

WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In This Box

2013 JUL 25 PM 4:04

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code §11-10-11c

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 28

TITLE OF RULE BEING PROPOSED: MUNICIPAL SALES AND SERVICE AND USE TAX ADMINISTRATION

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 25<sup>th</sup> 2013 AT 5:00 p.m. <sup>noon</sup> ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

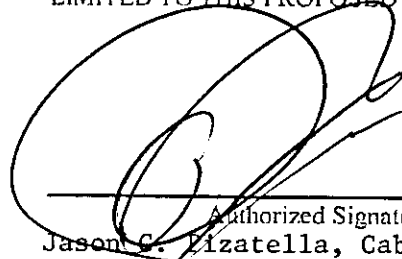
Mrk Marlon

Department of Tax and Revenue

1001 Lee Street

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

Jason C. Pizatella, Cabinet Secretary

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

## QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: June 19, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Department, Legal Division, 1001 Lee Street, East, Charleston, WV 25324-1005 (304) 558-5330

LEGISLATIVE RULE TITLE: Municipal Sales and Service and Use Tax Administration

1. Authorizing statute(s) citation West Virginia Code §11-10-11c

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

Pending

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Public Hearing(s) or Public Comment Period ended:

Pending

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received \_\_\_\_\_

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

Pending

f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Mark S. Morton, General Counsel for Revenue Operations

State Tax Department - Legal Division, P.O. Box 1005, Charleston, WV

304-558-5330 (tel) 304-558-8728 (fax)

Mark.S.Morton@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

\_\_\_\_\_  
\_\_\_\_\_

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A  
\_\_\_\_\_

- b. Date of hearing or comment period:

N/A  
\_\_\_\_\_

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A  
\_\_\_\_\_

- d. Attach findings and determinations and reasons:

Attached N/A  
\_\_\_\_\_

**PROPOSED  
TITLE 110  
LEGISLATIVE RULE  
TAX DEPARTMENT  
SERIES 28  
MUNICIPAL SALES AND SERVICE AND USE TAX ADMINISTRATION  
STATEMENT OF CIRCUMSTANCES**

The passage of H.B. 105 in the First Special Session of the Legislature in 2013 authorized the State Tax Department to administer, enforce and collect any local sales and service or use tax. That bill also authorized the Tax Department to set a fee for such administration and authorized the promulgation of a legislative rule to set that fee.

This rule is necessary to provide the appropriate calculation of the administrative fee that the tax department needs to effectively administer these taxes for municipalities. This rule is likewise necessary to provide appropriate clarification on the extent of the administrative responsibilities delegated to the Tax Commissioner.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Municipal Sales and Service and use Tax Administration (110 CSR 28)

Rule Title: \_\_\_\_\_

Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Tax Department

Address: 1001 Lee Street  
Charleston, WV 25301

Phone Number: (304) 558-5330 Email: \_\_\_\_\_

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Rule, as written, explains and clarifies all municipal sales and use taxes imposed under the provisions of W. Va. Code §8-1-5a et seq. and W. Va. Code §8-13C-8 and defines and clarifies the State Tax Department periodic fee and its calculation.

This fiscal note summary reflects the costs of implementation of necessary State tax administration associated with the recent enactment of Municipal Home Rule legislation allowing up to 20 municipalities to impose a local sales and use tax.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

<b>FISCAL YEAR</b>			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0.00	300,000.00	1,000,000.00
Personal Services	0.00	70,000.00	700,000.00
Current Expenses	0.00	30,000.00	100,000.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	200,000.00	200,000.00
<b>2. Estimated Total Revenues</b>	0.00	440,000.00	1,000,000.00

Municipal Sales and Service and use Tax Administration (110 CSR 28)

Rule Title: \_\_\_\_\_

Rule Title: \_\_\_\_\_

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The State Tax Department will incur significant additional administrative expenses associated with the implementation of local municipal sales taxes per the allowance of the recently enacted Municipal Home Rule Bill. These costs would be recouped through an administrative fee as determined by this Rule. The administrative fee would offset an amortized start-up cost for the implementation of a new sales and use tax as well as ongoing administrative costs related to collection, compliance, accounting, audit and taxpayer service functions necessary to administer the local tax. The added services are necessary to help businesses comply with the complexities associated with a local tax imposed within limited geographic subset areas of the State.

