Amendment Two:
A Power Grab that Puts Local Public Services at Risk

By Sean O'Leary, senior policy analyst
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Overview

This fall, West Virginians will vote on amending the state's constitution to take property taxing authority away from local communities and give increased power to the state legislature, which is expected to pursue a major tax cut for mostly out-of-state businesses if the amendment passes.

Amendment Two, or the Property Tax Modernization Amendment, would amend the constitution to give the state legislature the authority to exempt business machinery and equipment, business inventory, and personal vehicles from property taxation, resulting in a severe loss of revenue for counties and local governments and marking a significant shift in power away from local governments and to state government.

While there is little evidence to support claims of the economic benefits of eliminating property taxes on businesses, doing so would hamper the ability of local governments and schools to provide vital services that do promote growth and benefit all West Virginians.

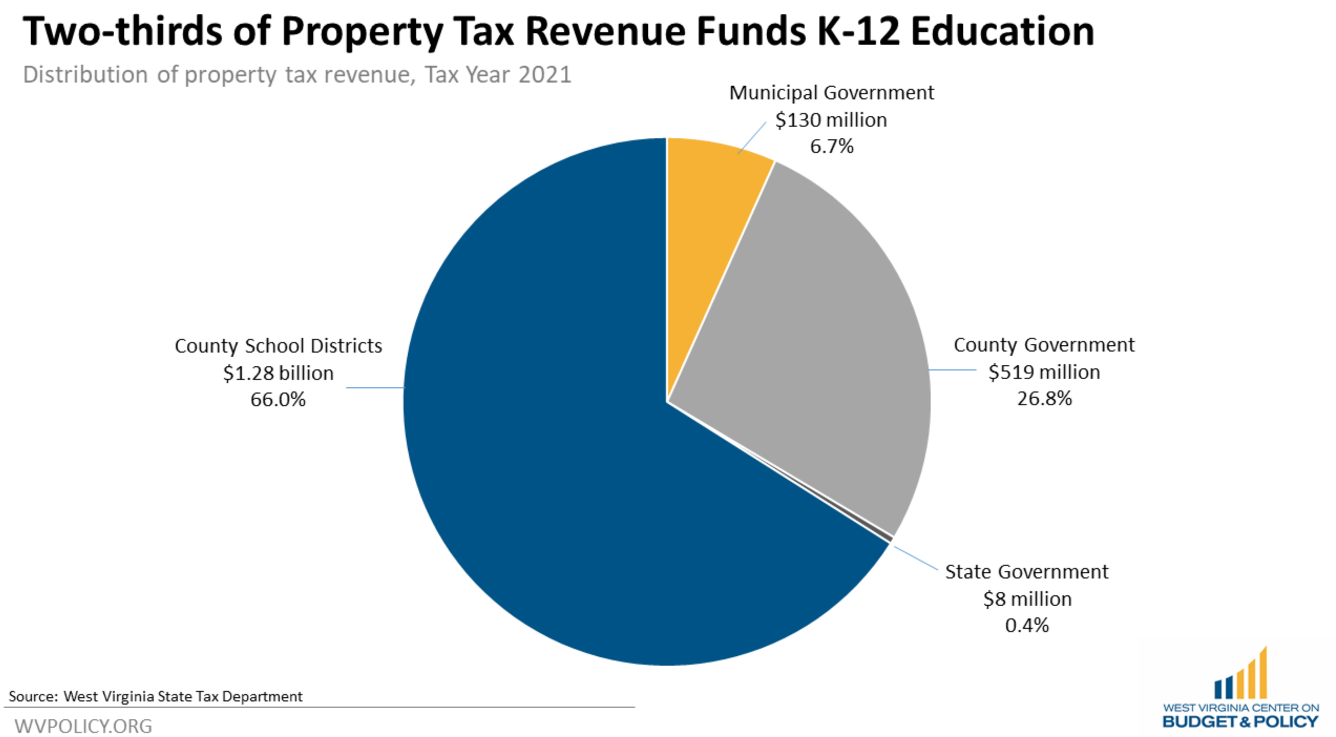
Key Findings

- Property taxes are primarily a local tax in West Virginia, with over two-thirds of property tax revenue funding local school districts.
- 40 percent of property tax revenue comes from voter-approved bond and excess levies.
- West Virginia has some of the lowest property tax rates in the country.
- Amendment Two would give the state legislature control over 27 percent of total property tax revenue, a total of $515 million. The legislature's anticipated goal is to eliminate this portion of property tax revenue entirely by exempting new items from property taxation.
- Businesses – not individuals – would receive two-thirds of the proposed tax cuts under Amendment Two.
- If Amendment Two is passed and the legislature moves forward with exempting new items from property taxation, county governments would lose an estimated $138 million in revenue, municipal governments would lose an estimated $35 million, and school districts would lose an estimated $209 million, after adjusting for anticipated impacts to the school aid formula.
- Very little evidence exists to support claims that West Virginia's property taxes are a significant barrier to economic growth. Instead, studies have shown that factors such as educational attainment, infrastructure, and quality of public services – all factors that are funded by property taxes – are more important to economic growth and attracting businesses than taxes.

Property Tax Overview

Property taxes provide revenue for the essential public structures, services, and programs that enhance the quality of life for all people in the state. In West Virginia, property taxes are primarily a local tax, providing over $1.9 billion in 2021 for local government services like public libraries, police and fire protection, parks and recreation, and senior centers, with over two-thirds of property tax revenue funding local school districts (Figure 1).

Figure 1



Regular property tax rates provide $1.15 billion of revenue, and West Virginia's constitution sets the maximum property tax rates for local governments and school districts.[1] However, in circumstances where the maximum property tax rates do not generate enough funding for critical public services, voters can decide whether to temporarily exceed these maximum rates for specific projects or needs through an excess levy. Excess levies are an additional property tax used to provide supplemental funding for libraries, ambulance services, school building improvements, extracurricular activities, and other essential community services. Counties and municipalities may impose an excess levy for up to five years if it is approved by 60 percent of the voters in a special levy election; school districts may impose an excess levy for up to five years, and only need the approval of 50 percent of the voters.

