



**WEST VIRGINIA  
SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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6/13/2017 12:42:22 PM

OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 7 -- NOTICE OF AN EMERGENCY RULE (Page 1)**

AGENCY	Tax				
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES	110-28
RULE NAME	Municipal Sales and Service and Use Tax Administration				

CITE AUTHORITY West Virginia Code § 11-10-11c

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Out of an abundance of caution, the City of Weston prepared its budget for FY 2018 without inclusion of the municipal consumers sales and use tax revenues. The city was unsure of the potential revenue yields that could be expected from the tax, and so set its budget conservatively. Notwithstanding budget formalities, municipal consumers sales and use tax revenues were anticipated on the assumption that revenue from a one percent municipal sales and use tax would be generated beginning July 1, 2017.

However, Weston did not adopt its municipal sales and use tax ordinance until March 16, 2017, and the existing legislative rule requires that a certified copy of the adopted ordinance must be provided to the Tax Commissioner at least 180 days before July 1, 2017. The current legislative rule (Title 110, Series 28) also provides that a new municipal sales and use tax ordinance, and any change in rates of an existing municipal sales and use tax ordinance, may only take effect on the first day of July that begins at least 180 days after a certified copy of the adopted ordinance imposing a new municipal sales and use tax, or the ordinance amending an existing municipal sales and use tax ordinance, is provided to the Tax Commissioner. It has also been determined that as of March 16, 2017, the City of Weston had not amended its business and occupation tax ordinance to reduce its business and occupation tax, which reduction is required by W. Va. Code § 8-1-5a in

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes  
Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 110-28



Rule Id: 16433



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**FORM 7 -- NOTICE OF AN EMERGENCY RULE (Page 2)**

AGENCY	Tax				
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RULE NAME	Municipal Sales and Service and Use Tax Administration				28

CITE AUTHORITY West Virginia Code § 11-10-11c

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order to impose a municipal sales and use tax. It is anticipated that this ordinance will be adopted by the City Council of Weston with an effective date of January 1, 2018.

The Tax Commissioner determined that because the City of Weston had not complied with the 180-day rule in CSR § 110-28-8, the Tax Commissioner would not begin to collect the City's municipal sales and use tax until July 1, 2018. For the City of Weston and its residents, lack of access to the tax revenue anticipated by the municipal sales and use tax will inflict substantial harm to the public interest, negatively affecting all services provided by the municipality, including police protection, firefighting, public health and infrastructure maintenance. Accordingly, pursuant to W. Va. Code § 29A-3-15 (f), the need for this rule qualifies as an emergency.

Under the emergency rule, language is added to CSR § 110-28-8.1 that allows a municipal sales and use tax to take effect, and be collected by the Tax Commissioner, either on the July 1st or the January 1st that begins at least 180 days after a certified copy of the ordinance imposing the tax is submitted to the Tax Commissioner. This emergency amendment would allow the City of Westons municipal sales and use taxes to go into effect and be collected beginning January 1, 2018, assuming the ordinance to reduce the City of Westons business and occupation tax is effective January 1, 2018.

Weston is under

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**FORM 7 -- NOTICE OF AN EMERGENCY RULE (Page 3)**

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CITE AUTHORITY West Virginia Code § 11-10-11c

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significant financial strain due to downturns in the economy and the paucity of resources available to the city. Although the change to be adopted by the emergency rule is a benign adjustment allowing for two possible start dates annually, that change is crucial to the City of Weston.

The State Tax Department has submitted to the Governor for initial approval a proposed permanent amendment to Title 110, Series 28, Section 8, Code of State Rules, pursuant to which a municipality that imposes a municipal consumers sales and use tax, and any municipality that changes the rate of a municipal consumers sales and use tax, shall notify the Tax Commissioner at least 180 days before the date the municipal consumers sales and use tax takes effect or the change in the rate of the tax takes effect and the effective date may be either January 1 or July 1.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**  
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**FORM 9 -- EMERGENCY RULE QUESTIONNAIRE (Page 1)**

AGENCY	Tax				
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES	110-
RULE NAME	Municipal Sales and Service and Use Tax Administration				28

CITE AUTHORITY West Virginia Code § 11-10-11c

**PRIMARY CONTACT**

Mark Morton  
P.O. Box 1005

Charleston, West Virginia 25324

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**FORM 9 -- EMERGENCY RULE QUESTIONNAIRE (Page 2)**

AGENCY	Tax				
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RULE NAME	Municipal Sales and Service and Use Tax Administration				28

CITE AUTHORITY West Virginia Code § 11-10-11c

DATE OF FILING  
Thursday, June 08, 2017

STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE  
West Virginia Code § 11-10-11c

DATE OF FILING OF PROPOSED LEGISLATIVE RULE  
Thursday, June 08, 2017

DOES THE EMERGENCY RULE ADOPT NEW LANGUAGE OR DOES IT AMEND OR APPEAL A  
CURRENT LEGISLATIVE RULE?