State governments around the country typically recoup their expenses associated with the administration of local sales taxes through the imposition of a fee against the gross proceeds of such local tax. In the alternative, State Taxpayers would have to subsidize the additional administrative costs through additional State allocated resources for tax administration. Due to economies of scale, smaller states such as West Virginia must impose a larger fee to fully recoup administrative costs on local sales tax collections than larger states, especially those with large scale county option sales taxes.

Since each implementation of a local sales tax requires substantial up-front expenditures, the State Tax Department incurs these costs prior to any local sales tax revenue being collected against which a retainage fee can be applied. The Rule provides for the recovery of the up-front implementation costs and the ongoing administration costs over time. One alternative to the State Tax Department periodic fee

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative

\_\_\_\_\_

TITLE 110  
LEGISLATIVE RULE  
DEPARTMENT OF TAX AND REVENUE

2013 JUL 25 PM 4: 04

SERIES 28  
MUNICIPAL SALES AND SERVICE AND USE TAX ADMINISTRATION

**§110-28-1. General.**

1.1. Scope. -- These legislative rules explain and clarify administrative and procedural requirements and characteristics of municipal sales and use taxes imposed under the provisions of W. Va. Code §8-1-5a et seq. and W. Va. Code §8-13C-8.

1.1.a. In recognition of:

The experience, knowledge, and technical, and legal expertise of the Tax Department,

The computer and logistical systems currently operated and maintained by the Tax Department,

The auditing and revenue processing resources of the Tax Department, and

The obvious cost efficiency and operational efficiencies of placing municipal consumers sales and service tax and use tax administration under the exclusive authority of the Tax Department --

The Legislature has determined that the preeminent interest of all municipal consumers sales and service tax and use tax jurisdictions is best served by empowerment of the Tax Commissioner, by law, to hold, maintain and exercise sole authority to administer the municipal consumers sales and service tax and use tax.

1.1.b Pursuant to Legislative intent that the Tax Department administer the municipal consumers sales and service tax and use tax, this rule sets forth procedures and requirements for such administration.

1.1.c. Pursuant to Legislative intent that the General Fund not be burdened with costs of administration of the municipal consumers sales and service tax and use tax, this rule sets forth procedures and requirements for statutorily mandated recovery of Tax Department costs incurred in such administration.

1.2. Authority. -- W. Va. Code §11-10-11c.

1.3. Filing Date. --

1.4. Effective Date. --

**§110-28-2. Definitions.**

2.1. "Accumulated cost account" means the total pooled amount of all implementation costs and all operating costs incurred by the Tax Department on and after the commencement date for recoverable cost accrual. The accumulated cost account is added to periodically as costs are incurred. The accumulated cost account is drawn down by the periodic cost recovery fee. After any periodic offset of the accumulated cost account by the periodic cost recovery fee or any other adjustment, any amount remaining in the accumulated cost account, carries forward into future periods, and may be further offset from time to time as the periodic cost recovery fee is applied in

succeeding periods.

2.2 “Allocation numerator” means revenues of a specific revenue generating municipality for the period under the provisions, as applicable, of W. Va. Code §8-1-5a (Home Rule Pilot Plan) or W. Va. Code §8-13C-1 et seq. (Municipal sales and use tax), net of refunds and net of adjustments for filing errors, payment errors, and similar adjustments for the period, but before offset by the periodic cost recovery fee and before application of the reconciliation adjustment.

2.3 “Allocable revenues” means total net tax revenues, as herein defined, after offset by the periodic cost recovery fee and after application of the reconciliation adjustment. Allocable revenues are periodically distributed to each revenue generating municipality in proportion to the amount that each allocation numerator (as herein defined) for the period, bears to total net tax revenues (as herein defined) for the period.