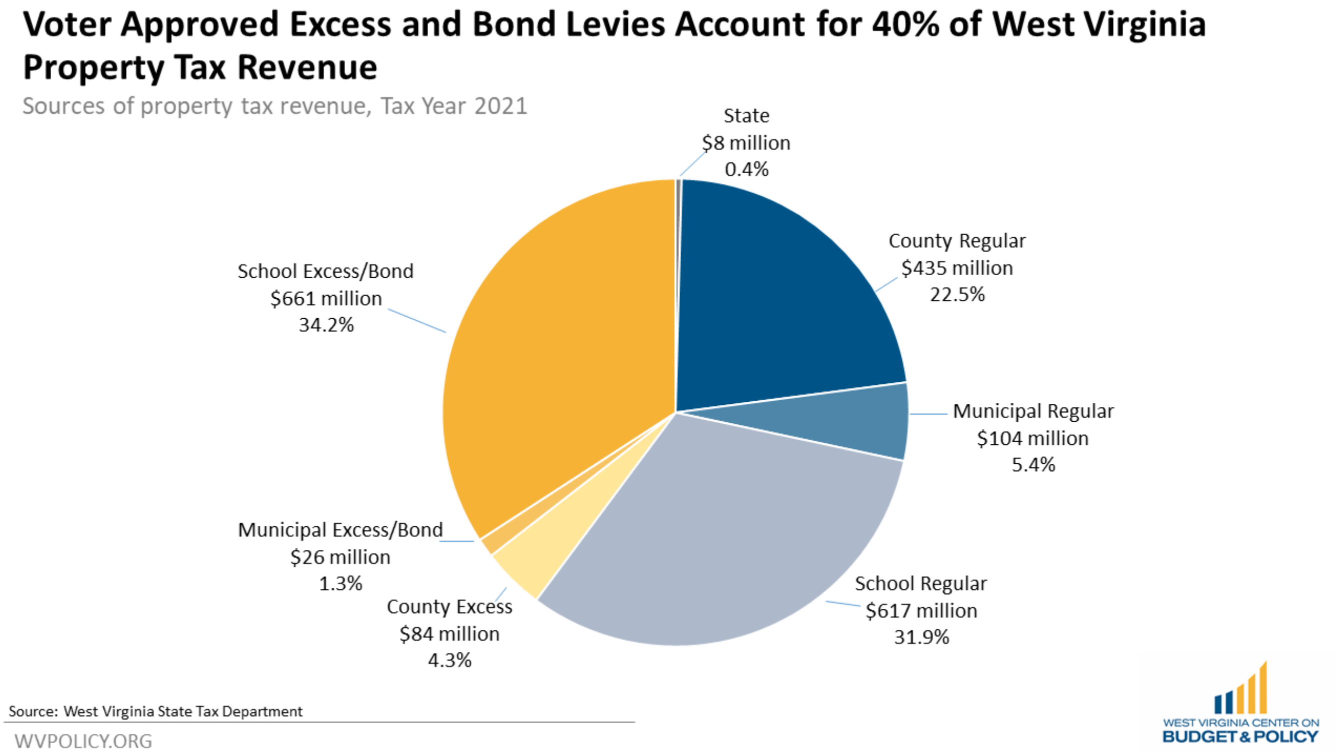
Further, counties, school districts, and municipalities may levy a property tax based on any bonds they have issued, typically for building and other capital improvements. This tax rate is determined by the amount of money that must be raised to pay the principal and interest of the bond and – when combined with the regular county, school, or municipal rate – may not exceed the maximum rate for that taxing authority.

Currently, 44 of West Virginia's 55 school districts, 30 of the state's 55 county governments, and 57 municipalities have excess levies in place. In addition, 20 school districts have active bond levies.[2] Voter-approved excess and bond levies account for nearly 40 percent of property tax revenue in the state, generating

[1] West Virginia State Constitution, Article X.
[2] West Virginia State Auditor's Office.

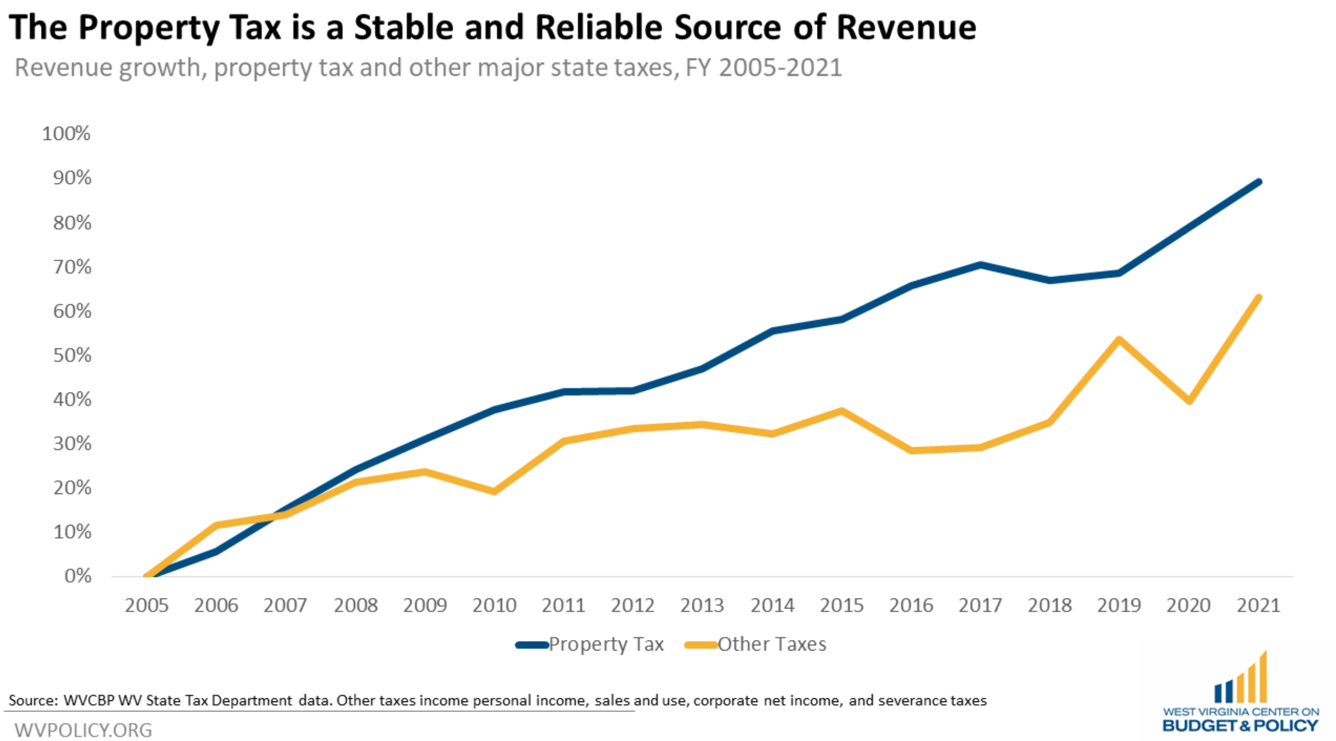
$771 million. This includes $84 million from county excess levies, $661 million from school excess and bond levies, and $26 million from municipal excess and bond levies (Figure 2).

