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Comprehensive West Virginia Property Tax Reform Failed, But Incentives Are Available

The West Virginia Legislature in the 2021 regular session approved H.J.R. 3, the Property Tax Modernization Amendment. The resolution proposed an amendment to Article X, section 1 of the West Virginia Constitution that would have given the Legislature the authority to exempt from ad valorem property taxation tangible machinery, equipment, and inventory directly used in business activity and personal property tax on motor vehicles owned and operated by individuals and businesses alike.

Voters soundly rejected the measure when it appeared as Amendment 2 on the November 2022 general election ballot — partly based on staunch opposition from Gov. Jim Justice (R).[1]

After initial hand-wringing early in the 2023 session over whether to focus on personal income tax reductions or property tax incentives, the Legislature and the governor turned their attention to personal income tax reform in the Mountain State. H.B. 2526 passed the Legislature on March 4 and was signed by the governor on March 7. While its initial 21.25 percent cut in graduated personal income tax rates grabbed the headlines, the legislation also provides credits against personal and corporate net income taxes for real and personal property taxes that taxpayers remit to counties. H.B. 2526 provides a refundable credit against personal and corporate net income taxes for 100 percent of personal property taxes timely paid for motor vehicles; a refundable real property tax credit for 100 percent of real property taxes paid on homesteads by disabled veterans; and a refundable small business property tax adjustment credit for small businesses, with the amount of the credit being 50 percent of the property tax timely paid. A small business is defined as a business with personal property in West Virginia with an aggregate appraised value of $1 million or less.

The estimated fiscal impact for the various credits against personal and corporate net income taxes based on property taxes are

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included in the Department of Revenue's fiscal note for H.B. 2526: $135 million to $140 million for personal property taxes paid on vehicles, $8.4 million for the real property tax credit for disabled veterans, and $35 million for the personal property tax credit for small businesses. The financial benefit for small businesses is not insubstantial, but it is a far cry from the proposal to eliminate personal property taxes for machinery, equipment, and inventory owned by all businesses in West Virginia. Nevertheless, there are several property tax incentives available to taxpayers in West Virginia, with a heavy emphasis on incentives for manufacturers.

Special Valuation for Qualified Capital Additions

West Virginia has a special property tax valuation program for certain manufacturing facilities in which qualified capital additions to those facilities (including natural gas processing facilities) are appraised for property tax purposes at salvage value — or 5 percent of the original cost of the facility — for the first 10 years of the life of the qualified capital addition.[2] It is colloquially referred to as the "5 for 10" program, with the qualified capital addition being valued at 5 percent of the original cost for 10 years. The qualified capital addition includes real and personal property, but land does not qualify.[3]

The original version of this special valuation program, enacted in 1997, required an original investment in the manufacturing facility of $100 million, with qualified capital additions exceeding $50 million or more subject to valuation at 5 percent of the original cost.[4] In 2011 the program was updated to include natural gas liquid extraction facilities, and the investment threshold for these facilities is an original investment of $20 million and a qualified capital addition of $10 million.[5]

Beginning with tax year 2013, the program was updated again to attract ethylene cracker facilities to the state. Any natural gas liquid extraction facility — or facility that uses products produced from a natural gas liquid extraction facility — receives salvage value treatment for the entire facility, regardless of any preexisting investment, if the original cost of the facility exceeds $2 billion.[6]

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Since its inception, the special program has required that the capital addition be constructed, located, or installed within 2 miles of a manufacturing facility owned or operated by the person making the capital addition.[7] This requirement was repealed for qualified capital additions placed into service on and after January 1, 2023.[8]

West Virginia assesses real and personal property at 60 percent of its appraised value, resulting in qualified capital additions valued under this program being assessed at 3 percent of the original value for the addition.

This program results in $40 million of tax savings per year, according to the West Virginia Tax Division.[9]

Special Valuation for Pollution Control Facility

Certain personal property located at a pollution control facility is also valued at salvage value for property tax purposes.[10] Salvage value is 5 percent of the original cost under this program.[11] A pollution control facility is any personal property designed, constructed, and installed primarily to abate or reduce air or water pollution or contamination in compliance with West Virginia or federal air or water quality standards.[12]

The West Virginia Department of Environmental Protection maintains a list of personal property that qualifies as pollution abatement control equipment for purposes of the special valuation program.[13] The list of preapproved items is posted on the Tax Division's website, and items not on the list require the department's approval to receive the special valuation treatment. [14]

Coal waste power projects designed and constructed to reclaim, burn, and dispose of coal waste in compliance with applicable air and water quality standards are deemed pollution control facilities. Thus, all items of personal property may be valued at salvage value, subject to an allocation formula. [15]

Since 2001, wind power projects — including the turbine and tower — have been treated as pollution control equipment.[16] Beginning in tax year 2008, the portion of the wind turbine and tower subject to valuation at 5 percent of the original cost can be no greater than

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79 percent of the facility's total value, and no other equipment associated with the wind power project is subject to special valuation treatment.[17]

To date, legislation has not been enacted to treat solar power projects as pollution control equipment.

