



The West Virginia Tax Review

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A Publication of the West Virginia State Tax Department

Cecil H. Underwood, Governor
Joseph M. Palmer, State Tax Commissioner

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1999 - A Year of Change

When taxpayer's open their mailbox in January, they are in for a surprise. No – no, we aren't quite able to second guess refunds and process them that quickly! What the Department was able to do was adapt to change and explore new and innovative ideas suggested by Department personnel.

"We think the public will be receptive to the Department's advancements into the 21st century."

In an effort to make returns and instructions more "user" friendly, Personal Income Tax packages were completely evaluated this past year. Additionally, returns from 32 other states were assessed as well as the software used in their design's. Reviewing the differences in software programs and formatting styles were both challenging and informative.

A core committee was formed to compare and evaluate the returns used by the other states. They determined what were feasible ideas based upon their knowledge and experience with tax laws pertinent to this State. In turn, a working draft of each booklet was designed and expanded upon. A finalized draft was then distributed to key personnel in the Department for review and comment. With minor suggestions

and recommended changes noted, the drafts were approved.

Some of the more noticeable changes taxpayer's will see in the 1999 booklets are:

- Scenic front cover
- Table of Contents
- Quick reference index for the Regional Offices
- Reference index for returns included in the booklets
- Letter from the Tax Commissioner
- Informative Text Blocks
- Sample estimated voucher and instructions
- Verbiage on IT-140S directed at "Married taxpayers filing separate returns"

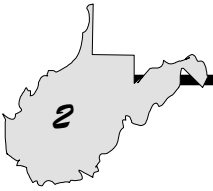
- Reformatted Tax Tables
- Usage of more graphics

The Department anticipates favorable comments from both the general public and from practitioner's. As always, it is our goal to simplify what is considered a "confusing" subject and compose instructions that are as informative and direct as possible. With these positive changes in mind, we anticipate a rapid processing of returns. This further results in a quicker mailing of refund checks in spite of all the Y2K fears that seem to be foremost in everyone's mind. Although the surprise may not be refunds in January, we think the public will be receptive to the Department's advancements into the 21st century.

*Patricia Ennis
Taxpayer Services Division*

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West Virginia Introduces Project Towboat

West Virginia Tax Department Auditors have been assigned to ensure that businesses that use West Virginia waterways pay their fair share of taxes.

The West Virginia Use Tax Statute (§ 11-15A-13) imposes a Use Tax on all gallons of gasoline and special fuels consumed by barges or other watercraft transporting freight (among others) or passengers in or through West Virginia. Under article ii, § 1 of the West Virginia Constitution, the territory of the State of West Virginia includes the bed, bank and shore of the Ohio River that lie opposite the state. Watercraft operating on any part of the Ohio river opposite West Virginia, as well as on other navigable waters of the State, are operating within the taxing jurisdiction of the State.

A tax rate of \$0.0485 per gallon of motor fuel is based on statutory tax rate applied against the average wholesale price of gasoline and special fuel sold in West Virginia. The Use Tax imposed under West Virginia Code § 11-15a-13, has been held by the West Virginia Supreme Court to not violate the federal constitution or any other law. *Hartley Marine Corp. v. Mierke*, 196 W. Va. 669, 474 S E 2d 599 (1996), cert. Denied, 519 U.S. 1108, 117 S. Ct 942, 136 l. ed. 2d. 832 (1997).

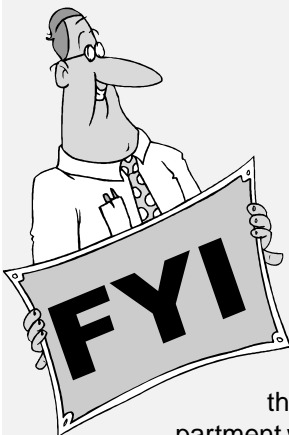
Using information obtained from the United States Army Corps of Engineers (which operates the inland waterways locks), West Virginia tax auditors have identified 109 towboat operators on the Ohio, Monongahela and Kanawha Rivers who are not filing Use Tax Returns for Gasoline and Special Fuels with West Virginia. All



these towboat operators have been contacted by letter and/or telephone and have been given the option of a field audit, managed audit, or an estimated assessment.

Of the 109 operators contacted, 13 have accepted the managed audit option, five have completed managed audits and remitted the Use Tax due, and eight have a managed audit underway or pending. Two others, which are larger operators, have been scheduled for a regular field audit this winter. The remaining operators are being evaluated based on their West Virginia operations, and will either be scheduled for audit or sent an estimated assessment of tax due.

*Tom Raynes, Tax Manager
Field Auditing Division*



Magnetic Media Reporting Of Wage And Tax Data

As of December 31, 1999, the West Virginia State Tax Department will no longer accept W-2 and 1099-R information submitted on round-reel tape. Employers who submit employees wage and tax data, W-2 and 1099-R information, by magnetic media must submit this on either 3480 or 3490 cartridge.

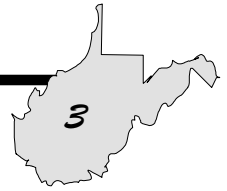
*Lola Flint
Internal Auditing Division*

Electronic Filing

New Growth and Technology on the Horizon

Electronic Filing, or *e-file* as it is now known, has always been recognized for the speed and accuracy with which returns could be processed. Refunds are in the taxpayers' hands in less than half the time when compared to paper filings, the error rate is approximately ten times less than paper, and, with the acknowledgment system, taxpayers know when we've received their return. Currently, filings must be done by either a tax professional or from a taxpayer's home PC over the Internet. Initiatives unveiled at two FTA conferences this year should spur greater growth for next year.

Tax year 1998 saw our e-file program grow to over 95,000 returns filed. The program has grown 475 percent since its inception in 1993, with the majority of increase coming in the past three years. Currently our program incorporates only Resident personal income tax returns along with Schedules M, H, T, and G. Plans to expand the program to include Schedule E and Non-Resident returns are under consideration. Also in tax year 1998, we took a step towards becoming



Electronic Filing New Growth and Technology on the Horizon, cont'd

ing a paperless process by requiring that the WV-8453 be held by the preparer/taxpayer (if filing On-Line) for a minimum of three years. IRS is looking at this as well. This was made feasible by capturing the W-2 information electronically.

Marketing e-file has always been a problem for tax agencies, including the IRS. In 1998, the IRS began a nationwide television, radio, and print campaign to promote filing federal returns electronically. Beginning in tax year 1999, states like West Virginia, which participates in the Fed/State program, will be tagged in the promotions as well. Ads will display this new logo in newspapers and magazines and marketing packs sent to preparers will be available for display in their offices. We will continue to place e-file information prominently on the front or back covers of the Resident Personal Income Tax booklets mailed to taxpayers. Additionally, we are sending label only postcards to those taxpayers that used e-file in previous years. This reduces the number of booklets needed, saving taxpayer dollars.

Filing taxes over the Internet, or *On-Line* filing, is becoming increasingly more popular. On-Line filing requires a PC, modem, and Internet access. Taxpayers use the developers' secure server and the software therein, so no software needs to be installed to their own computers. Approved On-Line filing companies can be accessed through our web site. Our growth in this area was 2000 percent above the previous year. At the FTA Technology Conference in August, a major developer of PC and On-Line filing software, announced that any taxpayer with an income of \$50,000 or less would be able to file their taxes On-Line at no cost. This is significant because, in the past, free e-file was only available to low income and elderly

taxpayers through VITA centers. Returns could be prepared, not only from a taxpayer's home, but from the office or public library as well. With On-Line filing, sessions do not have to be completed all at once. Access is password protected and there are no limits to the number of logons.

Another initiative, Federal/State Telefile, was updated at the FTA Electronic Filing Symposium in April. This was a pilot program tested in Kentucky and Indiana last year. Test results were far better than anticipated in both states. The pilot will continue for tax year 1999. If the program is again successful, it will be opened up to other states in tax year 2000. West Virginia is on the short list of preferred states because of our tax structure and IT-140S. This program alone would probably increase West Virginia e-file by 20-30 percent in addition to normal increases. Additionally, the IRS may open their SRS to allow for state only transmissions. This would take up any slack in the Telefile programs and allow for the transmission of forgotten state returns.

And finally, Taxpayer Service Division has greatly improved the web site navigation and features. Taxpayers can now find preparers near them through the Electronic Filer Database, link to On-Line filing services, perform refund inquiries, and download printable tax forms.

The IRS has a publicly stated goal to be 80 percent paperless by the year 2007. Other projects such as encrypted signatures, On-Line business tax filings, and credit/debit card payment alternatives, which are receiving serious attention in Congress as well as State governments, will help make this goal a reality.