Figure 2



Property taxes are a stable and reliable source of revenue for state and local governments, growing steadily each year even during recessions, compared to other more volatile revenue sources. Figure 3 compares property tax revenue growth to growth in other major sources of state tax revenue since FY 2005, demonstrating the relative stability of property tax revenue growth. Between FY 2015 and FY 2021, property tax revenue in West Virginia grew at an average annual rate of 4.1 percent, compared to 3.1 percent for other major sources of tax revenue (e.g., income, sales, severance, and corporate net income).

Figure 3



Both real and personal property are subject to the property tax in West Virginia. For individuals and businesses, real property includes land and buildings such as homes and offices. When it comes to personal property, individuals pay the property tax on their personal vehicles, while businesses pay property taxes on furnishings, inventory, machinery, equipment, fixtures, supplies, and tools.

Despite claims that West Virginia's tax on business machinery, equipment, and inventory makes the state an outlier,[3] most states tax some form of business personal property. West Virginia is one of 36 states that taxes business machinery and equipment, and one of 14 states that taxes business inventory.[4] Further, the Tax Foundation ranks West Virginia as having the ninth-best property tax climate for businesses.[5]

Moreover, by including both real and personal property in its property tax base, West Virginia is able to keep property tax rates low. In fact, West Virginia state taxpayers pay less in property taxes than people in almost any other state, largely because of low rates on real property for both individuals and businesses. Overall, West Virginia ranks 43rd among the 50 states in property taxes paid per capita.[6] West Virginia's tax on business personal property helps keep the property tax from becoming regressive. Business property taxes, particularly personal property taxes, generally fall on owners of capital and out-of-state consumers, as most of the goods manufactured and extracted are sold out of state rather than to in-state consumers. According to the Minnesota Department of Revenue's Tax Incidence Study, 79 percent of incidence of industrial property taxes are exported

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[3] Brett Dunlap, "Lawmakers discuss West Virginia's economic future, drug epidemic," *The Parkersburg News and Sentinel*, February 2, 2018.
[4] Garret Wilson, "States Should Continue to Reform Taxes on Tangible Personal Property" (Tax Foundation, August 2019).
[5] Janelle Fritts and Jared Walczak, "2022 State Business Tax Climate Index" (Tax Foundation, December 2021).
[6] WVCBP analysis of U.S. Census Bureau State and Local Government Finance and Bureau of Economic Analysis data.

out of state.[7] This phenomenon of taxes being borne by non-residents is referred to as exportability and is generally considered a positive feature of a tax.

Amendment Two

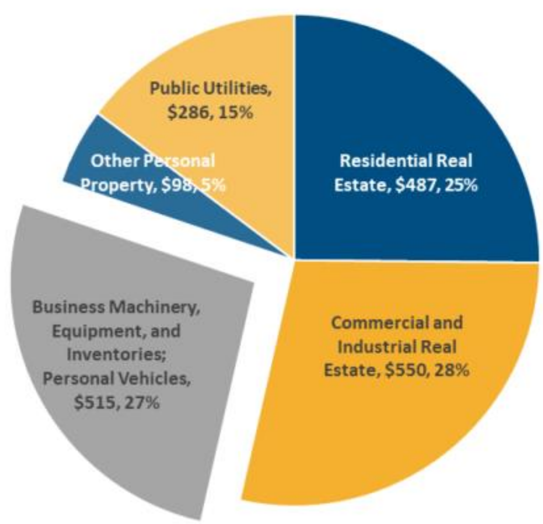
Amendment Two, or the Property Tax Modernization Amendment, will be on the ballot this November for voters to consider and could lead to the fulfillment of a long-term goal of state legislators to take control of a significant portion of property tax revenue in order to give mostly out-of-state businesses a large tax cut. If passed, it would amend the constitution to give the state legislature the authority to exempt business machinery and equipment, business inventory, and personal vehicles from property taxation, resulting in a severe loss of revenue for counties and local governments and marking a significant shift in power away from local governments and to state government.

If passed, Amendment Two would give the legislature control over $515 million of property tax revenue, or 27 percent of total property tax revenue in the state. This includes $219 million from business machinery and equipment, $84 million from business inventory, $26 million from other business personal property, $136 million from personal vehicles, and $50 million from "supplemental" property taxes, or taxes that were owed from previous years but paid in the current year (Figure 4). In effect, it would give the state legislature control over hundreds of millions of dollars intended for local services that the state government doesn't provide.

