

# Chapter 3

## Property Tax & Fiscal

### Property Tax

As a result of the 1932 tax limitation amendment, the West Virginia Constitution prescribes limitation upon and guidelines for the imposition of ad valorem taxes on real and personal property.

Article 10, section 1 of the Constitution requires that taxation shall be equal and uniform throughout the state and that all property both real and personal be taxed in proportion to its value to be ascertained as directed by law. This same section provides for four separate classes of property.

Class I - Personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including livestock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks, and other similar intangible personal property. A 1957 Constitutional amendment exempted money and bank deposits and a 1984 amendment permits the exemption of other intangible personal property by general law. The maximum rate of tax or levy rate, on this class of property is fifty cents on each one hundred dollars of value.

Class II - All property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owner or bona fide tenants. The maximum rate of tax on this class of property is one dollar on each one hundred dollars of value.

Class III - All property other than class I and II located outside of municipalities. The maximum rate of tax on class III property is one dollar and fifty cents on each one hundred dollars of value.

Class IV - all property other than class I and class II properties located within municipalities. The maximum rate of tax on class IV property is two dollars on each one hundred dollars of value. In class III & IV the 1957 amendment exempted household goods and personal effects not held or used for profit. A 1986 amendment exempted tangible personal property which is moving in interstate commerce through or over West Virginia consigned from a point or origin outside West Virginia to a warehouse within the state for storage in transit to a final destination outside the state.

Section 1 of article 10 permits the legislature to exempt property used for educational, literary, scientific, religious or charitable purposes, all cemeteries, public property, the personal property, including livestock, employed exclusively in agriculture as above defined and the products of agriculture as so defined while owned by the producers.

Article 10, section 1a exempts bank deposits, money, household goods and personal effects from property taxation. Article 10, section 1b exempts the first twenty thousand dollars of assessed valuation of any real property, or personal property in the form of a mobile home used exclusively for residential purposes and occupied by the owner or one of its owners thereof as his residence and who is a resident of this state and who is sixty-five years of age or older or who is permanently and totally disabled.

Article 10 section 1b permits the legislature to extend this exemption to home owners, as set forth in the preceding paragraph, who are under the age of sixty-five.

This same section mandates that all property subject to property tax be assessed at sixty percent of its value as directed and ascertained by the requirements of this section.

Chapter 11, article 3, section 1 of the code fixes the time and basis of assessments. All property is to be assessed as of July one at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, except that the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented: Provided, That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented. The taxes upon all property shall be paid by those who are the owners thereof on that day, whether it be assessed to them or others.

Chapter 11, article 3, section 1a, establishes tax districts as distinguished from magisterial districts. Much of Chapter 11, article 3 deals with the duties of and methods to be used by the county assessor and will not be described in detail.

The West Virginia Constitution, as heretofore explained, specifically exempts certain properties from property taxation and permits the legislature by general law to exempt others. Chapter 11, article 3, section 9, statutorily exempts from property tax those properties authorized by the Constitution.

Chapter 11, article 3, section 19, requires the assessor to complete the real and personal property tax books in time to deliver such books to the board of review and equalization (county commission) not later than February first of the assessment year.

## Review and Equalization by County Commission

Chapter 11, article 3, section 24, requires the county commission to annually, not later than the first day of February, meet for the purpose of reviewing and equalizing the assessments made by the assessor. The commission may not adjourn for more than three business days at a time, not including Saturday, Sunday, and legal holidays, until it has completed the duties required by this section and must not remain in session for more than twenty-eight days and may not adjourn sine die before the fifteenth day of February.

As of tax year 2012, the process is amended to include a second session of the county commission setting as the Board of Assessment Appeals in October of the tax year. A taxpayer may elect to apply, in writing, to the Board of Review and Equalization during the February session, not later than February 20<sup>th</sup> of the tax year, requesting to delay their hearing until the October session of the Board of Assessment Appeals (11-3-24b). Notice of intent to file a petition before the Board in October must contain acknowledgment that the taxpayer will timely pay first and second half property tax installments on or before they become due and that any reduction in assessed value that is determined in finality will result in a credit against taxes for the tax year next succeeding the tax year in which the decision becomes final.

