

WEST VIRGINIA TAX DIVISION



West Virginia Department of Education OSF Summer Conference

July 10, 2024

Bridgeport Conference Center



Before we get started

This presentation is meant to be a source of general information and not as a substitute for tax laws, rules, or regulations and may not be relied upon as legal or tax advice or to support specific instances not addressed.

The material presented may contain simplified explanations of potentially complex legal and tax concepts so as to apply generally across broad areas of tax practice, both legal and accounting, and is intended for general overview and application.

Individual comments by presenters are meant to be illustrative in nature and are not intended as official Tax Department policy.

Guidance Publications

- TSD 312: Sales and Use Tax for Schools
- TSD 320: Sales and Use Tax for Nonprofit Organizations
- TSD 300: Sales and Use Tax Exemptions
- TSD 442: Marketplace Facilitators
- TSD 317: Registration and Sales Tax for Transient Vendors
- TSD 360: Business Registration Procedures

Business Registration Procedures

- Application: West Virginia New Business Registration Application (\$30)
- Do you have multiple locations? Are you a remote seller?
- Nonprofit Status
- Engaging in a business activity in WV?
 - What if solely doing licensed charitable raffles?

Verifying Vendors for Payment

Every vendor engaging in business in West Virginia is required to have a Business Registration Certificate they should be able to produce upon request.

The Tax Division also does Final Settlement for Contractors to confirm contractors are in Good Standing. Questions can be submitted to tpsadmin@wv.gov and requests can be submitted via MyTaxes.

Fundraising: Charitable Gaming

Only a tax exempt charitable or public service organization may be licensed by the Tax Commissioner to conduct bingo games and raffles in West Virginia.

Licensing Requirements:

- Events may receive annual or limited licenses.
 - Annual License: \$500. This cost can be prorated if the application occurs later in the calendar year.
 - Limited License: \$50-\$100 allows a one-time event for one location.

It is important to note that in order to conduct a charitable bingo and a charitable raffle, an organization must attain a license for each activity.

Planning Your Event

- What organization is this for? Are they a licensed nonprofit?
- When is the event?
- Will there be more than one throughout the year?
- Can your organization open a checking account specifically for a bingo or raffle?
- What prizes will there be?
- Who is working your event?

Getting Your License

- Are you new to obtaining a Bingo or Raffle License? If so, have you been operating for at least 2 years and is your event at least 60 days away?
- Forms: BGO-1 (Bingo) or RAF-1 (Raffle)
 - Tax ID
 - Specific Checking Account for Charitable Game being conducted
 - When is the event being conducted and where?
 - Who is going to be responsible for the money?

The Event

- Prizes
 - Material prizes are to be valued at fair market value
 - Participants who win more than \$100 in prizes must be reported on the return after the event. Be sure to collect their full name, address, when they won the prize, amount, and social security number.
- Alcohol consumption is not permitted at Bingo Events. For Raffles, please check with the WV Alcohol Beverage Control Administration
- Only those 18 years and older are permitted to participate at bingos, be it to play or work at the event.
- Bingo events can last 6 hours, not including an additional 2 hours for setup and 2 hours for take down.

Filing Your Event Returns

- Bingo Annual License Holders
 - Quarterly Financial Reports
 - BGO-3 and BGO-SCH Annually
- Raffle Annual License Holders
 - RAF-3 and RAFFLE-4 Annually
- Limited License Holders
 - Bingo: BGO-3, BGO-SCH
 - Raffle: RAF-3, RAFFLE-4

Sales and Use Taxes Generally

- All sales, leases and services in West Virginia are taxable unless there is a specific exemption in the sales tax law. The burden of proving that a sale was exempt from tax is upon the seller.
- School officials should ensure that sales tax is imposed on all sales of items that are not specifically exempt. Sales tax applies not only to sales by schools, but also to sales by school employees, school related organizations like the PTA and businesses when the sales are made at or through the schools or by school children.
- Retail sales in this state by out-of-state businesses (including mail order sales) are subject to use tax when the out-of-state retail business has agents or other physical presence in the State.

Sales and Use Tax – Exemption - Textbooks and Materials

- **Exempt:** Sales of textbooks, workbooks, instructional aids and standardized examination materials required in any elementary or secondary school in this State are exempt per se from sales and use tax.
- **Not Exempt:** Other school materials, school supplies and books which are not required. Additionally, sales of non-required jewelry, candy, clothing items, posters, magazines, greeting cards and all other items not specifically exempt.