Figure 4

Constitutional Amendment Would Give the State Legislature Control Over 27% of Property Taxes

West Virginia property taxes by source, Tax Year 2021 (millions)



Source: WVCBP analysis West Virginia State Tax Department and West Virginia Association of Counties data

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While proponents of Amendment Two's passage tend to focus on the potential exemption of the personal vehicle tax, over 70 percent of the potential tax cuts would go to businesses (Figure 5). The property tax on individual vehicles accounts for less than one-third of the potential tax cuts under the property tax amendment.

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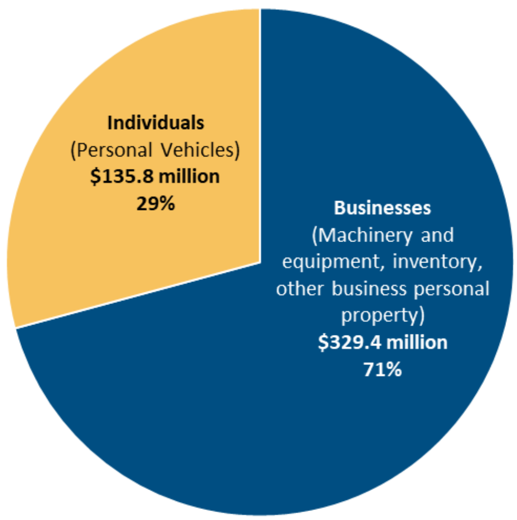
[7] Minnesota Department of Revenue, 2021 Minnesota Tax Incidence Model.

In addition, since industrial property taxes are highly exportable,[8] very little of the savings would stay in West Virginia, instead largely flowing to businesses headquartered out-of-state.

Figure 5

More Than 70% of Amendment Two's Proposed Property Tax Exemptions Benefit Businesses

West Virginia personal property taxes by source, Tax Year 2021 (millions)



Source: West Virginia Association of Counties and West Virginia State Tax Department data.
Note: Does not include $50 million in "supplemental" property taxes, or taxes paid in Tax Year 2021 but owed from previous year

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Impact on Local Communities

The proposed exemptions under Amendment Two would result in local governments losing an important revenue stream. The $515 million in property tax revenue from personal vehicles and business machinery and equipment, business inventory, and other business personal property accounts for up to 37 percent of total property tax revenue in some counties (Figure 6). The loss of this critical revenue will adversely impact the ability of municipalities, county governments, and school districts to provide needed services, and will likely lead to cuts in services or increased taxes on other parties, like homeowners or small businesses. The Appendix included at the end of this brief provides county by county impacts.

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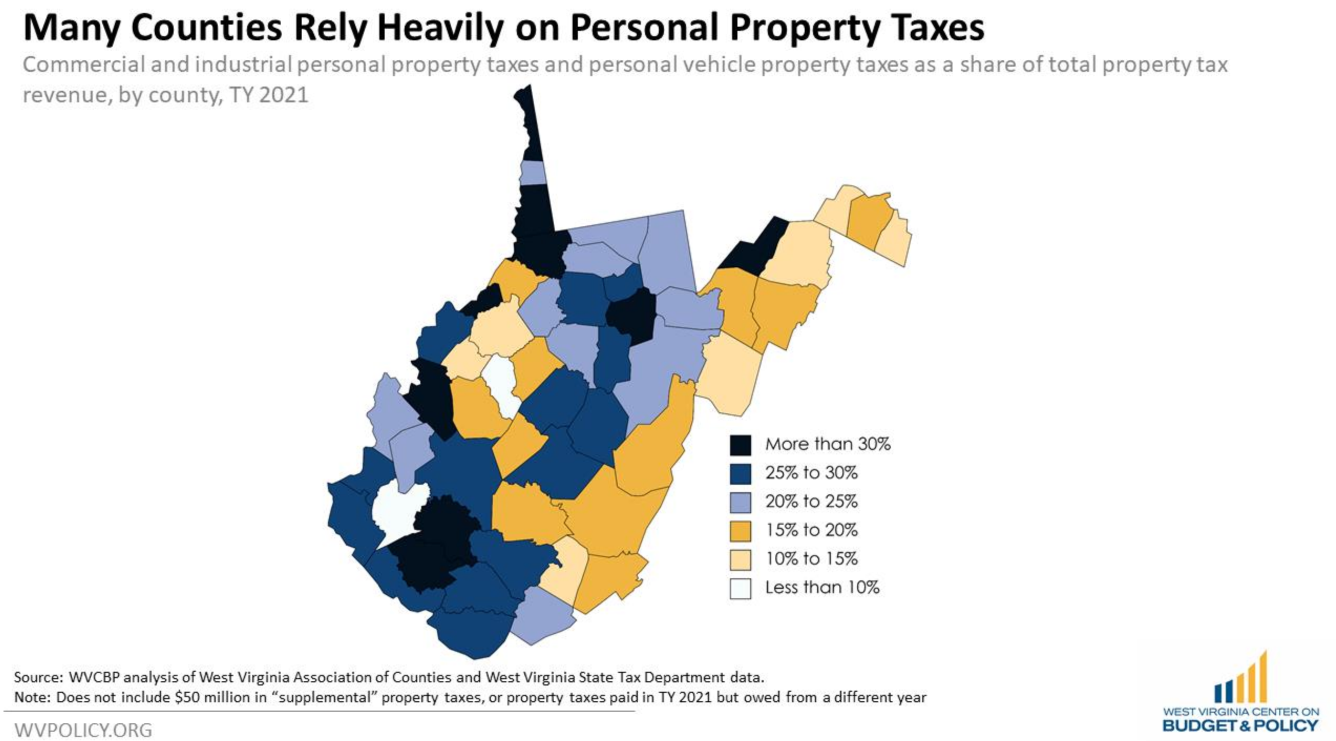
[8] Ibid.

Figure 6



Counties

West Virginia's 55 counties play an essential role in the functional operation of the state's communities. From libraries and parks to sewage and air transportation, counties provide important public services and programs that make their communities more prosperous, efficient, secure, and stable. These public services also help businesses to compete and thrive. However, without a strong revenue system, many of these services would diminish or disappear entirely.

