WEST VIRGINIA CODE CHAPTER 11 ARTICLE 15

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§11-15-1. General consumers sales and service tax imposed.

The purpose of this article is to impose a general consumers sales and service tax.

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§11-15-1a. Legislative findings.

The Legislature hereby finds and declares that:

(1) It is the intent of the Legislature that the consumers sales tax imposed by the provisions of article fifteen and the use tax imposed by the provisions of article fifteen-a of this chapter, be complementary laws and wherever possible be construed and applied to accomplish such intent as to the imposition, administration and collection of these taxes; and

(2) On and after January 1, 2004, the taxes levied by this article and article fifteen-a of this chapter shall also be administered and collected in accordance with the provisions of article fifteen-b of this chapter.

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§11-15-2. Definitions.

(a) General. -- When used in this article and article fifteen-a of this chapter, words defined in subsection (b) of this section have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) Definitions. --

(1) "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) "Communication" means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and includes commercial broadcast radio, commercial broadcast television and cable television.

(3) "Contracting":

(A) In general. -- "Contracting" means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor, subcontractor or construction manager) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. Contracting also includes services provided by a construction manager so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(B) Form of contract not controlling. -- An activity that falls within the scope of the definition of contracting constitutes contracting regardless of whether the contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract, whether or not open-ended, or any other kind of construction contract.

(C) Special rules. -- For purposes of this definition:

(i) The term "structure" includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property or which adds utility to real property or any part thereof or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time;

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(ii) The term "alteration" means, and is limited to, alterations which are capital improvements to a building or structure or to real property;

(iii) The term "repair" means, and is limited to, repairs which are capital improvements to a building or structure or to real property;

(iv) The term "decoration" means, and is limited to, decorations which are capital improvements to a building or structure or to real property;

(v) The term "improvement" means, and is limited to, improvements which are capital improvements to a building or structure or to real property;

(vi) The term "capital improvement" means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property, or any part thereof, and that last or are intended to be relatively permanent. As used herein, "relatively permanent" means lasting at least a year in duration without the necessity for regularly scheduled recurring service to maintain the capital improvement. "Regular recurring service" means regularly scheduled service intervals of less than one year;

(vii) Contracting does not include the furnishing of work, or both materials and work, in the nature of hookup, connection, installation or other services if the service is incidental to the retail sale of tangible personal property from the service provider's inventory: Provided, That the hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant to this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free-standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if the repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or intends to allow the real property or thing permanently attached thereto to remain in service for a year or longer; and

(viii) The term "construction manager" means a person who enters into an agreement to employ, direct, coordinate or manage design professionals and contractors who are hired and paid directly by the owner or the construction manager. The business activities of a "construction manager" as defined in this subdivision constitute contracting, so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(4) "Directly used or consumed" in the activities of manufacturing, transportation,

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transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include only:

(i) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(ii) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(iii) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(iv) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(v) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(vi) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(vii) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(viii) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(ix) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(x) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xi) Maintaining or repairing of property, including maintenance equipment, directly used in transportation, communication, transmission, manufacturing production or production of

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natural resources;

(xii) Storing, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(xiii) Engaging in pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(xiv) Otherwise using as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(B) Uses of property or services which do not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of these activities.

(5) "Directly used or consumed" in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business means used or consumed in those activities or operations which constitute an integral and essential part of those activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to those activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include only:

(i) Tangible personal property, custom software or services, including equipment,

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machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;

(ii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the transmission or distribution of gas, water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and these vehicles and their equipment as are specifically designed and equipped for those purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(iii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and repair parts used to keep in operation exempt storage devices;

(iv) Tangible personal property, custom software or services used immediately in the storage, removal or transportation of economic waste resulting from the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business;

(v) Tangible personal property, custom software or services used immediately in pollution control or environmental quality or protection activity or community safety or security directly relating to the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business.

(B) Uses of property or services which would not constitute direct use or consumption in the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and

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administration; or

(vi) An activity or function incidental or convenient to the activities of gas storage, generation or production or sale of electric power, the provision of public utility service or the operation of a utility business.

(6) "Gas storage" means the injection of gas into a storage reservoir or the storage of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir engaged in by businesses subject to the business and occupation tax imposed by sections two and two-e, article thirteen of this chapter.

(7) "Generating or producing or selling of electric power" means the generation, production or sale of electric power engaged in by businesses subject to the business and occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

(8) "Gross proceeds" means the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses may not be deducted, but any credit or refund made for goods returned may be deducted.

(9) "Includes" and "including", when used in a definition contained in this article, does not exclude other things otherwise within the meaning of the term being defined.

(10) "Manufacturing" means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(11) "Person" means any individual, partnership, association, corporation, limited liability company, limited liability partnership or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

(12) "Personal service" includes those: (A) Compensated by the payment of wages in the ordinary course of employment; and (B) rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(13) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number decline with use in a known amount.

(14) Production of natural resources.

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(A) "Production of natural resources" means, except for oil and gas, the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith and the construction, installation or fabrication of ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated facilities and apparatus, by the producer or others, including contractors and subcontractors, at a coal mine or coal production facility.

(B) For the natural resources oil and gas, "production of natural resources" means the performance, by either the owner of the natural resources, a contractor or a subcontractor, of the act or process of exploring, developing, drilling, well-stimulation activities such as logging, perforating or fracturing, well-completion activities such as the installation of the casing, tubing and other machinery and equipment and any reclamation, waste disposal or environmental activities associated therewith, including the installation of the gathering system or other pipeline to transport the oil and gas produced or environmental activities associated therewith and any service work performed on the well or well site after production of the well has initially commenced.

(C) All work performed to install or maintain facilities up to the point of sale for severance tax purposes is included in the "production of natural resources" and subject to the direct use concept.

(D) "Production of natural resources" does not include the performance or furnishing of work, or materials or work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property, by persons other than those otherwise directly engaged in the activities specifically set forth in this subdivision as "production of natural resources".

(15) "Providing a public service or the operating of a utility business" means the providing of a public service or the operating of a utility by businesses subject to the business and occupation tax imposed by sections two and two-d, article thirteen of this chapter.

(16) "Purchaser" means a person who purchases tangible personal property, custom software or a service taxed by this article.

(17) "Sale", "sales" or "selling" includes any transfer of the possession or ownership of tangible personal property or custom software for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his or her agent for consumption or use or any other purpose. "Sale" also includes the furnishing of a service for consideration. Notwithstanding anything to the contrary in this code, effective after June 30, 2008, "sale" also includes the furnishing of prepaid wireless calling service for consideration.

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(18) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property or custom software, but does not include contracting, personal services or the services rendered by an employee to his or her employer or any service rendered for resale: Provided, That the term "service" or "selected service" does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer's, distributor's or other third party's marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a "service" or "selected service" rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(19) "Streamlined Sales and Use Tax Agreement" or "agreement", when used in this article, has the same meaning as when used in article fifteen-b of this chapter, except when the context in which the word "agreement" is used clearly indicates that a different meaning is intended by the Legislature.

(20) "Tax" includes all taxes, additions to tax, interest and penalties levied under this article or article ten of this chapter.

(21) "Tax Commissioner" means the State Tax Commissioner or his or her delegate. The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the state Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(22) "Taxpayer" means any person liable for the tax imposed by this article or additions to tax, penalties and interest imposed by article ten of this chapter.

