

## **2008 LEGISLATIVE SUMMARY**

West Virginia lawmakers passed several pieces of legislation during the 2008 Legislative Session that will impact citizens and the State Tax Department. Below are some highlights of the actions completed. The brief descriptions below are a synopsis of each bill and should not be replaced for the exact wording of each bill passed by the 2008 West Virginia Legislature. For a complete description of each bill discussed below, log on to the West Virginia Legislature website at: [www.legis.state.wv.us](http://www.legis.state.wv.us).

### **HB 4016 and HB 4017– Personal & Corporate Net Income Tax Updates** (Coupling with Federal Stimulus Package)

Update the state=s personal income tax and corporate net income taxes to be in line with federal income taxes. This allows for businesses to claim 50% bonus depreciation deduction on new investments made in 2008. It also increases small business= maximum allowable deductions for new capital investments made in 2008 from \$128,000 to \$250,000. The changes are designed to stimulate capital investment. Personal income taxpayers will benefit with mortgage relief provisions that eliminate taxable income associated with loan forgiveness. The changes are expected to save corporations and individuals more than \$43 million a year on their 2008 tax returns.

### **SB 541 c Continuing Personal Income Tax Adjustment for Retirees**

Retirees receiving pension income from the Federal Pension Benefit Guarantee Corporation will receive an income tax deduction. The deduction amount is determined by the difference between the pension they would have received in the absence of a corporate bankruptcy and the pension the retirees actually received. This is a retroactive benefit dating back to the 2007 tax year.

### **HB 4421– Repeal of Corporate License Tax**

Corporations will no longer be taxed for a corporate license as of July 1, 2008. The repeal of the tax reduces taxes for all registered corporations by roughly \$6.7 million per year and also results in a more simplified business registration process.

### **SB 474 – Energy Star Tax Holiday**

Establishes Energy Star Products Sales Tax Holiday between September 1, 2008 and September 7, 2008. During this time, purchases of specified energy star products will be exempt from the state=s 6% sales tax. To qualify, purchases may

cost up to \$2,500. This is a per product exemption. Future holidays are scheduled as well.

### **SB 545 – Tax Administration Efficiency**

There are several tax changes in this bill. Businesses will not have to renew their business registration after July 1, 2010. However, to reinstate a revoked or suspended business license, a fee of \$100 will be collected as a penalty on or after July 1, 2010. The bill also establishes a single return for the Sales and Use Tax, allows for combined tax assessments and requires electronic filing of all tax returns for those taxpayers who pay more than \$100,000 a year for any single tax. The required electronic filing begins January 1, 2009. This bill allows certain healthcare providers to have a direct pay sales tax permit. The Tax Commissioner will follow IRS guidelines regarding income tax withholding provisions and payment as of January 1, 2009.

### **HB 3201 – Business Licensing for Alter Ego Businesses**

The Tax Commissioner may refuse to grant a business license to any alter ego businesses of another business whose license was suspended or revoked. A business is defined as an alter ego if: (1) the two businesses are connected by sharing more than 20% of real, tangible personal property or operating assets; (2) ownership of the two businesses are attributed to the same person or entity with the IRS; or (3) substantive control of the business is held by the same person, individual, or entity, directly or indirectly or through attribution. The provisions of the bill take effect within 90 days of passage or prior to the July 1, 2008 renewal period.

### **HB 4607 & SB 280 – Special District Excise Tax & Downtown Redevelopment**

Relates to Special District Excise Tax and Sales Tax Increment Financing (TIF). The Tax Commissioner may mandate electronic filing. Tax documents may be shared with interested parties representing the Special District. SB 280 may create one or more Municipal Sales TIF districts that will benefit the General Revenue Fund. Somewhere between 20% and 50% of the Municipal Sales TIF will be dedicated to the State General Revenue Fund. This percentage will be determined by the Development Office.

### **CHANGES EFFECTIVE IN CY 2008:**

### **HB 4684 – Film Industry Investment Credit Transfer**

Allows qualified film makers, who produce their product in West Virginia, to be able to sell or transfer excess film tax credits to other individuals or businesses

effective January 1, 2008. Certain program administrative responsibilities were also transferred from the Tax Department to either the Film Office or the Development Office.