If the exemptions under Amendment Two are enacted, county governments would lose an estimated $138 million in revenue. The average county government would lose more than $2.5 million in property tax revenue per year, likely resulting in higher levy rates for other taxpayers or cuts to public services.

Municipalities

West Virginia has 241 municipalities, each providing important local services like police and fire protection, housing, and community development. If the exemptions under Amendment Two are enacted, municipalities would lose an estimated $35 million in revenue, likely leading to higher property taxes for other taxpayers, new taxes and fees, or cuts to public services.

School Districts

West Virginia's 55 school districts oversee more than 700 elementary and secondary schools, educating over 250,000 students annually. West Virginia's schools provide the educational foundation for the state's future workforce, giving individuals the skills and knowledge necessary to gain employment and be productive citizens. The property taxes levied by school districts provide roughly one-third of total school district funding.

If the exemptions under Amendment Two are enacted, school districts would lose an estimated $340 million in revenue. While the school aid formula replaces all but $35 million lost through regular school levies, school districts would lose all of the revenue from their excess and bond levies – an estimated $174 million – for a total loss of $209 million.

Excess and Bond Levies

As mentioned above, 44 of West Virginia's 55 school districts, 30 of the state's 55 county governments, and 57 municipalities have excess levies in place, while 20 school districts also have active bond levies. All of these community-supported levies are at risk of funding shortfalls if the proposed property tax amendment is approved this fall and property tax cuts are later enacted by the state legislature.

If the exemptions under Amendment Two are enacted, local governments would lose an estimated $205 million in revenue from excess and bond levies, including $162 million from school excess levies, $14 million from school bond levies, $22 million from county excess levies, and $7 million from municipal bond and excess levies. Such funding is unlikely to be made up even if the state does eventually identify replacement revenue for regular property tax cuts.

Senate Plan for Amendment Two Relies on Unrealistic Revenue and Spending Assumptions

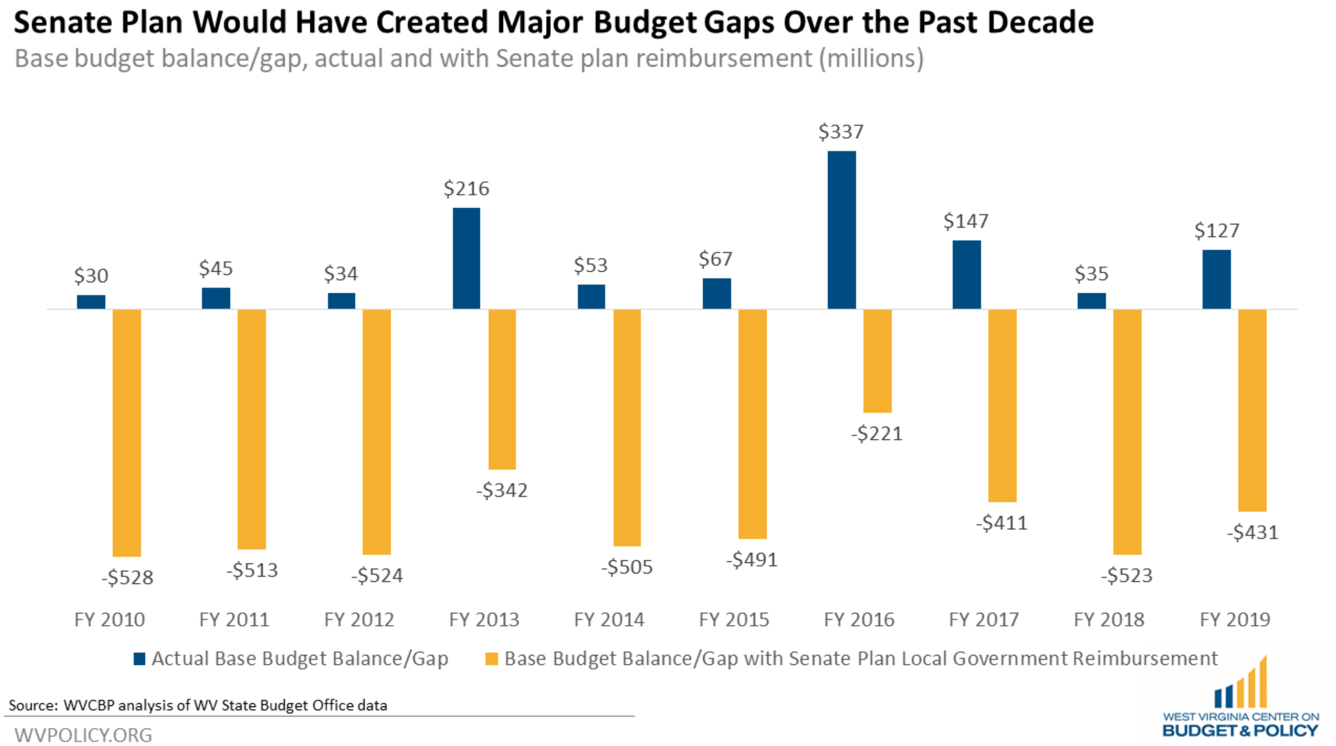
The West Virginia State Senate recently released an outline of a plan to use state revenues to reimburse counties, schools, and municipalities for the hundreds of millions of dollars in property tax revenue that would potentially be lost if Amendment Two passes.[9] Despite the Senate's claims that the plan would entirely replace the over $500 million in lost property tax revenue without raising other taxes – and while still allowing for the eventual full elimination of the income tax – the plan is based on unrealistic revenue and spending assumptions that have been highly influenced by the pandemic and the tens of billions of federal aid West Virginia has received in the past two years. Under normal budget circumstances, the plan would quickly become unfeasible.

The Senate plan relies on the extraordinary revenue growth of the past two years continuing indefinitely, as well as the state maintaining flat budgets with no growing expenses. The Senate plan assumes $147 million in annual revenue growth and $0 in annual spending growth in order to generate large enough budget surpluses to reimburse local governments. However, prior to the pandemic, the state was averaging only $89 million per year in revenue growth while also experiencing $82 million per year in spending growth. A return to this pre-pandemic normal would result in a much tighter budget picture than the Senate plan accounts for, with little room to reimburse local governments for hundreds of millions in lost property tax revenue.