*Jeff Anderson
E-file Coordinator*

The "Privatization and Out-sourcing" of Government Services

In their never ending efforts to reduce or slow the growth of government, public officials have for many years looked to the privatization and out-sourcing of government services.

Privatization allows a private sector company to take over a provision of service historically performed by a government agency. Out-sourcing is contracting with private sector companies to perform certain selective functions for government agencies.

The Compliance Division of the State Tax Department collects delinquent taxes. The question is often asked, "Why not turn this function over to a private collection agency?" Interestingly, many states have found that government agencies can perform certain functions more effectively and efficiently than the private sector. The Department of Administration awards a statewide debt collection contract to private sector collection agencies.



Revised Forms & Publications

The following credit schedules, forms and publications have been created or revised within the first and second quarters of 1999. If you would like a copy of one of these publications, please refer to the information provided below to order.

Publications

- TSD-2 Tax Division Telephone Numbers (Rev. 2/99)
- TSD-316 Rental of Private Condominiums and Other Types of Lodging (Rev. 8/99)
- TSD-365 How Interest and Additions to Tax are Assessed (Rev. 7/99)
- TSD-384 Estate Tax (Rev. 8/99)
- TSD-393 Estate Tax and Intestate Succession Law (Rev. 8/99)
- TSD-398 Reduced Severance Tax Rate for Thin Seam Coal Produced From New Mines (Rev. 8/99)

Forms/Schedules

- Schedule CA Colin Anderson Credit (Rev. 8/99)
- WV/CST-250 Application for Direct Pay Permit (Rev. 8/99)
- WV/PET-REFUND Petition for Refund (Rev. 8/99)

Adjusted Interest Rate



West Virginia Code, § 11-10-17a, requires the State Tax Department 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.

The rate of interest on underpayments and overpayments of taxes, and on public contracts when final payment is delayed, is 8 percent for the period that will begin January 1, 2000 and will end June 30, 2000, inclusive.

Brewing and Stewing for the right answer? We have the perfect potion!



Call or write to the following address:

West Virginia State Tax Department
Taxpayer Services Division
P.O. Box 3784
Charleston, West Virginia 25337-3784

Fax: (304) 558-3269; Telephone: (304) 558-3333;
Toll-free: 1-800-WVA-TAXS (1-800-982-8297)

TDD Service: 1-800-2TAXTDD (1-800-282-9833)

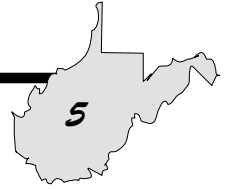
To order forms or publications, please call the automated information system at: (304) 344-2068 or toll-free within West Virginia: 1-800-422-2075.

To order by mail, please use the above address.

Internet address: <http://www.state.wv.us/taxdiv>

Would you like to make a suggestion for an upcoming article or comment on this issue of the newsletter? Do you have an address that needs updated? E-mail:

Patte@tax.state.wv.us



The “Privatization and Out-sourcing” of Government Services, cont.d

Many state agencies use the services of these private collection agencies to collect delinquent student loans and other delinquent government charges and fees. The Compliance Division of the State Tax Department has used the services of private collection agencies for over 10 years.

During the past five years, we have referred 60,000 delinquent tax accounts to private collection agencies and they have collected \$4.5 million dollars. The collection agency is paid a percentage of the taxes they collect. During the same five year period, The Compliance Division revenue agents worked 340,000 delinquent accounts and collected over \$396 million at approximately one half the cost we would have paid to a private collection agency. The collection agencies collect around 20 percent

of the accounts that are placed with them. This is compared to the 80 percent collection average collected from our accounts receivable each year. We consider the value of out-sourcing certain delinquent tax accounts to private collection agencies to be beneficial, in that it enables our revenue agents the opportunity to work on high priority tax cases and not be “bogged down” with large volumes of small balance delinquencies. This leverages our success and is one of the reasons the Compliance Division has realized a significant increase in delinquent tax collections.

*James E. Dixon, Director
Compliance Division*

Internal Revenue Service Changes Address of Internet Web Site

The Internal Revenue Service's award winning Web site has a shorter, easier to remember address — <http://www.irs.gov>. As a convenience, those who may have bookmarked the previous address (www.irs.ustreas.gov) will continue to be linked to the site.

Since its inception in January 1996, the IRS Web site has had nearly two billion hits — more than 900 million in 1999 alone. The bulk of Web site hits occur during the January to April filing season. However, useful information is at the users' fingertips year round. For example:

- ◆ Curious about the 2000 filing season? See draft tax forms and send the IRS comments about them through the Web site.
 - ◆ Interested in how the IRS is changing? Stay up to date on the agency-wide modernization effort through links from the Commissioner's page.
 - ◆ Employed for the first time? Learn about tax obligations by visiting the site's “TAX interactive” feature.
- “TAXi” helps put the American tax system in context and explains various tax terms for young people.
- ◆ Want to know whether a group is eligible to receive tax-deductible contributions? Search through a list of qualified charitable organizations.
 - ◆ Can't pay right away? Use an interactive calculator to figure a monthly payment amount and print out an installment agreement request form.
 - ◆ Working as a tax return preparer? Find the latest IRS guidance, subscribe to e-mail services or obtain details about educational opportunities, such as the upcoming Tax Professional Symposium.

In addition, the IRS Web site is a source for hundreds of tax forms and publications that may be downloaded free of charge. The site's “Newsstand” features agency news releases and fact sheets, and the “Index of Problem Alerts” gives prompt information on problems that have surfaced and what the IRS is doing about them.

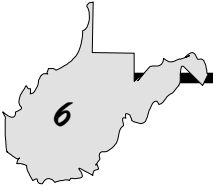


Internal Revenue Service

Need an address to another state's Web page? Try this Web site as an outstanding reference site...

<http://www.taxsites.com>

All information contained within the *West Virginia Tax Review* should be used as a source of general information. It is not a substitution tax laws or regulations.



Tax Division Telephone Numbers

EXECUTIVE OFFICE

Robin C. Capehart, Secretary 558-0211
 Joseph M. Palmer, Tax Commissioner 558-0751
 Ronald C. Stone,
 Assistant Tax Commissioner 558-8730
 Keith Olson, Chief of Staff 558-1466
 Dale W. Steager, General Counsel 558-3356
 Mark Morton, General Counsel for
 Revenue Operations 558-8500
 Executive Office Fax Number 558-2324
 Revenue Center Fax Number 558-8733

OPERATIONS DIVISION

Patricia J. Haddy, Director 558-0762
 Syble A. Atkins, Procurement Officer 558-2554
 Fax Number 558-3947

SPECIAL PROCEDURES - BANKRUPTCY UNIT

David Bissett, Attorney 558-0738

OFFICE OF HEARINGS & APPEALS

R. Michael Reed, Chief Administrative
 Law Judge 558-1666
 Fax Number 558-1670

LEGAL DIVISION

Robert A. Hoffman, Director 558-5330
 John Montgomery, Managing Attorney 558-5330
 Jan Mudrinich, Managing Attorney 558-5330
 Fax Number 558-8728

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 Nancy E. Brown, Assistant Director 558-2051
 Taxpayer Assistance 558-3333
 Toll-free 1-800-982-8297
 Fax Number 558-3269
 Automated Information 344-2068
 Toll-free from within West Virginia 1-800-422-2075
 Internet Address <http://www.state.wv.us/taxdiv>

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 Bill James, Assistant Director 558-8500

CRIMINAL INVESTIGATION DIVISION

Gary N. Griffith, Director 558-8515

AUDITING DIVISION

Dan R. Taylor, Director 558-8500
 Steve Crouse, Assistant Director 558-8500

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 Dave Kinder, Charleston 558-8773
 Fax Number 558-1645
 Bill Annon, Clarksburg 627-2165
 Fax Number 627-2112
 George Cremeans, Huntington 528-5565
 Fax Number 528-5514
 Mary Sue Catlett, Martinsburg 267-0020
 Fax Number 267-0041
 Jerry Payne, Parkersburg 420-4573
 Fax Number 420-4530
 Cindy Stanley, Wheeling 238-1140
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RESEARCH AND DEVELOPMENT DIVISION

Mark Muchow, Director 558-8500
 Roger Cox, Tax Analyst II 558-8500
 Kerri Petry, Tax Analyst II 558-8500

REVENUE DIVISION

Lloyd Fridley, Director 558-8500
 Bob Martin, Assistant Director 558-8500

INTERNAL AUDITING DIVISION

George Hall, Director 558-8500
 Linda C. Bennett, Assistant Director 558-8500

PROPERTY TAX DIVISION

Jerry A. Knight, Director 558-3940
 W. Wade Thompson, Assistant Director 558-3940
 Donald W. Hebb, Special Properties 558-3940
 Debi McCallister, Assessment Standards 558-3940
 Peggy Parsons, Office Manager 558-3940
 Fax Number 558-1843



1999 Legislative Summary

The following is an abbreviated summary of changes that were enacted during the 1999 Legislative Session.