At either the February or October meetings, taxpayers may appeal the value assessed to their property.

At the first meeting in February, the assessor must submit the property books for the current year, which shall be complete in every particular, except that the levies shall not be extended. The assessor and his assistants are required to attend the meetings and render every assistance possible in connection with the value of property assessed by them.

The commission is required to examine and review the property books, and to add on the books the names of persons, the value of personal property and the description and value of real estate liable to assessment which have been omitted by the assessor. The commission is directed to correct all errors in the names of persons, in the description and valuation of property, and they shall cause to be done whatever else may be necessary to make the valuation comply with the provisions of law.

**The commission may not consider or review any question of classification or taxability.** If the commission determines that any property or interest is assessed at more or less than its true and actual value, it must fix it at the true and actual value. In the event an assessment is increased, the commission is required to give the property owner at least five days' notice, in writing, and signed by the president of the commission, of the intention to make the increase. Service upon the property owner shall be sufficient, or upon his agent or attorney in person, or if sent by registered mail to such property owner, his agent, or attorney, at the last known residence. If he is not found and has no known residence, then notice must be given by publication thereof as a class I legal advertisement in compliance with the provisions of chapter 59, article 3, of the Code.

If persons fail to apply for relief at this meeting (or beginning in tax year 2012, fail to petition for hearing in October of the tax year), they shall have waived their right to ask for correction in their assessment list for the current year, and shall not thereafter be permitted to question the correctness of their list as finally fixed by the county commission, except on appeal to the circuit court. After the county commission has completed the review and equalization of the property books, a majority of the commission must sign a statement that it is the completed assessment of the county for the year and the property books must be delivered to the assessor and the levies extended as provided by law.

## Levy Estimate & Fixing the Levy Rate

Revenues from property taxation historically have been and are presently the principal source of revenue for county government. For this reason, the budgeting process for county government has been tied to the fixing of the property tax levy rates. See appendix H - "CCA's Recommended Uniform Budget Process" as outlined by West Virginia Code chapter 7, article 7, section 7.

Theoretically the county commission first would determine its expenditures, then its revenues, other than property tax, and then fix the levy rate accordingly. As a practical matter, this procedure is in almost all cases reversed. The levy limitation amendment of 1932 fixed maximum rates of levy that could be imposed upon the various classes of property. Since the demands upon county commissions for various services in almost all cases exceeds the available revenues, the process is to first determine the revenues from all sources and then adjust expenditures to meet the legal requirement of a balanced budget.

### ***I. Preparation & Certification of the Levy***

Chapter 11, article 8, section 9 requires each levying body (county commission) to hold a meeting or meetings between the seventh and twenty-eighth days of March for transaction of business generally and particularly for the preparation of the levy estimate and its certification to the state auditor's office.

Chapter 11, article 8, section 18, requires the State Auditor to prepare and furnish forms and instructions for preparation of the levy estimate required by the preceding paragraph. By reason of this, the State Auditor has prepared a uniform chart of accounts which is utilized by the counties in preparing the levy estimate.

Chapter 11, article 8, section 10, requires each county commission, during this time, to ascertain the fiscal condition of the county and to make an itemized statement setting forth:

- (1) The amount due and the amount that will become due and collectible from every source during the current fiscal year except from the levy of taxes to be made for the year upon the county as a whole and upon any district of the county for which the levies are laid by the county court;
- (2) The interest, sinking fund and amortization requirements for the current fiscal year of bonded indebtedness legally incurred upon a vote of the people, as provided by law, prior to the adoption of the Tax Limitation Amendment, owing by the county as a whole and by any district;
- (3) Other contractual indebtedness not bonded, legally incurred prior to the adoption of the Tax Limitation Amendment, owing by the county as a whole and such debts owing by any district;
- (4) All other expenditures to be paid out of the receipts for the current fiscal year, with proper allowance for delinquent taxes, exonerations and contingencies;
- (5) The total amount necessary to be raised for each fund by the levy of taxes for the current year;
- (6) The proposed county levy in cents on each one hundred dollars' assessed valuation of each class of property for the county and its subdivisions;
- (7) The proposed levy in each district for district funds, if any, on each one hundred dollars' valuation of each class of property;
- (8) The separate and aggregate amounts of the real, personal and public utility properties in each class in the county and in each subdivision thereof.