If a pollution control facility produces a profitable byproduct, or if part of the facility is required for the operation of the business without regard to state or federal air or water quality standards, the tax commissioner allocates the portion of the value attributable to the pollution control activity.[18]

This program is the most widely used of the special valuation incentives, with tax savings totaling $72.6 million per year, according to the Tax Division.[19]

Special Valuation for Manufacturing Property

The value of specialized manufacturing property is its salvage value.[20] Specialized manufacturing property includes molds, jigs, dies, forms, patterns, or templates directly used in manufacturing.[21] Again, salvage value is generally defined as 5 percent of the original cost of the property.[22] This program results in tax savings totaling $2 million per year, according to the Tax Division.[23]

Special Valuation for High-Technology Business

The value of servers or tangible personal property directly used in a high-technology business or in an internet advertising business is its salvage value, or 5 percent of its original cost.[24] The definition of high-technology business includes a laundry list of qualifying activities, including the designing of computer hardware, computer software, computer systems, websites, and networks.[25] An internet advertising business calls public attention to goods and services while using the internet as its sole advertising communications medium.[26]

This program results in tax savings totaling $130,000 per year, according to the Tax Division.[27]

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Special Valuation for Special Aircraft Property

The value of special aircraft property is its salvage value.[28] Special aircraft property is defined as all aircraft owned or leased by commercial airlines or private carriers — or any parts, materials, or items used in the construction, maintenance, or repair of aircraft that will become affixed to the aircraft, the aircraft's engine, or any other component of the aircraft.[29]

Again, salvage value is generally defined as 5 percent of the original cost of the property.[30]

This program results in tax savings totaling $1.7 million per year, according to the Tax Division.[31]

Special Valuation for Wireless Technology Property

Beginning July 1, 2019, for five years following the date of erection, the value of a wireless tower is its salvage value, and the value of the tower determined under the unit valuation approach (if the tower is owned by a public utility) must be reduced by the difference between the original cost and the tower's salvage value.[32] A tower is a "structure which hosts an antenna or other equipment used for the purposes of transmitting cellular or wireless signals for communications purposes, including telephonically, or for computing purposes, including any antenna and all associated equipment, and which is constructed or erected on or after July 1, 2019."[33]

Salvage value, as with other special valuation programs, is 5 percent of the original cost.[34]

No tax savings data is available for this relatively new incentive.

PILOT Agreements

West Virginia provides for payment-in-lieu-of-taxes (PILOT) agreements in several circumstances.

First, under legislation enacted in 2021, real or personal property located in a development or redevelopment district owned by the

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state, a state political subdivision, or an agency thereof can be subject to a PILOT agreement. The property in the district and owned by a governmental agency is considered public property and is exempt from state and local ad valorem property taxation — as long as title is owned by the state, a political subdivision, or an agency thereof. The exemption extends to leasehold or similar interests held by persons other than the state, a political subdivision, or an agency thereof, if the interest is acquired or constructed under a written agreement of the county school board, county commission, and any municipal authority within whose jurisdiction the property is physically situated.[35] The PILOT agreement must provide the amount that will be paid by the lessee and the amount, if any, attributable to the base assessed value of property in the district and the incremental value that results from development in the district.[36]

Municipalities or county commissions may enter into PILOT agreements for certain electric power systems. The real and personal property acquired by the municipality or county — and any leasehold interest therein held by other persons — is considered public property and is exempt from property taxation as long as it is owned by the county or municipality. The exemption is applicable to leasehold interests only if acquired or constructed with the written agreement of the county school board, county commission, and any municipal authority within whose jurisdiction the electric power system is to be physically situated. Payments under the PILOT agreement are distributed as if they resulted from property taxation.[37]

Freeport Amendment Exemption

Tangible personal property moving in interstate commerce through or over the territory of West Virginia, or that was consigned from an out-of-state point of origin to a public or private in-state warehouse for storage in transit to a final destination outside the state, is deemed not to have acquired a situs in West Virginia and is not subject to West Virginia ad valorem property tax. This exemption applies whether the ultimate destination of the property is specified when transportation begins or afterward, if the ultimate

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destination specified timely for exempt status determination purposes.[38]

The exemption applies even if the personal property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged for delivery out of state, unless such activity results in a new or different product.[39]

This program results in tax savings of $12.7 million per year, according to the Tax Division.[40]

