremonies in connection with the disposition of human remains carried out at the request of any individual responsible for funeral and disposition arrangements.

The definition of “burial goods” is similar to “funeral goods.” Article 5B, Chapter 35 of the West Virginia Code provides the following definition in Section 1(16).

“Preneed cemetery company contract” means a contract for the sale of real and personal property, goods or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed for more than one hundred twenty days after the receipt of initial payment on account of such sale. Such property, goods or services include, but are not limited to, burial vaults, mausoleum crypts, lawn crypts, memorials, marker bases and open-

ing and closing and/or interment services, but do not include graves or incidental additions such as dates, scrolls or other supplementary matter representing not more than ten percent of the total contract price.

The distinction between that which is sold as preneed funeral services, funeral goods or burial goods and that which is sold under preneed cemetery company contracts is reasonably clear and unambiguous; that which is sold under a preneed cemetery company contract does not include preneed funeral services, funeral goods or burial goods. This determination is supported by West Virginia Code § 35-5B-3(1) which states that “[t]he provisions or this article [Article 5B, Chapter 35] do not apply to: (1) Sales of property, goods and services subject to the provisions of article fourteen, chapter forty-seven of this code; ...”

In conclusion, a preneed cemetery company when registered only as a preneed cemetery company may not sell preneed funeral services, funeral goods or burial goods because those activities are regulated under Article 14, Chapter 47 of the West Virginia Code. In order to engage in those transactions, a preneed cemetery company must also be registered with the Preneed Funeral Services Division of the Office of the West Virginia Attorney General (telephone no. (304) 558-8986 or 1-800-368-8808). See, W. Va. Code § 47-14-1 et seq.

ADMINISTRATIVE NOTICE 97-20

SUBJECT: West Virginia Health Care Provider Tax: Nursing Facility Services. Policy of the State Tax Commissioner on the Allowance of Contractual Allowances in Computing Health Care Provider Tax Liability

ISSUE: Whether a nursing facility may deduct contractual allowances from its gross receipts when calculating the health care provider tax.

Information regarding Administrative Notices may be obtained by calling or writing to:

**West Virginia Department of Tax and Revenue
Taxpayer Services Division**

P.O. Box 3784 Charleston, W.Va. 25337-3784

Telephone: (304) 558-3333

Toll-free within West Virginia: 1-800-982-8297

TDD Service for the hearing impaired: 1-800-282-9833

WV TAX DECISION 96-104 C - CONSUMERS SALES AND SERVICE TAX--PROFESSIONAL SERVICES--Pursuant to 110 C.S.R. 15, § 8.1, the Tax Division is authorized by the legislature to designate a particular service as a professional service. A licensed registered record administrator (RRA) meets all of the criteria mandated by the legislature for designation as a professional and it is determined that an RRA is a professional within the meaning of West Virginia's consumers sales and service tax.

WV TAX DEC 95-041 RC - CONSUMERS SALES AND SERVICE TAX--TEMPORARY EMPLOYMENT SERVICES--Pursuant to 110 C.S.R. 15, § 60.4, temporary employment agencies are rendering a service, the gross receipts of which are subject to sales tax. The

fact that the temporary employees may be rendering personal and/or professional services at their assigned worksite does not mean that the employment agency is excepted from sales tax as providing personal and/or professional services.

WV TAX DECISIONS 92-147 CS, 93-125 CS AND 94-639 CS - CONSUMERS SALES AND SERVICE TAX--

fective July 1, 1993. For periods prior to this date, the Tax Department published erroneous information on the application of sales tax to tree removal services.

WV TAX DEC 93-550 C - CONSUMERS SALES AND SERVICE TAX--TREE REMOVAL--GOING FORWARD BASIS-- Pursuant to 110 C.S.R. 15, § 117.24 (1989, 1990 and 1992), the complete removal of a tree is a service activity subject to sales tax.

The Tax Department's TSD 310 (1989) erroneously listed tree removal as a capital improvement. The first revision of TSD 310 published in June, 1991 omitted tree removal from the capital improvement section of Yard Care and failed to identify it as a service activity. It was not until July, 1993, that the widely relied upon TSD 310 identified tree removal as a service activity in accord with the regulations. Accordingly, a taxpayer will be put on a going forward basis for all tree removal activities prior to July 1, 1993.