### **CHANGES EFFECTIVE JULY 1, 2008:**

#### **SB 552 – Pre-paid Wireless Tax/911 fees**

The Consumer Sales and Use Tax will include purchases of pre-paid wireless calling services. Within 30 days following the end of each calendar month, the Tax Commissioner shall give the Public Service Commission the proceeds of the tax imposed upon the sale of pre-paid wireless calling services in the preceding month. To determine the amount of those monthly proceeds, the Tax Commissioner shall use an amount equal to one twelfth of the annual wireless enhanced 911 fees collected in the prior year by the Public Service Commission. Beginning July 1, 2009, the Tax Commissioner shall adjust this amount annually in proportion to the increase or decrease in the enhanced wireless 911 fees paid to the Public Service Commission during the previous 12 months.

#### **SB 751 – Surface Coal Mining & Reclamation**

More than doubles the Coal Reclamation Fee to benefit the Special Reclamation Water Trust Fund. The fee will increase from 7 cents per ton to 14.4 cents per ton between July 1, 2008 and June 30, 2009.

#### **SB 101 – Nonprofit Electric Power Cooperatives Property Tax**

Property taxes will no longer be assessed on nonprofit rural cooperatives providing electricity. This change takes effect on July 1, 2008.

#### **HB 4088 – Farm Equipment Dealer Inventory Tax**

For property tax assessment purposes, farm equipment dealers may calculate the value of their inventory on the basis of yearly sales rather than the amount of inventory in place beginning July 1, 2008.

### **CHANGES EFFECTIVE IN CY2009:**

#### **HB 4041 – Coalbed Methane**

Sets new tax exemption dates for coalbed methane wells. Any well placed in service prior to January 1, 2009, will be exempt from the severance tax until the expiration of the five-year exemption window for new wells. With the exception of grandfathered wells, all coalbed methane is subject to both the 5% regular

severance tax and the additional 4.7 cents per 1,000 cubic foot workers= compensation severance tax as of January 1, 2009. The first \$4 million or fraction thereof of coalbed methane severance tax collections are to be paid to the West Virginia Infrastructure Fund. The amount is not to exceed \$4 million per fiscal year. In order to provide a report of taxes paid and amount of coalbed methane produced per county, the Tax Commissioner may collect information from the Department of Environmental Protection and/or the owners or operators of coalbed methane wells.

### **HB 4628 – Job Creation Tax Credit**

Promotes job development through business tax credits with the establishment of new jobs. Under the Economic Opportunity Tax Credit, any eligible business (i.e. manufacturing, warehousing, information processing, goods distribution, destination tourism, and research and development) creating less than 20 new jobs for a regular business and less than 10 new jobs for a qualified small business, shall receive a tax credit of \$3,000 per year, for a period of 5 years, for each new job created. To qualify, the new jobs must be full-time, pay a minimum salary of \$32,000, and offer health benefits.

### **HB 4420 – Real Estate Investment Trusts**

For tax years beginning on or after January 1, 2009, payments made to qualified Captive Real Estate Investment Trusts (REITS) or qualified Captive Regulated Investment Companies (RICS) are treated as income subject to the Corporate Net Income Tax.

### **SB 680 – Combined Reporting (Certain changes effective January 1, 2008)**

Changes to the Business Franchise Tax. The gradual phase-down of the Business Franchise Tax continues in 2009. On the first day of each of the applicable calendar years the tax will decrease to 0.48% in 2009, 0.41% in 2010, 0.34% in 2011, 0.27% in 2012, 0.20% in 2013, 0.10% in 2014, and 0% thereafter. Once the changes made by the Legislature in 2007 are phased in, there will be a net business tax reduction in excess of \$90 million. The elimination of the tax will generate an estimated \$50 million in additional tax savings.

In addition, there are reductions in the Corporate Net Income Tax rate. On the first day of each of the applicable calendar years, rates will be reduced from 8.75% in 2008 to 8.5% in 2009-2011, to 7.75% in 2012, to 7.0% in 2013, and to 6.5% in 2014. These reductions are estimated to provide additional tax savings of \$86 million. The rate reductions for 2012 through 2014 will occur only if the amount of funds in the state's rainy day funds equals or exceeds 10% of the states general revenue fund for the immediately preceding fiscal year.