2.4. “Excise tax” means collectively the special district excise tax authorized under W.Va. Code §7-22-1 et. seq. and W.Va. Code §8-38-1 et. seq.

2.5. “Implementation cost” means the total aggregate cost incurred by the Tax Department for initial implementation of tax administration for, or related to, all program municipalities. Implementation cost includes, but is not limited to, the initial costs incurred by the Tax Department to: hire and train personnel, configure record keeping systems, design forms, configure remittance processing systems and auditing and verification processes, implement and test computer programming, build and input municipal mapping and boundaries databases and zip code databases and configure and set up systems for distribution of revenues to each municipal taxing jurisdiction, and undertake other necessary costs to set up an administration system for collecting and distributing allocable revenues derived from municipal consumers sales and service tax and use tax revenues for program municipalities.

2.6. “Municipal consumers sales and service tax and use tax” and “municipal consumers sales tax” and “municipal sales and service tax” and “municipal use tax” mean and refer to, collectively, any tax authorized under the provisions of W.Va. Code §8-1-5a (Home Rule Pilot Plan) or W. Va. Code §8-13C-1 et seq. (Municipal sales and use tax).

2.7. “Net tax revenues” means the total pooled amount of all revenues under the provisions, as applicable, of W.Va. Code §8-1-5a (Home Rule Pilot Plan) or W.Va. Code §8-13C-1 et seq. (Municipal sales tax), of all revenue generating municipalities, for the period, net of refunds and net of adjustments for filing errors, payment errors, and similar adjustments for the period, and after application of the reconciliation adjustment for the period, but before offset by the periodic cost recovery fee.

2.8. “Operating cost” means the total aggregate cost incurred by the Tax Department for direct and indirect ongoing costs incurred to administer taxes imposed pursuant to the authority of W.Va. Code §8-1-5a (Home Rule Pilot Plan) or W.Va. Code §8-13C-1 et seq. (Municipal sales tax), for, or related to, all program municipalities. Operating cost includes, but is not limited to, costs of day to day operations for processing and verifying tax returns and remittances, verifying and issuing tax refunds, processing and correcting filing and payment errors, calculating and issuing periodic distributions of tax revenues back to revenue generating municipalities, administering the interface between the State and Streamlined sales and use tax administrators for municipal consumers sales and service tax and use tax, administering rate changes, changes and updates to municipal boundaries and changes and updates to the vendor database for program municipalities.

2.9 “Period,” “the period” or “periodic” means and refers to the tax period or accounting period, applicable in the context of the usage of the term, and may refer to a monthly, quarterly, semi-annual or annual time period, or such other time period as may be prescribed by the Tax Commissioner.



2.10. "Periodic cost recovery fee" -- The periodic cost recovery fee is retained by the Tax Department to recover those costs aggregated in the accumulated cost account. "Periodic cost recovery fee" means the lesser of:

2.10.a. The total balance in the accumulated cost account; or

2.10.b. 5% of net tax revenues for the period.

2.11. "Program municipalities" means all municipalities that have achieved full legal authorization to impose and implement a municipal consumers sales and service tax and use tax under the provisions of West Virginia Code § 8-1-5a (Home Rule Pilot Plan) or 8-13C-1 et seq. (municipal consumers sales and service tax and use tax). A municipality shall not be treated as a program municipality until actual tax collections have begun.

2.12. "Reconciliation adjustment" means the adjustment for the variance between the amount of the projected periodic cost recovery fee applied in a fiscal year versus the periodic cost recovery fee actually calculated for the fiscal year. The adjustment is the amount to be added to net tax revenues or subtracted from net tax revenues (among other adjustments) to determine allocable revenues. See discussion in section 4.11. of this rule.

2.13. "Revenue generating municipalities" means those municipalities that have generated tax revenues for the period under the provisions, as applicable, of W. Va. Code §8-1-5a (Home Rule Pilot Plan) or W. Va. Code §8-13C-1 et seq. (Municipal sales tax), net of refunds and net of adjustments for filing errors, payment errors, and similar adjustments for the period, but before offset by the periodic cost recovery fee and before application of the reconciliation adjustment for the period.