WV TAX DEC 96-154 U - PURCHASERS' USE TAX -- RENTALS OF PORTABLE TOILETS TO HOTEL OPERATING FLEA MARKET -- EXCEPTION FOR SERVICES SUBJECT TO CONTROL OF PUBLIC SERVICE COMMISSION NOT SHOWN TO BE APPLICABLE--The purchasers' use tax applies to the rentals of portable toilets to a hotel operating a flea market, where it is not shown that such rentals come within the W. Va. Code § 11-15-8 exception for services subject to the control of the Public Service Commission.

PURCHASERS' USE TAX -- RENTALS OF PORTABLE TOILETS TO HOTEL OPERATING FLEA MARKET -- EXEMPTION FOR PURCHASES FOR RESALE NOT SHOWN TO BE APPLICABLE -- The purchasers' use tax applies to the rentals of portable toilets to a hotel operating a flea market, where it is not shown that the purchase for resale exemption, W. Va. Code § 11-15-9 (j), applies.

WV TAX DEC 95-291 G, 95-292 GU, 95-

Administrative Decisions

OHA Docket Number System

The first two digits of the Office of Hearings and Appeals' docket number identify the year the petition was filed. The next three digits represent the number of the petition, and the code letters (shown below) identify the tax and issue. Example: 95-280 GCZ.

<i>B</i>	<i>Business and Occupation Tax</i>	<i>P</i>	<i>Personal Income Tax</i>
<i>BB</i>	<i>Beer Barrel Tax</i>	<i>R</i>	<i>Raffle</i>
<i>BN</i>	<i>Bingo</i>	<i>S</i>	<i>Soft Drink Tax</i>
<i>C</i>	<i>Consumers Sales and Service Tax</i>	<i>SV</i>	<i>Severance Tax</i>
<i>CP</i>	<i>Special Tax on Coal Production</i>	<i>SW</i>	<i>Solid Waste Tax</i>
<i>DR</i>	<i>Declaratory Ruling</i>	<i>T</i>	<i>Carrier Income Tax</i>
<i>FN</i>	<i>Franchise Tax</i>	<i>U</i>	<i>Use Tax</i>
<i>FS</i>	<i>Business Registration Tax</i>	<i>W</i>	<i>Withholding Tax</i>
<i>G</i>	<i>Gasoline and Special Fuels Excise Tax</i>	<i>WL</i>	<i>Wine Liter Tax</i>
<i>GC</i>	<i>Gasoline and Special Fuels Sales Tax</i>	<i>WN</i>	<i>Wine Sales Tax</i>
<i>GU</i>	<i>Gasoline and Special Fuels Use Tax</i>	<i>X</i>	<i>Cigarette Tax</i>
<i>I</i>	<i>Estate Tax</i>	<i>"R"</i>	<i>prefix indicates a refund of the designated tax</i>
<i>K</i>	<i>Coal Reclamation Tax</i>	<i>"D"</i>	<i>suffix indicates a Davis issue</i>
<i>M</i>	<i>Motor Carrier Road Tax</i>	<i>"(R)"</i>	<i>suffix indicates paid under protest</i>
<i>ME</i>	<i>Medicaid Enhancement Tax</i>	<i>"S"</i>	<i>suffix indicates attempt to resolve through issuing unit</i>
<i>N</i>	<i>Corporation Net Income Tax</i>	<i>"Z"</i>	<i>suffix indicates small claims case resolve</i>

293 G & 95-294 GU - GASOLINE AND SPECIAL FUEL EXCISE AND USE TAXES--IMPORTATION OF FUEL--OFF HIGHWAY USE--The excise and use taxes are due on the importation of diesel fuel into West Virginia even though the fuel was consumed off highway during the assessment period.

WV TAX DEC 96-040 U - PURCHASERS' USE TAX -- UNTIMELY FILED PETITION FOR REASSESSMENT -- An untimely filed petition for reassessment must be dismissed, as the Tax Commissioner is without explicit or implicit statutory authority to extend, for any reason, the sixty-day period set forth in W. Va. Code § 11-10-8(a) for filing such a petition.

PURCHASERS' USE TAX -- SERVICE OF NOTICE OF ASSESSMENT ON TAXPAYER -- W. Va. Code § 11-10-8(a) requires the State Tax Commissioner to serve notice of a tax assessment on "the taxpayer," not on the taxpayer's certified public accountant, lawyer, or other independent representative, and service of the notice on the taxpayer is complete without also serving notice on such a representative.