Sales and Use Tax – Exemption – Other items

Newspapers and Yearbooks:

- **Exempt:** School newspapers and yearbooks compiled and edited by students of the school as well as sales or advertising space within when sold to students or school employees.
- **Not Exempt:** Sales of the yearbooks and newspapers are taxable when sold to others.
- **Tickets for Activities:**
 - **Exempt:** Sales of tickets for activities sponsored by elementary and secondary private schools located in this State are exempt. Additionally, Sales of tickets to athletic, cultural, social and fundraising events when they are sponsored by the school. For an activity to be sponsored by a school, it must be an activity which was organized solely to benefit the school's students, and which would not otherwise occur.
 - **Not Exempt:** This exemption does not apply to sales of anything else, such as sales of merchandise. Sales of tickets to such events when not sponsored by the school even if the event occurred on school property

Sales and Use Tax – Exemption – Fundraising by school support groups

A not-for-profit volunteer support group for a public or private school in this State may hold fundraisers for the school and not collect sales tax when:

- a) The fundraisers are held no more than 18 times during any 12-month period;**
- b) Each fundraiser lasts for no more than 14 consecutive days; and**
- c) The sole purpose of the fundraiser is to obtain revenue for the function and activities of the school.**

Sales and Use Tax – Exemption – Fundraising by school support groups

- The school fundraiser must be sponsored by a not-for-profit volunteer support group for the school.
- The not-for-profit volunteer school support group does not need a determination letter for the Internal Revenue Service that the organization is exempt for federal income tax purposes.
- However, the not-for-profit volunteer school support group must hold a valid current West Virginia business registration certificate.
- The not-for-profit volunteer school support group may assert the purchases for resale exemption from sales tax when it buys merchandise to be sold as qualified fundraiser events.
- Schools and not-for-profit volunteer school support groups must keep appropriate records.

Sales and Use Tax – Exemption – Food

Exempt:

- Food sold by schools, school sponsored parent-teacher associations or school sponsored student organizations, to students enrolled in the school or to employees of the school during normal school hours is exempt per se from sales tax. The same exemption applies to municipal sales and use taxes.
- Sales of food outside normal school hours are also exempt if made by a school-sponsored student or parent-teacher association or similar organization at athletic, cultural, social or fund-raising events when the proceeds of such sales, after payment of reasonable expenses, are donated to the school or used to purchase tangible personal property or services for the school.

Not Exempt:

- Sales of food by vending machines and sales of food to the public during normal school hours are always subject to sales tax unless such sales fall under the fundraising exemption.

Property Taxes and School Funding

- **Primary funding mechanism of Education.**
- **Makes up approximately 66% of all property tax levies**
- **Types of property:**
 - **Real – Residential**
 - **Real – Commercial/Industrial**
 - **Personal Property (Cars, Inventory, Equipment, Oil and Gas, etc.)**
 - **Public Utility**

Property Taxes and School Funding

- **Reappraisal of property in three-year cycles. All Property to be assessed at 60% of market value.**
- **Assessors to appraise:**
 - Residential -- Real & Personal Property
 - Commercial Real & Personal Property
 - Farm Real Property
- **Tax Commissioner to appraise:**
 - Industrial Property – Real and Personal Property, Oil and Gas, Coal and Managed Timber
- **Board of Public Works to appraise and assess:**
 - Public Service – Business Real and Personal Property

Classes of Property

- **Class 1:** Tangible personal property employed in agriculture, all products of agriculture, and all notes, bonds bills, accounts receivable and intangible property.
- **Class 2:** All property owned, used, and occupied by the owner exclusively for residential purposes. All farms, including land used for horticulture and grazing, occupied and cultivated by their owners or bona fide tenants.
- **Class 3:** All real and personal property situated outside of municipalities, exclusive of Classes I and II. (Non-owner occupied)
- **Class 4:** All real and personal property situated inside of municipalities, exclusive of Classes I and II. (Non-owner occupied)

Calculation of Taxes

CALCULATION OF TAXES

Appraised Value x 60% = Assessment x Levy Rate = Taxes

<u>CLASS 1</u>	<u>CLASS 2</u>	<u>CLASS 3</u>	<u>CLASS 4</u>
19.40	38.80	77.60	77.60

*expressed in cents per \$100

Examples

Class 2: \$100,000 x 60% = \$60,000 x .00388 = \$233

Class 3: \$100,000 x 60% = \$60,000 x .00776 = \$466

Class 4: \$100,000 x 60% = \$60,000 x .00776 = \$466

Historical Data - Statewide

School Current Expenses Levy (in millions)



