West Virginia Governor's Proposed Personal Income Tax Reduction

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In his 2021 State of the State Address, West Virginia Governor Jim Justice proposed a repeal of the state income tax. While he was short on specifics in his address, the general framework was to cut the rate in half for most West Virginians and cutting the rate by 1/3 for the "super highest earners." In conjunction with the reduction in the income tax, Gov. Justice discussed raising the state sales and use tax by 1.5%, "tiering" rates for natural resource producers so that they will pay a higher rate when the price of natural resources are robust and broadening the sales and use tax base by taxing professional services.

Gov. Justice's announced plans followed public statements made by new Senate President Craig Blair in which he expressed a desire to eliminate the personal income tax in West Virginia. Gov. Justice hosted a series of virtual town halls in which he solicited input from the state's citizens, but he had yet to make a draft bill available. Finally, on March 4, 21 days into the 60-day legislative session, the Governor submitted his bill to the legislature. While the full version of the bill has not yet been posted on the legislature's website, it is available on the website for Gov. Justice., and it is expected that the full version of the bill will be available on March 5.

An abstract of the bill provides a good summary of the bill's provisions:

- A 60% reduction of the personal income tax, which currently taxed per a tiered schedule with a minimum rate of 4% and a maximum rate of 6.5%
    - Only applies to wages and salaries and pensions, annuities, social security, and unemployment (note that West Virginia began phasing out state income tax on social security beginning in tax year 2020)
    - The reduction does not apply to business profits, rents and royalties, pass-through entity profits, capital gains, farm income, supplemental gains and losses, taxable

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interest, or dividends
    - Estimated to decrease general revenue fund collections by over $1 billion

- Increase state sales tax from 6.0% to 7.9%
    - Over 50 municipalities in West Virginia impose a local sales and use tax, making the effective rate in these municipalities 8.9%
    - West Virginia's state rate of 7.9% would be the highest in the United States (only the commonwealth of Puerto Rico has a higher rate)
    - Estimated to increase collections from sales and use tax by $475 million

- Expand the sales tax base to include:
    - Computer hardware and software, selected advertising, electronic data processing, health and fitness memberships, and sales of lottery tickets
    - Legal and accounting services, and other professional services (likely to exclude medical services). West Virginia would become the only state east of the Mississippi River to impose a sales and use tax on professional services
    - Estimated to increase collections by $180 million

- Impose a tax on luxury items
    - It is anticipated that vehicle sales will not be subject to the "luxury items" tax
    - Estimated to increase collections by $20 million

- Increase the current 5% severance tax on natural gas via tiered rates that increase as the price of the commodity increases, and vice versa
    - While the rate is tiered, the historical price of natural gas over the last decade would result in a rate more than 5%
    - Estimated to increase revenue collections by $12.5 million

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- Tax “wet gas” at a rate of 6.5%
    - Wet gas is generally produced via horizontal drilling in the Marcellus and Utica Shale formations in West Virginia
    - Estimated to increase revenue collections by $5 million
- Impose tiered severance tax rates on coal production
    - For thin seam coal formations, estimated to increase revenue collections by $7.5 million
    - For metallurgical and steam coal produced by deeper formations, expected to increase collections by $16 million
- Impose tiered severance tax rates on oil production
    - Estimated to increase revenue collections by $1 million
- Increase taxes on cigarettes, tobacco products and e-cigarettes
    - The tax on cigarettes would increase from $1.20/pack to $2.25/pack
        - Estimated to increase revenue collections by $70 million
    - The tax on tobacco products would increase from 12% of the wholesale price to 19.5% of the wholesale price
        - Estimated to increase revenue collections by $8.2 million
    - The tax on e-cigarettes would increase tenfold, from 7.5¢/mL to 75¢/mL
        - Estimated to increase revenue collections by $8 million
    - Increase beer barrel tax from $5.50 per barrel to $29.25 per barrel
        - Estimated to increase revenue collections by $26 million

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- Increase wine tax from 26.406 ¢/liter (or $1/gallon) to $4 per gallon
    - Estimated to increase revenue collections by $5.5 million
- Increase the liquor wholesale markup from 28% to 39.25%
    - Estimated to increase revenue collections by $5.4 million
- Increase soft drink tax
    - From 1¢/9 fluid ounces to 6¢/16.9 fluid ounces
    - From 80¢/gallon of syrup to $4 per gallon of syrup
    - From 1¢/28.35 grams of dry mixture to 5¢/28.35 grams of dry mixture

It is notable that many of these concepts were part of Gov. Justice's massive proposed tax increase in 2017, the first year of his first term as Governor. Those proposals to increase the sales tax, broaden the sales tax base, impose a commercial activities tax, and increase taxes on beer and liquor met opposition in the legislature and were not implemented. The Governor's proposed tiered severance tax for natural resources met a similar fate in 2017.

It is notable that in 2017, Gov. Justice was a registered Democrat, and the legislature was under Republican control. Justice changed parties, registering as a Republican later in 2017, and remains so. Republicans currently hold a supermajority in both the House and Senate. Whether that tips the scales in favor of a tax bill that imposes over $900 million of tax increases and new taxes on a broad spectrum of industries remains to be seen.

For more information, contact Craig Griffith or any attorney with Frost Brown Todd's Tax practice group.

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