WEST VIRGINIA CODE: §7-22-7A

§7-22-7a. Base tax revenue amount.

(a) Recalculation of base tax revenue amount. --

(1) If the base tax revenue amount determined under section seven of this article is greater than $1 million for a given district, then, upon written request of the county commission that has established the economic opportunity development district pursuant to this article, filed with the Executive Director of the Development Office not later than April 30, 2015, the base tax revenue amount for that district shall be recalculated by the Tax Commissioner as the aggregate annual amount of special district excise tax due and owing and remitted to the Tax Commissioner by all business locations located in the district with respect to sales made and services rendered from business locations in the district, for the twelve full calendar months next succeeding the date the special district excise tax was first collected in the district.

(2) Limitation -- If the base tax revenue amount determined under section seven of this article exceeds the amount determined under subdivision (1) of this subsection by more than $1 million, then the recalculated base tax revenue amount for purposes of this article is the base tax revenue amount previously determined under section seven of this article minus $1 million.

(3) Effective date. –

(A) The recalculated base tax revenue amount determined under this section shall be the amount used to determine the net annual district tax revenue amount for the district beginning on July 1, 2015. For purposes of this article, "net annual district tax revenue amount" means the gross annual district tax revenue amount minus the base tax revenue amount. For purposes of this article, "gross annual district tax revenue amount" means the amount of special district excise tax, net of refunds and adjustments, collected from the district before subtraction of the base tax revenue amount.

(B) The recalculated base tax revenue amount shall only be applicable to determine the net annual district tax revenue amount for periods beginning on and after July 1, 2015. The recalculated base tax revenue amount determined pursuant to this section is prospective in operation, and no adjustment, refund, payment or repayment of special district excise tax, or consumers sales and service tax and use tax, or net annual district tax revenue amount, or accrual thereof, attributable to periods prior to July 1, 2015, shall affect recalculation of the base tax revenue amount.

(b) Base tax revenue amount carry forward, recovery, recovery limitation.

(1) Notwithstanding any provision of section twelve of this article to the contrary, and

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notwithstanding the provisions of section eleven-a, article ten, chapter eleven of this code, if the amount of special district excise tax due and owing and collected in a calendar month is less than one-twelfth of the base tax revenue amount, the State Treasurer shall deposit the full amount of special district excise tax collections for that month into the General Revenue Fund of this state. In order to account for deficient special district excise tax collections in prior months for an economic opportunity development district, the State Treasurer shall deposit the full amount of special district excise tax collections into the General Revenue Fund in subsequent months during the fiscal year in which the deficiencies occurred, in amounts that may exceed one-twelfth of the base tax revenue amount, until past monthly deficiencies for that fiscal year are satisfied in full. Upon payment in full of past monthly deficiencies for such fiscal year, only one-twelfth of the base tax revenue amount shall be transferred to the General Revenue Fund for each month. Any monthly deficiencies shall be carried forward and accounted for in subsequent months only during the fiscal year in which such deficiencies occurred. On the first day of each fiscal year, any monthly deficiencies for an economic opportunity development district remaining from the prior fiscal year shall be discharged and shall not be taken into consideration by the State Treasurer when the monthly deposits are made to the General Revenue Fund pursuant to this section. For purposes of this section, fiscal year refers to the July 1 to June 30 fiscal year for the State of West Virginia.

(2) Notwithstanding the provisions of subdivisions (2) and (3), subsection (d) section eleven-a, article ten, chapter eleven of this code, the provisions of this subsection apply to, and are limited to, the circumstance where the amount of special district excise tax due and owing and collected in a calendar month is less than one-twelfth of the base tax revenue amount. All other corrections of, or relating to, any erroneous distribution, transfer, allocation, overpayment or underpayment of moneys or any adjustments otherwise necessary with relation to erroneous distributions, transfers, allocations, overpayments or underpayments of moneys, deposits, collections, or payments of special district excise tax shall be made in accordance with the provisions of section twenty-six, article ten, chapter eleven of this code.

(c) Limitation on changes to base tax revenue amount.

Except pursuant to a lawful recalculation of the base tax revenue amount under this section, or a lawful modification of geographical area included in a district under this article, the base tax revenue amount may not be modified, increased or decreased by reason of any change in law or fact relating to the consumers sales and service tax and use tax or to the base tax revenue amount determined under this article. No current, retrospective or prospective tax reporting anomaly, permutation of tax filing configuration, failure of tax payment, failure of tax filing, tax adjustment, claim for a tax refund, issuance of a tax refund, entitlement to a tax refund, claim for a tax credit, issuance of a tax credit, or entitlement to a tax credit, relating to, or affecting, consumers sales and service tax or use tax paid or payable in the district or special district excise tax paid or payable in the district, either prior to the date upon which the base tax revenue amount was determined under this article or subsequent to the date upon which the base tax revenue amount was determined under this article, changes in any way the base tax revenue amount.

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(d) Sharing of District Information.

(1) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code:

(A) So long as bonds are outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the trustee for bonds issued pursuant to this article information on or derived from special district excise tax returns submitted pursuant to this article; and

(B) The trustee may share the information so obtained with the county commission that established the economic opportunity development district that issued the bonds pursuant to this article, with financial advisors registered or licensed with the appropriate oversight agency to act in such capacity and with underwriters and placement agents registered or licensed with the appropriate oversight agency to act in such capacity, that have been engaged by the county commission, and with the bondholders and with bond counsel for bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a written agreement in order to accomplish exchange of the information.

(C) If bonds are not outstanding pursuant to this article, the Tax Commissioner shall provide on a monthly basis to the county commission that has established the economic opportunity development district pursuant to this article, information on or derived from special district excise tax returns submitted pursuant to this article; and

(D) The county commission may share the information so obtained with legal counsel for the county commission and with financial advisors registered or licensed with the appropriate oversight agency to act in such capacity and with underwriters and placement agents registered or licensed with the appropriate oversight agency to act in such capacity, that have been engaged by the county commission. The Tax Commissioner and the county commission may enter into a written agreement in order to accomplish exchange of the information.

(2) Any confidential information provided pursuant to this subsection shall be used solely for the protection and enforcement of the rights and remedies of the bondholders of bonds issued pursuant to this article, or, if there be none such, then, the district board of the district, or, if there be none such, then, the county commission that established the economic opportunity development district pursuant to this article. Any person or entity that is in possession of information disclosed by the Tax Commissioner, including but not limited to, the trustee and the county commission, and any person or entity that is in possession of information disclosed by or shared by the trustee pursuant to this subdivision, or disclosed by or shared by the county commission pursuant to this subdivision, is subject to the provisions of section five-d, article ten, chapter eleven of this code with relation to further disclosure of such information, as if the person or entity that is in possession of the tax information is an officer, employee, agent or representative of this state or of a local or municipal governmental entity or other governmental subdivision. This section does not prohibit the publication or release of statistics so classified as to prevent the identification of

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particular returns and the items thereof and the identity of specific taxpayers. For purposes of this article the term "confidential information" means information subject to the confidentiality restrictions of section five-d, article ten, chapter eleven of this code.

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