

# **WEST VIRGINIA FIREWORKS SAFETY FEE REPORT**

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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 legalized<sup>1</sup> 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 revenues<sup>2</sup> to be distributed to the Veterans' Facility Support Fund and the remaining 25 percent to the Fire Protection Fund.<sup>3</sup> 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 COLLECTIONS

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 each month are remitted to the Tax Department the following month. (For example, fees collected in June representing June sales are typically remitted to the Tax Department in July.) Table 1 illustrates the allocation of collections by quarter to each fund along with the administrative fee reserved for the Tax Department from July 2016 through December 2018.

**Table 1 – Fireworks Safety Fee Collections by Fund  
1<sup>st</sup> Quarter FY20167 to 2<sup>nd</sup> Quarter FY2019**

<b>Fiscal Year</b>	<b>Quarter</b>	<b>Veteran's Facility Support Fund</b>	<b>Fire Protection Fund</b>	<b>Administrative Fees</b>	<b>Total</b>
2017	1	\$ 555,230	\$185,077	\$ 7,477	\$ 747,784
2017	2	\$ 5,026	\$ 1,675	\$ 68	\$ 6,769
2017	3	\$ 6,500	\$ 2,167	\$ 87	\$ 8,754
2017	4	\$ 11,501	\$ 3,833	\$ 155	\$ 15,489
2018	1	\$ 454,018	\$151,339	\$ 6,114	\$ 611,471
2018	2	\$ 55,108	\$ 18,370	\$ 743	\$ 74,221
2018	3	\$ 17,974	\$ 5,991	\$ 243	\$ 24,208
2018	4	\$ 8,688	\$ 2,896	\$ 130	\$ 11,714
2019	1	\$ 381,678	\$127,226	\$ 5,140	\$ 514,044
2019	2	\$ 69,806	\$ 23,269	\$ 940	\$ 94,015
<b>Total</b>		<b>\$1,565,529</b>	<b>\$521,843</b>	<b>\$21,097</b>	<b>\$2,108,469</b>

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

<sup>2</sup> 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.

<sup>3</sup> See W. Va. Code §9A-1-11 for more information on the Veterans' Facility Support Fund and W. Va. Code §33-3-33 for more information on the Fire Protection Fund.

In total, Fireworks Safety Fee collections totaled nearly \$2.1 million from July 2016 through December 2018. Nearly \$1.57 million in revenues benefitted the Veterans' Facility Support Fund, and more than \$521,000 in revenues benefitted the Fire Protection Fund. The Tax Department retained approximately \$21,000 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 collections based on the month in which Fireworks Safety Fees were collected by the Department.<sup>4</sup> 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 Collections noted in this report may have not yet been remitted by the Treasurer given this difference in distribution scheduling.

### **YEAR-OVER-YEAR ANALYSIS**

The time elapsed since enactment of the Fireworks Safety Fee statute provides some capacity for year-over-year (y/y) analysis of fees and consumer activity to date. This section examines trends over the 30 months of distribution activity available, caution must be exercised in reviewing these data. The 30-month period is a limited collection of data. Unless otherwise specified, analysis of data in this section focuses on total fees distributed and the trend by month and year.

Considering the twelve-month period from January through December 2017, 83.6 percent of the collections occurred in July and August 2017. By comparison, July and August 2018 collections comprised a smaller majority (75.2 percent) of the 12-month period spanning January through December 2018. This is primarily driven by August 2018 collections that lagged prior year by roughly 15.5 percent. There have been gradual declines in firework safety fee collections. Between calendar years 2016 and 2017 there was a decline of 5.9 percent and a decline of 9.3 percent between calendar years 2017 and 2018. During the two-year collection period, revenues declined 14.7 percent. Monthly changes of January through December collections are provided in Table 2.

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<sup>4</sup> Collections 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 Collections in this report. However, these monies were not transferred to the respective funds until early August.

**Table 2 – Twelve-Month Analysis of Year-Over-Year Collections**

<b>Month</b>	<b>2016</b>	<b>2017</b>	<b>2016 to 2017 Change</b>	<b>2018</b>	<b>2017 to 2018 Change</b>	<b>2016 to 2018 Change</b>
January	N/A	\$ 3,998	N/A	\$ 11,528	188.3%	N/A
February	N/A	\$ 4,325	N/A	\$ 7,253	67.7%	N/A
March	N/A	\$ 431	N/A	\$ 5,427	1159.2%	N/A
April	N/A	\$ 1,638	N/A	\$ 1,326	-19.0%	N/A
May	N/A	\$ 1,577	N/A	\$ 10	-99.4%	N/A
June	N/A	\$ 12,274	N/A	\$ 10,378	-15.4%	N/A
July	\$134,814	\$239,618	77.7%	\$185,279	-22.7%	37.4%
August	\$605,941	\$353,612	-41.6%	\$298,756	-15.5%	-50.7%
September	\$ 7,029	\$ 18,242	159.5%	\$ 30,009	64.5%	326.9%
October	\$ 2,477	\$ 62,555	2425.4%	\$ 68,666	9.8%	2672.1%
November	\$ 3,044	\$ 10,585	247.7%	\$ 24,368	130.2%	700.5%
December	\$ 1,248	\$ 1,081	-13.4%	\$ 981	-9.3%	-21.5%
<b>Total</b>	<b>\$754,553</b>	<b>\$709,936</b>	<b>-5.9%</b>	<b>\$643,981</b>	<b>-9.3%</b>	<b>-14.7%</b>