Administration and Procedure

House Bill 2005, effective June 11, 1999, amended several sections in Chapter 6, Article 9A and Chapter 16, Article 5G of the West Virginia Code, all of which related to open government procedures.

Committee Substitute for House Bill 2570, effective June 8, 1999, amended West Virginia Code § 64-7-1 to authorize the Tax Commissioner to promulgate the following legislative rules, with any specified modifications or amendments:

- ◆ 110 C.S.R. 1H, Value of Timberland and Managed Timberland
 - ◆ 110 C.S.R. 1I, Valuation of Active and Reserve Coal Property for Ad Valorem Property Tax Purposes
 - ◆ 110 C.S.R. 1J, Valuation of Producing and Reserve Oil and Natural Gas for Ad Valorem Property Tax Purposes
 - ◆ 110 C.S.R. 1K, Valuation of Natural Resources Property Other Than Coal, Oil or Natural Gas for Ad Valorem Property Tax Purposes
 - ◆ 110 C.S.R. 1M, Valuation of Public Utility Property for Ad Valorem Property Tax Purposes
 - ◆ 110 C.S.R. 2, Electronic Data Processing System Network for Property Tax Administration
 - ◆ 110 C.S.R. 6F, Property Tax Valuation of Certain Manufacturing Property
 - ◆ 110 C.S.R. 13M, Tax Credits for New Value-added Wood Manufacturing Facilities
 - ◆ 110 C.S.R. 13N, Tax Credits for New Steel, Aluminum or Polymer Manufacturing Operations
- House Bill 2637, effective June 7,

1999, enacted West Virginia Code § 29A-3-18 relating to severability clauses in legislative rules. Unless there is a provision within a legislative rule stating that the provisions of the rule are not severable, the provisions of the legislative rule are severable. The application of this section is both prospective and retroactive.

Senate Bill 510, effective June 1, 1999, amends West Virginia Code §§ 11-10-5n and 12-2-1. Both of these sections relate to paying taxes by "commercially acceptable means."

Senate Bill 635, effective June 11, 1999, transfers the powers, duties, assets and employees of the Tax Commissioner, as chief inspector of public offices, to the State Auditor.

Business and Occupation Tax

House Bill 2884, effective June 10, 1999, amends the Business and Occupation Tax on electric generators imposed under West Virginia Code § 11-13-20.

Consumers Sales and Service Tax

Senate Bill 521, effective March 11, 1999, enacted West Virginia Code § 15-1h-1 et seq., creating Morale, Welfare and Recreation Facilities at Camp Dawson.

Corporation Net Income Tax

Senate Bill 144, effective February 18, 1999, amended West Virginia Code § 11-24-3 by updating the meaning of the terms utilized in the Corporate Net Income Tax by bringing them into conformity with their meanings for federal income tax purposes. The bill also gives effect to any amendments made to the Internal Revenue Code after December 31, 1997 but prior to January 1, 1999 in the determination of the taxes imposed by the article.

Senate Bill 522, effective March 11, 1999, amended West Virginia Code § 11-24-23f. The bill once again allows

for the tax credit against Corporate Net Income Tax for investments in a rehabilitated building made by a taxpayer in any taxable year beginning January 1, 1995, and continuing without an ending date. The Tax Commissioner is also directed to require a disclosure of information regarding this credit in accordance with the provisions in West Virginia Code 11-10-5s.

Estate Tax

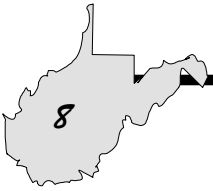
Committee Substitute for Senate Bill 597, effective June 9, 1999, amended West Virginia Code §§ 44-2-2, 44-2-26, 44-3A-4, 44-3A-4a and 44-3A-32, relating to:

- ◆ time limits for creditors to file claims against estates
- ◆ removing a reference to inheritance tax, and
- ◆ requiring an estate tax lien release before an estate can be closed via a short form settlement.

House Bill 2707, effective June 11, 1999, amended West Virginia Code § 36-1-20, relating to joint tenancies with right of survivorship, adding a provision barring certain felons from obtaining a victim's share of joint property through survivorship.

Senate Bill 427, effective June 11, 1999, amended West Virginia Code §§ 44-1-8, 44-1-11, 44-1-14 and 44-2-1, and added a new section, West Virginia Code § 44-4-14a, all relating to administration of estates and trusts. The following were implemented:

- ◆ relieving an executor of the obligation to post a bond where the will so directs
- ◆ allowing a commission for the sheriff administered estates
- ◆ providing criminal penalties for failure to appraise an estate
- ◆ eliminating the requirement that appraisements be filed in triplicate



1999 Legislative Summary, con't.

- ◆ reducing the time period for creditors to file claims in non-references estates
- ◆ establishing a time period for fiduciaries to make final settlements
- ◆ allowing extensions of this time period under certain circumstances
- ◆ requiring a fiduciary to report to the county commission if estate is not settled within prescribed time frames
- ◆ permitting a county commission to discharge a fiduciary of his or her duties under certain circumstances, and
- ◆ establishes criminal penalties for a fiduciary's failure to appraise an estate and failure to report to the county commission.

Motor Carrier Road Tax

Senate Bill 244, effective June 11, 1999, amended West Virginia Code §§ 11-14A-2 and 11-14A-7, relating to the Motor Carrier Road Tax. The definition of "recreational vehicle" is removed, and the definition of "motor carrier" was changed. The bill also amended West Virginia Code § 11-14A-7(b) by eliminating the restriction of issuing no more than three trip permits to any motor carrier in any given fiscal year.

Personal Income Tax

House Bill 2424, effective from passage on March 13, 1999, amended West Virginia Code §§ 38-7-7, 38-1-1 and 38-10-4 all relating to exempting certain retirement funds and pensions from attachment, levy and bankruptcy proceedings.

Committee Substitute for Committee Substitute for Senate Bill 431, effective July 1, 1999, amended West Virginia Code § 11-21-12a and enacted Article 6, Chapter 18C, all relating to the West Virginia Providing Real Opportunities for Maximizing In-State Student Excellence Scholarship Program (PROMISE). Section 11-21-12a, which relates to the Prepaid

Tuition Program is amended by authorizing a reducing modification to federal adjusted gross income to be available regardless of the type of return form the taxpayer files. Additionally, the taxpayer may carry forward the reducing modification for no more than 5 tax years beginning in the tax year in which the payment was made.

Senate Bill 143, effective February 18, 1999, amended West Virginia Code § 11-21-9 by updating the meaning of the terms utilized in the personal income tax by bringing them into conformity with their meaning for federal income tax purposes. This bill also gives effect to any amendments made to the Internal Revenue Code after December 31, 1997 but prior to January 1, 1999 in the determination of the taxes imposed by the article.

Senate Bill 623, effective March 10, 1999, creates in new Section 11-21-8g a credit against personal income tax for rehabilitated residential certified historic structures (buildings). This credit is patterned after the Credit for Qualified Rehabilitated Building Investment, West Virginia Code § 11-21-8a, which terminated December 31, 1997. The major differences are that the amount of this credit is twice as large as that credit, but this credit is not available for nonresidential buildings.

Property Tax

House Bill 2034, effective June 11, 1999, provides for the apportionment of property taxes on motor vehicles jointly titled by a married couple, but awarded to one spouse in a final divorce order.

House Bill 2670, effective June 11, 1999, transfers the responsibilities of assessing intrastate commercial motor carriers from the Board of Public Works (BPW) to county assessors. This bill also clarifies the process used by the Department of Motor Vehicles to impose ad valorem fees on inter-

state commercial motor carriers.

Senate Bill 358, effective June 7, 1999, amended West Virginia Code § 11-22-1, related to the definition of the word "document" for purposes of tax stamps on transfers of real estate. The bill adds to the list of transfers that are exempt from the tax. Now, deeds made pursuant to mergers of limited liability companies, partnerships, limited partnerships, and conversions of limited liability are exempt from tax. Transfers between grandparents and grandchild and his or her spouse, without consideration, are also exempt.

Severance Tax

Committee Substitute for House Bill 2749, effective June 20, 1999, amended West Virginia Code § 11-13A-3a to exempt from the severance tax natural gas and oil under certain circumstances, for all taxable periods beginning on or after January 1, 2000.

