WEST VIRGINIA CODE CHAPTER 11 ARTICLE 1

WV Legislature

§11-1-1. Office of Tax Commissioner continued and designated the state Tax Division; appointment, term, oath and bond of commissioner; powers and duties generally; sections of division; assistant Tax Commissioner; authorization of criminal background checks conducted by Tax Commissioner for prospective employees; assistant attorneys general to assist commissioner.

(a) The Office of the Tax Commissioner is continued in all respects as previously constituted in the state government, but is hereby designated as the state Tax Division of the Department of Revenue.

(b) The Tax Commissioner is the chief executive officer of the state Tax Division and shall be appointed by the Governor, by and with the advice and consent of the Senate, to serve at the will and pleasure of the Governor for the term for which the Governor was elected and until a successor has been appointed and has qualified.

(c) The Tax Commissioner, before entering upon the duties of office, shall take the oath or affirmation prescribed by section 5, article IV of the Constitution. The Tax Commissioner shall give bond with good security, to be approved by the Governor, in the penalty of $15,000. The Tax Commissioner shall be repaid his or her actual disbursements for traveling expenses. The Tax Commissioner shall be provided with an office in a state owned or leased building and with furniture, office equipment and any necessary clerical assistance.

(d) The Tax Commissioner has control and supervision of the state Tax Division and is responsible for the work of each of its sections or other subunits. Each section or bureau shall be headed by a director appointed by the Tax Commissioner and who is responsible to the Tax Commissioner for the work of his or her section or bureau. The Tax Commissioner may create any sections or bureaus and employ any necessary staff or employees to administer the state tax laws for which the Tax Commissioner or Tax Division is responsible, within the amount of expenditures appropriated for operation of the Tax Division by the Legislature. The Tax Commissioner has authority to appoint an assistant Tax Commissioner who shall be his or her principal assistant. The powers and duties vested in the Tax Commissioner by this chapter and any other provisions of law may be delegated by the Tax Commissioner to the assistant or other employees, but the Tax Commissioner is responsible for all official acts of his or her delegates.

(e) Background checks.

(1) The commissioner is authorized to conduct a criminal records check through the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation, and such other police or investigative organization or agency as the Tax Commissioner may designate.

(2) Investigations may be conducted for:

(A) Applicants or prospective applicants for employment with the Tax Division,

WV Legislature

(B) Current and preexisting employees of the Tax Division,

(C) Applicants or prospective applicants for contract employment with the Tax Division,

(D) Current and preexisting contractors that work with or for the Tax Division, and

(E) Any other person or entity that may handle, review or possess federal tax information or state tax information.

(3) These investigations may be conducted for the purpose of determining whether an applicant for employment with the Tax Division, or an individual, company or entity, that is being evaluated as a potential contractor with the Tax Division, is suitable for such employment, or for the purpose of determining suitability of an individual to be granted access to federal tax information, that is subject to the disclosure restrictions of 26 U.S.C. § 6103, or for any other lawful purpose.

(4) Background investigations of any individual, corporation, limited liability company, partnership or other entity or organization, or of any officer, owner, representative, agent, employee or principal of any such corporation, limited liability company, partnership or other entity or organization pursuant to this section may include, but not be limited to:

(A) Federal Bureau of Investigation (FBI) fingerprint results;

(B) A check of an individual's criminal history in all states of the United States;

(C) A check of the criminal history in all states of the United States of a corporation, limited liability company, partnership or other entity or organization, or of any officer, owner, representative, agent, employee or principal of any such corporation, limited liability company, partnership or other entity or organization; and

(D) Investigation of records of local law-enforcement agencies where the individual has lived, worked, or attended school within the preceding five years, or longer, as the Tax Commissioner may determine, to identify:

(i) Any arrests of the individual or of an officer, owner, representative, agent or principal of a corporation, limited liability company, partnership or other entity or organization.

(ii) Any criminal record of a corporation, limited liability company, partnership or other entity or organization, or of any officer, owner, representative, agent, employee or principal of any such corporation, limited liability company, partnership or other entity or organization.

(iii) Misbehavior or trends of misbehavior that may not have been reported to the FBI database, but which provide information regarding character and suitability of an individual to hold a responsible employment position or to receive and handle federal tax information or state tax information.

WV Legislature

(iv) The citizenship and residency of an individual.

(v) Validation of an individual's eligibility to legally work in the United States.

(5) The result of any criminal records or criminal history check shall be sent to the commissioner, and any other state or federal agency having a lawful interest in the results of such an investigation, as designated by the Tax Commissioner.