A copy of the statement, certified by the county clerk, shall be forwarded to the State Auditor, and the clerk

shall publish the statement forthwith. The session shall then stand adjourned until the third Tuesday in April.

Chapter 11, article 8, section 10a requires the county commission to reconvene on the third Tuesday in April to hear and consider any objections, orally or in writing, by the prosecuting attorney, the State Auditor or his representative, or by any taxpayer to the estimate or proposed levy.

The county commission, after hearing objections shall reconsider the proposed original estimate, and if the objections are well taken, shall correct the estimate and the levy. The estimate and levy shall not be entered of order until it has been approved, in writing, by the State Auditor. The clerk shall then enter the estimate and levy, the order of the court, and written approval of the State Auditor in the proper record book.<sup>1</sup>

Chapter 13, article 1, section 20 requires the county commission to impose annually a tax on all property, in excess of all other taxes, sufficient in amount to pay the bond principal and interest falling due each year. This levy rate is imposed separately from the levy for other purpose. The subject of issuance and sale on bonds will be discussed in a separate section.

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1 See appendix - H for "CCA recommended Uniform Budget Process"

## **II. Revisions of the Levy Estimate**

Chapter 11, article 8, section 26a provides as follows:

"The State Auditor shall, by uniform regulations, provide for the revision of the levy estimate of a county court [county commission] or municipality to permit expenditures for purposes for which no appropriation or an insufficient appropriation was made in the annual levy estimate as approved by the State Auditor. The revision shall be made only with the prior written approval of the State Auditor."

A copy of the order by the county commission requesting such revision, which includes a statement that the revision is being made prior to the obligation or expenditure of funds, must accompany the budget revision form. Revisions can be made to objects of expenditure (as defined in the Uniform Chart of Accounts) without the State Auditor's approval, provided that the total for that category is not changed.

In emergency situations, purchases can be made for expenditures for which no or insufficient appropriation exists prior to obtaining the written approval of the State Auditor to revise the budget. This applies only to emergency purchases which must be made immediately because of a physical or financial emergency, and because of their urgent nature, cannot be delayed in order to receive prior approval. Such emergency purchases must be ratified by a subsequent order of the county commission, and a budget revision must then be submitted to the State Auditor.

## **III. Levy Limitation**

The levy limitation amendment to the Constitution fixed the maximum rates of levy that could be imposed upon the various classes of property but left it to the legislature to divide those rates between the local levying bodies. The current maximum rates of levy allocated by the legislature to the county commission for all purposes is:

Class I	14.3 cents on each \$100 of assessed value
Class II	28.6 cents on each \$100 of assessed value
Class III	57.2 cents on each \$100 of assessed value
Class IV	57.2 cents on each \$100 of assessed value

All of the bonds which were issued prior to the passage of the tax limitation amendment of 1932 have been retired, but the county commission must first lay the levy required to pay the annual principal and interest on bonds issued subsequent to the passage of that amendment and then may use the remainder for current expense<sup>2</sup>

Excess levies will be discussed in a section devoted to that subject.

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<sup>9</sup>See appendix-I for current rates of levy.

#### **IV. Reappraisal**

With respect to reappraisal programs, chapter 11, article 8, section 6e, provides that where any annual appraisal, triennial appraisal or general valuation of property would produce an assessment that would cause an increase of one percent or more in the total projected property tax revenues that would be realized were the then current regular levy rates by the county commission and the municipalities to be imposed, the rate of levy shall be reduced proportionately as between the county commission and the municipalities and for all classes of property for the forthcoming tax year to cause the rate of levy to produce no more than one hundred one percent of the previous year's projected property tax revenues from extending the county commission and municipality levy rates, (excluding new assessments). However, the county commission, after holding a public hearing, may increase the levy to an amount not to exceed by more than 10% of those property tax revenues received by the county the preceding year. 11-1c-8 requires increasing the 101 % maximum amount to be raised by the levy by an additional 2% for the funding of the assessor's office for at least three consecutive years beginning July 1, 1991 or until monies borrowed for this purpose have been repaid, whichever comes last. Each year thereafter the increased rate shall be 1%.

