WEST VIRGINIA CODE: §7-27-28

§7-27-28. Counties authorized to impose county transportation sales and use taxes.

(a) In addition to all other powers and duties now conferred by law upon county commissions, said county commissions, may, after first satisfying the requirements of the preceding section, adopt an order duly entered of record imposing county transportation sales and use taxes as provided in this article.

(b) Rate of county transportation sales and use taxes. – The rate of the county transportation sales tax and the rate of the county transportation use tax shall be identical and may not exceed one percent of the purchase price subject to tax under article fifteen, chapter eleven of this code, or one percent of the value upon which the county transportation use tax is imposed.

(c) County transportation sales tax base. – In general, the tax base of the county transportation sales tax imposed pursuant to this article shall be identical to the consumer sales and service tax base of this state, except that: (1) The exemption in section nine-f, article fifteen, chapter eleven of this code may not apply; (2) the county sales tax may not apply when taxation is prohibited by federal law; and (3) the county sales tax may not apply as provided in subsection (e) of this section.

(d) County transportation use tax base. – The base of a county transportation use tax imposed pursuant to this article shall be identical to the base of the use tax imposed pursuant to article fifteen-a, chapter eleven of this code, on the use of tangible personal property, custom software and taxable services, within the boundaries of the county, except that: (1) The exemption in section nine-f, article fifteen, chapter eleven of this code may not apply; (2) the county sales tax may not apply when taxation is prohibited by federal law; and (3) the county sales tax may not apply as provided in subsection (e) of this section.

(e) Exceptions. – County sales and use taxes may not apply to:

(1) Sales and uses of motor vehicles upon which the tax imposed by section three-c, article fifteen, chapter eleven of this code was paid or is payable;

(2) Sales and uses of motor fuel upon which or with respect to which the taxes imposed by articles fourteen-a and fourteen-c, chapter eleven of this code was paid or is payable;

(3) Any sale of tangible personal property or custom software or the furnishing of a service that is exempt from the tax imposed by article fifteen, chapter eleven of this code;

(4) Any use of tangible personal property, custom software or the results of a taxable service that is exempt from the tax imposed by article fifteen-a, chapter eleven of this code, except that this exception may not apply to any use within the county when the state consumer

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sales and service tax imposed by article fifteen, chapter eleven of this code, was paid to the seller at the time of purchase but the county transportation sales tax was not paid to the seller; and

(5) Any sale or use of tangible personal property, custom software, taxable service that the county is prohibited from taxing by federal law or the laws of this state.

(f) Whenever tangible personal property, custom software, or a taxable service is purchased in a county of this state that does not impose county transportation sales and use taxes pursuant to this article and the tangible personal property, custom software or results of a taxable service are used in a county that does impose county transportation sales and use taxes pursuant to this article:

(1) A vendor who delivers the tangible personal property, custom software or results of a taxable service to a purchaser, or the purchaser's donee, located in a county that imposes county transportation sales and use taxes pursuant to this article, shall collect, add the tax to the purchase price and collect the tax from the purchaser; and

(2) A person using tangible personal property or custom software in a county of this state that imposes sales and use taxes pursuant to this article, shall remit the county's use tax to the Tax Commissioner unless the amount of sales and use taxes imposed by the county in which the tangible personal property, custom software or taxable service was purchased were lawfully paid.

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