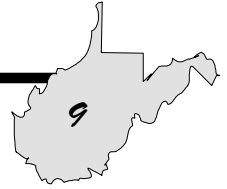
Supercredit and General Credits

Committee Substitute for House Bill 2999, effective March 5, 1999, enacted West Virginia Code § 11-13-3f, creating a credit for qualified investment in an aerospace industrial facility.

Senate Bill 165, effective June 11, 1999, amends West Virginia Code § 11-13I-2(b) of the "Tax Credit for Employing Former Employees of Colin Anderson Center Who Lost Their Jobs Due to Closure of Colin Anderson Center," West Virginia Code 11-13I-1 et seq. The amendment extends the credit by two years in two ways. First, the credit may be claimed for tax years ending before January 1, 2001 (instead of 1998). Second, the employees for which the credit is claimed must be employed prior to December 31, 1999 (instead of 1997).

Miscellaneous

Committee Substitute for House Bill



Bulk Orders Now Being Accepted

Bulk orders for West Virginia income tax forms are now being accepted. To order forms in bulk supply, use the order form provided in this issue of the West Virginia Tax Review. **Please be sure your name and delivery address are printed clearly on the form in the space provided.**

If you need only a few forms, you may call the Department's 24-hour automated information service and select option 2. The number to dial is (304) 344-2068 or 1-800-422-2075 from within West Virginia. This service is operational year round.

Taxpayer Services Division

In addition to the automated service, taxpayers and preparers are encouraged to visit our Internet web site where forms may be downloaded. Most of our forms require Adobe Acrobat® Reader to read and download. Acrobat® Reader is a free download by clicking on the icon found at the bottom of the home page. That address is <http://www.state.wv.us/taxdiv>.

The Department will continue to provide free forms **and** ship free of charge to all libraries, post offices, IRS offices, military installations, VITA and TCE sites, county courthouses, as well as some banks who display the forms in their lobby for public distribution.

All orders for forms and publications weighing in excess of one pound will be sent by United Parcel Service. The individual placing the order is responsible for the delivery fee which is based on weight. Orders which weigh in excess of five pounds will be assessed a \$5.00 handling

fee to recover the additional expense of handling larger orders. Bulk orders will be shipped C.O.D through UPS and will also include a UPS C.O.D fee. The Department cannot accept advance payment for delivery or handling fees. **Please make advance arrangements for paying UPS charges upon delivery.**

The Department will begin mailing requested 1999 forms after January 3, 2000. Please allow 3 to 4 weeks after this date for processing purposes.

To place a bulk order, please use the form on page 15. **The Department reserves the right to limit the number of forms that are mailed.**

*Patricia Ennis
Taxpayer Services*

Did You Know?

- Spouses who have separated but have not yet obtained a divorce have more than two choices when it comes to filing their tax returns. Instead of filing jointly or married filing separately, one spouse may be able to qualify to file either as a single person, or using the beneficial head-of-household status. Various tests imposed by the tax law must be met.
- If you need to correct a return filed in a prior year, you can do so by filing an IRS form 1040X or a State 140X. You can file it at any time if the error resulted in an underpayment. However, to get a refund, you must file within three years from the original due date of the tax return, or two years from the date on which you paid the tax owed, whichever is later.
- Willful failure to file a return is a crime. Taxpayers who can't pay all or part of the tax should file their returns, pay as much as they can and request a payment plan.
- Did you know that unemployment compensation benefits and lottery winnings are both fully taxable on both the Federal and State tax returns?

1999 Legislative Summary, con't.

2004, effective June 11, 1999, enacted West Virginia Code §§ 35-5-7, 35-5-8 and 35-5B-19, and amended West Virginia Code § 35-5B-5, all relating to cemetery company contracts and preneed company contracts as well as abandonment of interment rights.

Committee Substitute for House Bill 2453, repealed West Virginia Code §§ 5-18-1 et seq. And 5-18A-1 et seq., amended and reenacted West Virginia Code § 24-1-3, and created West Virginia Code Chapter 24D. The bill delegates to the Public Service Commission the regulation of cable television and the responsibility formerly held by

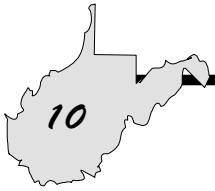
the West Virginia Cable Television Advisory Board. The bill preserves the current method of taxation imposed on cable television providers, property and service. The bill creates Tenants' Rights to Cable Service.

House Bill 106, effective March 22, 1999 enacted West Virginia Code §§ 47-20-31 and 47-31-30, relating to charitable bingo and charitable raffles, respectively.

House Bill 2730, effective July 1, 1999, enacted West Virginia Code § 5A-3-10a and amended West Virginia Code § 5A-3-22, all relating to the awarding of State Contracts.

Senate Bill 372, effective March 12, 1999, adds Article 9B to Chapter 16 of the West Virginia Code. This new article implements the Tobacco Master Settlement Agreement by establishing a reserve fund to guarantee a source of compensation from tobacco product manufacturers who do not inter into the master settlement agreement.

Committee Substitute for Senate Bill 608, effective June 11, 1999, enacted West Virginia Code §§ 38-16-1 et seq., and 61-5-7a, and amended West Virginia Code § 61-5-27, all relating to nonconsensual common law liens.



Tax Calendar

Every Month

- ◆ Returns and payments that fall due on the same date in each and every month of the calendar year are as follows:
- ◆ 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 15th. 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 the 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 15th.
- ◆ State Gasoline Tax reports and taxes are due for the preceding month. Forms 501, 507 and 508 are due the 25th of each month for the prior month.
- ◆ State Beer Barrel Tax (\$5.50 per 31 gallon barrel) is due the 10th of each month for the preceding month by West Virginia wholesalers and brewers/importers.

15th

- ◆ Last day to file monthly Solid Waste Tax Report for the preceding month. Form SWA-1.
- ◆ Last day to file monthly Cigarette Tax Report for the preceding month. Form 7.09.

- ◆ Last day to file, report and pay monthly Soft Drinks Tax for the preceding month. Form 20.15.
- ◆ Last day to file return and pay State Consumers Sales Tax due for the 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 and Use Tax due for the preceding month. For 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 a monthly return.

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

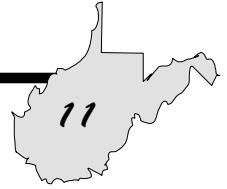
Office of Hearing and Appeals Docket Number System

The first two digits of the 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: 90-280 GCZ.

B	Business and Occupation Tax
BB	Beer Barrel Tax
BN	Bingo
C	Consumers Sales and Service Tax
CL	Corporate Charter Tax
CP	Special Tax on Coal Production
DR	Declaratory Ruling
FN	Franchise Tax
FS	Business Registration Tax
G	Gasoline and Special Fuels Excise Tax
GC	Gasoline and Special Fuels Sales Tax
GU	Gasoline and Special Fuels Use Tax
HP	Medicaid Enhancement Tax
I	Estate Tax
IFTA	International Fuel Tax Agreement
K	Coal Reclamation Tax
L	501 C Status
M	Motor Carrier Road Tax

N	Corporation Net Income Tax
P	Personal Income Tax
R	Raffle
S	Soft Drink Tax
SV	Severance Tax
SW	Solid Waste Tax
T	Carrier Income Tax
U	Use Tax
W	Withholding Tax
WL	Wine Liter Tax
WN	Wine Sales Tax
X	Cigarette Tax

- "R" prefix indicates a refund of the designated tax
- "D" suffix indicates a Davis issue
- "(R)" suffix indicates paid under protest
- "S" suffix indicates attempt to resolve through issuing unit
- "Z" suffix indicates small claims case



Legal Housekeeping

ADMINISTRATIVE NOTICE 99 - 18 (REVISED)

SUBJECT: CIGARETTE TAX - - State Tax Commissioner's Policy Statement concerning revisions in method of applying for reimbursement of cigarette tax for overpayment and/ or returns of stamped cigarettes to manufacturers, revisions of reporting forms and Implementation of Tobacco Master Settlement Agreement, WV Code § 16-9B passed March 12, 1999; in effect from passage.

This notice will discuss the method of applying for refund/credit of cigarette tax, the implementation of Tobacco Master Settlement Agreement as well as the revision of the following forms:

- ◆ Monthly Report for Distributors and/or Wholesalers of Cigarettes
- ◆ Requisition for West Virginia Cigarette Stamps
- ◆ Application for Refund/Credit of Cigarette Tax

DISCUSSION

Refund/Credit of Cigarette Tax - **In addition to the present procedure for refund of cigarette tax prescribed pursuant to WV Code § 11-17-10 and §11-10-14, all Wholesalers/Distributors may choose a credit to be applied to cigarette stamp purchases in lieu of a refund check for reimbursement of cigarette tax for overpayment and/or returns of stamped cigarettes to the manufacturer.**

The statutory discounts prescribed by WV Code § 11-17-9 shall be deducted from the gross face value of unused stamps on, mutilated, but identifiable stamps that any wholesaler or retail dealer may present for redemption on written verified requests made by the purchaser, his administrators, executors, successors or assigns.