Only with the inexplicable revenue growth fueled by pandemic aid and flat budgets backfilled with federal dollars does the Senate's plan work. In fact, over the past decade, there is not a single year where the state would have been able to make the $558 million local government reimbursement without making significant spending cuts or raising taxes (Figure 7).

[9] WV Senate Finance Committee: County by County Assessment and Potential Replacement Revenue.

Figure 7



Property Taxes and Economic Growth

While proponents of eliminating West Virginia's property tax on business machinery, equipment, inventory, and other business personal property claim the tax is one of the state's "biggest impediments to job growth,"[10] there is very little evidence to support those claims. In fact, evidence strongly suggests that taxes on businesses overall play a very small role in economic growth.

In 2019, West Virginia Forward, a collaborative initiative between West Virginia University, Marshall University, and the West Virginia Department of Commerce, released a report on West Virginia's business personal property tax. The report noted that, "there are a limited number of studies on the effects of [tangible personal property] tax changes on economic activity" and those that do exist "have offered mixed conclusions." The report goes on to note that, "Some studies demonstrate that there are more important factors businesses and investors take into consideration when deciding to base their operations in a particular location. Factors such as the quality of the available labor force (e.g., education attainment and necessary skills to fill firms' needs), utility and occupancy costs, infrastructure (e.g., highways and transportation), proximity to consumers and the quality of public services, appear to be more significant in a firm's location decision than local and state tax structure."[11]

Ohio, a state that has recently eliminated its property tax on manufacturing machinery and equipment, found little economic benefit. Since beginning the phase out of the tax in 2005, Ohio has trailed the nation in

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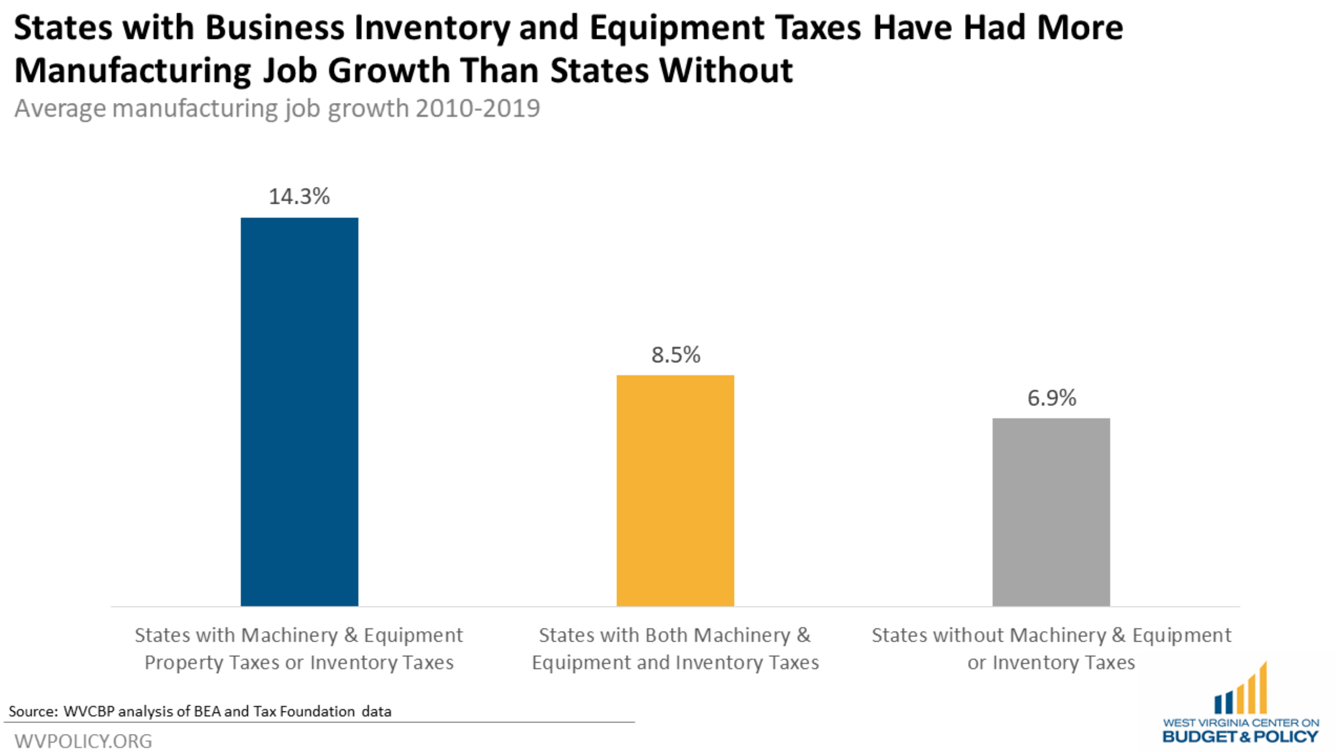
[10] West Virginia House of Delegates, "This Week in the House of Delegates" (January 25, 2019). Accessed from http://www.wvlegislature.gov/News_release/pressrelease.cfm?release=2492.
[11] Priscila Borges Marques dos Santos, "Resolving tangible personal property tax," (Morgantown, West Virginia: WV Forward and West Virginia University, May 2019).

manufacturing job growth,[12] and a recent study found that Ohio's elimination of the tax actually *cost* the state manufacturing jobs, as it created an incentive to automate and replace labor with machinery.[13]

Overall, during the past decade, states with property taxes on business machinery, equipment, and inventory saw more manufacturing job growth on average than the states without such taxes, strongly undermining the claim that the tax is a significant barrier to job growth (Figure 8).