(23) "Transmission" means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(24) "Transportation" means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(25) "Ultimate consumer" or "consumer" means a person who uses or consumes services or personal property.

(26) "Vendor" means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article.

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(c) Additional definitions. -– Other terms used in this article are defined in article fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen of this chapter. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.

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§11-15-3. Amount of tax; allocation of tax and transfers.

(a) *Vendor to collect.* — Unless otherwise provided in this article or provided in §11-15A-1 *et seq*. of this code, for the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services defined in §11-15-2 and §11-15-8 of this code, the vendor shall collect from the purchaser the tax as provided under this article and §11-15B-1 *et seq*. of this code, and shall pay the amount of tax to the Tax Commissioner in accordance with the provisions of this article or §11-15B-1 *et seq*. of this code.

(b) *Amount of tax.* — The general consumers sales and service tax imposed by this article shall be at the rate of six cents on the dollar of sales or services, excluding gasoline and special fuel sales, which remain taxable at the rate of five cents on the dollar of sales.

(c) *Calculation tax on fractional parts of a dollar until January 1, 2004.* — There shall be no tax on sales where the monetary consideration is five cents or less. The amount of the tax shall be computed as follows:

(1) On each sale, where the monetary consideration is from six cents to 16 cents, both inclusive, one cent.

(2) On each sale, where the monetary consideration is from 17 cents to 33 cents, both inclusive, two cents.

(3) On each sale, where the monetary consideration is from 34 cents to 50 cents, both inclusive, three cents.

(4) On each sale, where the monetary consideration is from 51 cents to 67 cents, both inclusive, four cents.

(5) On each sale, where the monetary consideration is from 68 cents to 84 cents, both inclusive, five cents.

(6) On each sale, where the monetary consideration is from 85 cents to $1, both inclusive, six cents.

(7) If the sale price is in excess of $1, six cents on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars as follows: One cent on the fractional part of the dollar if less than 17 cents; two cents on the fractional part of the dollar if in excess of 16 cents but less than 34 cents; three cents on the fractional part of the dollar if in excess of 33 cents but less than 51 cents; four cents on the fractional part of the dollar if in excess of 50 cents but less than 68 cents; five cents on the fractional part of the dollar if in excess of 67 cents but less than 85 cents; and six cents on the fractional part of the dollar if in excess of 84 cents. For example, the tax on sales from $1.01 to $1.16, both inclusive, seven cents; on sales from $1.17 to $1.33, both inclusive, eight cents; on sales from $1.34 to $1.50, both inclusive, nine cents; on sales from $1.51 to $1.67, both inclusive,

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10 cents; on sales from $1.68 to $1.84, both inclusive, 11 cents; and on sales from $1.85 to $2, both inclusive, 12 cents: *Provided*, That beginning January 1, 2004, tax due under this article shall be calculated as provided in this subsection and subsection (d) of this section does not apply to sales made after December 31, 2003.

(d) *Calculation of tax on fractional parts of a dollar after December 31, 2003*. — Beginning January 1, 2004, the tax computation under subsection (b) of this section shall be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(e) *No aggregation of separate sales transactions, exception for coin-operated devices*. — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though the sales are aggregated in the billing or payment therefor. Notwithstanding any other provision of this article, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.

(f) *Rate of tax on certain mobile homes*. — Notwithstanding any provision of this article to the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal year-round residence and dwelling shall be an amount equal to six percent of 50 percent of the sales price.

(g) *Construction; custom software*. — After December 31, 2003, whenever the words "tangible personal property" or "property" appear in this article, the same shall also include the words "custom software".

(h) *Computation of tax on sales of gasoline and special fuel*. — The method of computation of tax provided in this section does not apply to sales of gasoline and special fuel.

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§11-15-3a. Rate of tax on food and food ingredients intended for human consumption; reductions and cessations of tax.

(a) Rate of tax on food and food ingredients. -- Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary:

(1) Rate reduction. -- The rate of tax on sales, purchases and uses of food and food ingredients intended for human consumption after June 30, 2008, shall be three percent of its sales price, as defined in section two, article fifteen-b of this chapter.

(2) Additional rate reduction. -- The rate of tax on sales, purchases and uses of food and food ingredients as defined in that section that is intended for human consumption after December 31, 2011, shall be two percent of its sales price, as defined in that section. After June 30, 2012, the rate of tax on sales, purchases and uses of food and food ingredients as defined in that section that is intended for human consumption shall be one percent of its sales price, as defined in that section.

(3) Contingent termination of tax on food. -- The tax on sales, purchases and uses of food and food ingredients as defined in section two, article fifteen-b of this chapter that is intended for human consumption shall cease after June 30, 2013, and no such tax shall be imposed on sales, purchases and uses of food and food ingredients so defined: Provided, That the cessation of tax after June 30, 2013, authorized by this subsection shall be suspended if the balance of funds as of December 31, 2012, in the Revenue Shortfall Reserve Fund established in section twenty, article two, chapter eleven-b of this code does not equal or exceed twelve and one-half percent of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2012. Such suspension shall terminate, and the cessation of tax shall proceed, beginning on July 1 of any calendar year beginning after December 31, 2013, in which the balance of funds as of December 31 of the preceding fiscal year in said Revenue Shortfall Reserve Fund equals or exceeds twelve and one-half percent of the General Revenue Fund budgeted for the immediately succeeding fiscal year.

(b) Calculation of tax on fractional parts of a dollar. -- The tax computation under this section shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The seller may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(c) Federal Food Stamp and Women, Infants and Children programs, other exemptions. -- Nothing in this section affects application of the exemption from tax provided in section nine of this article for food purchased by an eligible person using food stamps, electronic benefits transfer cards or vouchers issued by or pursuant to authorization of the United States Department of Agriculture to individuals participating in the Federal Food Stamp Program, by whatever name called, or the Women, Infants and Children (WIC) program, or application of any other exemption from tax set forth in this article or article fifteen-a of this chapter.

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§11-15-3b. Exceptions to reduced rate of tax on food and food ingredients intended for human consumption.

The reduced rate of tax provided on food and food ingredients intended for human consumption provided in section three-a of this article shall not apply to sales, purchases and uses by consumers of "prepared food", as defined in article fifteen-b of this chapter, which shall remain taxable at the general rate of tax specified in section three of this article and section two, article fifteen-a of this chapter: Provided, That after June 30, 2007, the reduced rate of tax provided in section three-a of this article shall not apply to sales, purchases and uses by consumers of "prepared food", "food sold through vending machines" and "soft drinks" as defined in article fifteen-b of this chapter, which shall be taxed at the general rate of tax specified in section three of this article and section two, article fifteen-a of this chapter.

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§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

(a) Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, beginning on July 1, 2008, all motor vehicle sales to West Virginia residents shall be subject to the consumers sales tax imposed by this article.

(b) Rate of tax on motor vehicles. — Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, the rate of tax on the sale and use of a motor vehicle shall be five percent of its sale price, as defined in section two, article fifteen-b of this chapter: Provided, That so much of the sale price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section or section four, article three, chapter seventeen-a of this code has been paid by the purchaser shall be deducted from the total actual sale price paid for the motor vehicle, whether the motor vehicle be new or used. However, beginning July 1, 2017, the rate of tax imposed by this section shall increase to six percent of the sales price for purchases of motor vehicles made on and after that date.