(f) The Tax Commissioner, if he or she considers the action necessary, may request the Attorney General to appoint assistant attorneys general who shall perform duties as required by the Tax Commissioner. The Attorney General, in pursuance of the request, may select and appoint assistant attorneys general, with the consent of the Tax Commissioner, to serve during the will and pleasure of the Attorney General, and the assistants shall be paid out of any funds made available for that purpose by the Legislature to the state Tax Division.

WV Legislature

§11-1-1a. Provision of legal services.

(a) The Tax Commissioner has plenary power and authority to acquire those legal services the commissioner deems necessary to carry out the functions and duties of the state Tax Division or the office of Tax Commissioner, including, but not limited to, representation of the Tax Division or the commissioner in any administrative or judicial proceeding.

(b) The commissioner may acquire legal services from attorneys licensed to practice law who are employed by the commissioner on a salary basis or retained by the commissioner on a reasonable fee basis.

(c) The commissioner may also request the assistance of the Attorney General and be represented in an administrative or judicial proceeding by a deputy or assistant Attorney General acceptable to the commissioner.

WV Legislature

§11-1-1b. Training of employees.

(a) To ensure adequate standards of public service, the commissioner may provide technical and specialized instruction for employees of the State Tax Division. If, upon review of the personnel records of any employee of the State Tax Division, the commissioner is of the opinion that it would be in the best interest of the State Tax Division to provide the employee with additional training or instruction in the field or vocation in which the employee is engaged, the commissioner may, upon approval of the secretary, request that the employee obtain the additional training or instruction at any place the commissioner considers suitable. The commissioner is further authorized to pay out of state funds, as may be available, any required tuition, materials or enrollment fees for additional training or instruction authorized pursuant to the provisions of this section.

(b) The commissioner is hereby authorized to promulgate rules in accordance with the provisions of §29A-3-1 et seq. of this code setting forth at a minimum: (1) the types of training and degrees or certifications that may be obtained; (2) the employee classifications suitable for additional training; (3) the maximum amount that can be spent on any one employee's training; and (4) other matters as deemed necessary to promote the development and retention of a skilled workforce.

WV Legislature

§11-1-2. General duties and powers of commissioner; appraisers.

It shall be the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies, whether of the state or of any county, district or municipal corporation thereof, are faithfully enforced. He shall prepare all proper forms and books for the use and guidance of assessors, and shall perform all such other duties as may be required by law. He shall from time to time visit the several counties and municipal corporations of the state; shall inspect the work of the several assessors, county courts, justices, prosecuting attorneys, clerks of the courts, sheriffs, constables and collecting officers, among whom are included commissioners of school lands, and shall confer with them respecting such work for the future. In such conference, or by writing or otherwise, he may inquire into the proceedings of any such officer, make to him such suggestions respecting the discharge of his duty as may seem proper, and give such information and require such action as will tend to produce full and just assessments throughout the state, and the diligent collection of all taxes and levies, including licenses and inheritance taxes, and of fines.

The Tax Commissioner may, with the approval of the board of public works, appoint competent persons to appraise property values, and may employ experts to examine and report upon the different kinds and classes of property in the state, with a view to ascertaining the true and actual value thereof for assessment purposes, to the end that he may furnish to county assessors, county courts and the state board of public works more accurate information, and more effectively aid and supervise the assessors and the county courts in their work of assessment and valuation of property for purposes of taxation. Any such appraiser, or expert person, so appointed by the Tax Commissioner for the purpose of ascertaining property values, as aforesaid, shall have authority to examine under oath, the owner or owners, of any property subject to taxation in this state, as to any matters touching the value thereof; and he may examine, under oath, any other person as to any pertinent facts or matters within his knowledge, relative to the character and value of any such property. And, for the purposes of this provision, such appraisers and expert examiners shall have authority to administer oaths and to subpoena witnesses. If any person refuse to appear and to testify in response to any subpoena issued by such appraiser or expert examiner, he may apply to any judge of any criminal, intermediate, common pleas or circuit court, or the clerk thereof, either in term time or in vacation, for subpoena, or other proper process, for any such witness; and the judge of the court, or such clerk shall thereupon issue a subpoena, or other proper process, requiring the attendance and testimony of any such person before such appraiser, or examiner and if such person refuse to obey any such order, he shall be guilty of contempt and punished accordingly.

Upon the application of any officer concerned with the assessment or collection of taxes, he shall as to any matter specified by such officer, make like suggestions and give like information. In case of the failure of any assessing or collecting officer in the discharge of any duty, imposed upon him by law, the said Tax Commissioner shall, after due notice to any such assessor or collecting officer, proceed to enforce such penalty as may be provided by law, including, in any proper case, the removal of such officer, and to that end he is

WV Legislature

authorized to appear before any court or tribunal having jurisdiction. He may cause the violation of any law respecting the assessment or collection of taxes to be prosecuted. He may also be heard before any court, council or tribunal, in any proceeding in which an abatement of taxes is sought.