WV TAX DEC 96-241 U - RETAILER'S USE TAX -- LIABILITY OF RETAILER ENGAGING IN BUSINESS IN THIS STATE FOR UNCOLLECTED TAX -- Under the provisions of W. Va. Code §§ 11-15A-5(1), -6(a), -9, and -10, a retailer engaging in business in this state is liable to the State Tax Commissioner for any use tax due but not collected from the user; the fact that the user is jointly and severally liable for the uncollected use tax in that situation, under the provisions of W. Va. Code §§ 11-15A-2(b) and -11, does not relieve the retailer from its joint and several liability for the use tax, and the Tax Commissioner may require payment from either the retailer or the user.

Docket No. 93-475 U - USE TAX--PUR-

CHASES FOR USE IN CONTRACTING BUSINESS--Pursuant to legislative regulations, authorized by an Act of the Legislature which have the full force and effect of a statute, the construction of earthen dams is a contracting activity and purchases of tangible personal property and services for use in construction are subject to sales and use taxes. 110 C.S.R. 15, § 107.

WV TAX DECISION 95-070 N - CORPORATION NET INCOME TAX -- UNTIMELY FILED PETITION FOR REASSESSMENT -- An untimely filed petition for reassessment must be dismissed, as the Tax Commissioner is without explicit or implicit statutory authority to extend, for any reason, the sixty-day period set forth in W. Va. Code § 11-10-8(a) for filing such a petition.

WV TAX DECISION 96-094 W - WITHHOLDING TAX -- TIMELINESS OF PETITION FOR REASSESSMENT -- PROOF OF TIMELY MAILING AND OF PETITIONS BEING MISPLACED BY DEPARTMENT OF TAX AND REVENUE -- A petition for reassessment is timely filed in accordance with the provisions of W. Va. Code § 11-10-8(a) when the taxpayer proves that the petition was timely mailed by first class mail, and there is evidence that the Department of Tax and Revenue misplaced a few petitions at about the same time the petition in question was mailed.

WV TAX DECISION 96-030 U - PURCHASERS' USE TAX -- BURDEN OF PROOF ON TAXPAYER TO SHOW REMITTANCE OF TAX -- The State Tax Commissioner will affirm the tax portion of a purchasers' use tax assessment where the taxpayer fails to carry its burden of proving that it remitted the tax on the transaction(s) in question.

PURCHASERS' USE TAX -- ADDI-

TIONS TO TAX FOR NEGLIGENCE -- The State Tax Commissioner will affirm an assessment of additions to tax for negligence, where the taxpayer fails to prove that it was not negligent in retaining purchase invoices and in reporting and remitting purchasers' use tax. WV TAX DECISION 96-304 SV - SEV-

ERANCE TAX--TIMBER PRODUCTION--Pursuant to 110 C.S.R. 13A, § 4.4, the measure of tax is the gross value of the timber at the point where production ends. The burden of proof is upon the taxpayer to show that the gross proceeds of sale, less proper deductions, is not the actual gross value.

WV TAX DECISION 95-134 C - CONSUMERS SALES AND SERVICE TAX-- Assessment for sales tax collected but not remitted affirmed where Petitioner failed to appear at the hearing and offer any evidence that the assessment was incorrect and contrary to law, in whole or part.

WV TAX DECISIONS 93-690 WS & 93-691 CS - CONSUMERS SALES AND SERVICE TAX--WITHHOLDING TAX-- OFFICER LIABILITY--Petitioner withdrew his objections to the assessment and admitted, that as President, he was responsible for the unpaid taxes of the corporation.

WV TAX DECISION 96-021 W - WITHHOLDING TAX -- ADDITIONS TO TAX FOR NEGLIGENCE -- NOT ABATED WHEN NEGLIGENCE SHOWN -- The State Tax Commissioner will not abate an assessment of additions to tax for negligence when negligence in remitting a tax is shown, especially when the negligence relates to a repeated failure to remit the full amount of a "trust fund" tax, such as the withholding tax.

WV TAX DECISION 96-363 U - PURCHASERS' USE TAX -- FIRST TIME PETITION TIMELY FILED WHERE FAXED WITHIN SIXTY-DAY PERIOD TO EMPLOYEE OF DEPARTMENT OF TAX

Administrative Decisions

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AND REVENUE WHO HAS FAILED TO MENTION CERTIFIED MAIL/PERSONAL DELIVERY REQUIREMENTS -- A taxpayer filing a petition for reassessment for the first time has timely filed the petition under W. Va. Code § 11-10-8(a)(1) where, within sixty (60) days after being served with notice of the assessment, the taxpayer faxes the petition to an employee of the Department of Tax and Revenue who has failed to mention to the taxpayer the certified mail/personal delivery requirements.