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND EXPIRED?  
No

STATE, WITH PARTICULARITY, THOSE FACTS AND CIRCUMSTANCES WHICH MAKE THE  
EMERGENCY RULE NECESSARY FOR THE IMMEDIATE PRESERVATION OF PUBLIC PEACE,  
HEALTH, SAFETY OR WELFARE.

The emergency rule will allow the city of Weston to receive sales and use tax revenue six months earlier than without the rule. Lack of access to the revenue will negatively affect all services provided by the city, including police protection, fire fighting, public health and infrastructure maintenance.

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CITE AUTHORITY West Virginia Code § 11-10-11c

IF THE EMERGENCY RULE WAS PROMULGATED IN ORDER TO COMPLY WITH A TIME LIMIT ESTABLISHED BY THE CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN.

N/A

STATE, WITH PARTICULARITY, THOSE FACTS AND CIRCUMSTANCES WHICH MAKE THE EMERGENCY RULE NECESSARY TO PREVENT SUBSTANTIAL HARM TO THE PUBLIC INTEREST.

See response to above.

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Yes  
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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)**

AGENCY	Tax				
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES	110-
RULE NAME	Municipal Sales and Service and Use Tax Administration				28

CITE AUTHORITY West Virginia Code § 11-10-11c

**PRIMARY CONTACT**

Mark Morton  
P.O. Box 1005

Charleston, West Virginia 25324

**SECONDARY CONTACT**

Stephen Stockton  
P.O. Box 1005

Charleston, West Virginia 25324

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RULE NAME	Municipal Sales and Service and Use Tax Administration				28

CITE AUTHORITY West Virginia Code § 11-10-11c

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

**There would be no revenue impact.**

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)**

AGENCY Tax  
RULE TYPE Legislative AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 110-  
RULE NAME Municipal Sales and Service and Use Tax Administration 28

CITE AUTHORITY West Virginia Code § 11-10-11c

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.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
ESTIMATED TOTAL COST	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

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CITE AUTHORITY West Virginia Code § 11-10-11c

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

**There would be no revenue impact on the revenues of state government. Costs will be only those marginal costs involved in administering the tax for another municipality.**

**Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 4)**

AGENCY	Tax				
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES	110-
RULE NAME	Municipal Sales and Service and Use Tax Administration				28

CITE AUTHORITY West Virginia Code § 11-10-11c

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.

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

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**FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)**

AGENCY	Tax				
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	Yes	TITLE-SERIES	110-
RULE NAME	Municipal Sales and Service and Use Tax Administration				28

CITE AUTHORITY West Virginia Code § 11-10-11c

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

Under the emergency rule as presented, language is added to Section 110-28-8.1 that allows a municipal sales and use tax to take effect, and be collected by the Tax Commissioner, either on the July 1st or the January 1st that begins at least 180 days after a certified copy of the ordinance imposing the tax is submitted to the Tax Commissioner. This emergency amendment would allow the City of Westons municipal sales and use taxes to go into effect and be collected beginning January 1, 2018.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes  
Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 110-28



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TITLE 110  
LEGISLATIVE RULE  
DEPARTMENT OF TAX AND REVENUE

SERIES 28  
MUNICIPAL SALES AND SERVICE AND USE TAX ADMINISTRATION

**§110-28-1. General.**

1.1. Scope. -- This legislative rule explains and clarifies 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-1, et. seq.

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 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 its administration.

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

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

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its 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 defined in subsection 2.7. of this section, 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 defined in subsection 2.2. of this section, for the period, bears to total net tax revenues 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 any other time period 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 becomes a program municipality only when 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 as provided in subsection 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.**

3.1. 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.a. 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.1. 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.a.2. Sales of gasoline and special fuel are not subject to a municipal sales and service tax or municipal use tax;

3.1.a.3. 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; and

3.1.a.4. Sales that are not subject to a municipal sales and service tax or municipal use tax

because they are exempt as otherwise provided by law.

3.1.b. 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. 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 §7-22-1, 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 §7-22-1, 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 §7-22-1, 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-1, et. seq., 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. The 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 subsections 4.4 and 4.5 of this rule, a municipal sales and service tax and municipal use tax need not 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 the provisions were set forth herein in extenso.

4.7. The Tax Commissioner may prescribe any processes, procedures, forms, schedules and other administrative requirements as determined 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 other information 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;

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

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

4.8.e. The projected amount of total allocable revenues for the fiscal year;

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

4.8.g. Any other data and information included by the Tax Commissioner.

4.9. 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 notice, by means other than, or in addition to, the State Register.

4.10. The Tax Commissioner may, solicit comments or recommendations regarding projections, determinations and data for a period of approximately 30 days, and in response to the comments or recommendations, 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.