(c) Motor vehicles purchased out of state. — Notwithstanding this article or article fifteen-a to the contrary, the tax imposed by this section shall apply to all motor vehicles, used as defined by section one, article fifteen-a of this chapter, within this state, regardless of whether the vehicle was purchased in a state other than West Virginia.

(d) Definition of sale. — Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, for purposes of this section, “sale”, “sales” or “selling” means any transfer or lease of the possession or ownership of a motor vehicle for consideration, including isolated transactions between individuals not being made in the ordinary course of repeated and successive business and also including casual and occasional sales between individuals not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions.

(e) Definition of motor vehicle. — For purposes of this section, “motor vehicle” means every propellable device in or upon which any person or property is or may be transported or drawn upon a highway including, but not limited to: Automobiles; buses; motor homes; motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck tractors and road tractors having a weight of less than fifty-five thousand pounds; trailers, semitrailers, full trailers, pole trailers and converter gear having a gross weight of less than two thousand pounds; and motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor homes; except that the term “motor vehicle” does not include: Modular homes, manufactured homes, mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the highways but primarily designed for habitation and occupancy; devices operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the

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Public Service Commission; mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment as defined in section one, article one, chapter seventeen-a of this code; trucks, truck tractors and road tractors having a gross weight of fifty-five thousand pounds or more; trailers, semitrailers, full trailers, pole trailers and converter gear having weight of two thousand pounds or greater: Provided, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment defined in section one, article one, chapter seventeen-a of this code; Class B trucks, truck tractors and road tractors registered at a gross weight of fifty-five thousand pounds or more; and Class C trailers, semitrailers, full trailers, pole trailers and converter gear having weight of two thousand pounds or greater does not subject the sale or purchase of the vehicle to the consumers sales and service tax imposed by section three of this article.

(f) Exemptions. — Notwithstanding any other provision of this code to the contrary, the tax imposed by this section shall not be subject to any exemption in this code other than the following:

(1) The tax imposed by this section does not apply to any passenger vehicle offered for rent in the normal course of business by a daily passenger rental car business as licensed under the provisions of article six-d, chapter seventeen-a of this code. For purposes of this section, a daily passenger car means a motor vehicle having a gross weight of eight thousand pounds or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than $1 nor more than $1.50 for each day or part of the rental period. The Commissioner of the Division of Motor Vehicles shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(2) The tax imposed by this section does not apply where the motor vehicle has been acquired by a corporation, partnership or limited liability company from another corporation, partnership or limited liability company that is a member of the same controlled group and the entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by this section. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(3) The tax imposed by this section does not apply where motor vehicle has been acquired by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Code, Title 26 U. S. C. §501(c)(3) and which is recognized to be a bona fide senior citizen service organization by the Bureau of Senior Services existing under the provisions of article five-p, chapter sixteen of this code.

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(4) The tax imposed by this section does not apply to any active duty military personnel stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from the date the person returns to this state.

(5) The tax imposed by this section does not apply to motor vehicles acquired by registered dealers of this state for resale only.

(6) The tax imposed by this section does not apply to motor vehicles acquired by this state or any political subdivision thereof or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of this state as a nonprofit corporation for protection of life or property.

(7) The tax imposed by this section does not apply to motor vehicles acquired by an urban mass transit authority, as defined in article twenty-seven, chapter eight of this code, or a nonprofit entity exempt from federal and state income tax under the Internal Revenue Code for the purpose of providing mass transportation to the public at large or designed for the transportation of persons and being operated for the transportation of persons in the public interest.

(8) The tax imposed by this section does not apply to the registration of a vehicle owned and titled in the name of a resident of this state if the applicant:

(A) Was not a resident of this state at the time the applicant purchased or otherwise acquired ownership of the vehicle;

(B) Presents evidence as the Commissioner of the Division of Motor Vehicles may require of having titled the vehicle in the applicant's previous state of residence;

(C) Has relocated to this state and can present such evidence as the Commissioner of the Division of Motor Vehicles may require to show bona fide residency in this state; and

(D) Makes application to the Division of Motor Vehicles for a title and registration and pays all other fees required by chapter seventeen-a of this code within thirty days of establishing residency in this state as prescribed in subsection (a), section one-a of this article.

(9) On and after January 1, 2009, the tax imposed by this section does not apply to Class B trucks, truck tractors and road tractors registered at a gross weight of fifty-five thousand pounds or more or to Class C trailers, semitrailers, full trailers, pole trailers and converter gear having a weight of two thousand pounds or greater. If an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle.

WV Legislature

(10) The tax imposed by this section does not apply to vehicles leased by residents of West Virginia. On or after January 1, 2009, a tax is imposed upon the monthly payments for the lease of any motor vehicle leased under a written contract of lease by a resident of West Virginia for a contractually specified continuous period of more than thirty days, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle. Leases of thirty days or less are taxable under the provisions of this article and article fifteen-a of this chapter without reference to this section.

(g) Division of Motor Vehicles to collect. — Notwithstanding any provision of this article, article fifteen-a and article ten of this chapter to the contrary, the Division of Motor Vehicles shall collect the tax imposed by this section: Provided, That such tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle.

(h) Dedication of tax to highways. — Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, all taxes collected pursuant to this section, after deducting the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in the State Treasury and expended by the Commissioner of Highways for design, maintenance and construction of roads in the state highway system.

(i) Legislative rules; emergency rules. — Notwithstanding any provision of this article, article fifteen-a and article ten of this chapter to the contrary, the Commissioner of the Division of Motor Vehicles shall promulgate legislative rules explaining and implementing this section, which rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code and should include a minimum taxable value and set forth instances when a vehicle is to be taxed at fair market value rather than its purchase price. The authority to promulgate rules includes authority to amend or repeal those rules. If proposed legislative rules for this section are filed in the State Register before June 15, 2008, those rules may be promulgated as emergency legislative rules as provided in article three, chapter twenty-nine-a of this code.

(j) Notwithstanding any other provision of this code, effective January 1, 2009, no municipal sales or use tax or local sales or use tax or special downtown redevelopment district excise tax or special district excise tax shall be imposed under article twenty-two, chapter seven of this code or article thirteen, chapter eight of this code or article thirteen-b of said chapter or article thirty-eight of said chapter or any other provision of this code, except this section, on sales of motor vehicles as defined in this article or on any tangible personal property excepted or exempted from tax under this section. Nothing in this subsection shall be construed to prevent the application of the municipal business and occupation tax on motor vehicle retailers and leasing companies.

WVLegislature

§11-15-4. Purchaser to pay; accounting by vendor.

(a) Unless assumed or absorbed by the vendor in accordance with the provisions of §11-15A-8 of this code, the purchaser shall pay to the vendor the amount of tax levied by this article which is added to and constitutes a part of the sales price, and is collectible by the vendor who shall account to the state for all tax paid by the purchaser.

(b) The vendor shall keep records necessary to account for:

(1) The vendor's gross proceeds from sales of personal property and services;

(2) The vendor's gross proceeds from taxable sales;

(3) The vendor's gross proceeds from exempt sales;

(4) The amount of taxes collected under this article, which taxes shall be held in trust for the State of West Virginia until paid over to the Tax Commissioner or if assumed or absorbed in accordance with the provisions of §11-15A-8 of this code, the extent to which such taxes were so absorbed or assumed; and

(5) Any other information as required by this article or §11-15B-1 *et seq*. of this code, or as required by the Tax Commissioner.