### **§110-28-3. Tax Base.**

Any municipal sales and service tax and municipal use tax imposed under the authority granted by W. Va. Code §8-1-5a et seq. and W. Va. Code §8-13C-1 et seq. is subject to the following:

3.1. The base of a municipal sales and service tax and municipal use tax imposed shall be identical to the base of the consumers sales and service tax imposed pursuant to W. Va. Code §11-15-1 *et seq.* on sales made and services rendered and on the use of tangible personal property, custom software or taxable services within the boundaries of the municipality, subject to the following:

3.1.a. Except for the exemption provided in W. Va. Code §11-15-9f, all exemptions and exceptions from consumers sales and service tax apply to a municipal sales and service tax and municipal use tax;

3.1.b. Sales of gasoline and special fuel are not subject to a municipal sales and service tax or municipal use tax; and

3.1.c. Sales of motor vehicles taxable under W. Va. Code §11-15-3c are not subject to a municipal sales and service tax or municipal use tax.

3.2. Any municipal sales and service tax and municipal use tax imposed applies solely to tangible personal property, custom software and services that are sourced to the municipality. The sourcing rules set forth in W. Va. Code §11-15B-1 *et seq.*, including any amendments thereto, apply to any municipal sales and service tax and municipal use tax levied.

### **§110-28-4. Administration and Collection of Tax.**

4.1. Any municipality that imposes a municipal sales and service tax and municipal use tax may not administer or

collect the tax, but shall use the services of the Tax Commissioner to administer, enforce and collect the tax imposed in the same manner as the state consumers sales and service tax and use tax. The provisions of articles fifteen, fifteen-a and fifteen-b, chapter eleven of the W. Va. Code and the provisions of W.Va. CSR §110-15-1 et. seq. shall apply to the implementation and administration of any municipal sales and service tax and municipal use tax imposed and all provisions of those enactments shall be read in extenso herein.

4.2. Any municipal sales and service tax and municipal use tax shall be imposed in addition to the consumers sales and service tax and use tax imposed pursuant to articles fifteen and fifteen-a, chapter eleven of the West Virginia Code on sales made and services rendered and on the use of tangible personal property, custom software or taxable services within the boundaries of the municipality and, except as exempted or excepted, all sales made and services rendered and on the use of tangible personal property, custom software or taxable services within the boundaries of the municipality shall remain subject to the tax levied by those articles.

4.3. Any municipal sales and service tax and municipal use tax shall be imposed in addition to any tax imposed pursuant to W.Va. Code §7-18-1, W.Va. Code §§ 8-13-6 and 8-13-7 and W.Va. Code §8-38-12. The municipal sales and service tax and municipal use tax which is collected or sourced in any special district in which tax is imposed pursuant to W.Va. Code §7-18-1, W.Va. Code §§8-13-6 and 8-13-7 and W.Va. Code §8-38-12, is hereby deemed to be special district excise tax subject to the provisions of the Code under which the applicable special district is created. Municipal sales and service tax and municipal use tax which is collected or sourced in any such special district shall be administered, collected, remitted, and distributed according to the applicable requirements W.Va. Code §7-18-1, W.Va. Code §§8-13-6 and 8-13-7 and W.Va. Code §8-38-12, with like effect as if such W. Va. Code provisions were applicable only to the taxes imposed pursuant to the provisions of W. Va. Code §8-1-5a et seq. and W. Va. Code §8-13C-8, and were set forth in extenso therein.

4.4. Collection by Vendor. - Each vendor shall collect from the purchaser municipal sales and service tax and municipal use tax imposed upon each sale of tangible personal property and service in the municipality at the same time and in the same manner as each vendor collects from the purchaser the state consumers sales and service tax and use tax. Municipal sales and service tax and municipal use shall be added to and constitute a part of the sales price.