### **General Obligation Bonds**

General obligation bonds, as distinguished from revenue bonds, are bonds issued by the county commission for which the credit of the county is pledged. The county commission must annually lay a levy on all property subject to taxation in an amount sufficient to pay annually the principal and interest falling due each year. Revenue bonds do not pledge the credit of the county, but such bonds must be retired from revenues of the project for which they were issued.

Chapter 13, article 1, section 2, provides that bonds may be issued for the purpose of acquiring, constructing and erecting, enlarging, extending, reconstructing or improving any building, work, utility or undertaking, or for furnishing, equipping and acquiring or procuring the necessary apparatus for any building, work, improvement or department, or for establishing and maintaining a library or museum for the public use, or acquiring a recreation park for the public use, or for acquiring, constructing, furnishing, equipping and maintaining civic arenas, auditoriums, exhibition halls and theaters, or for other similar corporate purpose, for which the political division is authorized to levy taxes or expend public money. But no bonds shall be issued for the purpose of providing funds for the current expenses of the commission.

Chapter 13, article 1, section 3, limits the amount of bonded indebtedness by a county commission to not more than two and one half percent of the value of the taxable property within the county as shown by the last assessment thereof except for the erection and equipment of a court house and/or jail with funds borrowed from the government of the United States, or any governmental agency, federal or state there is permitted an additional two and one-half percent.

Chapter 13, article 1, sections 7 through 13, require the holding of an election for the purpose of voting upon the question of issuing the bonds. Such election may be held at a general election, primary election or special election. Notice of election must be given within fourteen days of the election by appropriate legal advertisement. The form of ballot is set forth in chapter 13, article 1, section 12. The county commission must canvass the returns at the same time and in the same manner as is required of a general election.

If three fifths (60%) or more of all the votes cast favor the issuance of the bonds chapter 13, article 1, section 14, sets forth the procedure to be followed by the commission in issuance and sale of the bonds. Chapter 13, article 1, section 21, provides for advertising of the sale of the bonds by appropriate legal advertisement.

## **Excess Levies**

Article 10, section 1, of the Constitution allows the county commission to increase the maximum rate of levy. These increases are called excess levies. A county must call for an election to impose an excess levy (chapter 11, article 8, section 16), which may be held at a general election or as a special election. These levies must be approved by 60% of the voters.

An excess levy rate may not exceed 50% of the maximum levy rate for regular levies and may run for a maximum of five years. The commission must state how much money is to be raised by the excess levy and specifically state what the money is to be used for. Adequate time must be allowed prior to the election to meet the legal requirements of holding an excess levy election.

## **Depositories**

Chapter 7, article 5, section 1 of the code requires the county commission of every county on or before the thirtieth day of June to, by order of record, designate all of the banking institutions situated in the county and duly incorporated under the laws of this state or organized under the laws of the United States which may be used as depositories of public moneys.

This is a ministerial act and does not automatically qualify the banking institutions as a county depository. The banking institutions must execute a surety bond or furnish hypothecated securities in lieu of bond in such sums as the commission shall direct but it may not be in an amount less than the maximum sum that shall be deposited in the depository at any one time.

Banking institutions that comply may serve as depositories of public moneys for one year and the sheriff has the authority to deposit public moneys into any qualified depository that he may choose. However, once deposited, it may be disbursed or transferred only upon approval of the county commission.

The sheriff is authorized to establish with the qualified depositories two accounts, one to be designated "demand deposit account" and the other to be designated "time deposit account." The time deposit is similar to a savings account and will earn interest equal to that paid on private savings accounts. If it appears to the county commission that funds on deposit in a demand deposit account exceeds the current requirements, the commission may authorize the sheriff, in writing, to transfer or deposit such funds, or a portion thereof, to the time deposit account.

Chapter 7, article 6, section 5a of the code authorizes the sheriff to make excess funds available to the state board of investments if such actions are approved in writing by the county commission. It must be determined by the sheriff that the interest rate offered by the local depositories is less than the net interest rate less the administration fees charged by the state board.