The credit, once approved by the Tax Department and received by the Taxpayer, must be applied to the next Requisition for Cigarette Stamps submitted.

Advantage: **Claims for credits are processed weekly. Currently refunds are processed monthly on the 24th day of each month. A check is issued the following month and mailed to the Taxpayer. This process takes approximately six weeks from the time an Application for Refund is received. The credit will allow the Wholesaler/Distributor to utilize the reimbursement in a more efficient and timely manner.**



Implementation of Tobacco Master Settlement Agreement (WV Code § 16-9B-1) - (e) **On November 23, 1998, leading US tobacco product**

manufacturers entered into a settlement agreement known as the "Master Settlement Agreement" with the State. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

WV Code § 16-9B-1(f) states: It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgement-proof before liability may arise.

If the manufacturers elect not to participate in the Master Settlement Agreement, they are required to place a statutorily prescribed amount of money per "unit sold" in West Virginia (per cigarette or per defined unit of "roll your own" tobacco) into a qualified escrow fund.

The definition of "units sold" states in part, the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer as measured by the excise taxes collected by the State. The statute requires the Tax Commissioner to propose legislative rules for implementation of the statute necessary to ascertain the amount of State excise tax paid on the cigarettes of each such tobacco manufacturer for each year. This means that the Tax Department must now track and identify sales by manufacturer.

A new Schedule 3, Sales of Stamped Cigarettes Into West Virginia, is now a required attachment to the Monthly Report for Distributors and/or Wholesalers of Cigarettes. See instructions below under "Schedule 3".

FORMS' REVISIONS

Monthly Report for Distributors and/or Wholesalers of Cigarettes (WV/CIG 7.09 (Rev. 3/99))

1. Because Taxpayers now have the option of applying for a credit of overpayments of cigarette tax and/or returns of stamped cigarettes to manufacturers, with credit to be applied to the Requisition for Cigarette Stamps, a section has been added to the monthly report to document requisition numbers and the credit numbers that were applied to each.

2. Meter Impressions in West Virginia have been eliminated, therefore the section for meter

impressions on the current report has been omitted.

3. Cigarette Package Accountability for unstamped cigarettes and stamped WV cigarettes has been moved to the front of the report.

4. For In-State accounts which stamp for multiple states, the cigarette stamp inventory and cigarette package accountability has been moved to the back of the report with a section for the totals of all other states on the front.

5. Schedules for Receipts of Unstamped Cigarettes (currently DELT 7.09-1 (Rev.6-84)) and Receipts of Stamped WV Cigarettes (currently DELT 7.09-2 (Rev. 1-74)) have been revised to become Schedule 1 and Schedule 2 respectively and have been simplified for the Taxpayer.

Requisition for West Virginia Cigarette Stamps (WV/CIG 703 Rev. 5/98)

1. The Wholesaler/Distributor requesting stamps will now be required to sign and date the requisition in the top section and indicate whether or not the account is bonded. The requisition will now be preprinted with the account identification number, name and shipping address.

2. Type of stamp and quantity available for packages of 20 cigarettes.

3. Quantity of stamps requested @ .17.

4. Type of stamp and quantity available for packages of 25 cigarettes.

5. Quantity of stamps requested @ .2125.

6. The bottom section represents the amount due, less 4% discount and any credit issued by the Tax Department.

Application for Refund/Credit of Cigarette Tax (CIG 7.22 (Rev. 5/98))

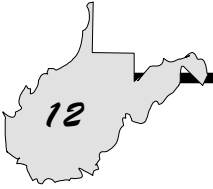
1. In the first section, the Taxpayer must indicate refund or credit. If one is not chosen, a credit will be issued.

2. This form will be preprinted with the identification number, name and mailing address.

Sales of Stamped Cigarettes into West Virginia (Schedule 3 (Rev. 3/99))

◆ Lines 1-19 - Manufacturers are listed on the schedule. The Wholesaler/Distributor will be required to list beside each applicable manufacturer (column B for "roll your own" containers, column C for packs of 20 and column D for packs of 25) the total of "roll your own" tobacco in ounces and packs of cigarettes sold into West Virginia. If the manufacturer is not listed, Taxpayer is required to enter the name of the manufacturer as well as the total sales on the blank lines provided. If additional space is required, Taxpayer is required to attach separate sheet.

◆ Line 20 - Total ounces of "roll your own" tobacco sold.



12

◆ Line 21 - Total of all packs of 20 cigarettes (column B). Total of all packs of 25 cigarettes (column C).

The first schedule must be filed with the March, 1999 report, due date April 15, 1999, to show sales from March 12, 1999 (the effective date for the statutory enactment) through the close of the month. An extension of time to file the March, 1999 reports has been granted until April 25, 1999. If the Wholesaler/Distributor has already submitted this report, it must be amended to include this schedule.

IMPORTANT CHANGES TO EACH FORM

A copy will no longer be provided of any of these forms. The Taxpayer will be required to keep a copy for their records.

All forms will be mailed annually, the first mailing scheduled for June 1999 and subsequent mailings in December of each year. *Schedule 3, Sales of Stamped Cigarettes in West Virginia, will be mailed in April 1999 with enough forms to supply the Taxpayer until the June 1999 mailing.* (Issued: July 16, 1999)

ADMINISTRATIVE DECISIONS

JANUARY 1999

98-363 C - ISSUED 1/8/99

CONSUMERS SALES AND SERVICE TAX—BURDEN OF PROOF MET—**Petitioner, who by testimony and written documentation proved that the assessment should be reduced, has met the burden of proof required of a taxpayer pursuant to W. Va. Code § 11-10-9.**

CONSUMERS SALES AND SERVICE TAX—ADDITIONS TO TAX NOT WAIVED—**Petitioner's admission that he used consumers sales and service tax to pay bills does not constitute reasonable cause for waiver of additions to tax pursuant to W. Va. Code § 11-10-18(1)-(2).**

98-191 C & 98-212 U - ISSUED 1/8/99

CONSUMERS SALES AND SERVICE TAX—GENERAL ACCOUNTING SERVICES TAXABLE—Pursuant to 110 C.S.R. 15, § 8.1.1.1 the Tax Division is authorized by the Legislature to designate a particular service as a professional service. Since accounting services per se are not recognized as a profession at common law nor has the Legislature or the Tax Division seen fit to include the same within the definition of professional services, accounting services are subject to consumers sales and service tax as are all other nonprofessional services.

CONSUMERS SALES AND SERVICE TAX—BACKGROUND AND WORK EXPERIENCE NOT DETERMINATIVE—**One's educational background or the quality and the content of one's practice is not determinative of whether one is a professional for consumers sales and service tax purposes, absent meeting the criteria mandated by the West Virginia Legislature.**

CONSUMERS SALES AND SERVICE TAX—ADDITIONS TO TAX WAIVED—Com-

plexity of legal issue presented for decision constitutes reasonable cause for waiver of additions to tax, since there was no showing of willful neglect.

98-356 U(R) - ISSUED 1/8/99

PURCHASERS' USE TAX—REFUND PETITION DENIED—**Petitioner which sold and installed a utility building by anchoring same to a concrete pad which it had previously poured is considered to have made a capital improvement to real property for which it is liable for use tax with respect to all purchases of tangible personal property and services which it provided in connection with the aforesaid capital improvement.**

96-366 PS & 96-367 PS - ISSUED 1/8/99

PERSONAL INCOME TAX—FAILURE TO FILE AMENDED RETURNS—**Failure of Petitioner to file amended West Virginia personal income tax returns within ninety (90) days after the filing of his required amended federal personal income tax returns as required by W. Va. Code § 11-21-59, necessitates that the Tax Commissioner affirm assessments against the Petitioner.**

PERSONAL INCOME TAX—BURDEN OF PROOF NOT MET—**As a result of the Petitioner's failure to prove that the assessments are incorrect and contrary to law in whole or in part as required by W. Va. Code § 11-10-9 the assessments must be affirmed as issued.**

PERSONAL INCOME TAX—NO WAIVER OF ADDITIONS TO TAX—**Where the Petitioner did not appear to offer testimony or submit documentary evidence that his failure to file was due to reasonable cause and not willful neglect, the additions to tax will not be waived.**

97-670 C - ISSUED 1/8/99 (ON APPEAL)