Figure 8



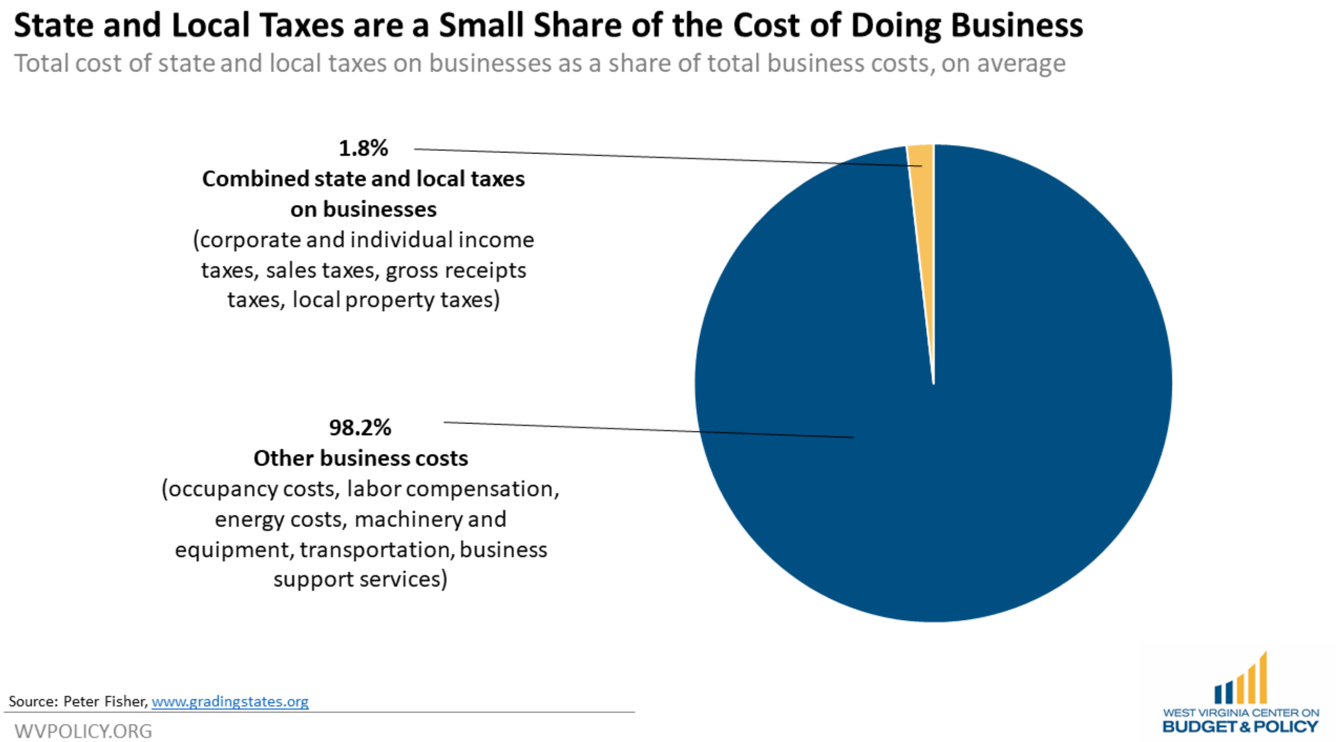
One reason that state and local business tax cuts are a poor strategy for promoting economic growth and creating jobs is because taxes are a small fraction of the total cost of doing business. Tax cuts "work" by reducing business costs, in the hope that the reduction in costs will generate growth. But because the cost of paying state and local taxes is so minor compared to other costs like labor, utilities, occupancy, and transportation, tax cuts are largely ineffective.

On average, state and local business taxes make up less than two percent of the cost of doing business, and the personal business property tax is only a fraction of that amount (Figure 9). Eliminating the personal business property tax would barely move the needle on reducing total business costs, with little influence on the economy.

[12] Sean O'Leary, "Data Doesn't Support Eliminating the Business Machinery, Equipment, and Inventory Property Tax" (Charleston, West Virginia: West Virginia Center on Budget and Policy, June 2022).
[13] Sian Murphy and Geoffrey Propheter, "Estimating the Manufacturing Employment Impact of Eliminating the Tangible Personal Property Tax: Evidence From Ohio," *Economic Development Quarterly* Vol 31, Issue 4, 2017.

Further, it is important to keep in mind that when a given tax funds public services like education and infrastructure that are essential to the economy – as West Virginia's property tax does – then cuts to that tax can actually result in impeded growth.

Figure 9



Conclusion

If Amendment Two passes, $515 million that funds vital public services could be eliminated by the state legislature, weakening the ability of local governments to invest in education, roads, public safety, recreation, and more. Local governments would lose significant power and authority over their own sources of revenue and would be forced to rely on promises from state lawmakers to fund their own public services – promises which, as explained above, are not expected to be fiscally feasible to keep.

Arguments for eliminating property taxes on business machinery, equipment, inventory, and other personal property are not based on evidence and data. There is little evidence that West Virginia's property tax curtails economic growth. Instead, research shows that the public services that are funded by property taxes are the same factors that attract businesses and people to the state, help the economy grow, and create a shared prosperity.

Rather than benefiting the state and its people, Amendment Two would take power away from local governments and voters and weaken the ability of communities to make investments that promote growth – all to allow the state legislature the opportunity to pursue more ineffective tax cuts.