# Disbursements

Chapter 7, article 5, section 4 provides in part as follows:

*"No money shall be paid by the sheriff out of the county treasury except upon an order signed by the president and clerk of the county court [county commission], and properly endorsed: Provided, however, That in counties having a population in excess of fifty thousand as shown by the last preceding federal census, such signatures and the signature of the sheriff authorizing the payment of such orders by a county depository may be made by means of such mechanical or electrical device as the county court [county commission] may select."*

Chapter 7, article 5, section 3 of the code requires every person having a claim or demand against a county to file with the county clerk an account or statement fully setting forth the items to be paid. The clerk is then required to present the account or statement to the county commission at its next meeting. The commission then decides whether to make payment totally or in part, or to disallow payment. Section 8 of this article has been held by the West Virginia Supreme Court in Chapman v. County Court 27 WV 496 to permit filing of the account or statement directly with the county commission.

## Purchasing

### I. Commodities

Chapter 7, article 1, section 5 provides in part as follows:

*"It shall be the duty of the county commissioners of each county to supervise and control the purchase of furniture, fixtures and equipment and other supplies for their county..."*

Chapter 7, article 1, section 11 permits the county commission to make a purchase of and contract for commodities and printing of fifteen thousand dollars or less in the open market but a purchase of commodities and printing in excess of that amount, except in cases of emergency, must be based on competitive bids. The commission is authorized to promulgate rules and regulations governing competitive bids. This section provides that a vendor who has been debarred pursuant to the provisions of 5A-3-33a thru 5A-3-33f of the WV Code, may not bid on or be awarded a contract under this section. Chapter 5A, article 1, section 1, defines commodities to mean supplies, material, equipment, contractual services and any other article or thing used by or furnished to the county.

### II. Government Construction Contracts

Chapter 5, article 22, section 1 of the Code requires that the state and its subdivision shall except as provided, solicit competitive bids for every construction project exceeding twenty-five thousand dollars in total costs. Again, any vendor that has been debarred under chapter 5A is ineligible. Following the solicitation of bids, the construction contract shall be awarded to the "lowest qualified responsible bidder." The "lowest qualified responsible bidder" is the bidder that bids the lowest price and as a minimum meets the following requirements: 1) certifies that he or she is ready, able and willing to timely furnish the labor and materials required to complete the contract; 2) is in compliance with all applicable WV laws; and 3) has supplied a valid bid bond or other surety authorized or approved by the contracting public entity. If the county determines that the bidder does not meet the minimum requirements of the "lowest qualified responsible bidder" standard, the county must document its findings in writing and include it in the bid file prior to the awarding of the contract. After the award of the contract, all bids submitted are open for public inspection.

### **III. Architect-Engineer Services**

Chapter 5G, article 1 specifies a process for the procurement of architectural or engineering services by the state and its political subdivisions (counties & cities) on the basis of demonstrated competence and qualification for the type of professional services required. See Chapter 5G for more specific details.

## **State Auditor's Office as Ex officio Chief Inspector and Supervisor of Public Office**

Chapter 6, article 9, section 1 through 10 designates the State Auditor as ex officio the chief inspector and supervisor of public offices and delegates to him broad authority with respect to accounting, reporting and auditing of county finances. This article includes the following:

- 1) Section 2 of this article requires the chief inspector to formulate, prescribe and install a system of accounting and reporting which is to be uniform for all local governmental offices and agencies.
- 2) Section 3 mandates that separate accounts be kept for every appropriation or fund made or levied by the county commission showing the date and manner of each payment made out of the fund.
- 3) Section 5 requires the State Auditor to require from every local taxing agency financial reports covering a full period of each fiscal year in accordance with forms and methods prescribed by the Auditor.
- 4) Section 7 requires the State Auditor or appointee at least once a year make a detailed audit of the financial affairs of each county. This section sets forth in detail the manner in which this audit is to be conducted.
- 5) Section 8 requires the county commission to pay the cost of such audit into a special revolving state fund established for payment of these costs.
- 6) Section 9a provides for public inspection of all reports and audits required by this article.