The maximum offset of the Manufacturing Investment Tax Credit will increase from 50% of state tax liability to 60% beginning in 2009. The Manufacturing Investment Tax Credit, of 5% for capital investments, greatly reduces the effective Business Franchise Tax rate as well as the Corporate Net Income Tax rate for West Virginia manufacturing. For example: if a manufacturer makes a \$10 million investment in new plant and equipment in a West Virginia facility, the Manufacturing Investment Tax Credit will generally equal 5% of such investment or \$500,000 pro-rated over a ten-year period at a rate of \$50,000 per year. If this manufacturer's net allocated income is \$1 million, the pre-credit West Virginia Corporate Net Income Tax liability would be \$85,000 or 8.5% of \$1 million in 2009. After application of the \$50,000 Manufacturing Investment Tax Credit, West Virginia Corporate Net Income Tax liability drops to \$35,000 or an amount equal to just 3.5% of net income.

Beginning in 2009, manufacturers may claim a non-refundable tax credit against Business Franchise Tax and Corporate Net Income Tax equal to the amount of local property taxes paid on West Virginia manufacturing inventory. This credit is expected to save manufacturers roughly \$11 million per year.

Financial organizations may qualify for a transition tax credit equal to the net increase in Corporation Net Income Tax liability multiplied by 80% in 2009, 60% in 2010, 40% in 2011, 20% in 2012, and 10% in 2013. This transition tax credit may not reduce the annual Corporate Net Income Tax liability below \$1 million.

A Business Franchise Tax Credit is available for any financial organization related to additional goodwill added to the balance sheet on or after January 1, 2008 that is attributable to the purchase of a non-domiciled bank. The tax credit to be claimed is determined by 50% of the qualified additional goodwill multiplied by the business franchise tax rate. Thus, in 2008, the tax credit equals 0.55% multiplied by 50% of the additional goodwill value.

In 2008, a number of technical changes were made to perfect the combined reporting requirements which were passed by the Legislature in 2007. Some of the more important technical changes were made by SB 680 to perfect the combined reporting requirements including a default waters-edge election for those filing a combined report. In addition, transition rules regarding carryover uses of net operating loss deductions and investment tax credits were adopted. Finally, special income nexus rules and apportionment rules were readopted for financial organizations.

### **SB 239 – Senior Citizen Tax Deferral**

Senior Citizens will be able use a new refundable tax credit beginning in the 2009 calendar year. Seniors, over the age of 65, will have the option of deferring payment of any residential property tax increase in excess of \$300 until they either sell their home or when their estate is settled. If a senior's gross household income is \$25,000 or less and the property taxes increase more than \$300, the senior is eligible for a refundable tax credit. The credit will be equal to the difference between the base year tax paid prior to the increase and the tax paid during the tax year. The senior must choose between this and other existing refundable tax credits designed to provide property tax relief to lower income households. For the 2009 tax year, those people over the age of 65 can elect to defer certain increases in real property tax or to claim a new refundable tax credit. A Senior Citizen Property Tax Relief Credit is an available option to seniors who see substantial increases to their property tax. Certain lower income seniors may take the credit against their personal income tax. This credit is refundable.

### **SB 265 – Aircraft Property Valuation Act**

In 2008, legislation proposed by the Governor was approved to reduce personal property taxes on business use aircraft by up to 95 percent beginning in FY 2009. The change will eliminate any tax disincentive to locate and service business use aircraft in West Virginia. Prior to this change, very few aircraft located in West Virginia due to a relatively high annual personal property tax liability averaging more than 1.5 percent of the market value of the aircraft. Surrounding states either impose no similar tax or impose tax at a small fraction compared to West Virginia. The tax reduction of up to 95 percent is expected to cost no more than \$2 million because of the lack of significant numbers of aircraft within the state. The tax reduction should result in a significant increase in the number of aircraft locating in West Virginia along with spin-off economic and fiscal benefits associated with additional services provided to maintain such aircraft within the state borders.