Historical Data – Statewide – Public Utility Property

Public Utility Levy (in millions)



Historical Data – Statewide – Residential Real

Residential Real Levy (in millions)



Historical Data – Statewide – Commercial/Industrial Real

Commercial/Industrial Real (in millions)

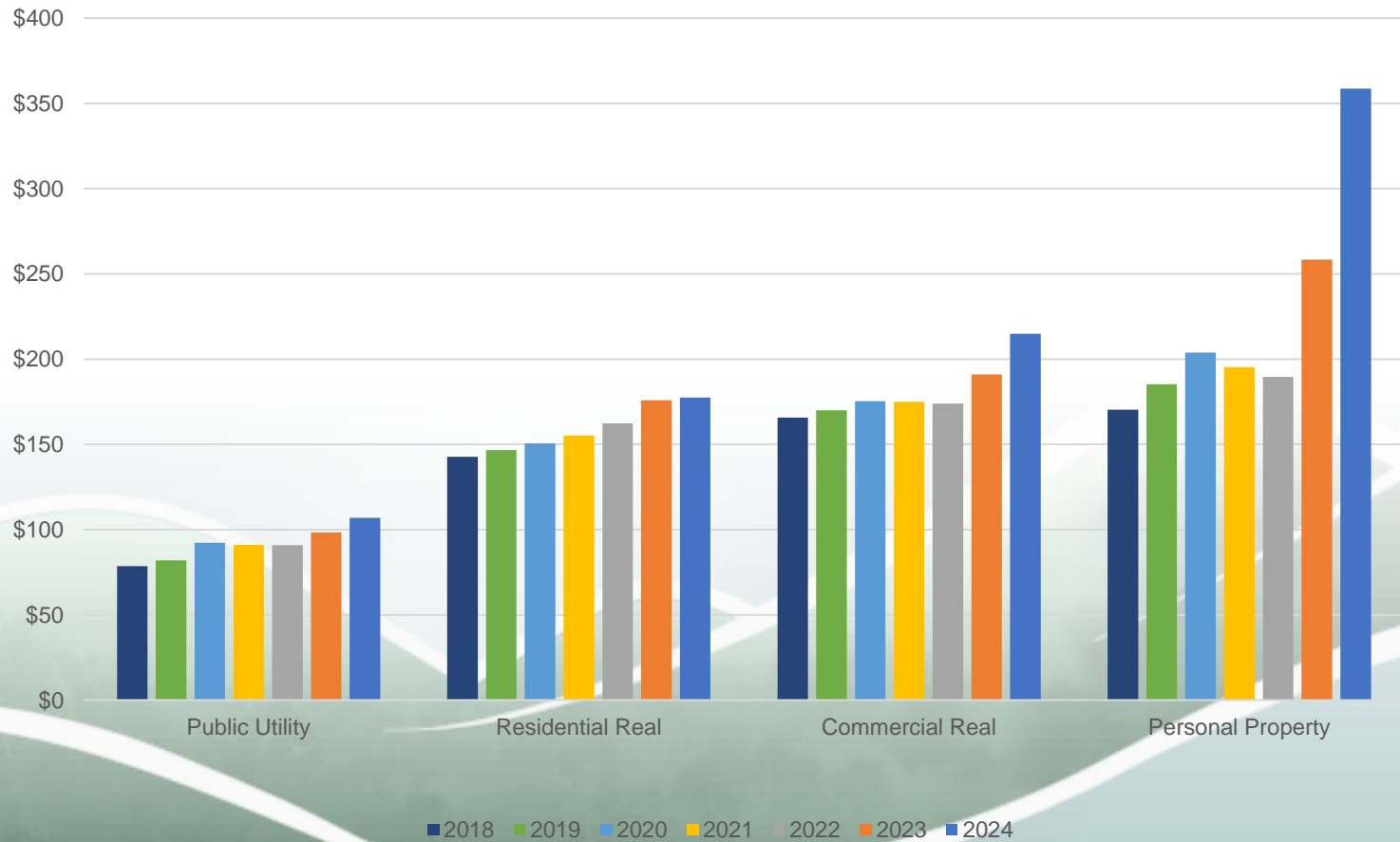


Historical Data – Statewide – Personal

Personal Property



Historical Data – Statewide – Overall



Oil and Gas Property – Changes since 2019

- Pre *Consol v. Steager*:

- “[I]t is the duty of the Tax Commissioner in all valuation efforts to value all property at its true and actual value, that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, ..., is usually sold...” *Recht Decision*.