WV TAX DECISIONS 94-360 W & 94-361 C - CONSUMERS SALES AND SERVICE TAX--WITHHOLDING TAX--OFFICER LIABILITY--STATUTE OF LIMITATIONS--Assessments issued beyond the statutory period of limitation must be abated.

WV TAX DECISION 95-234 CS & 95-235 CS - CONSUMERS SALES AND SERVICE TAX AND WITHHOLDING TAX MONEY PENALTY--LIABILITY OF CORPORATE OFFICER OR OF PERSON ALLEGEDLY REQUIRED TO COLLECT, ACCOUNT FOR, AND PAY OVER TAX ON BEHALF OF CORPORATION--PERSON BEARING THE BURDEN OF SHOWING LACK OF RESPONSIBILITY--Consumer sales and service tax and withholding tax money penalty assessments issued against an individual as an officer of a corporation will be abated where the individual proves that he lacked responsibility for collection and/or payment of the taxes.

WV TAX DECISIONS 93-507 FN, 93-508 W & 93-509 C - CONSUMERS SALES AND SERVICE TAX--OFFSET FOR SALES TAX PAID TO ANOTHER STATE--The Tax Commissioner has no authority to allow an offset of sales tax paid on purchases made out-of-state against an assessment for sales tax not collected and remitted even though the purchases would have been exempt as purchases for resale had they been made in West Virginia.

WV Tax Decision 96-032 C (R) - CONSUMERS SALES AND SERVICE TAX --

GASOLINE AND SPECIAL FUEL DISTRIBUTOR'S PURCHASES OF SERVICES OF RETAIL DEALER ARE

TAXABLE -- Where a gasoline and special fuel distributor retains title to the

gasoline and special fuel until it is sold for the distributor by a retail dealer, the commissions paid by the distributor to the retail dealer for the services of operating the retail station are subject to the consumers sales and service tax. The fact that the sales of the gasoline and special fuel are also subject to the consumers sales and service tax under W. Va. Code § 11-15-18 does not constitute impermissible "double" taxation of the distributor, because the dealer's services for which the dealer is paid a commission by the distributor are taxable events which are separate from the product sales.

CONSUMERS SALES AND SERVICE TAX -- ASSESSMENT MODIFIED WHERE TAXPAYER CARRIES BURDEN OF PROOF WITH RESPECT TO TAXABLE AMOUNTS OF COMMISSIONS PAID BY TAXPAYER -- The State Tax Commissioner will modify an assessment of consumers sales and service tax on a gasoline and special fuel distributor's purchases of a retail dealer's services, where the distributor carries its burden of proving that the audit findings overstate the amount of commissions actually paid by the distributor to the dealer.

WV Tax Decs. 93-030 CS, 93-031 WS & 93-032 WS - CONSUMERS SALES AND SERVICE TAX--WITHHOLDING TAX--OFFICER LIABILITY--Consumer sales and service tax and withholding tax money penalty assessments issued

against the President and majority stockholder of a corporation will be affirmed where the individual fails to prove that he was not a responsible corporate officer.

WV Tax Dec. 93-617 FN - MOTOR CARRIER ROAD TAX/FUEL--MOTOR CARRIER ROAD TAX/USE-- There is no statutory authority for

allowing a taxpayer to claim a refund of gasoline and special fuel excise tax on gallons used off-highway by the filing of a

motor carrier road tax refund claim consolidating off-highway gallons used with gallons used out-of-state. The taxpayer's method of claiming the off-highway use refund circumvented the six month limitation period applicable to that type of refund. Additionally, the taxpayer was erroneously claiming the corresponding fuel use tax refund on off-highway gallons that were used in West Virginia. Therefore, the assessment to recoup the erroneously paid refunds was affirmed.

BUSINESS FRANCHISE TAX--Assessment of tax for the failure to file and pay franchise tax will be abated where the Petitioner proves that it was included in the consolidated return of its parent corporation.

WV Tax Dec. 93-614 FN - BUSINESS FRANCHISE TAX--Assessment of tax for the failure to file and pay franchise tax will be abated where the Petitioner proves that it was included in the consolidated return of its parent corporation.

