

WEST VIRGINIA FIREWORKS SAFETY FEE REPORT

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Submitted by:

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Introduction

The West Virginia Legislature enacted the Enrolled Committee Substitute for House Bill 2852 (HB 2852) during the 2016 Regular Session. This bill legalized¹ the sale of fireworks in the State effective June 1, 2016 and levied a fee, called the Fireworks Safety Fee, on such purchases in addition to the imposition of State and local sales taxes on sales of fireworks as applicable. Per Section 29-3E-7(a) et seq. of the West Virginia Code, this fee is equal to 12 percent of the sale price of consumer fireworks sold in the State. The Bill designated 75 percent of revenues² to be distributed to the Veterans' Facility Support Fund and the remaining 25 percent to the Fire Protection Fund.³ Pursuant to Section 29-3E-14 of the West Virginia Code, this report details the Fireworks Safety Fee and State sales tax revenues received from its enactment.

Fireworks Safety Fee Distributions

The passage of HB 2852 made sales of fireworks in West Virginia legal effective June 1, 2016. Due to a statutory lag, Fireworks Safety Fees collected by retailers in June were remitted to the Tax Department in July. This lagged structure provides only six months of collections and subsequent distributions during Calendar Year 2016 (July through December), representative of six months of sales (June through November) during the same year.

Table 1 illustrates distributions by month to each fund along with the administrative fee reserved for the Tax Department. More than 98 percent of total distributions occurred in July and August, reflecting June and July fireworks sales, respectively. This imbalanced share of distributions is unsurprising given that the Bill was made effective June 1, 2016, shortly before Independence Day celebrations. With the exception of some potential sales increase around other major holidays (e.g., New Year's Day and Memorial Day), the Tax Department anticipates Fireworks Safety Fee collections will largely be driven by Independence Day purchases.

Table 1 – Fireworks Safety Fee Distributions by Fund July–December 2016

Month	Veterans' Facility Support Fund	Fire Protection Fund	Administrative Fees	Total
July	\$100,100	\$33,367	\$1,348	\$134,814
August	\$449,911	\$149,970	\$6,059	\$605,941
September	\$5,219	\$1,740	\$70	\$7,029
October	\$1,839	\$613	\$25	\$2,477
November	\$2,260	\$753	\$30	\$3,044
December	\$927	\$309	\$12	\$1,248
Total	\$560,256	\$186,752	\$7,546	\$754,554

Amounts rounded to nearest dollar.

In total, Fireworks Safety Fee distributions exceeded \$754,000 from July through December 2016. More than \$560,000 in revenues benefitted the Veterans' Facility Support Fund, and

¹ Prior to the passage of this Bill, only sales of novelty fireworks, such as sparklers, were allowed.

² Revenues represent distribution of total collections received from the Fee less the administrative fee reserved by the Tax Department and any refunds or adjustments that occurred during the period.

Registration and public display fees imposed by the State Fire Marshal are not included in this report.

³ See Section 9A-1-11 of the West Virginia Code for more information on the Veterans' Facility Support Fund and Section 33-3-33 of the West Virginia Code for more information on the Fire Protection Fund.

nearly \$187,000 in revenues benefitted the Fire Protection Fund. The Tax Department retained approximately \$7,500 in administrative fees to offset the costs of administering and monitoring the fee.

It is important to note this report only considers the Tax Department’s monthly distributions based on the month in which Fireworks Safety Fees were collected by the Department.⁴ The Tax Department distributes Fireworks Safety Fee collections to the Veterans’ Facility Support Fund directly and the Fire Protection Fund via the West Virginia State Treasurer’s Office each month. The Treasurer’s Office distributes the latter to volunteer fire departments quarterly; some Tax Department distributions noted in this report may have not yet been remitted by the Treasurer given this difference in distribution scheduling.

State Sales Tax Collections on Fireworks

State sales tax remittances on sales of fireworks in West Virginia are lagged in the same manner as the Fireworks Safety Fee. However, since the West Virginia Sales and Use Tax return does not itemize most commodities (e.g., fireworks), the Tax Department relies on Fireworks Safety Fee collections to estimate State sales taxes based on approximate net fireworks sales.⁵ It is important to note that sales tax estimates provided in this report reflect State sales taxes only and do not include any municipal sales taxes collected.

Table 2 illustrates estimated State sales tax collections by month resulting from the legal sale of fireworks in West Virginia. As with Fireworks Safety Fee collections, 98 percent of total estimated State sales tax collections occurred in July and August 2016. In total, an estimated \$378,000 in State sales taxes were collected from July through December 2016 as a result of the legalization of fireworks purchases in West Virginia.