WV Legislature

§11-1-2a. Refund of taxes erroneously collected.

(1) On and after the effective date of this section, any taxpayer claiming to be aggrieved through being required to pay any tax into the treasury of this state, may, within five years from the date of the filing of the return in respect of which the tax was imposed or within four years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within four years from the time the tax was paid, and not after, file with the official or department through which the tax was paid, a petition in writing to have refunded to him any such tax, or any part thereof, the payment whereof is claimed by him to have been required unlawfully; and if, on such petition, and the proofs filed in support thereof, the official collecting the same shall be of the opinion that the payment of the tax collected, or any part thereof was improperly required, he shall refund the same to the taxpayer by the issuance of his or its requisition on the treasury upon which the Auditor shall issue his warrant as hereinafter provided; if the official collecting the same shall be in doubt as to whether or not such taxes were unlawfully paid, or if he be of the opinion that the payment of the tax collected, or any part thereof, was lawful, and the taxpayer within thirty days after notice of such opinion is not satisfied with the ruling of such official, then such tax official may on his own initiative, and shall, upon written notice so to do from the taxpayer given within said thirty-day period, promptly institute against said taxpayer, in a court of competent jurisdiction, a declaratory judgment proceeding to ascertain whether any such tax, or part thereof, has been unlawfully collected; if it be determined in such proceeding that any such tax, or part thereof was unlawfully collected, then such official shall promptly refund the same to the taxpayer by the issuance of his or its requisition on the treasury; and the Auditor shall issue his warrant on the treasurer for any refund requisitioned under this section payable to the taxpayer entitled to the refund, and the treasurer shall pay such warrant out of the fund into which the amount so refunded was originally paid: Provided, That no refund shall be made at any time on any claim involving the assessed valuation or appraisement of the property which was fixed at the time the tax was originally paid: Provided further, That such official shall be under no duty to institute any such declaratory judgment proceeding unless it shall appear that the taxpayer giving the notice as herein provided is acting in good faith and that there is a substantial question as to the lawfulness of the collection of such tax.

(2) With respect to any tax imposed for any period ending prior to the effective date of this section, the time within which any taxpayer claiming to be aggrieved, through being required to pay any tax into the treasury of this state, may file with the official or department through which the tax was paid the petition provided in subsection (1) shall be three years from the date of such payment, and not after.

(3) The provisions of this section shall take effect on July 1, 1967.

WV Legislature

§11-1-2b. Housing index requirements.

(a) For purposes of this section only annually, on or before January 1, the Tax Commissioner shall create a single dwelling residential housing index which shall contain the cost of all single dwelling residential housing in the state. The index shall list the average and median cost of single dwelling residential housing by county and by square footage, if available, commencing with the most expensive to the least expensive.

(b) For purposes of this section only, the Tax Commissioner shall also, annually, on or before January 1, establish:

(1) A single dwelling residential housing index multiplier;

(2) The average and median cost of single dwelling residential housing in the state;

(3) The multiplier needed to equal the housing cost in the least expensive county to the most expensive county;

(4) Whether the average and median cost of single dwelling residential housing in a county is above or below the average and median cost for the entire state; and

(5) A table indicating:

(A) The average and median cost of single dwelling residential housing in the state; and

(B) The multiplier for each county, comparing the statewide average and median cost of single dwelling residential housing with a multiplier calculated in relation to the average value.

(c) For purposes of this section only, the Tax Commissioner shall annually, on or before December 31 of each year, provide the single dwelling residential housing index and multiplier to the Joint Committee on Government and Finance and also make it available to the public.

WV Legislature

§11-1-3. Aiding board of public works, Auditor and treasurer.

The Tax Commissioner shall attend meetings of the board of public works when it is considering matters of assessment or revenue, when requested by said board or the Governor to so attend, and he shall give such assistance to the said board as it or the Governor may direct, in making any assessment to be made by it. In case of appeal to any court from any assessment made by the said board, the Tax Commissioner shall appear before any court and protect the interest of the state and of any county, district or municipal corporation which may be interested. He shall, upon the request of the Auditor or treasurer, assist such officers in any matters relating to the revenues of the state.

WV Legislature

§11-1-4. Biennial report of commissioner; fiscal officers to furnish information.