WV Legislature

§11-15-4a. Noncollection of tax; liability of vendor.

If any vendor does not collect the tax imposed by §11-15-3 of this code, the vendor shall be personally liable for the amount the vendor did not collect, except as otherwise provided in this article or §11-15B-1 *et seq*. of this code.

WV Legislature

§11-15-4b. Liability of purchaser; assessment and collection.

(a) *General.* — Unless the vendor assumed or absorbs the tax imposed by this article in accordance with §11-15A-8 of this code, if any purchaser refuses or otherwise does not pay to the vendor the tax imposed by §11-15-3 of this code, or a purchaser refuses to present to the vendor a proper certificate indicating the sale is not subject to this tax, or presents to the vendor a false certificate, or after presenting a proper certificate uses the items purchased in a manner that the sale would be subject to the tax, the purchaser shall be personally liable for the amount of tax applicable to the transaction or transactions.

(b) *Collection of tax from purchaser.* — Except as otherwise provided in this chapter, nothing in this section relieves any purchaser who owes the tax and who has not paid the tax imposed by §11-15-3 of this code from liability for payment of the tax. In those cases, the Tax Commissioner has authority to make an assessment against the purchaser, based upon any information within his or her possession or that may come into his or her possession. This assessment and notice thereof shall be made and given in accordance with §11-10-7 and §11-10-8 of this code.

(c) *Liability of vendor.* — This section may not be construed as relieving the vendor from liability for the tax, except as otherwise provided in this article or §11-15B-1 *et seq*. of this code.

WV Legislature

§11-15-4c. Collection of fee in addition to the consumers sales tax for sales of mobile factory-built homes; deposit of additional fee in West Virginia Affordable Housing Trust Fund.

(a) There is imposed, in addition to the sales tax imposed by the provisions of this article and §11-15A-1 et seq. of this code, a fee of $20 on all sales by licensed dealers of factory-built homes as that term is defined in §37-15-2 of this code to be collected as provided in §11-15B -1 et seq. of this code and remitted to the Tax Commissioner to be deposited by the commissioner in the Affordable Housing Fund, as provided in §31-18-20d of this code.

(b) The moneys collected from this additional fee shall be segregated from other funds of the West Virginia Housing Development Fund and shall be accounted for separately. None of these moneys may be expended by the West Virginia Housing Development Fund to defray administrative and operating costs and expenses actually incurred by the West Virginia Housing Development Fund.

WV Legislature

§11-15-5. Total amount collected is to be remitted.

No profit shall accrue to any person as a result of the collection of the tax levied by this article notwithstanding the total amount of the taxes collected may be in excess of the amount for which the person would be liable by the application of the rate of tax levied by section three of this article to the vendor's gross proceeds from taxable sales and services. The total amount of all taxes collected by the vendor shall be returned and remitted to the Tax Commissioner as provided in this article or article fifteen-b of this chapter.

WV Legislature

§11-15-5a.

Repealed.

Acts, 1987 reg. Sess., Ch. 138.

WV Legislature

§11-15-6. Vendor must show sale or service exempt; presumption.

(a) The burden of proving that a sale or service was exempt from the tax shall be upon the vendor, unless the vendor takes from the purchaser an exemption certificate signed by and bearing the address of the purchaser and setting forth the reason for the exemption and substantially in the form prescribed by the Tax Commissioner.

(b) To prevent evasion, it is presumed that all sales and services are subject to the tax until the contrary is clearly established.

WV Legislature

§11-15-7. Tax on gross proceeds of sales or value of manufactured, etc., products.

(a) A person exercising the privilege of producing for sale, profit or commercial use, any natural resources, product or manufactured product, and either engaged in the business of selling such product not otherwise exempted herein, or engaged in a business or activity in which such natural resource, product or manufactured product is used or consumed by him and such use or consumption is not otherwise exempt under this article, shall make returns of the gross proceeds of such sales or, in the absence of sale, the gross value of the natural resource, product or manufactured product, so used or consumed by him and pay the tax imposed by this article.

(b) The Tax Commissioner shall promulgate such uniform and equitable rules as he deems necessary for determining the gross value upon which the tax imposed by this article is levied in the absence of a sale, which value shall correspond as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by the same person or by another person.

(c) The provisions of this section, as amended by this act, shall apply to natural resources, products or manufactured products, used or consumed by the producer or manufacturer thereof on or after May 1, 1989.

WV Legislature

§11-15-7a. Tax on the manufacture, sale and installation of modular dwellings.

(a) Notwithstanding the provisions of section seven of this article, persons engaged in the manufacture and sale or the manufacture, sale and installation of a modular dwelling shall pay the tax imposed by this article only on the value of the building supplies and materials used in the manufacture and installation of the modular dwelling and the preparation of the site for permanent installation, and not on the labor involved in such activities. For purposes of this section, the value of the building supplies and materials shall be the actual cost of the building supplies and materials. If the manufacturer asserts an exemption at the time of purchase of the building supplies and materials, the manufacturer shall remit the tax due on the value of the building supplies and materials used in the manufacture of the modular dwelling at the time of sale of the modular dwelling. If the manufacturer pays the tax at the time of purchase of the building supplies and materials, the manufacturer is responsible for maintaining records evidencing payment of the tax. Failure to maintain such records will result in the tax being assessed to the manufacturer.

(b) Persons engaged in the sale and installation of a modular dwelling shall pay the tax imposed by this article on only the value of the materials used in the manufacture and installation of the modular dwelling and the preparation of the site for permanent installation, and not on the labor involved in such activities. For purposes of this section, the value of the materials used in the manufacture of the modular dwelling shall be the actual cost of the materials and building supplies to the manufacturer as delineated on the invoice to the purchaser. If the actual cost of the materials is not available, then the cost of the materials used in the manufacture of the modular dwelling shall be sixty percent of the total cost of the modular dwelling. A credit will be given to the purchaser for any sales or use tax that has been lawfully imposed by another state and paid by the manufacturer on the purchase of building supplies and materials used in the manufacture of the modular dwelling. If the manufacturer pays the tax at the time of purchase of the building supplies and materials, the manufacturer is responsible for maintaining records evidencing payment of the tax and delineating this amount on the invoice. Failure to maintain such records will result in the credit being denied.

(c) Definition of modular dwelling. -- For purposes of this article, a modular dwelling shall include, but not be limited to, single and multifamily houses, apartment units and commercial dwellings comprised of two or more sections without a permanent chassis, built to a state or model code other than the National Manufactured Housing Construction and Safety Standards Act of 1974, which are primarily constructed at a location other than the permanent site at which they are to be finally assembled and which are shipped to the site with most permanent components in place.

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§11-15-8. Furnishing of services included; exceptions.

The provisions of this article apply not only to selling tangible personal property and custom software, but also to the furnishing of all services, except professional and personal services, and except those services furnished by businesses subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission.

WV Legislature

§11-15-8a. Contractors.

(a) The provisions of this article shall not apply to contracting services. However, purchases by a contractor of tangible personal property or taxable services for use or consumption in the providing of a contracting service shall be taxable beginning March 1, 1989, except as otherwise provided in this article.