CONSUMERS SALES AND SERVICE TAX—BURDEN OF PROOF NOT MET—**Petitioner's failure to substantiate the arbitrary figures contained in his post hearing exhibit falls far short of the burden of proof requirement placed upon him by W. Va. Code § 11-10-9 to prove that the assessment is incorrect and contrary to law, and therefore the estimated assessment is upheld.**

98-002 C - ISSUED 1/8/99 (ON APPEAL)

CONSUMERS SALES AND SERVICE TAX—BURDEN OF PROOF NOT MET—**Petitioner who used arbitrary figures in an attempt to prove that the assessment was incorrect, without supplying any documentation in support thereof, has not met the burden of proof required by W. Va. Code § 11-10-9, and, therefore, the estimated assessment will be affirmed as issued.**

98-001 C - ISSUED 1/8/99 (ON APPEAL)

CONSUMERS SALES AND SERVICE TAX—BURDEN OF PROOF NOT MET—**Failure by the Petitioner to show that the assessment is incorrect and contrary to law as required by W. Va. Code § 11-10-9, mandates that the estimated assessment be affirmed as issued.**

97-669 C - ISSUED 1/8/99 (ON APPEAL)

CONSUMERS SALES AND SERVICE TAX—BURDEN OF PROOF NOT MET—**Petitioner's failure to substantiate the arbitrary figures contained in his post hearing exhibit falls far short of the burden of proof requirement placed upon him by W. Va. Code § 11-10-9 to prove that the assessment is incorrect and contrary to law, in whole or in part, and therefore the estimated assessment will be upheld.**

93-644 U & 93-645 U - ISSUED 1/8/99 (ON APPEAL)

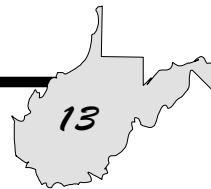
PURCHASERS' USE TAX—CONVENIENCE ITEMS NOT PURCHASED FOR RESALE—**Taxpayer who provided convenience items to customers, which items were neither retained after the service was rendered nor even related to the service being rendered and which constituted only a silent cost of doing business, do not constitute a "resale" as defined in 110 C.S.R. 15, § 9.3.4.3.**

PURCHASERS' USE TAX—PURCHASES NOT FOR RESALE — Pursuant to 110 C.S.R. 15, § 9.3.4.3.c, purchases of soap, carpet cleaner, tire cleaner and detergents by Petitioner's car wash are not considered tax exempt purchases for resale but, rather, are taxable as being directly used or consumed in the washing process.

ADM. DEC. 97-447 U(R) - ISSUED 1/19/99

USE TAX—ACTIVITY OF PROCESSING AND BOTTLING DRINKING WATER NOT CONSIDERED MANUFACTURING—**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, taxpayer is not engaged in manufacturing and the purchases of polycarbonate bottles and services in regard to water tests are subject to the purchasers' use or consumers sales and service tax.**

USE TAX—CONSULTING SERVICES PROVIDED BY LAB TECHNICIANS TO PERSONS ENGAGED IN THE BUSINESS OF OZONATING SPRING WATER NOT PROFESSIONAL—**Consulting services provided by qualified lab technicians to persons engaged in the business of ozonating spring water are not considered "professional" services for purposes of the consumers sales and service tax or purchasers' use tax exception. Whether a service is professional is determined on a case-by-case basis by considering the amount of education required for the service, the nature and extent of nationally recognized standards of performance, licensing requirements, and continuing education requirements. While lab technicians must have college education equivalent to, or more than, the bachelors' degree in chemistry, or in bacteriology, the extent of education, alone, without more, is not sufficient to meet the remaining criteria set forth in the regulations. 110 C.S.R. 15, § 8.1.1.2 and 8.1.1.1 (1992).**



97-603 U - ISSUED 1/19/99

PURCHASERS' USE TAX—PURCHASES OF MOBILE HOMES USED IN CONTRACTING ACTIVITY TAXABLE AT THE RATE OF SIX PERCENT—Purchases of mobile homes used in the construction activity by the taxpayer are properly subject to the purchasers' use tax or consumers sales and service tax applicable at the rate of six percent (6%), not at the rate of three percent (3%) provided in the special rule applied to the purchase of mobile homes used by the purchaser as his principal year-round residence.

97-654 RN - ISSUED 1/26/99

WEST VIRGINIA CORPORATION NET INCOME TAX—BURDEN OF PROOF—NET OPERATING LOSS DEDUCTION FOR "SPECIFIED LIABILITY LOSS"—The State Tax Department will deny a petition for refund of West Virginia corporation net income tax when the taxpayer fails to carry its burden of proof with respect to the amount of a net operating loss deduction for a "specified liability loss."

98-286 N, 98-287 FN, 98-288 SV -
ISSUED 1/28/99

WEST VIRGINIA CORPORATION NET INCOME TAX AND BUSINESS FRANCHISE TAX—NOT APPLICABLE WHEN BUSINESS SHOWN TO BE A SOLE PROPRIETORSHIP—The State Tax Department will abate a West Virginia corporation net income tax assessment and a business franchise tax assessment against a business when the business owner shows that neither of those taxes applied because the business was operated at the time in question as a sole proprietorship.

SEVERANCE TAX—AFFIRMED WHEN TAXPAYER CONCEDES LIABILITY AT HEARING—The State Tax Department will affirm a severance tax assessment when the taxpayer eventually concedes at the administrative hearing that he is liable for the amount of that assessment.

FEBRUARY, 1999

98-389 C - ISSUED 2/4/99

CONSUMER SALES AND SERVICE TAX—NO WAIVER OF ADDITIONS TO TAX—Arguments for waiver of additions to tax such as one's failure to hire competent in-house accounting personnel and that the failure to comply was not intentional constitutes willful neglect and not reasonable cause for waiver of additions to tax under W. Va. Code § 11-10-18(a)(1)-(2).

98-337 WS - ISSUED 2/4/99 (ON APPEAL)
WITHHOLDING TAX—LIABILITY FOR MONEY PENALTY UPHeld—Pursuant to W. Va. Code § 11-10-19(a), Petitioner is personally liable for the failure of the company to pay over withholding taxes since he was the person who was required to collect, account for and pay over the tax and by his own actions was also willful, since he testified that he was the one who paid the taxes in question which were never received by

the Tax Department.

WITHHOLDING TAX STATUTE—MONEY PENALTY NOT REDUCED—Petitioner's claim that the amount of the money penalty is excessive because only one (1) W. Va. worker was employed is not sufficient proof under W. Va. Code § 11-10-9 to show that the assessment is incorrect and contrary to law in whole or in part in light of the fact that Petitioner's former company submitted a written year-end reconciliation report showing a much higher withholding amount.

WITHHOLDING TAX STATUTE—CASE LAW IS NOT CONTRARY TO FINDING OF PERSONAL LIABILITY—Petitioner's authority to collect, account for and pay over withholding taxes coupled with his decision to personally see to it that the taxes were paid constitute sufficient basis for finding personal liability under both W. Va. Code § 11-10-9 and the holding in the *Slodov case*.

98-005 RP - ISSUED 2/4/99

REFUND OF PERSONAL INCOME TAX—BURDEN OF PROOF—Under W. Va. Code § 11-10-14(a), once a petition for refund is filed the procedure for the hearing and decision are the same as prescribed in W. Va. Code § 11-10-9 wherein the burden of proof would lie with the taxpayer to show that payment of the refund is legally justified.

REFUND OF PERSONAL INCOME TAX—INTEREST COMPUTATION—Pursuant to W. Va. Code § 11-10-17 (d) interest commences to run from the filing date of the claim for refund and ends on the date of the final administrative or judicial determination of the overpayment.

98-349 W & 98-351 C - ISSUED 2/4/99

WITHHOLDING TAX—NO WAIVER OF ADDITIONS TO TAX—Petitioner's admission that she was solely responsible for the failure to pay the tax does not constitute reasonable cause for waiver of additions to tax under W. Va. Code § 11-10-18(a)(1)-(2).

98-369 WS - ISSUED 2/22/99

WITHHOLDING TAX—LIABILITY FOR MONEY PENALTY UPHeld—Pursuant to W. Va. Code § 11-10-19(a), Petitioner is personally liable for the failure of the company to file and pay over withholding taxes since she admitted being a responsible officer who both had the authority to pay said taxes and did in fact file withholding tax return(s) for prior period(s).

98-431 C - ISSUED 2/22/99

CONSUMERS SALES AND SERVICE TAX—BURDEN OF PROOF NOT MET—Petitioner's failure to offer evidence that certain sales were made to tax exempt customers mandates that the sales tax assessment should be affirmed, since Petitioner did not prove that the assessment is incorrect and contrary to law in whole or in part as required by W. Va. Code § 11-10-9.