WV Tax Dec. 96-370 RG - GASOLINE AND SPECIAL FUEL EXCISE TAX--REFUND--The six month statutory

Administrative Decisions

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period for filing a claim for refund of gasoline and special fuel excise tax, W. Va. Code § 11-14-11(c), must be strictly applied and may not be extended for any reason.

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WV Tax Dec. 94-012 P(R) - PERSONAL INCOME TAX--ITEMIZED DEDUCTIONS--There are no itemized deductions for personal income tax purposes, W. Va. Code § 11-21-15(e).

WV TAX DEC. 96-162 MS - MOTOR CARRIER ROAD TAX--PENALTY FOR FAILURE TO FILE NO-TAX-DUE RETURNS--Under W. Va. Code §§ 11-14A-16 and 11-10-9, a taxpayer seeking a waiver of motor carrier road tax penalties for the failure to file no-tax-due returns has the burden of proving that such failure to file was due to reasonable cause and not due to willful neglect.

Docket No. 93-643 U - USE TAX--CHARITABLE ORGANIZATIONS--Pursuant to 110 C.S.R. 15, § 42, nonprofit organizations are not by reason of their nonprofit status alone, exempt from sales and use tax. A non-profit corporation which has employees and charges for its services, may be exempt from sales and use tax pursuant to W. Va. Code §§ 11-15-9(f) and 11-15A-3(a)(4) if it: (1) has a valid business registration certificate; (2) is exempt from federal income tax as a corporation qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code; (3) receives more than one-half of its support from any combination of gifts, grants, charitable contributions and membership fees; (4) uses the purchases in serving the exempt purpose of the

corporation; and (5) does not use any of the purchases to generate unrelated business income. The exemption statute is strictly construed against the taxpayer and the taxpayer has the burden of proving that it meets the criteria.

PLIES AND OTHER PROPERTY INSTALLED, AFFIXED TO OR INCORPORATED INTO A BUILDING STRUCTURE OR REAL PROPERTY--Taxpayer, a 501 (c)(3) corporation providing low income housing, failed to prove that appliance repair parts installed on appliances in tenants' apartments and the common kitchen, were property installed, affixed to or incorporated into a building, structure or real property. Rather, the appliance repair parts were installed on tangible personal property. Therefore, the purchases were not exempt pursuant to W. Va. Code §§ 11-15-9(aa) and 11-15A-3(a)(4).

WV Tax Dec. 96-392 RU - PURCHASERS' USE TAX -- CLAIM FOR REFUND MUST BE DENIED WHEN IT IS NOT TIMELY FILED UNDER W. VA. CODE § 11-10-14(l)(1) -- State tax law requires the State Tax Commissioner to deny a claim for refund which is not timely filed in accordance with the applicable provisions of W. Va. Code § 11-10-14(l)(1). The relevant refund claim limitation period set forth in that statute applies to any refund claim based upon retroactive changes in tax policy. See W. Va. Code § 11-10-14b(b)(2)(C).

WV Tax Decs. 96-314 RG, 96-315 RG, 96-316 RG & 96-317 RG - GASOLINE AND SPECIAL FUEL EXCISE TAX -- UNTIMELY FILED CLAIM FOR REFUND -- TAX COMMISSIONER WITHOUT AUTHORITY TO EXTEND STATUTORY PERIOD FOR FILING CLAIM FOR REFUND -- The six-month statutory period for filing a claim for refund of gasoline and special fuel excise tax, W. Va. Code § 11-14-11(c), must be strictly applied and may not be extended for equitable reasons.

WV Tax Dec. 94-543 C - CONSUMERS SALES AND SERVICE TAX--NEGLIGENCE PENALTY--Additions to tax imposed under W. Va. Code § 11-10-18(c) because of negligence or the intentional disregard of rules and regulations, without intent to defraud, will be abated when the evidence clearly shows that the taxpayer acted reasonably and prudently under the circumstances.

WV Tax Dec. 93-493 C - CONSUMERS SALES AND SERVICE TAX--PROFESSIONAL SERVICES--Pursuant to 110 C.S.R. 15, § 8.1, the Tax Division is authorized by the Legislature to designate a particular service as a professional service. The burden of proving that the service should be designated as a professional service is on the taxpayer. A computer consultant, who fails to appear at the hearing and offer any evidence in support of his claimed professional status has not carried the burden of proof.