(b) Transition rules. -- The exemption from payment of tax on purchases of tangible personal property or taxable services directly used or consumed in the activity of contracting, as defined in section two of this article, which expires as of March 1, 1989, shall nevertheless remain in effect with respect to:

(1) Tangible personal property or taxable services purchased by a contractor on or after said first day of March in fulfillment of a written contract for contracting, as defined in section two of this article, that was executed and legally binding on the parties thereto on or before February 15, 1989; or in fulfillment of a written contract entered into after February 15 pursuant to a written bid for contracting that was made on or before February 15 that was binding on the contractor, but only to the extent that the bid is subsequently incorporated into a written contract; or

(2) Tangible personal property or taxable services purchased by a contractor on or after March 1 pursuant to a written contract executed on or before February 15, 1989, to purchase in specified quantities identified tangible personal property or specified taxable services; or

(3) Tangible personal property or taxable services purchased by a contractor for consumption or use in fulfillment of a written contract entered into before September 1, 1989, when such contract is for the construction of a new improvement to real property the construction or operation of which was approved by a federal or state regulatory body prior to February 1, 1989, or pursuant to a federal grant awarded prior to such first day of February.

(c) Renewals and extensions. -- A renewal of any contract shall constitute a new contract for purposes of this section, and the date of entry into a contract renewal by the parties, the date or dates of tender of consideration and the time of performance of any contractual obligations under a renewed contract shall be treated as the dates for determining application of this section to the renewed contract. Extensions of time granted or agreed upon by the parties to a contract for performance of the contract or for tender of consideration under the contract shall not be treated as contract renewals. Contracts to which such extensions apply shall be treated under these transition rules as if the original contractual provisions for performance and tender of consideration remain in effect.

(d) Definitions. -- For purposes of this section:

(1) The term "contract" or "contracts" means written agreements reciting or setting forth a

WV Legislature

fixed price consideration or a consideration based upon cost plus a stated percentage or a stated monetary increment. This term shall not mean or include ongoing sales contracts, contracts whereby any element of the consideration or the property or services sold or to be rendered in performance of the contract are undefined, or determined, as to either nature or quantity, subsequent to the making of the contract, or any open-ended contract.

(2) The term "contract renewal" or "renewal" means a covenant or agreement entered into or assumed by parties which have a current contractual relation or which have had a past contractual relation, whereby the parties agree to incur obligations beyond those which they were, or would have been, required, at the minimum, to carry out under their current or past contractual relation.

WV Legislature

§11-15-8b. Nonresident contractor--registration, bond, etc.

(a) Every nonresident contractor shall register with the Tax Commissioner prior to engaging in the performance of a contract in this state.

(b) (1) At the time of registration, the contractor shall deposit with the Tax Commissioner six percent of the amount the contractor is to receive for the performance of the contract which shall be held within a Contractors Use Tax Fund pending the completion of the contract, the determination of the taxes due this state under this article and article fifteen-a of this chapter because of such contract and the payment of the tax.

(2) In lieu of the deposit, the contractor may provide a corporate surety bond to be approved by the Tax Commissioner as to form, sufficiency, value, amount, stability, and other features necessary to provide a guarantee of payment of the compensating tax due this state.

(c) In addition, within thirty days after registration, under this section, the contractor shall file a statement with the Tax Commissioner itemizing the machinery, materials, supplies, and equipment that he has or will have on hand at the time he begins the fulfillment of the contract, including where such tangible personal property has been brought, shipped, or transported from outside this state upon which neither the tax imposed by this article nor article fifteen-a of this chapter has been paid, and shall pay the tax due thereon at the time of filing and thereafter shall report and pay the taxes as required by this article and article fifteen-a of this chapter.

WV Legislature

§11-15-8c. Transition rules for elimination of exemption for materials and supplies incorporated in real property owned by governmental entities.

(a) General rule. -- The expired provisions in subsection (j), section nine of this article, which previously exempted sales of tangible personal property to persons engaging in the activity of contracting, pursuant to a written contract with the United States, this state, or with a political subdivision thereof, or with a public corporation created by the Legislature or by another governmental entity pursuant to an act of the Legislature, for a building or structure, or improvement thereto, or other improvement to real property that is or will be owned and used by the governmental entity for a governmental or proprietary purpose, shall continue in force for:

(1) Tangible personal property purchased by a contractor on or after October 1, 1990, in fulfillment of a written contract for contracting, as defined in section two of this article, that was executed and legally binding on the parties thereto on or before September 15, 1990; or in fulfillment of a written contract entered into after said fifteenth day of September pursuant to a written bid for contracting that was made on or before said fifteenth day of September that was binding on the contractor, but only to the extent that the bid is subsequently incorporated into a written contract; and

(2) Tangible personal property purchased by a contractor on or after October 1, 1990, for consumption or use in fulfillment of a written contract for the construction of a new improvement to real property, the construction or operation of which was approved by a federal or state regulatory body prior to September 15, 1990, or pursuant to a federal grant awarded prior to said fifteenth day of September.

(b) Renewals and extensions. -- A renewal of any contract shall constitute a new contract for purposes of this section, and the date of entry into a contract renewal by the parties, the date or dates of tender of consideration and the time of performance of any contractual obligations under a renewed contract shall be treated as the dates for determining application of this section to the renewed contract. Extensions of time granted or agreed upon by the parties to a contract for performance of the contract or for tender of consideration under the contract shall not be treated as contract renewals. Contracts to which such extensions apply shall be treated under these transition rules as if the original contractual provisions for performance and tender of consideration remain in effect. For purposes of this section, the terms "contract" or "contracts", and "contract renewal" or "renewal" shall have the same meaning as defined in subsection (d), section eight-a of this article.

WV Legislature

§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, 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

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"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 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.

WV Legislature

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

WV Legislature

§11-15-8e. Forestry Equipment.

Effective July 1, 2026, the provisions of this article shall not apply to the sales and service of forestry equipment as defined in §11-8-5a of this code.

WV Legislature

§11-15-9. Exemptions.

(a) Exemptions for which exemption certificate may be issued. — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam, and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia Department of Education and the Arts, the Higher Education Policy Commission, or the Council for Community and Technical College Education for universities and colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions, or subdivisions of other states: *Provided*, That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state, or local governments for distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are subject to the tax imposed by §11-15-3c of this code or like tax;

(5) Sales of property or services to churches which make no charge whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, food for meals, and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(6) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under §11-12-1 *et seq*. of this code, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which is:

(A) A church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended;

(B) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

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(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions, or membership fees;

(D) An organization which has no paid employees and its gross income from fundraisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America, or the YMCA Indian Guide/Princess Program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term "support" includes, but is not limited to:

(I) Gifts, grants, contributions, or membership fees;

(II) Gross receipts from fundraisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state, or local tax or any similar benefit;

(ii) The term "charitable contribution" means a contribution or gift to, or for the use of, a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

WV Legislature

(iii) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The exemption granted in this subdivision applies only to services, equipment, supplies, and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel which are taxable as provided in §11-14C-1 *et seq*. of this code;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale, or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: *Provided*, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers, or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The Tax Commissioner may propose a legislative rule for promulgation pursuant to §29A-3-1 *et seq*. of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: *Provided*, That sales of tangible personal property and services to be used or consumed in the construction of, or permanent improvement to, real property and sales of gasoline and special fuel are not exempt: *Provided, however*, That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: *Provided*, That sales of gasoline and special fuel by distributors and importers are taxable except when the sale is to another distributor for resale: *Provided, however*, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which are to be installed in, affixed to, or incorporated by that person or his or her agent into any real property, building, or structure are not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs, durable medical goods, mobility-enhancing equipment, and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes;

