WEST VIRGINIA CODE: §11-15-8D

§11-15-8d. Limitations on right to assert exemptions.

(a) Persons who perform "contracting" as defined in §11-15-2 of this code or persons acting in an agency capacity may not assert any exemption to which the purchaser of such contracting services or the principal is entitled. Any statutory exemption to which a taxpayer may be entitled is invalid unless the tangible personal property or taxable service is actually purchased by such taxpayer and is directly invoiced to and paid by such taxpayer. This section does not apply to purchases by an employee for his or her employer, purchases by a partner for his or her partnership or purchases by a duly authorized officer of a corporation, or unincorporated organization, for his or her corporation or unincorporated organization so long as the purchase is invoiced to and paid by the employer, partnership, corporation or unincorporated organization.

(b) Transition rule. — This section does not apply to purchases of tangible personal property or taxable services in fulfillment of a purchasing agent or procurement agent contract executed and legally binding on the parties thereto prior to September 15, 1999. This transition rule does not apply to any purchases of tangible personal property or taxable services made under such a contract after August 31, 1991, and this transition rule does not apply if the primary purpose of the purchasing agent or procurement agent contract was to avoid payment of consumers sales and use taxes. Effective July 1, 2007, this section does not apply to purchases of services, machinery, supplies or materials, except gasoline and special fuel, to be directly used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure by a person performing "contracting", as defined in §11-15-2 of this code, if the purchaser of the contracting services would be entitled to claim the refundable exemption under §11-15-9(b)(2) of this code had it purchased the services, machinery, supplies or materials. Effective July 1, 2009, this section does not apply to purchases of services, computers, servers, building materials and tangible personal property, except purchases of gasoline and special fuel, to be installed into a building or facility or directly used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure by a person performing "contracting", as defined in §11-15-2 of this code, if the purchaser of the contracting services would be entitled to claim the exemption under §11-15-9h(a)(7) of this code. This section shall not apply to qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and their components, or to qualified purchases of building materials and certain tangible personal property, as those terms are defined in §11-15-9n of this code, by a person performing "contracting", as defined in §11-15-2 of this code, if the purchaser of the contracting services would be entitled to claim the refundable exemption under §11-15-9n of this code. Purchases of gasoline and special fuel shall not be treated as exempt pursuant to this section.

(c) Effective July 1, 2011, notwithstanding any other provision of this code to the contrary,

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this section shall apply as to purchases of services, machinery, supplies or materials, except gasoline and special fuel, to be directly used or consumed in the construction, alteration, repair or improvement of a new or existing natural gas compressor station or gas transmission line having a diameter of twenty inches or more by a person performing "contracting", as defined in §11-15-2 of this code, even though the purchaser of the contracting services would be entitled to claim the refundable exemption under §11-15-9(b)(2) of this code had it purchased the services, machinery, supplies or materials, unless the person or entity performing contracting under this subsection, as the term "contracting" is defined in §11-15-2 of this code, complies with §11-13S-4(e) of this code.

(d) (1) Effective July 1, 2012, this section does not apply to purchases of services, building materials and tangible personal property, except purchases of gasoline and special fuel, to be installed into a building or facility or directly used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure by a person performing contracting, as defined in §11-15-2 of this code, if the purchaser of the contracting services is a nonprofit youth organization that would be entitled to claim the exemption under §11-15-9(a)(6)(E) of this code had it purchased the services, machinery, supplies or materials.

(2) For purposes of this subsection, the term "nonprofit youth organization" means any nonprofit organization, including any subsidiary, affiliated or other related entity within its corporate or business structure, that has been chartered by the United States Congress to help train young people to do things for themselves and others, and that has established an area of at least six thousand contiguous acres within West Virginia in which to provide adventure or recreational activities for these young people and others.

(3) The exception provided in this subsection shall terminate June 30, 2022.

(e) (1) Effective July 1, 2026, this section does not apply to purchases of services, and building materials, except purchases of gasoline and special fuel, to be installed into a public school facility or directly used or consumed in the construction, alteration, repair or improvement of a new or existing public school facility by a person performing contracting, as defined in §11-15-2 of this code, if the purchaser of the contracting services is an entity that would be entitled to claim the exemption under §11-15-9(a)(6)(B) of this code had it purchased the services, building materials or tangible personal property.

(2) For purposes of this subsection, the terms:

"Building materials" means all tangible personal property, including any device or appliance used by builders, contractors or landowners in making improvements, additions, or alterations to a building or other structure or to real property in such a way that such tangible personal property becomes a part of the building or other structure or the realty, which is installed into or directly used or consumed in the construction, addition, alteration, repair or improvement of a qualified, new or expanded public school facility. "Building materials" does not include tools, construction equipment or any property or device which

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does not become a permanent part of the realty when construction is completed. A device or appliance becomes a fixture and a part of the building or other structure or the real property to which it is connected when it is built into or is attached to the property in such a way that its removal would substantially damage or deface such property.

"School facility" means real property used primarily for instructional, administrative, or extracurricular functions by a public elementary or secondary school, or vocational school.

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