Table 2– Estimated Fireworks Sales Tax Collections July–December 2016

Month	State Sales Taxes Collected*
July	\$67,000
August	\$303,000
September	\$4,000
October	\$1,000
November	\$2,000
December	\$1,000
Total	\$378,000

* Estimated collections
Amounts rounded to nearest thousand dollars.

As noted previously, these sales tax collection estimates do not include sales taxes collected at the municipal level. Municipal sales tax returns do not itemize commodities, and the Fireworks

⁴ Distributions typically occur early in the following month. For example, Fireworks Safety Fees collected by retailers in June were remitted to the Tax Department in July and represent July distributions in this report. However, these monies were not transferred to the respective funds until early August.

⁵ It is plausible that an unknown portion of sales tax gains from fireworks purchases may occur at the expense of other taxable goods. Therefore, the net gain to the State from fireworks sales is likely less than those estimated in this report.

Safety Fee return does not require retailers to identify the location of sales. These limitations make accurate estimation of the municipal sales taxes attributable to fireworks purchases impossible.

Other Considerations

Several factors impacted the first six months of Fireworks Safety Fee distributions, which to date lag the original estimate by 55 percent. Due to limited data on consumer fireworks spending in the State, the Tax Department modeled the estimate after collections for a similar tax in Indiana. Although the data were scaled to match the difference in population size and to account for recent trends in Indiana collections, precise predictions of consumer spending patterns and other relevant factors were difficult to determine. Sales were also likely affected by municipal regulations considered or imposed following the passage of the Bill. A number of local governments considered safety measures and noise ordinances to manage use of fireworks within municipal borders following legalization.

In addition, the program was made effective shortly before one of the most high-demand fireworks seasons, giving retailers little time to prepare. West Virginia faces competition from nearby states with long-standing fireworks statutes and regulations. This has encouraged fireworks retailers to construct more permanent locations to meet demand. It is likely these retailers drew some patronage from West Virginian citizens prior to the passage of HB 2852 and continued to draw patronage after the Bill went into effect.

Lower or absent fees on sales of fireworks in nearby states may also contribute to this competitive impact. Georgia,⁶ Indiana,⁷ and Michigan⁸ impose a similar fee on the sale of fireworks; however, these fees are much lower at 5 to 6 percent. And neighboring states of Kentucky⁹ and Ohio¹⁰ only impose sales taxes on fireworks purchases. The effective rate, inclusive of sales taxes and the Fireworks Safety Fee, on sales of fireworks in West Virginia is 18 percent in municipalities without a local sales tax and up to 19 percent in those with the municipal option, making total West Virginia fireworks taxes approximately triple those imposed in Kentucky (6 percent) and Ohio (5.75 percent).¹¹

Further, the majority of retailers selling fireworks in the State during the last six months were likely operating from temporary locations—due to either timing of passage or uncertainty of market demand—which reduced availability after the temporary locations closed. It is plausible that retailers may elect to operate more permanent businesses in the future, and collections from the Fireworks Safety Fee are expected to benefit should this materialize. However, the Tax Department cautions that this fee is imposed on a typically transitory business that, by its nature, may preclude many brick-and-mortar stores from opening.

⁶ See <https://dor.georgia.gov/fireworks-excise-tax-faq>.

⁷ See <http://www.in.gov/dor/3989.htm>.

⁸ See http://www.michigan.gov/lara/0,4601,7-154-42271_59975---,00.html.

⁹ See KSR 227.715.

¹⁰ The State of Ohio levies sales taxes on the purchase of fireworks, but does not expressly state this in statute (see OCR 5739). Ohio residents are prohibited from using fireworks in State borders without appropriate permits and other requirements.

¹¹ Represents only state sales tax rates for Kentucky and Ohio. Additional local sales taxes may apply, but would be unlikely to raise effective rates in these states beyond 50 percent of the current West Virginia combined rate for fireworks sales.

Beyond the relative novelty of the program, much of West Virginia experienced severe flooding in late June 2016, with 12 counties in particular sustaining extensive damage. The flooding destroyed houses and businesses, resulted in numerous fatalities, and caused wide-spread economic strain in many communities due to destruction of assets and temporary or permanent loss of employment. These events constricted disposable income for many citizens, thereby suppressing the purchase of discretionary items such as fireworks. It is likely the State would have realized higher Fireworks Safety Fee collections if the flooding had not occurred, but the magnitude of potential lost revenue is unknown.

Conclusion

Despite lagging estimate, the implementation of the Fireworks Safety Fee has benefitted veterans and volunteer fire departments by nearly \$750,000 since July 2016. With the exception of a potential sales increase for New Year's celebrations, the Tax Department does not anticipate substantial collections for the remainder of FY 2017. However, it is likely the State will realize higher collections as a result of Independence Day and other summertime celebrations in 2017 compared to those realized during the same time this year.