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(12) Sales of radio and television broadcasting time, preprinted advertising circulars, and newspaper and outdoor advertising space for the advertisement of goods or services;

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term "casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character" means sales of tangible personal property or services at fundraisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any 12-month period and "limited duration" means no more than 84 consecutive hours: *Provided*, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than 84 consecutive hours at a time, which are held no more than 18 times in a 12-month period for the purposes of this subdivision are considered "casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character";

(15) Sales of property or services to a school which has approval from the Higher Education Policy Commission or the Council for Community and Technical College Education to award degrees, which has its principal campus in this state and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel are taxable as provided in §11-15-18, §11-15-18b, and §11-14C-1 *et seq*. of this code;

(16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the State Lottery Commission, under the provisions of §29-22-1 *et seq*. of this code;

(17) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 *et seq*. of this code to lessees for a period of 30 or more consecutive days;

(18) Notwithstanding the provisions of §11-15-18 or §11-15-18b of this code or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the Tax Commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with chapter 29A of this code by the Tax Commissioner;

(19) Any sales of tangible personal property or services purchased and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. § 2011, *et*

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seq., as amended, or with drafts issued through the West Virginia special supplement food program for women, infants, and children codified in 42 U. S. C. § 1786;

(20) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

(21) Sales of electronic data processing services and related software: *Provided*, That, for the purposes of this subdivision, "electronic data processing services" means:

(A) The processing of another's data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and

(B) Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(22) Tuition charged for attending educational summer camps;

(23) (A) Dispensing of services performed by one corporation, partnership, or limited liability company for another corporation, partnership, or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code of 1986, as amended. For purposes of this subdivision, "control" means ownership, directly or indirectly, of stock, equity interests, or membership interests possessing 50 percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership, or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests, or membership interests possessing 50 percent or more of the value of the corporation, partnership, or limited liability company;

(B) Leases of heavy equipment or machinery among corporations, partnerships, or limited liability companies when the entities are members of the same control group or are related taxpayers as defined in Section 267 of the Internal Revenue Code of 1986, as amended;

(24) Food for the following is exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations, or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount

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of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization, or a governmental agency under a program to provide food to low-income persons at or below cost;

(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying out those functions and activities: *Provided*, That purchases made by the organizations are not exempt as a purchase for resale; or

(G) Food sold by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(25) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters, or other school or athletic booster organizations supporting activities for grades kindergarten through 12 and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: *Provided*, That the purchases made by the organizations are not exempt as a purchase for resale;

(26) Charges for room and meals by fraternities and sororities to their members: *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

(27) Sales of or charges for the transportation of passengers in interstate commerce;

(28) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the Constitution of this

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state;

(29) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or §11-15A-1 *et seq*. of this code, or pursuant to the provision of any other chapter of this code;

(30) Charges for the services of opening and closing a burial lot;

(31) Sales of livestock, poultry, or other farm products in their original state by the producer of the livestock, poultry, or other farm products or a member of the producer's immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed without presenting or obtaining exemption certificates provided the farmer maintains adequate records;

(32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption provided in this subdivision may be claimed by presenting to the seller a properly executed exemption certificate;

(33) Sales of aircraft repair, remodeling, and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certified or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling, or maintenance service and sales of machinery, tools, or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines, or aircraft component parts for a certified or licensed carrier of persons or property or for a governmental entity;

(34) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(35) Sales of services by individuals who babysit for a profit: *Provided*, That the gross receipts of the individual from the performance of baby-sitting services do not exceed $5,000 in a taxable year;

(36) Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

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(37) Commissions received by a manufacturer’s representative;

(38) Sales of primary opinion research services when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits, and compilation of data are transferred to the client across state lines by mail, wire, or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term "primary opinion research" means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews, and other data-collection methods commonly used for quantitative and qualitative opinion research studies;

(39) Sales of property or services to persons within the state when those sales are for the purposes of the production of value-added products: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, and materials directly used or consumed by those persons engaged solely in the production of value-added products: *Provided, however*, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term "value-added product" means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles, and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned, or frozen product;

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(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked, or frozen product; and

(J) Poultry into a dried, canned, cooked, or frozen product;

(40) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility, or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed $3,000: *Provided*, That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination, and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses, and similar presentations and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows, or any video or audio-taped presentations or the sale or leasing of video or audio tapes, air shows, or any other public meeting, display, or show other than those specified herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a legislative rule pursuant to §29A-3-1 *et seq*. of this code establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: *Provided further*, That nude dancers or strippers may not be considered as entertainers for the purposes of this exemption;

(41) Charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures, or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture, or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment, or transportation taxable under this article: *Provided*, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment, or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes

under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(42) Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

(43) Direct or subscription sales by the Division of Natural Resources of the magazine currently entitled Wonderful West Virginia and by the Division of Culture and History of the magazine currently entitled Goldenseal and the journal currently entitled West Virginia History;

(44) Sales of soap to be used at car wash facilities;

(45) Commissions received by a travel agency from an out-of-state vendor;

(46) The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia Department of Environmental Protection or the West Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider;

(47) Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(48) Lodging franchise fees, including royalties, marketing fees, reservation system fees, or other fees assessed that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement;

(49) Sales of the regulation size United States flag and the regulation size West Virginia flag for display;

(50) Sales of an aircraft sold in this state on or after July 1, 2020, as evidenced by a Federal Aviation Administration Bill of Sale AC Form 8050-2 and registered outside of this state as evidenced by Federal Aviation Administration Aircraft Registration AC Form 8050-1 shall be exempt, so long as the aircraft is removed from this state within 60 days of the date of

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purchase on the bill of sale. The time between the date of purchase and the removal of the aircraft shall not be counted for purposes of determining whether the aircraft is subject to use tax; and

(51) Sales of services providing the processing of beef, pork, goat, or lamb by a slaughterhouse.

(b) Refundable exemptions. — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or as provided in §11-15-9d of this code give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals, and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies, and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: *Provided*, That sales of gasoline and special fuel are taxable;

(4) Sales and services, firefighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the State of West Virginia: *Provided*, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to, or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter, or an emergency children and youth shelter if the shelter is owned, managed, developed, or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.

(c) Effective date. — The amendments to this section in 2018 shall take effect beginning July

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1, 2018, and apply to former sales made on and after that date: *Provided*, That the amendments to subdivision (6), subsection (b) of this section take effect upon passage of this act of the Legislature and shall be construed to prohibit on and after January 1, 2018, all transfers to the State Road Fund established in the State Treasury pursuant to section 52, article VI of the Constitution of West Virginia, of the taxes imposed by §11-15-1 *et seq*. and §11-15A-1 *et seq*. of this code.

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§11-15-9a. Exemptions; exceptions for sales of liquors and wines to private clubs.

The exemptions provided in this article for sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to the tax under this article and, for sales of tangible personal property for the purpose of resale in the form of tangible personal property, shall not apply to persons or organizations licensed under authority of article seven, chapter sixty of this code, for the purchase of liquor or wines for resale either from the Alcohol Beverage Control Commissioner or from retail liquor licensees licensed under authority of article three-a, chapter sixty of this code.

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§11-15-9b. Exemption for purchases of tangible personal property and services for direct use in research and development.

