WEST VIRGINIA CODE: §8-38-12

§8-38-12. Special district excise tax authorized.

(a) General. -- The council of a municipality, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by ordinance, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) Tax base. -- The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district. Sales of gasoline and special fuel are not subject to special district excise tax, but remain subject to the tax levied by article fifteen, chapter eleven of this code. Except for the exemption provided in section nine-f of article fifteen, chapter eleven of this code, all exemptions and exceptions from the consumers sales and service tax also apply to the special district excise tax.

(c) Tax rate. -- The rate or rates of a special district excise tax levied pursuant to this section shall be stated in an ordinance enacted by the municipality and identical to the rate or rates of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales rendered within the boundaries of the district authorized by this section.

(d) Collection by Tax Commissioner. -- The ordinance of the municipality imposing a special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

(1) The State Tax Commissioner may require the electronic filing of returns related to the special district excise tax imposed pursuant to this section and may require the electronic payment of the special district excise tax imposed pursuant to this section. The State Tax Commissioner may prescribe by rules adopted or proposed pursuant to article three, chapter twenty-nine-a of this code, administrative notices, and forms and instructions, the procedures and criteria to be followed to electronically file those returns and to electronically pay the special district excise tax imposed pursuant to this section.

(2) Any rules filed by the State Tax Commissioner relating to the special district excise tax imposed pursuant to this section shall set forth the following:

(A) Acceptable indicia of timely payment;

(B) Which type of electronic filing method or methods a particular type of taxpayer may or may not use;

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(C) What type of electronic payment method or methods a particular type of taxpayer may or may not use;

(D) What, if any, exceptions are allowable and alternative methods of payment that may be used for any exceptions;

(E) Procedures for making voluntary or mandatory electronic payments or both;

(F) Procedures for ensuring that taxpayers new to an economic opportunity development district are included within the Tax Commissioner's database;

(G) Procedures for ensuring that taxpayers with multiple locations properly allocate their special district excise taxes to the appropriate economic opportunity development district and reflect the allocation of their returns; and

(H) Any other provisions necessary to ensure the timely electronic filing of returns related to the special district excise tax and the making of payments electronically of the special district excise tax imposed pursuant to this section.

(3)(A) Notwithstanding the provisions of section five-d, article ten, chapter eleven of this code: (i) 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 returns submitted pursuant to this article; and (ii) the trustee may share the information so obtained with the municipality that established the economic opportunity development district that issued the bonds pursuant to this article 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.

(B) Any confidential information provided pursuant to this subdivision shall be used solely for the protection and enforcement of the rights and remedies of the bondholders of bonds issued pursuant to this article. Any person or entity that is in possession of information disclosed by the Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is subject to the provisions of section five-d, article ten, chapter eleven of this code 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.

(C) Notwithstanding any provision of this code to the contrary, so long as bonds are outstanding pursuant to this article, the Tax Commissioner shall allow a designated representative of the municipality that established the economic opportunity development district for which the bonds were issued to audit the returns filed by the taxpayers in the economic opportunity development district no less often than once each quarter of the fiscal year. The Tax Commissioner may require the audit to be conducted at the Tax Commissioner's office, may prohibit copying of any returns, and may require the

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representatives to enter into a written confidentiality agreement. The Tax Commissioner shall promptly investigate any questions raised by an audit, shall promptly take all actions required to correct any errors, and shall report to the applicable municipality the results of its investigation and actions.

(e) Deposit of net tax collected. --

(1) The ordinance of the municipality imposing a special district excise tax shall provide that the Tax Commissioner deposit the net amount of tax collected in the special Economic Opportunity Development District Fund to the credit of the municipality's subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2)(A) The State Treasurer shall withhold from the municipality's subaccount in the Economic Opportunity Development District Fund and shall deposit in the General Revenue Fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the Development Office pursuant to section seven of this article.

(B) In addition to the amounts described in paragraph (A) of this subdivision, the Tax Commissioner shall deposit in the General Revenue Fund of this state on the dates specified in paragraph (A) not less than twenty percent nor more than fifty percent of the excess of the special district excise taxes collected during the preceding month above one twelfth of the base tax revenue, said percentage to be fixed by the Development Office in conjunction with its approval of an application in accordance with section seven of this article based on the amount of state funds, if any, to be expended in conjunction with the respective economic opportunity development district project for items including, but not limited to, the acquisition, construction, reconstruction, improvement, enlargement or extension of roadways, rights-of-way, sidewalks, traffic signals, water or sewer lines and other public infrastructure and such other expenditures of state funds identified by the Development Office: Provided, That the Development Office has the discretion to reduce the minimum percentage of the excess special district excise taxes deposited by the Tax Commissioner in the General Revenue Fund as outlined above from twenty percent to ten percent in conjunction with its approval of an application in accordance with section seven of this article based on its determination that:

(i) The economic development project provides for expenditures in excess of $100 million;

(ii) The economic opportunity development district project does not require the state to expend any additional state funds for items within the district including, but not limited to, the acquisition, construction, reconstruction, improvement, enlargement or extension of roadways, rights-of-way, sidewalks, traffic signals, water or sewer lines and other public infrastructure; and

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(iii) The economic development project contains a provision for a mixed use development with a housing component with at least ten percent of housing units in the district allocated as affordable housing.

(f) Effective date of special district excise tax. -- Any taxes imposed pursuant to the authority of this section are effective on the first day of the calendar month that begins at least sixty days after the date of enactment of the ordinance imposing the tax or at any later date expressly designated in the ordinance that begins on the first day of a calendar month.

(g) Copies of ordinance. -- Upon enactment of an ordinance levying a special district excise tax, a certified copy of the ordinance shall be mailed to the State Auditor, as ex officio the chief inspector and supervisor of public offices, the State Treasurer and the Tax Commissioner.

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