-What is True and Actual Value? Income Approach

- Estimates the value of the property based upon the income that it generates
 - What is the income?

Income = (Actual Production x 3 Yr. Weighted Average Price per mcf or barrel) – Industry Average Operating Expenses (\$125,000)

- Is it expected to increase, decline, or stay the same?

Application of a decline rate

- What is the expected rate of return?

Greater than industry average

Oil and Gas Property – Changes since 2019

➤ **Consol v. Steager (Sometimes when you lose, you actually win)**

Accordingly, we find that this clear, simply-stated regulation under any common-sense reading plainly contemplates use of a monetary average, which must be applied evenly across the board to avoid an unconstitutionally impermissible application. We therefore hold that the provisions contained in West Virginia Code of State Rules §§ 110-1J-4.1 and 110-1J-4.3 for a deduction of the average annual industry operating expense requires the use of a singular monetary average deduction. Consol v. Steager, 832 S.E.2d 135, 152 (2019)

Oil and Gas Property – Changes since 2019

HB 2581 (2021) (Sometimes when you win, you actually lose)

- **Income = Actual Income - Actual Annual Operating Expenses (to the point of sale)**
- **Clear imposition on Natural Gas Liquids**
- **Emergency Rule Authority**

Oil and Gas Property – Changes since 2019

- Reasonableness Standard (Minimum Pricing)
- Actual Annual Operating Expenses:
 - Lease operating expenses;
 - Lifting costs;
 - Gathering;
 - Compression;
 - Processing;
 - Separation;
 - Fractionation; and
 - Transportation
- New Capitalization Rate Methodology
- Use of actual income without initial decline or annualization

Oil and Gas Property – Changes since 2019

- **HB 4336 (2022)(sometimes when you win or lose you actually tie)**
- **Reinstates first year decline methodology**
- **Reinstates first year annualization**
- **Phases out of minimum pricing**
- **Statutory adoption of Tax Division definitions of actual annual operating costs**
- **Statutory adoption of Tax Division capitalization rate methodology**
- **Statutory adoption of Tax Division safe harbor for marginal wells**

Oil and Gas Property – Changes since 2019

Oil and Gas Levied (in millions)



Oil and Gas Property – Excess Levy Estimate

Excess Levy - Estimated							
	2024	2022	Difference		2024	2022	Difference
TYLER	\$42,013,471	\$6,339,190	(\$35,674,281)	MCDOWELL	\$989,204	\$318,233	(\$670,971)
MARSHALL	\$30,124,215	\$5,395,944	(\$24,728,270)	MINGO	\$863,838	\$245,114	(\$618,723)
WETZEL	\$21,919,743	\$2,853,255	(\$19,066,488)	LINCOLN	\$832,572	\$203,709	(\$628,863)
DODDRIDGE	\$14,786,903	\$3,045,998	(\$11,740,906)	TAYLOR	\$616,536	\$165,228	(\$451,308)
HARRISON	\$9,700,833	\$1,721,142	(\$7,979,692)	WYOMING	\$604,506	\$189,283	(\$415,223)
BROOKE	\$7,900,129	\$2,127,394	(\$5,772,734)	LOGAN	\$603,137	\$160,975	(\$442,161)
OHIO	\$6,621,194	\$2,685,196	(\$3,935,998)	BOONE	\$541,048	\$155,431	(\$385,617)
MONONGALIA	\$6,354,767	\$1,015,891	(\$5,338,876)	JACKSON	\$408,243	\$151,268	(\$256,974)
RITCHIE	\$5,582,167	\$1,665,900	(\$3,916,267)	WAYNE	\$391,570	\$100,729	(\$290,841)
LEWIS	\$3,664,821	\$361,392	(\$3,303,429)	PUTNAM	\$329,046	\$98,253	(\$230,793)
MARION	\$2,827,333	\$2,376,183	(\$451,150)	RALEIGH	\$194,675	\$102,265	(\$92,410)
PLEASANTS	\$1,132,956	\$226,874	(\$906,082)	GILMER	\$131,082	\$58,851	(\$72,232)
KANAWHA	\$1,128,310	\$345,700	(\$782,611)	FAYETTE	\$127,091	\$63,442	(\$63,649)



Questions?

Please send them in an email to:

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