98-384 PS - ISSUED 2/27/99

PERSONAL INCOME TAX—ADDITIONS TO

TAX NOT WAIVED—Additions to tax imposed by W. Va. Code §§ 11-10-18(a)(2) and 11-10-18a(e)(3) are non-waivable in the absence of reasonable cause and where no showing was made that said payment(s) could not be made because of casualty, disaster or other unusual circumstances.

MARCH, 1999

98-435 U - ISSUED - 3/4/99

PURCHASERS' AND RETAILERS' USE TAX—ASSESSMENT TO BE HEARD ON THE MERITS—Untimely filed petition for reassessment will be heard on the merits in a situation where the authority to act was transferred from the Petitioner to its accountant, where no dereliction of duties was shown (accountant tried repeatedly to discuss assessment with Tax Department prior to issuance thereof) and where the distraction of an office move was occurring at the same time.

97-553 CS - ISSUED - 3/5/99

CONSUMERS SALES AND SERVICE TAX—BURDEN OF PROOF NOT MET—As a result of Petitioner's admission that the business did not either collect or seek to collect consumers sales and service tax with respect to any of its sales and that it would not provide actual figures in lieu of estimates, the estimated assessment will be affirmed since Petitioner has failed to meet its required burden of proof as set forth in W. Va. Code § 11-10-9.

93-617 PS - ISSUED - 3/5/99

WEST VIRGINIA PERSONAL INCOME TAX—TAXPAYER'S BURDEN TO PROVE ASSESSMENT INVALID - Under W. Va. Code § 11-10-9, a taxpayer must bear the burden of proving that a tax assessment is incorrect or invalid, in whole or in part.

WEST VIRGINIA PERSONAL INCOME TAX—ADDITIONS TO TAX FOR FAILURE TO FILE RETURN AND TO PAY TAX—The State Tax Commissioner will not waive additions to tax included in a personal income tax assessment against a taxpayer for his failure to pay tax shown as due on the return, when the taxpayer did not provide any justifiable reason for his failure to comply with the duty to pay tax shown as due on the return.

97-582 C - ISSUED 3/5/99 -

CONSUMERS SALES AND SERVICE TAX—REIMBURSEMENTS FOR FREIGHT CHARGES FOUND NOT TAXABLE—Reimbursements for freight charges to a taxpayer incurred on behalf of its customers and paid to common carriers are not subject to the consumers sales and service tax, so long as the taxpayer was not engaged in the business of shipping goods and the freight charges were not incurred with the object of gain or economic benefit. 110 C.S.R. 15, § 89.1 is not applicable when (1) there is no markup on the freight charges and (2) there are no handling charges.



97-106 HP - ISSUED -
3/10/99

HEALTH CARE PROVIDER TAX—MANDATORY ALLOCATION IF APPLICABLE—Based upon W. Va. Code § 11-27-1 et. seq. and Special Notice 93-7, gross income derived from laboratory services performed both within and without the State of West Virginia must be apportioned or allocated in an acceptable manner.

HEALTH CARE PROVIDER TAX—MEDICAL LAB TESTS OUT OF STATE—The health care provider tax does not tax the gross receipts derived from medical lab testing of specimens originating and ending in West Virginia to the extent that said testing took place, in whole or in part, out-of-state.

HEALTH CARE PROVIDER TAX—SEPARATION OF POWERS CLAUSE—Since the Tax Department is part of the executive branch and not the judicial branch of government, it lacks jurisdiction under the separation of powers clause of the State Constitution, W. Va. Const. Art. V, § 1, to rule on the constitutionality of state tax statutes.

98-303 WS - ISSUED - 3/8/99 (ON APPEAL)

WITHHOLDING TAX—BURDEN OF PROOF RESIDES WITH THE PETITIONER—Although weight is given to the Petitioner's testimony in any case, the fact remains that the one having the burden of proof (the Petitioner) under W. Va. Code § 11-10-9 usually must corroborate the essential facts by witnesses or other equivalent proof and that failure to do so requires that the assessment be affirmed.

WITHHOLDING TAX—RECKLESS DISREGARD TRIGGERS PERSONAL LIABILITY—Pursuant to the case of *Turpin v. United States* the willfulness requirement of W. Va. Code § 11-10-19(a) is satisfied where one has the knowledge and authority to file returns and pay over taxes due but fails to carry out said duties or recklessly disregards them and thereby fails to obtain the knowledge required to perform said duties.

WITHHOLDING TAX—NO SHOWING MADE THAT MONEY PENALTY SHOULD BE ALLOCATED—Although document showed that assets were transferred from Petitioner's company to a successor in business, personal liability must be imposed for subsequent periods since subsequent returns and remittances bore the signature of the Petitioner.

95-133 U (ON APPEAL)

PURCHASERS' USE TAX—PERSONAL LIABILITY ATTACHES—Petitioner remains personally liable for the failure of its vendor to collect sales tax pursuant to 110 C.S.R. 15, § 4.8 et. seq., since no exemption in Section 9.2 applied and no exemption certificate or direct pay permit could be issued or tendered.

PURCHASERS' USE TAX—SPECIAL TAX RATE NOT APPLICABLE—Although 110 C.S.R. 15, § 122.1, allows a special tax rate of three (3) percent on the sale of manufactured housing used as a year-round resi-

dence, Petitioner's failure to produce exemption certificate(s) attesting to such a fact mandates that the general tax rate of six (6) percent be applied under W. Va. Code § 11-10-9, since Petitioner failed to show that the assessment was incorrect and contrary to law in whole or in part.

PURCHASERS' USE TAX—SALES TAX REMITTANCES CREDITED—As a result of sales tax having been remitted by Petitioner's vendor to the State of West Virginia on a portion of its manufactured home sales made to the Petitioner which were delivered in West Virginia, the same shall be applied against the outstanding use tax liability.

98-366 WS - ISSUED - 3/22/99

WITHHOLDING TAX LIABILITY—LIABILITY FOR MONEY PENALTY NOT SHOWN—Although the Petitioner was a minority shareholder of the company, W. Va. Code § 11-10-19(a) mandates that for a person to be personally liable, that person must be one who is required to either collect, account for and pay over such tax or to supervise directly the date-to-day operations of the company and to have "willfully" failed to account for and pay over such tax. A withholding tax money penalty assessment will be abated when it is clear from all of the evidence that the allegedly liable person was not responsible for the day-to-day financial affairs of the business during the assessment period.

98-357 WS - ISSUED - 3/22/99

WITHHOLDING TAX LIABILITY—LIABILITY FOR MONEY PENALTY NOT SHOWN—Although the Petitioner was a minority shareholder of the company, W. Va. Code § 11-10-19(a) mandates that for a person to be personally liable that person must be one who is required to either collect, account for and pay over such tax or to supervise directly the date-to-day operations of the company and to have "willfully" failed to account for and pay over such tax. A withholding tax money penalty assessment will be abated when it is clear from all of the evidence that the allegedly liable person was not responsible for the day-to-day financial affairs of the business during the assessment period.

98-187 C - ISSUED - 3/22/99

CONSUMERS SALES AND SERVICE TAX—BURDEN OF PROOF—West Virginia Code § 11-10-9 places the burden of proof upon the taxpayer (Petitioner) to show that the assessment is incorrect and contrary to law in whole or in part.

CONSUMERS SALES AND SERVICE TAX—MANDATORY RECORD KEEPING—W. Va. Code § 11-15-23 requires that complete records be kept and that failing to do so gives the taxing authority the right to estimate same based upon the best available information.

CONSUMERS SALES AND SERVICE TAX—SAMPLING PERMISSIBLE—Pursuant to 110 C.S.R. 15, § 14b(2),(3) and, (4), the Tax Commissioner is authorized to use a sample and projection method of auditing based upon the best information available if

the taxpayer's records are (1) too detailed, complex or voluminous to do a detailed audit, (2) inadequate or insufficient to do a competent audit, or (3) where the cost of doing a detailed audit is unreasonable when compared to the benefits to be derived.

98-289 WS - ISSUED - 3/31/99

WITHHOLDING TAX—OFFICER LIABILITY—ASSESSMENT ABATED—NOT "REQUIRED" TO REMIT THE TAX AND NOT "WILLFUL" FAILURE TO REMIT—The State Tax Department will abate a withholding tax money penalty assessment issued against a corporate officer when the officer proves that he was not "required" to remit the tax on behalf of the corporation and did not "willfully" fail to remit the tax. See W. Va. Code § 11-10-19(a).

96-039 C - ISSUED - 3/31/99 (ON APPEAL)

CONSUMERS SALES AND SERVICE TAX—CERTAIN INVENTORY SERVICES NOT EXEMPT UNDER DATA PROCESSING SERVICES EXEMPTION—Petitioner's business activities performed prior to data processing, such as, pre-inventory visit(s), pre-loading of computers, prearranged inventory plan, and the actual physical counting, do not constitute data processing services and are not, therefore, exempt from consumers sales and service tax.

