



STATE OF WEST VIRGINIA
Department of Revenue
State Tax Department

Jim Justice
Governor

Dale W. Steager
Tax Commissioner

November 20, 2017

The Honorable
Edward A. Hawkins
President
Monongalia County Commission

The Honorable
Thomas C. Bloom
County Commissioner
Monongalia County Commission

The Honorable
Sean P. Sikora
County Commissioner
Monongalia County Commission

Monongalia County Commission
243 High St., Room 202
Courthouse
Morgantown, WV 26505

RE: Wine & Liquor Tax Revenue:

Dear President Hawkins,
Commissioner Bloom and
Commissioner Sikora:

This letter is in response to your correspondence, dated November 8, 2017, which we received on November 13, 2017. In your letter you refer to your letter of June 5, 2017, and you request that the Tax Department disclose to you a list of businesses with physical addresses operating outside of municipal boundaries within Monongalia County that are required to pay Wine & Liquor Tax based on sales since 2012.

You state that, in its letter of June 5, 2017, the Monongalia County Commission submitted the form "Designation of Agent for Receipt of Tax Information" to the Tax Department with the intent to obtain restricted tax information based on the W. Va. Code §11-10-5d(f) "material interest" statutory confidentiality exception.

You state that the County Commission believes it has a "material interest" in the wine and liquor tax information of businesses reporting wine and liquor sales within the county.

And you argue that the County Commission should be permitted to have access the same information that is open to municipalities.

The Tax Department cannot disclose the information sought.

W. Va. Code §11-10-5d(f) reads as follows:

§ 11-10-5d. Confidentiality and disclosure of returns and return information.

...

(f) Disclosure to person having a material interest. --

The Tax Commissioner may, pursuant to legislative regulations promulgated by him or her, and upon such terms as he or she may require, disclose a return or return information to a person having a material interest therein: Provided, That such disclosure shall only be made if the Tax Commissioner determines, in his or her discretion, that the disclosure would not seriously impair administration of this state's tax laws.

The subsection W. Va. Code § 11-10-5d(f) exception applies only in circumstances where the Tax Department has promulgated a legislative rule authorizing disclosure of information under subsection 11-10-5d(f) specifically addressing the particular Taxpayer or class of Taxpayers having a "material interest" in specific tax information.

No such rule has been issued by the Tax Department for the disclosure of the information sought in your November 8, 2017 letter.

Your letter mentions disclosure of information to municipalities and seeks to assert a parity between the statutory authorization of municipalities to receive tax information versus the authority of counties to receive such information. The statutory authorization for the receipt of confidential tax information by municipalities is found in subsections §11-10-5d(i) and (j) of the West Virginia Code, and not under subsection (f).

We acknowledge the receipt of your July 5, 2017 letter, with which you enclosed the ***Designation of Agent for receipt of Tax Information Pursuant to WV Code § 11-10-5d(i)*** form, bearing the signature of Edward A. Hawkins, President of the Monongalia County Commission, and the signature of Renetta McClure, County Administrator.

I regret to inform you that under W. Va. Code subsection §11-10-5d(i) and subsection 11-10-5d(j), the ***Designation of Agent*** form is only effective for municipalities.

While we fully understand the County's desire to examine tax records of businesses operating in the county, we can identify no provision of West Virginia law that will allow disclosure of the restricted tax information sought in your letter. We must therefore reaffirm the basic conclusions set forth in our February 20, 2017 letter to you.

Disclosure of the tax information requested in your November 8, 2017 letter is hereby **DENIED**.

We hope this letter has been helpful to the County Commission. I regret that the Tax Department is required by law to deny disclosure of the requested tax information.

Sincerely,



Dale W. Steager
Tax Commissioner