Appendix

Local Government Impacts*

County	School Excess and Bond Levy Loss	School Regular Levy Loss After School Aid Formula	Total School Loss	Total County Loss	Total Municipal Loss	Total Local Government Impact
BARBOUR	$0	$339,908	$339,908	$1,182,540	$175,136	$2,037,492
BERKELEY	$6,888,161	$54,589	$6,942,750	$3,886,341	$746,987	$18,518,828
BOONE	$2,210,839	$390,966	$2,601,805	$1,989,275	$214,637	$7,407,522
BRAXTON	$301,899	$244,561	$546,461	$861,708	$90,000	$2,044,629
BROOKE	$4,133,558	$658,373	$4,791,931	$3,401,063	$962,265	$13,947,190
CABELL	$9,957,500	$937,685	$10,895,185	$7,810,842	$2,691,748	$32,292,960
CALHOUN	$29,785	$42,655	$72,440	$202,528	$4,790	$352,198
CLAY	$93,518	$51,013	$144,531	$179,744	$9,321	$478,127
DODDRIDGE	$4,157,508	$1,455,114	$5,612,622	$2,998,116	$21,516	$14,244,876
FAYETTE	$2,065,177	$342,235	$2,407,411	$1,873,628	$416,305	$7,104,756
GILMER	$154,301	$79,876	$234,177	$370,204	$42,669	$881,227
GRANT	$376,367	$247,164	$623,531	$870,881	$54,719	$2,172,662
GREENBRIER	$2,157,052	$758,717	$2,915,769	$1,577,974	$481,892	$7,891,404
HAMPSHIRE	$416,751	$194,188	$610,939	$784,697	$39,722	$2,046,297
HANCOCK	$3,910,560	$513,373	$4,423,933	$2,100,336	$820,166	$11,768,368
HARDY	$266,416	$214,629	$481,045	$760,430	$164,387	$1,886,907
HARRISON	$7,304,693	$1,808,973	$9,113,667	$6,553,743	$2,821,109	$27,602,185
JACKSON	$4,257,709	$752,530	$5,010,239	$3,656,656	$396,962	$14,074,096
JEFFERSON	$3,534,132	$516,828	$4,050,960	$1,887,158	$395,040	$10,384,118
KANAWHA	$19,031,206	$3,367,550	$22,398,757	$16,908,335	$8,055,941	$69,761,789
LEWIS	$691,051	$271,766	$962,817	$957,561	$107,264	$2,990,459
LINCOLN	$247,745	$44,184	$291,929	$213,309	$8,890	$806,057
LOGAN	$3,664,343	$648,003	$4,312,346	$3,370,557	$272,382	$12,267,631
MARION	$4,084,381	$748,728	$4,833,109	$3,295,979	$845,227	$13,807,424
MARSHALL	$11,644,060	$2,700,106	$14,344,165	$6,240,839	$892,897	$35,822,067
MASON	$1,686,719	$298,280	$1,984,998	$1,216,348	$145,393	$5,331,738
McDOWELL	$1,693,379	$299,458	$1,992,837	$1,055,134	$157,136	$5,197,944
MERCER	$3,122,126	$548,115	$3,670,241	$1,945,377	$523,464	$9,809,323
MINERAL	$2,297,905	$406,362	$2,704,266	$1,711,163	$283,669	$7,403,365
MINGO	$1,855,200	$194,131	$2,049,331	$1,085,046	$199,671	$5,383,379
MONONGALIA	$8,127,801	$1,279,728	$9,407,529	$6,044,663	$1,633,104	$26,492,825
MONROE	$513,443	$70,210	$583,653	$439,898	$28,409	$1,635,613
MORGAN	$551,734	$139,127	$690,861	$490,659	$29,569	$1,901,950
NICHOLAS	$1,298,304	$293,477	$1,591,781	$1,226,271	$284,194	$4,694,027
OHIO	$5,901,822	$1,386,754	$7,288,576	$2,916,651	$1,623,997	$19,117,800
PENDLETON	$0	$83,202	$83,202	$293,163	$16,756	$476,323
PLEASANTS	$1,942,439	-$352,397	$1,590,042	$1,004,635	$175,907	$4,360,626
POCAHONTAS	$0	$134,201	$134,201	$472,856	$33,847	$775,105
PRESTON	$1,733,375	$366,781	$2,100,156	$1,398,991	$245,385	$5,844,688
PUTNAM	$6,306,292	$1,037,435	$7,343,728	$2,958,340	$566,647	$18,212,442
RALEIGH	$6,036,562	$1,146,836	$7,183,397	$4,595,151	$880,781	$19,842,727
RANDOLPH	$0	$445,819	$445,819	$1,436,152	$295,563	$2,623,353
RITCHIE	$853,571	$228,988	$1,082,560	$1,176,807	$72,388	$3,414,314
ROANE	$130,761	$114,868	$245,629	$584,743	$49,530	$1,125,531
SUMMERS	$0	$72,955	$72,955	$257,055	$58,139	$461,104
TAYLOR	$931,035	$329,288	$1,260,323	$1,518,053	$154,708	$4,193,407
TUCKER	$0	$165,464	$165,464	$603,789	$91,251	$1,025,968
TYLER	$3,752,124	$1,372,793	$5,124,917	$2,396,782	$77,705	$12,724,321
UPSHUR	$929,602	$377,649	$1,307,251	$1,352,321	$263,580	$4,230,403

County	School Excess and Bond Levy Loss	School Regular Levy Loss After School Aid Formula	Total School Loss	Total County Loss	Total Municipal Loss	Total Local Government Impact
WAYNE	$3,267,231	$297,690	$3,564,921	$1,806,983	$370,790	$9,307,615
WEBSTER	$0	$102,792	$102,792	$362,186	$35,960	$603,730
WETZEL	$6,379,527	$1,207,747	$7,587,273	$4,152,947	$366,768	$19,694,262
WIRT	$196,118	$38,526	$234,643	$196,415	$9,304	$675,006
WOOD	$6,704,246	$971,305	$7,675,551	$4,395,109	$2,684,208	$22,430,419
WYOMING	$1,941,875	$203,200	$2,145,074	$1,135,739	$129,368	$5,555,256
STATE TOTAL	$158,106,289	$31,337,244	$189,443,533	$124,163,871	$32,219,163	$346,759,432

*Notes:

- This table projects all possible losses if Amendment 2 were to pass and the Legislature exempted all taxes they are given authority over including business machinery and equipment, inventory, and personal vehicles.
- While the state's school aid formula would make up much of the county school funding lost under the regular levy, there would still be an overall funding reduction. The school aid formula would not make up any excess levy or bond funding.
- These estimates are conservative as they do not account for $50 million in supplemental property taxes that were not available broken down by county. The total amounts referenced in the body of the report do account for the additional $50 million.

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