CONSUMERS SALES AND SERVICE TAX—PRE-DATA PROCESSING ACTIVITIES NOT *de MINIMIS*—Activities such as solicitation, site visits, pre-loading of computers, and related labor functions pertaining to the actual taking of the inventory are not inconsequential or *de minimis* to the data processing phase of Petitioner's business.

CONSUMERS SALES AND SERVICE TAX—BANK ANALOGY NOT CONTROLLING—Petitioner's activities beginning with pre-inventory visits and culminating with the obtaining or entry of the inventory information is far more complex than the regimen which takes place between in-state and out-of-state banks and is not, therefore, exempt as being functionally comparable.

CONSUMERS SALES AND SERVICE TAX—PRIOR INTERPRETATIONS OF DATA PROCESSING EXEMPTION NOT DETERMINATIVE—Based upon finding that pre-data processing activities were significant and thereby not inconsequential, apportionment between taxable and exempt activities would be appropriate. Petitioners refusal and/or failure to provide cost information as to said activities dictates that the assessment be affirmed, since no showing was made that the same was incorrect and contrary to law in whole or in part (§ 11-10-9).

CONSUMERS SALES AND SERVICE TAX—TAXABLE NEXUS ESTABLISHED—The myriad of activities associated with the taking of audit and financial inventories satisfies nexus and related requirements set forth in *Complete Auto Transit, Inc. v. Brady* and is properly apportioned since no showing was made that said revenues were subject to multiple taxation.



West Virginia State Tax Department

TSDf-01
Rev. 9/99

Request For Forms

PLEASE PRINT OR TYPE

(BUSINESS NAME)

(ATTENTION)

(ADDRESS)
(BULK ORDERS WILL NOT BE SHIPPED TO POST OFFICE BOXES)

(CITY, STATE, AND ZIP CODE)

(SIGNATURE)
(BY SIGNING YOU AGREE TO ACCEPT ALL C.O.D. AND OTHER RELATED CHARGES)

TAX YEAR: _____ **DATE:** _____

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**WEST VIRGINIA
STATE TAX DEPARTMENT
TAXPAYER SERVICES DIVISION
ATTENTION: FORM ORDERS
P.O. BOX 3784
CHARLESTON, WV 25337-3784**

IT-140P (Resident Packet)		IT-101 (Employer's Return of Income Tax Withheld)	
IT-140/Sch. M&E (Resident Form)		IT-103 (Reconciliation of Withholding by Employer)	
IT-140S (Resident Short Form w/Instructions)		IT-104 (Employee Withholding Exemption Certificate)	
Schedules H,T,G&L (Disability Cert./ Ext. of Time)		IT-104.1 (Low/Earned Income Credit)	
IT-140NR/PY (Nonresident/Part-Year Resident Packet)		CNT/BFT-P (Corp. Net/Bus. Franchise Tax Packet)	
IT-140NR/PY A&E (Nonresident Form)		CNT-112 ES&I (Estimated Voucher & Instr.)	
IT-140NRS (Special Nonresident Form)		CNT-112X (Amended CNT Return)	
IT-140NRC (Nonresident Composite Return)		CNT-139 (App./Tentative Refund from Carryback)	
IT-210 (Underpayment Forms & Instructions)		BFT-120ES&I (Estimated Voucher & Instr.)	
Injured Spouse Return		WV/BRT-BUS (Business Registration Packet)	
Schedule F (Deceased Taxpayer)		WV/CST-200 (CSST Return)	
IT-140X&I (Amended Return - <i>please specify year</i>)		WV/CST-210 (Direct Pay Sales & Use Tax Return)	
IT-141 (Fiduciary Return)		WV/CST-220 (Use Tax Return)	
IT-165 (Partnership Return of Income)		Other:	
IT-140ES&I (Estimated Voucher & Instructions)		Other:	
IT-100.1 (Withholding Instructions & Tables)		Other:	

Taxpayers currently registered with the Tax Department and those who have previously filed returns are automatically sent forms and returns regarding taxes for which they are liable. Tax practitioners should encourage their clients to provide these pre-addressed forms. **The Tax Department does not maintain a separate mailing list for forms or returns.**

Orders for small quantities of forms will be shipped for free. 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. **We cannot ship bulk orders to Post Office Boxes. You 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 Tax Department cannot accept checks as advance payment for delivery fees. Please make sure all arrangements have been made to pay all UPS charges on delivery. **The Tax Department reserves the right to limit orders.**

Orders other than bulk orders may be placed by calling our automated information service and requesting message #500 at (304) 344-2068 or toll free within West Virginia at: 1-800-422-2075. Additionally, forms may be downloaded through the Internet by visiting our web site at <http://www.state.wv.us/taxdiv>

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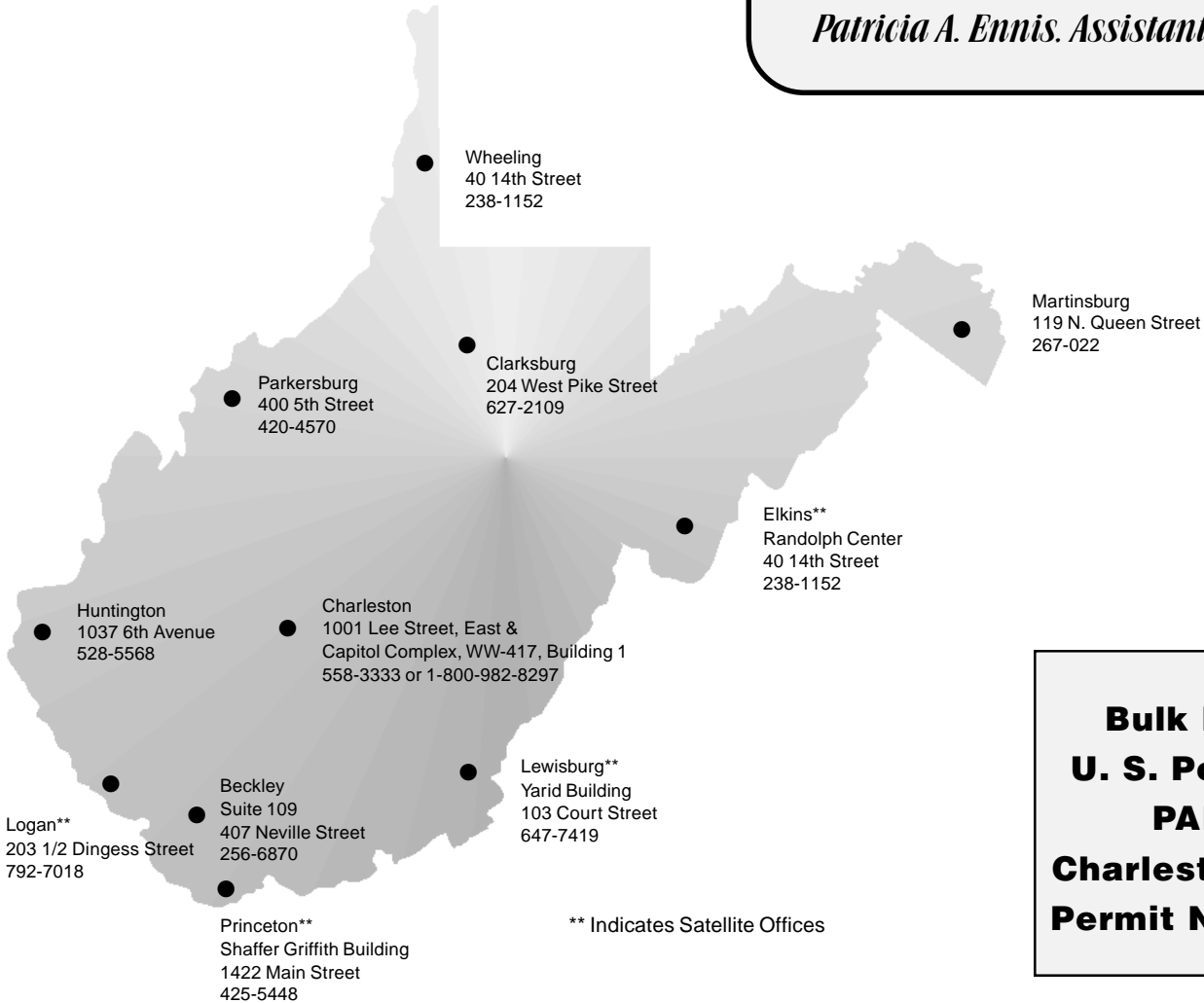
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