Manufacturing Property Tax Adjustment Credit

This provides West Virginia manufacturers with a nonrefundable state tax credit in the amount of local property taxes paid on manufacturing inventory.[41] It may be taken against personal income taxes or corporate net income taxes.[42]

Manufacturing inventory is defined as "raw materials, goods in process and finished goods of a business primarily engaged" in a manufacturing business with a North American Industry Classification System code number of 31, 32, or 33.[43] Entities that own property assessed as a public utility by the West Virginia Board of Public Works are ineligible for the credit.[44]

This program results in $3.5 million of tax savings per year, according to the Tax Division.[45] As noted in the division's 2023 tax expenditure study, West Virginia's move to single-sales-factor apportionment beginning with tax year 2022 — combined with the shift to market-based sourcing for sales other than tangible personal property — may reduce the tax liability of many West Virginia manufacturers, lessening this credit's impact.[46] The repeal of the business franchise tax also lowered its impact.

Natural Gas Liquids Property Tax Adjustment Credit

Beginning July 1, 2020, storers or transporters of natural gas liquids may claim a credit against corporate and personal income taxes.[47] The credit is the amount of West Virginia ad valorem property tax paid on the value of inventory and equipment of the eligible

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taxpayer during the personal income tax year or corporate net income tax year.[48]

No entities claimed this credit in tax year 2020, according to the Tax Division, despite an estimated general revenue fund impact of $500,000 annually.[49]

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[1] Brad McElhinny, "Amendment Two on Personal Property Taxes Is Resoundingly Defeated," *MetroNews*, Nov. 8, 2022.

[2] W. Va. Code sections 11-6F-2(e) and -3.

[3] W. Va. Code section 11-6F-2(f).

[4] W. Va. Code section 11-6F-2(e)(1).

[5] *Id.*

[6] W. Va. Code section 11-6F-2(e)(2).

[7] W. Va. Code section 11-6F-2.

[8] W. Va. Code section 11-6F-6(b).

[9] "West Virginia Tax Expenditure Study: Expenditures for Business Tax, Excise Tax, and Property Tax Expenditures," State Tax Department Research Division (January 2021).

[10] W. Va. Code section 11-6A-3.

[11] W. Va. Code R. section 110-6-2.7.

[12] W. Va. Code section 11-6A-2; W. Va. Code R. section 110-6-2.4.

[13] W. Va. Code section 11-6A-2; W. Va. Code R. section 110-6-4.

[14] West Virginia Tax Division, "West Virginia Pollution Abatement Preapproved Items" (2019).

[15] W. Va. Code R. section 110-6-5.2.

[16] W. Va. Code section 11-6A-5a.

[17] W. Va. Code section 11-6A-5a(b); W. Va. Code R. section 110-6-4.

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[18] W. Va. Code R. section 110-6-5.4.

[19] 2021 study, *supra* note 9.

[21] W. Va. Code section 11-6E-3.

[22] W. Va. Code section 11-6E-2(b)(12).
W. Va. Code section 11-6E-2(b)(11).

[23] 2021 study, *supra* note 9.

[24] W. Va. Code sections 11-6J-3 and -2(2).

[25] W. Va. Code section 11-15-9h(b)(2).

[26]W. Va. Code section 11-15-9h(b)(4).

[27 2021 study, *supra* note 9.

[28] W. Va. Code section 11-6H-3.

[29] W. Va. Code section 11-6H-2(b)(7).

[30] W. Va. Code section 11-6H-2(b)(6).

[31] 2021 study, *supra* note 9.

[32] W. Va. Code section 11-6L-3.

[33] W. Va. Code section 11-6L-2.

[34] *Id.*

[35] W. Va. Code section 7-11B-18(b).

[36] W. Va. Code section 7-11B-18(c).

[37] W. Va. Code section 8-19-4.

[38] W. Va. Const. Art. X, section 1c; W. Va. Code section 11-5-13(a); W. Va. Code St. R. section 110-3-3.6.

[30] W. Va. Code section 11-5-13(b).

[40] 2021 study, *supra* note 9.

[41] W. Va. Code section 11-13Y-4.

[42] W. Va. Code sections 11-13Y-3 and -4.

[43] W. Va. Code section 11-13Y-2(b)(7).

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[44] W. Va. Code section 11-13Y-2(b)(5).

[45] "West Virginia Tax Expenditure Study: Corporation Net Income Tax and Personal Income Tax Expenditures," West Virginia Tax Division Research and Development (January 2023).

[46] *Id.*

[47] W. Va. Code section 11-13HH-3.

[48] W. Va. Code section 11-13HH-4(b).

[49] 2023 study, *supra* note 45.

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