4.5. Collection by Retailer. - Every retailer engaging in business in this State and making sales of tangible personal property or taxable services for delivery into a municipality that has imposed any municipal sales and service tax and municipal use tax or with knowledge, directly or indirectly, that the property or services are intended for use in such municipality, shall at the time of making such sales, whether within or without the State, collect the municipal use tax before or at the time such tax accrues from the purchaser in the same manner that each retailer collects the state use tax from the purchaser. Such tax shall be added to and constitute a part of the sales price and the retailer must give to the purchaser a receipt therefor with the tax separately stated thereon.

4.6. Exceptions to Collection Requirements. - Notwithstanding Sections 4.4 and 4.5 of these rules, no municipal sales and service tax and municipal use tax need be collected by the vendor or retailer with respect to a transaction if the state consumers sales and service and use tax need not be collected under the provisions of the consumers sales and service and use tax, as if such provisions were set forth herein in extenso.

4.7. The Tax Commissioner may prescribe such processes, procedures, forms, schedules and other administrative requirements as the Tax Commissioner may determine to be useful or convenient for the efficient administration of the municipal consumers sales and service tax and use taxes addressed under this rule. The Tax Commissioner may require certified copies of the ordinance imposing the taxes, or changing the rate in a tax, along with a certified description of the boundaries of the municipality, the nine-digit zip codes for addresses located within the boundaries of the municipality, the certified designation of a municipal official to whom all notices and communications are to be sent and from whom all notices and communications are to be sent, and certified

documentation of such other information as the Tax Commissioner may need to administer, collect and enforce the taxes administered under this rule .

4.8. To the extent that they may be reasonably subject to computation, the Tax Commissioner may annually issue an Administrative Notice, to be published on or before the first day of June of each year in the State Register, setting forth projections or determinations of:

4.8.a. The projected beginning and ending balances of the accumulated cost account for the fiscal year beginning 30 days after the June 1 issuance date, and

4.8.b. the projected offsets and adjustments to the accumulated cost account projected for such fiscal year (principally the projected periodic cost recovery fee), and

4.8.c. The reconciliation adjustment that will be applied to determine allocable revenues in such fiscal year.

4.8.d. Tax Department's projection of the amount of the periodic cost recovery fee that will be applied against net tax revenues during such fiscal year.

4.8.e. The projected amount of total allocable revenues such fiscal year, and

4.8.f. At the sole discretion of the Tax Commissioner, projected allocable revenues to be distributed to each separate revenue generating municipality, on annual or other periodic basis, as the Tax Commissioner may determine, in such fiscal year, and

4.8.g. Such other data and information as the Tax Commissioner may elect to include.

4.9. Provided, that: The Tax Commissioner may elect to issue a notice other than, or in addition to, an Administrative Notice, and may elect to publish the Administrative Notice or any other such notice, by means other than, or in addition to, the State Register.

4.10. The Tax Commissioner may, solicit comments or recommendations regarding such projections, determinations and data for a period of approximately 30 days, and in response thereto, may reissue the notice, as amended, on or about the July 1 next succeeding the initial publication date.

4.11. The periodic cost recovery fee is an amount retained from municipal consumers sales and service tax and use tax proceeds by the Tax Department to recover those costs reflected and aggregated in the accumulated cost account.

4.11.a. Instead of applying the periodic cost recovery fee to offset net tax revenues in a given period, the Tax Department may, at the election of the Tax Commissioner, apply a projected periodic cost recovery fee against net tax revenues for a given period and then may add or subtract a reconciliation adjustment to net tax revenues for the next succeeding period, to reconcile the difference between the projected periodic cost recovery fee as applied in that previous period and the periodic cost recovery fee actually attributable to that previous period.

#### **§110-28-5. Remittance of Tax.**

5.1. No profit shall accrue to any person as a result of the collection of the municipal sales and service tax regardless of the fact that the total amount of such taxes collected may be in excess of the amount for which such person would be liable by the application of the levy set forth by the municipality, not to exceed one percent, to the

gross proceeds of his sales. The total of all municipal sales and service and use taxes collected by any such person shall be returned and remitted to the Tax Commissioner.