The Tax Commissioner shall make a report in writing to the Governor biennially, on or before October 1, next preceding the regular session of the Legislature, in which he shall show his official transactions during the period not covered by any preceding report; shall give information respecting the operation of the tax laws throughout the state; and shall recommend such changes in the laws concerning the assessment and collection of taxes, and kindred subjects, as he may think ought to be made, and shall report upon any special matter which may be referred to him by the Governor, Auditor or board of public works; his report shall be printed, communicated to the Legislature and distributed as in the case of other like reports. The Tax Commissioner may require from any county, district, municipal or other officer in this state, on forms prescribed by the Tax Commissioner, such annual or other reports as shall enable said Tax Commissioner to ascertain the assessed valuation and equalize valuations of all property listed for taxation throughout the state, the amount of taxes assessed, collected and returned delinquent and such other matters as the Tax Commissioner may from time to time require; any officer or person failing to furnish such information or reports when requested to do so by the Tax Commissioner shall be guilty of a misdemeanor, and, upon conviction thereof, fined not less than $50 nor more than $100, and may be confined in jail not less than ten nor more than thirty days.

WV Legislature

§11-1-4a. Powers of Tax Commissioner as to tax and revenue statistics.

In addition to the reports, information, and recommendations required under section four of this article, the Tax Commissioner is authorized and empowered to collect, tabulate, and classify, and make public from time to time in such manner as he may deem proper, detailed statistics relating to the revenues collected by the state.

Such statistics may be prepared and made public in a manner so as to provide accurate and useful information to government and commerce and, insofar as practicable, shall, with respect to each state revenue law, and for the state as a whole, and from within each county and municipality thereof, show the gross revenue yield, the total amount of business income reported from which such revenue is derived, the total number of taxpayers, the number of taxpayers within any statutory classification, and the gross revenue yield, together with the total amount of business income reported from any such statutory classification of taxpayers.

The Tax Commissioner may also make public such group statistics for similar or related units of business and industry within any statutory classification of taxpayers: Provided, however, That in carrying out the provisions of this section, the Tax Commissioner shall not make public the tax return, or any part thereof, of any individual, firm, or corporation, nor disclose in any manner statistics or information concerning the personal affairs of any individual or the business of any single firm or corporation.

WV Legislature

§11-1-5. Misconduct or negligence of officers.

The Tax Commissioner shall communicate to the circuit court and to the prosecuting attorney of the county any instance of misconduct or neglect of official duty on the part of any assessor, justice, prosecuting attorney, clerk of a court, sheriff or constable of such county, and any evidence thereof of which he may be cognizant; and the court shall cause the same to be investigated and, if the charges are true, proper charges shall be filed, and on conviction such assessor, justice, prosecuting attorney, clerk of a court, sheriff or constable shall forfeit not less than $100 nor more than $500, and shall be removed from office.

WV Legislature

§11-1-6. Forms and instructions for assessors.

The Tax Commissioner shall prepare and forward to the assessors such printed forms for the personal property books, and the land books, and such lists of taxable subjects to be furnished by the assessors to persons chargeable with taxes, as will procure a perfect assessment of all the persons and property, both real and personal, in this state subject to taxation, and shall have full power to alter or change any and all forms and books from time to time, so as to procure a just and equal assessment of all taxable property: Provided, however, That county assessors may, with the approval of the Tax Commissioner, use such printed forms as may be necessary in the use of mechanical devices designed to facilitate the work of the assessor: Provided further, That the county court is hereby authorized to purchase and pay out of the county treasury for such printed forms for use by the assessor. The Tax Commissioner shall also, by letter or printed circular, give such instructions to the assessors respecting their duties as may seem to him judicious; and if any assessor fail to obey such instructions, so far as they are not contrary to law, he shall forfeit not less than $100 nor more than $500, and, upon being convicted, shall be removed from office.

WV Legislature

§11-1-7. Assistance to commissioner by prosecuting attorney.

In every case in which the State Tax Commissioner may appear the prosecuting attorney of the county in which the case is pending shall give his assistance, without additional compensation.

WV Legislature

§11-1-8.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§11-1-9. Holders of short-term permits and licenses to sell; rulemaking.

(a) Notwithstanding any provision of this chapter to the contrary, holders of short-term permits or licenses to sell specific items, e.g., fireworks, beer, food, or wine at festivals, may not be required to submit any information to the Tax Commissioner after the term of the permit or license has expired: Provided, That the permit or license holder has filed with the Tax Commissioner all necessary information specific to the time period the permit or license was authorized and remitted to the Tax Commissioner and the permit or license holder has remitted all taxes and fees that are due under this code. This section does not prevent the Tax Commissioner from auditing the books and records of the license or permit holder for compliance with the provisions of this code.

(b) The Tax Commissioner shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code to implement this section.

WV Legislature