As expected, data available to date indicate increases in Fireworks Safety Fee Collections in months following major holidays (i.e., New Year's, etc.) and seasonally during warmer months. The single month with the largest collections was August 2016 and the single month with the smallest collections was May 2018. The decline in May 2018 collections was a due to an increase in refund payments.

## **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.<sup>5</sup> 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 3 illustrates estimated State sales tax collections by month resulting from the legal sale of fireworks in West Virginia. In total, an estimated \$1.054 million in State sales taxes have been collected as a result of the legalization of fireworks purchases in West Virginia. These estimates follow a similar pattern as Fireworks Safety Fee Collections. Timing of filing monthly Consumer Sales Tax returns relative to Fireworks Safety Fee returns may alter actual collection trends.

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<sup>5</sup> 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.

**Table 3 – Estimated Fireworks Sales Tax Collections July 2016 – December 2018**

<b>Month</b>	<b>State Sales Taxes*</b>
2016 - July	\$ 67,400
2016 - August	\$ 303,000
2016 - September	\$ 3,500
2016 - October	\$ 1,200
2016 - November	\$ 1,500
2016 - December	\$ 600
2017 - January	\$ 2,000
2017 - February	\$ 2,200
2017 - March	\$ 200
2017 - April	\$ 800
2017 - May	\$ 800
2017 - June	\$ 6,100
2017 - July	\$ 119,800
2017 - August	\$ 176,800
2017 - September	\$ 9,100
2017 - October	\$ 31,300
2017 - November	\$ 5,300
2017 - December	\$ 500
2018 - January	\$ 5,800
2018 - February	\$ 3,600
2018 - March	\$ 2,700
2018 - April	\$ 700
2018 - May	\$ 0
2018 - June	\$ 5,200
2018 - July	\$ 92,600
2018 - August	\$ 149,400
2018 - September	\$ 15,000
2018 - October	\$ 34,300
2018 - November	\$ 12,200
2018 - December	\$ 500
<b>Total</b>	<b>\$1,054,100</b>

\* Estimated collections  
 Amounts rounded to nearest hundred 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 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

It is plausible that a number of factors could have influenced the 30-month trends of Fireworks Safety Fee Collections covered in this report. As noted in the January 2018 report, competition has likely played a significant role in consumer fireworks activity in West Virginia since the fee was enacted. Even after 30 months, the West Virginia Fireworks Safety Fee is still a relatively new program that focuses heavily on a transient and seasonal business. Nearby states that had approved fireworks legalization laws prior to the passage of HB 2852 have an established customer base and business locations, unlike the temporary locations set-up in West Virginia since June 2016.

In addition, many nearby states impose a lower fee – if any fee at all – on sales of fireworks. States such as Georgia,<sup>6</sup> Indiana,<sup>7</sup> and Michigan<sup>8</sup> impose fees between 5 and 6 percent on a similar structure, while neighboring states such as Kentucky<sup>9</sup> and Ohio<sup>10</sup> only impose sales taxes on fireworks purchases. Compared to an effective rate of between 18 and 19 percent in West Virginia – inclusive of the 12 percent Fireworks Safety Fee, 6 percent State sales tax, and up to 1 percent municipal sales tax where applicable – the weight of the West Virginia tax is undoubtedly impacting consumer behavior for this commodity.

## CONCLUSION

In the 30 months since enactment, the Fireworks Safety Fee has resulted in the collection of more than \$2.1 million that benefits veterans and volunteer fire departments in the State. Recent trends indicate that proceeds from the Fee are unlikely to rise in the near term. Potential increases in future collections will largely hinge on changes to consumer behavior in purchasing fireworks in the State and whether retailers set up more permanent locations to sell fireworks year-round. Some factors, such as competition resulting from disparities in effective rates, may continue to impact collections.

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

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

<sup>8</sup> See [http://www.michigan.gov/lara/0,4601,7-154-42271\\_59975---,00.html](http://www.michigan.gov/lara/0,4601,7-154-42271_59975---,00.html).

<sup>9</sup> See KSR 227.715.

<sup>10</sup> 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.