5.2. Any person who is required to collect and remit the consumers sales and service tax or the use tax and who was also required to pay such taxes on purchases of tangible personal property or services for use or consumption in his business may utilize one of the following procedures when paying the municipal sales and service and use tax collected to the Tax Commissioner.

5.2.a. Such person may separately remit the amount collected and pay the amount due and owing on his purchases made using the direct pay permit procedure.

5.2.b. Such person may credit the amount of tax paid on his purchases for which an exemption is claimed against the amount of tax collected and:

5.2.b.1. if the amount collected is greater than the amount of tax paid on his exempt purchases, he shall remit the difference to the Tax Commissioner; or

5.2.b.2. if the amount of tax paid on his exempt purchases is greater than the amount collected, he may seek a refund or credit for the difference as provided in Section 9a of these rules.

5.2.c. A person shall use the same means to collect and remit municipal sales and service and use tax as the person uses to collect and remit the consumers sales and service tax and use tax.

5.3. Sales and Service Tax Return and Payment- Any municipal sales and service and use tax that a person is required to collect and remit to the State Tax Commissioner shall be provided for in the same return that such person is required to file under the consumers sales and service tax and use tax.

#### **§110-28-6. Appeals, Standards and Jurisdiction**

6.1. The Office of Tax Appeals has exclusive and original jurisdiction to hear appeals arising from issues set forth in section 6.3 of this rule for which the Tax Commissioner has administration, enforcement and collection responsibility under W. Va. Code §8-1-5a et seq. and W. Va. Code §8-13C-8 to the extent provided in this rule or for excise taxes, as herein defined.

6.1.a. The Office of Tax Appeals has no authority to hear challenges, disputes or other issues relating to the periodic cost recovery fee or any aspect of the Tax Commissioner's cost recovery authorized by statute and addressed in this rule.

6.1.b. The Office of Tax Appeals has no authority to hear challenges, disputes or other issues relating to the amount of money distributed to any municipality pursuant to W. Va. Code §8-1-5a et seq. and W. Va. Code §8-13C-8 or the provisions of this rule or to the methodology of calculating, determining or allocating any such money.

6.1.c. The Office of Tax Appeals has no authority to hear challenges, disputes or other issues relating to the methodology for calculating or determining the periodic cost recovery fee, the amount of the periodic cost recovery fee, or application of the periodic cost recovery fee as an offset against net tax revenues.

6.2. No municipality or county has standing before the Office of Tax Appeals in any dispute arising under any local sales and use tax and excise tax.

6.3. Any review of a municipal sales and service and use tax and excise tax by the Office of Tax Appeals is limited to the following:

6.3.a. Appeals from tax assessments issued by the Tax Commissioner pursuant to W.Va. Code § 11-10-1 et seq. and this rule;

6.3.b. Appeals from decisions or orders of the Tax Commissioner denying refunds or credits for all municipal sales and service and use tax and excise tax administered in accordance with this rule;

6.4. No municipality or county may engage in or participate in any audit, either performed by the Tax Commissioner or by the municipality or county itself, arising under any local sales and use tax and excise tax.

6.5. No municipality or county may hold the Tax Commissioner responsible for any unpaid or unrealized municipal sales and service and use tax.

**§110-28-7. Quarterly distribution of collections; Periodic cost recovery fee; Fund administration.**

7.1. Distributions of allocable revenues collected during each calendar quarter to each revenue generating municipality shall be made not later than the 15th business day of the month following the close of the quarter in which the tax was remitted to the Tax Department. Timely distribution is deemed to have occurred when the Tax Department issues the request for transfer to the State Treasurer. The Tax Commissioner is deemed to have fulfilled the responsibility for distribution of allocable revenues upon issuance of the request for transfer to the State Treasurer.