(a) Sales of tangible personal property and services after June 30, 2002, directly used or consumed in the activity of research and development are exempt from tax imposed by this article. Any person having a right or claim to the exemption set forth in this section shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit or give to the vendor the person's West Virginia direct pay permit number in accordance with the provisions of section nine-d of this article.

(b) For purposes of this article:

(1) "Directly used or consumed in the activity of research and development" means used or consumed in those activities or operations which constitute an integral and essential part of research and development, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to research and development.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activity of research and development include only:

(i) In the case of tangible personal property, physical incorporation of property into tangible personal property that is the subject of, or directly used in, research and development;

(ii) Causing a direct physical, chemical or other change upon property that is the subject of, or directly used in, research and development;

(iii) Transporting or storing property that is the subject of, or directly used in, research and development;

(iv) Measuring or verifying a change in property that is the subject of, or directly used in, research and development;

(v) Physically controlling or directing the physical movement or operation of property that is the subject of, or directly used in, research and development;

(vi) Directly and physically recording the flow of property that is the subject of, or directly used in, research and development;

(vii) Producing energy for property that is the subject of, or directly used in, research and development;

(viii) Controlling or otherwise regulating atmospheric or other environmental conditions required for research and development;

(ix) Serving as an operating supply for property that is the subject of, or directly used in, research and development;

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(x) Maintenance or repair of property, including maintenance equipment, that is directly used in research and development;

(xi) Storage, removal or transportation of economic or other waste resulting from the activity of research and development;

(xii) Pollution control or environmental quality or environmental protection activity directly relating to the activity of research and development, and personnel, plant, property or community safety or security activity directly relating to the activity of research and development; or

(xiii) Otherwise being used as an integral and essential part of research and development.

(B) Uses of property or services which do not constitute direct use or consumption in the activity of research and development include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Planning or scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to research and development, rather than an integral and essential part of these activities.

(2) "Research and development" means systematic scientific, engineering or technological study and investigation in a field of knowledge in the physical, computer or software sciences, often involving the formulation of hypotheses and experimentation, for the purpose of revealing new facts, theories or principles, or increasing scientific knowledge, which may reveal the basis for new or enhanced products, equipment or manufacturing processes. Research and development includes, but is not limited to, design, refinement and testing of prototypes of new or improved products, or design, refinement and testing of manufacturing processes before commercial sales relating thereto have begun. For purposes of this section commercial sales include, but are not limited to, sales of prototypes or sales for market testing.

(A) Research and development does not include:

(i) Market research;

(ii) Sales research;

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(iii) Efficiency surveys;

(iv) Consumer surveys;

(v) Product market testing;

(vi) Product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability;

(vii) The ordinary testing or inspection of materials or products for quality control (quality control testing);

(viii) Management studies;

(ix) Advertising;

(x) Promotions;

(xi) The acquisition of another's patent, model, production or process or investigation or evaluation of the value or investment potential related thereto;

(xii) Research in connection with literary, historical or similar projects;

(xiii) Research in the social sciences, economics, humanities or psychology and other nontechnical activities; and

(xiv) The providing of sales services or any other service, whether technical service or nontechnical service.

(c) No provision of this section may be interpreted to alter, abrogate or impede application of the exemption for sales of primary opinion research services set forth in section nine of this article.

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§11-15-9c. Exemption for services and materials regarding technical evaluation for compliance to federal and state environmental standards provided by environmental and industrial consultants.

The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia Department of Environmental Protection or the West Virginia Bureau for Public Health or both is exempt from the tax imposed by this article. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing the services that are separately billed to the purchaser of the services, and on which the tax imposed by this article has previously been paid by the service provider.

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§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the Tax Commissioner may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-nine-a of this code, authorize a person who is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided, to pay any tax levied by this article or article fifteen-a of this chapter directly to the Tax Commissioner and waive the collection of the tax by that person's vendor. No authority shall be granted or exercised except upon application to the Tax Commissioner and after issuance by the Tax Commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section is valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of a direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen-a of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors of the personal property or services shall be made directly to the Tax Commissioner by the permit holder.

(b) On or before the twentieth day of each month, every permit holder shall make and file with the Tax Commissioner a consumers sales and use tax direct pay permit return for the preceding month in the form prescribed by the Tax Commissioner showing the total value of the tangible personal property used, the amount of taxable services purchased, the amount of consumers sales and use taxes due from the permit holder, which shall be paid to the Tax Commissioner with the return, and any other information as the Tax Commissioner considers necessary: Provided, That if the amount of consumers sales and use taxes due averages less than $250 per month, the Tax Commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount of tax shown on the returns to be due shall be remitted on or before the fifteenth day following the close of the calendar quarter; and if the amount due averages less than $150 per calendar quarter, the Tax Commissioner may permit the filing of an annual direct pay permit return and the amount of tax shown on the return to be due shall be remitted on or before thirty days after the end of the permit holder tax year for federal and state income tax purposes: Provided, however, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amounts established in this subsection. The Tax Commissioner, upon written request by the permit holder, may grant a reasonable extension of time, upon terms as the Tax Commissioner may require, for the making and filing of direct pay permit returns and paying the tax due. Interest on the tax shall be chargeable on every extended payment at the rate specified in section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section is valid until expiration of the taxpayers registration year under article twelve of this chapter. This permit is automatically renewed when the taxpayer's business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the Tax

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(d) Persons who hold a direct payment permit which has not been canceled are not required to pay the tax to the vendor as otherwise provided in this article or article fifteen-a of this chapter. They shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of the notice, the vendor is absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales of tangible personal property and sales of services to the permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in a manner that the amount involved and identity of each purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, will thereafter apply to the person who previously held the permit, and that person shall promptly notify in writing vendors from whom tangible personal property or services are purchased or leased of the cancellation or surrender. Upon receipt of the notice, the vendor is subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases or storage of tangible personal property, thereafter made to or for that person.

(f) The amendments to this section enacted in the year 2006 are effective for tax years beginning on or after January 1, 2006.

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§11-15-9e. Apportionment of purchase price; existing contracts protected.

Whenever a purchaser will use acquired tangible personal property, a service, or the results of a service for both exempt and nonexempt purposes, the gross proceeds of such sale paid to the vendor for such property or service shall be apportioned between the exempt and nonexempt uses, in a manner established as reasonable by the Tax Commissioner, by regulations the Tax Commissioner may prescribe, for the purpose of determining the tax liability in respect of such purchase.

Contracts existing, executed, and binding prior to July 1, 1987, for the purchase of tangible personal property or services, by lease or otherwise, and in connection with which an exemption from tax was applicable to such purchase prior to such date but terminated on and after the same; no new tax liability shall arise in respect of payments to be subsequently made under such a contract nor to payments prepaid thereunder for any periods subsequent to such date, but only new contracts entered into on and after July 1, 1987, shall be liable for tax under the provisions of this article or of article fifteen-a of this chapter where such a prior applicable exemption has been so terminated.

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§11-15-9f. Exemption for sales and services subject to special district excise tax.

Notwithstanding any provision of this article to the contrary, any sale or service upon which a special district excise tax is paid, pursuant to the provisions of section twelve, article twenty-two, chapter seven of this code, section eleven, article thirteen-b, chapter eight of this code, or section twelve, article thirty-eight, chapter eight of this code is exempt from the tax imposed by this article: Provided, That the special district excise tax does not apply to sales of gasoline and special fuel.