WV Tax Dec. 95-069 C - CONSUMERS SALES AND SERVICE TAX--COMMISSIONS--The consumers sales and service tax applies to the furnishing of sales solicitation services.

WV Tax Dec. 93-158 U - USE TAX--MANUFACTURING EXEMPTION--Ozonating spring water does not result in the spring water being significantly transformed into a different form, composition or character from which it originally existed. Accordingly, Petitioner is not engaged in manufacturing and the purchases are not exempt under W. Va. Code § 11-15-9(g).

WV Tax Dec. 95-290 U - USE TAX--COMMISSIONS--Sales solicitation services rendered by independent contractors are subject to sales and use tax unless some other exemption provision applies. 110 C.S.R. 15, § 60.1.

WV TAX DEC 90-4660 PS - WEST VIRGINIA PERSONAL INCOME TAX -- TAXPAYERS' BURDEN OF PROOF -- Under W. Va. Code § 11-10-9, taxpayers must bear the burden of proving that a state tax assessment is incorrect or contrary to law, in whole or in part.

WV TAX DEC 96-517 PS - WEST VIRGINIA PERSONAL INCOME TAX -- TAXPAYER'S BURDEN OF PROOF FOR WAIVER OF ESTIMATED TAX "PENALTY" -- Under W. Va. Code § 11-10-18a(e)(3), a taxpayer seeking a waiver of the "penalty" for underpayment of estimated tax must show "casualty, disaster or other unusual circumstances" such that nonwaiver of the "penalty" would be "against equity and good conscience." Mere oversight with respect to making estimated tax payments does not constitute such "unusual circumstances."

WV TAX DEC 96-390 MS - MOTOR CARRIER ROAD TAX -- PENALTY FOR FAILURE TO FILE NO-TAX-DUE RETURN(S) -- TAXPAYER'S BURDEN OF PROOF -- A taxpayer must bear the burden of proving that he/she/it is not liable for the penalty imposed by W. Va. Code § 11-14A-16 for failing to file one or more no-tax-due motor carrier road tax returns. It is not sufficient to allege merely that, prior to the assessment, oral notice was given to the West Virginia Department of Tax and Revenue to the effect that the taxpayer was no longer intending to operate a motor vehicle on any highway in this state, or to allege, without proof, that written notice to that effect was sent to the Department prior to the assessment.

WV TAX DEC 93-357 U & 93-538 C - CONSUMERS SALES AND SERVICE TAX--NEGLIGENCE PEN-

ALTY--Additions to tax imposed under W. Va. Code § 11-10-18(c) will not be abated where taxpayer willfully quit paying sales tax because of confusion and anger over the application of sales tax amendments to its contracting activities even though the taxpayer ultimately asked for the audit in order to become current.

WV TAX DEC 93-684 N, 93-685 FN, 93-686 C - CONSUMERS SALES AND SERVICE TAX--CAPITAL IMPROVEMENT--Petitioner's activities of cleaning and restoring masonry buildings, including the sandblasting and feather blasting of the building, removal and repainting of all joints, replacement of damaged bricks, chemical cleaning and application of a water sealant to the masonry is a contracting activity resulting in a capital improvement.

WV TAX DEC 96-528 CS & 96-529 cs - CONSUMERS SALES AND SERVICE TAX -- LIABILITY OF CORPORATE OFFICER -- FOR PERIODS AFTER APRIL 30, 1992 -- For periods covered by the current, legislatively approved consumers sales and service tax regulations on point which became effective on May 1, 1992, an officer of a corporation is personally liable for the unpaid consumers sales and service tax liability of the corporation by virtue of his or her status as an officer with any managerial duties, whether or not the officer had the authority to make or to supervise directly the day-to-day financial decisions on behalf of the corporation, and whether or not the officer knew of the corporation's default with respect to its consumers sales and service tax obligations. See 110 C.S.R. 15, §§ 4a.5 & 4a.5.2, [W. Va.] St. Tax Rep. (CCH) para. 63-789; see also W. Va. Code § 64-7-6(rr) (1992).

WV TAX DEC 96-446 PS(R) - PERSONAL INCOME TAX--INCREASE IN FEDERAL TAXABLE INCOME--Under W. Va. Code § 11-21-59, a taxpayer must report any final change in federal taxable income within ninety days and pay the additional tax due.

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Further '97 Decisions will be printed in the Winter edition.

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