4.11.b. The periodic cost recovery fee shall not apply to the collection by the Tax Commissioner of the Excise Tax provided for in W.Va. Code §7-22-1 et seq. and W.Va. Code §8-38-1 et seq. as that collection is not provided for pursuant to W.Va. Code §11-10-11c and other applicable provisions of law, as that fee is limited to the fee authorized by W.Va. Code §11-10-11b.

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

5.1. A profit shall not accrue to any person as a result of the collection of the municipal sales and service and municipal use tax regardless of the fact that the total amount of taxes collected may be in excess of the amount for which a 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 that persons sales. The total of all municipal sales and service and municipal use taxes collected by any 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 the taxes on purchases of tangible personal property or services for use or consumption in that persons business may use one of the following procedures when paying the municipal sales and service and use tax collected to the Tax Commissioner. The person:

5.2.a. May separately remit the amount collected and pay the amount due and owing on purchases made using the direct pay permit procedure.

5.2.b. May credit the amount of tax paid on 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 exempt purchases, the person shall remit the difference to the Tax Commissioner; or

5.2.b.2. if the amount of tax paid on exempt purchases is greater than the amount collected, the person may seek a refund or credit for the difference as provided by law.

5.2.c. Shall use the same means to collect and remit municipal sales and service and municipal 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 municipal 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 the person is required to file under the consumers sales and service tax and use tax.

5.4. When no state tax liability – Any person subject to the municipal sales and service and use tax that has no liability for the state consumers sales and service and use tax, shall still remit the municipal sales and

service and municipal use tax in a manner consistent with this rule.

**§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 subsection 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-1, et. seq.

6.1.a. The Office of Tax Appeals may not 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 may not 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-1, et. seq., 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 may not 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. A municipality or county has no standing before the Office of Tax Appeals in any dispute arising under any municipal sales and service and municipal use tax and excise tax.

6.3. Any review of a municipal sales and service and municipal 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. A municipality or county may not 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. A municipality or county may not hold the Tax Commissioner responsible for any unpaid or unrealized municipal sales and service and municipal use tax or excise tax.

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

7.1. The Tax Commissioner shall distribute allocable revenues collected during each calendar quarter to each revenue generating municipality no 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 has occurred when the Tax Department issues the request for transfer to the State Treasurer. The Tax Commissioner has 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 municipal 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 considered 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 commences on July 1, 2013. The fee shall be retained by the Tax Commissioner from proceeds of municipal sales and service and municipal 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. Provided, that the periodic cost recovery fee shall not apply to the collection by the Tax Commissioner of the Excise Tax provided for in W.Va. Code §7-22-1 et seq. and W.Va. Code §8-38-1 et seq. as the collection is not provided for pursuant to W.Va. Code §11-10-11c and other applicable provisions of law, as that fee is limited to the fee authorized by W.Va. Code §11-10-11b.

7.3 The Treasurer shall deposit the following items on July 1, 2013 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;

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; and

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. Provided, that the expenditure is limited to the amount appropriated by the Legislature for any fiscal year after fiscal year 2014. The expenditures may include, but are not be limited to, general administration expenses, such as:

7.4.a. Operating costs; and

7.4.b. Implementation costs.

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

8.1. ~~Any jurisdiction~~ A municipality that imposes a municipal sales and service and municipal use tax, and any jurisdiction municipality that changes the rate of the 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 the municipal sales and use tax takes effect or the change in the rate of tax takes effect. ~~Provided that~~ However, the effective date shall for payment and collection of the tax shall begin either on the July 1 next succeeding the 180 days' notice to the Tax Commissioner of the imposition of the taxes or the change in the rate of the taxes, or on the January 1 next succeeding the 180 days' notice to the Tax Commissioner of the imposition of the taxes or the change in the rate of the taxes.

8.1.a. ~~Exception. Any jurisdiction that imposes a municipal sales and service and use tax prior to July 1, 2015 may notify the Tax Commissioner 150 days before the effective date of the imposition of the tax. Provided, that the effective date shall begin on the first day of a calendar quarter.~~ The notification required by this section shall include a certified copy of the ordinance imposing the taxes, 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 other information as the Tax Commissioner may need to administer, collect and enforce the taxes imposed by this article.

8.1.b. For example, if the information required by subsection 8.2. of this section is provided to the Tax Commissioner at the end of December of 2017, the sales and use tax adopted by the municipality will be collected by the Tax Commissioner beginning July 1, 2018.

8.1.c. For example, if the information required by subsection 8.2 of this section is provided to the Tax Commissioner at the end of May of 2018, the sales and use tax adopted by the municipality will be collected by the Tax Commissioner beginning January 1, 2019.

8.2. Any jurisdiction in which a municipal sales and service and use tax has been imposed, changes or alters its boundaries, shall provide a certified copy of the ordinance adding or detaching territory from the jurisdiction 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 subsection 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 1st 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 shall keep the Tax Commissioner updated with any change in the designated agent.