7.1.a. Each municipality shall record and account for distributions of the taxes administered under this rule on the books and records of the municipality as a single discrete payment. No expenditure, cost or offset shall be recorded or accounted for by the municipality for refunds, reconciliation adjustments, the periodic cost recovery fee, adjustments for filing errors, adjustments for payment errors, and similar adjustments. The municipality effectuates the municipal consumers sales and service tax and use tax only pursuant to statutory authorization. Under that statute, the Tax Commissioner is designated as the sole administrator of the taxes collected and distributed under this rule. Therefore all costs, charges, refunds, offsets, adjustments and fees are deemed to be administered at the Tax Department level of the process.

7.2. A fee, to be retained by the Tax Commissioner, is authorized by statute for collecting, enforcing and administering the municipal sales and service and use tax. That fee is equal to the periodic cost recovery fee calculated under the provisions of this rule. Recoverable cost accrual shall commence on the effective date of Senate Bill 435, enacted during the Regular Legislative Session of 2013. Such fee shall be retained by the Tax Commissioner from proceeds of municipal sales and service and use tax collected for program municipalities. The Tax Commissioner shall deposit all the proceeds from a municipal sales and service and use tax collected for program municipalities, minus any fee for collecting, enforcing and administering taxes, in the appropriate subaccount.

7.3. The following items shall be deposited into the "Local Sales Tax and Excise Tax Administration Fund" created by W.Va. Code §11-10-11c.

7.3.a. The periodic cost recovery fee, calculated pursuant to this rule.

7.3.b. Any amounts received on and after July 1, 2013, from fees retained by the Tax Commissioner pursuant to the authorization provided in W.Va. Code §8-13C-6;

7.3.c. Amounts deducted and retained by the Tax Commissioner under W.Va. Code §11-10-11b;

7.3.d. Any future amounts appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law; and

7.3.e. All moneys in the Tax Department "Municipal Sales and Use Tax Operations Fund" established under W.Va. Code §8-13C-6 that were transferred to the "Local Sales Tax and Excise Tax Administration Fund" on July 1, 2013 as provided in W.Va. Code §11-10-11c.

7.3.f. All moneys in the "Special District Excise Tax Administration Fund" established under W.Va. Code §11-10-11b that were transferred to the "Local Sales Tax and Excise Tax Administration Fund" on July 1, 2013 as provided in W.Va. Code §11-10-11c.

7.3.g. Any accrued interest or other return on the moneys in the fund.

7.4. Any amounts in the fund may be expended by the Tax Commissioner for the general administration, collection and enforcement of all municipal sales and use taxes and excise taxes. Such expenditures may include, but are not be limited to, general administration expenses, such as:

7.4.a. Operating cost; and

7.4.b. Implementation cost.

**§110-28-8. Notification; Effective Date of tax**

8.1. Any jurisdiction that imposes a municipal sales and service and use tax, and any jurisdiction that changes the rate of such tax shall notify the Tax Commissioner at least 180 days before the effective date of the imposition of the taxes or the change in the rate of the taxes. Provided, that such effective date must begin on the July 1 next succeeding 180 days' notice to the Tax Commissioner of the imposition of the taxes or the change in the rate of the taxes. Such notification shall include a certified copy of the ordinance imposing the taxes, or changing the rate in a tax, along with a description of the boundaries of the city, the nine-digit zip codes for addresses located within the boundaries of the City and such other information as the Tax Commissioner may need to administer, collect and enforce the taxes administered under this rule.

8.2. If any jurisdiction in which a municipal sales and service and use tax has been imposed, changes or alters its boundaries, such jurisdiction must provide a certified copy of the ordinance adding or detaching territory from the city to the Tax Commissioner. The ordinance must reflect the effective date of the change, and must be accompanied by a map of the city clearly showing the territory added or detached and the information specified in §8.1. of this rule. Provided, that any municipal sales and service tax or use tax will not be effective on the new boundary until the July 1<sup>st</sup> following 180 days' notice to the Tax Commissioner of the change in boundary.

8.3. Upon notification, each municipality and county must provide the Tax Commissioner with a designated agent to send and receive all information relating to the administration, enforcement, collection and distribution of any municipal sales and service tax and use tax or any excise tax. The county must keep the Tax Commissioner updated with any change in the designated agent.