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§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year 2004.

(a) The sale of an article of clothing or footwear designed to be worn on or about the human body and the sale of school supplies, such as pens, pencils, binders, notebooks, reference books, book bags, lunch boxes, computers, computer accessories and calculators, is exempted from the taxes imposed by this article if:

(1) The sales price of the article or school supply, except for a computer or computer accessory, is less than $100;

(2) The sales price of a computer is less than $750 after credit for any manufacturer's rebate or computer accessory is less than $100 after credit for any manufacturer's rebate; and

(3) The sale takes place during a period beginning at 12:01 a.m. eastern daylight time on the first Friday in August, 2004, and ending at 12 midnight eastern daylight time on the following Sunday in August, 2004.

(b) This section does not apply to:

(1) Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed;

(2) Accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(3) The rental of clothing, footwear or school supplies;

(4) Furniture; and

(5) Tangible personal property for use in a trade or business.

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§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of Internet advertising; sales of high-technology business services directly used in fulfillment of a government contract; sales of tangible personal property for direct use in a high-technology business or Internet advertising business; definitions.

(a) In order to modernize the exemptions from tax contained in this article as a result of technological advances in computers and the expanded role of computers, the Internet and global instant communications in business and to encourage computer software developers, computer hardware designers, systems engineering firms, electronic data processing companies and other high-technology companies to locate and expand their businesses in West Virginia, the following sales of tangible personal property and software are exempt:

(1) Sales of computer hardware or software (including custom designed software) to be directly incorporated by a manufacturer into a manufactured product. For purposes of this subsection, the payment of licensing fees for the right to incorporate hardware or software developed by persons other than the manufacturer into a manufactured product is exempt from the tax imposed by this article;

(2) Sales of computer hardware or software (including custom designed software) directly used in communication as defined in this article;

(3) Sales of electronic data processing services;

(4) Sales of educational software required to be used in any of the public schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to administration, regulation, certification or approval of the Department of Education, the Department of Education and the Arts or the Higher Education Policy Commission;

(5) Sales of Internet advertising of goods and services;

(6) Sales of high-technology business services to high-technology businesses which enter into contracts with this state, its institutions and subdivisions, governmental units, institutions or subdivisions of other states, or with the United States, including agencies of federal, state or local governments for direct use in fulfilling the government contract; and

(7) Sales of prewritten computer software, computers, computer hardware, servers and building materials and tangible personal property to be installed into a building or facility for direct use in a high-technology business or an Internet advertising business.

(b) Definitions. --

As used in this article, the following terms have the following meanings:

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(1) "Computer hardware" means a computer, as defined in article fifteen-b of this chapter, and the directly and immediately connected physical equipment involved in the performance of data processing or communications functions, including data input, data output, data processing, data storage, and data communication apparatus that is directly and immediately connected to the computer. The term "computer hardware" does not include computer software.

(2) "High-technology business" means and is limited to businesses primarily engaged in the following activities: Computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; design and development of new manufactured products which incorporate computer hardware and software; electronic data processing; network management, maintenance, engineering, administration and security services; website management, maintenance, engineering, administration and security services and computer systems management, maintenance, engineering, administration and security services. High-technology business as defined herein is intended to include businesses which engage in the activities enumerated in this definition as their primary business activity, and not as a secondary or incidental activity and not as an activity in support of or incidental to business activity not specifically enumerated in this definition.

(3) "High-technology business services" means and is limited to computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; electronic data processing; computer systems management; computer systems maintenance; computer systems engineering; computer systems administration and computer systems security services.

(4) "Internet advertising business" means a for-profit business that is engaged, for monetary remuneration, in the primary business activity of announcing, or calling public attention to, goods or services in order to induce the public to purchase those goods or services, and which uses the Internet as its sole advertising communications medium. For purposes of this definition, Internet advertising must be the primary business activity of the business and not a secondary or incidental activity and not an activity in support of or incidental to other business activity.

(5) "Network" means a group of two or more computer systems linked together.

(6) "Server" means a computer or device on a network that manages network resources.

(c) The amendments to this section made in the first extraordinary session of the Legislature in 2009 shall apply to purchases made on and after July 1, 2009.

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§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.

(a) Notwithstanding any provision of this article, article 15A or article 15B of this chapter, the purchase by a health care provider of drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices, all as defined in §11-15B-2 of this code, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease are exempt from the tax imposed by this article: Provided, That the exemption provided for the purchase by a health care provider of durable medical equipment is suspended for the period beginning on and after July 1, 2016, and continuing until June 30, 2018. On and after July 1, 2018, the exemption is reestablished.

(b) Notwithstanding any provision of this article, article 15A or article 15B of this chapter, the purchase of durable medical equipment, as defined in §11-15B-2 of this code, to be dispensed upon prescription by a health care provider and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt from the tax imposed by this article: Provided, That the durable medical equipment is purchased by an individual for exclusive use by the purchaser or another individual and used predominantly by the recipient individual in his or her home environment.

(1) Effective Dates. — The provisions of this subsection shall apply to purchases made on and after July 1, 2016.

(2) Per se exemption. — The exemption set forth by this subsection shall be given without the necessity of an exemption certificate, direct pay permit or refund or credit request.

(c) Notwithstanding any provision of this article, article 15A, or article 15B of this chapter, the sale and installation of mobility enhancing equipment, as defined in §11-15B-2 of this code, installed in a new or used motor vehicle for the use of a person with physical disabilities are exempt from the taxes imposed by this article. Any sale and installation for the repair or replacement parts of mobility enhancing equipment, whether the repair or replacement parts are purchased separately or in conjunction with the mobility enhancing equipment, and whether the parts continue the original function or enhance the functionality of the mobility enhancing equipment, are exempt from the taxes imposed by this article.

(d) Definitions. — The following definitions shall apply:

(1) For purposes of this section, "used predominantly by the recipient individual in his or her home environment", with reference to durable medical equipment, means that the equipment is sold to an individual for use by the individual purchaser or by another individual at home, regardless of where the individual resides. For purposes of this definition, the term "home" means and includes facilities such as nursing homes, assisted care centers and school dormitories, of which a user or purchaser is a resident. A purchase of such equipment shall not be disqualified from the exemption because the equipment is incidentally used on the streets, in commercial establishments, in public places and in

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locations other than the home, so long as use in the home is the predominant use. For purposes of this definition, the term "individual" means and is limited to a single, separate human being and specifically excludes any health care provider, or provider of nursing services, personal care services, behavioral care services, residential care or assisted living care, or any entity or organization other than a human being.

(2) When the equipment is sold to a facility such as a hospital, nursing home, medical clinic, dental office, chiropractor, or optician office, then this shall not constitute a use of the equipment by the recipient individual in his or her home environment. The fact that a nursing home may use the equipment only for its residents does not make the equipment exempt for home use: Provided, That nothing in this section shall be interpreted to void or abrogate lawful assertion and application of the purchases for resale exemption as it may apply to any purchaser of durable medical equipment.

(3) For purposes of this section, "health care provider" means any person licensed to prescribe drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease. For purposes of this section, the term "health care provider" includes any hospital, medical clinic, nursing home or provider of inpatient hospital services and any provider of outpatient hospital services, physician services, nursing services, ambulance services, surgical services, or veterinary services: Provided, That the amendment to this subsection enacted during the 2009 regular legislative session shall be effective on or after July 1, 2009.

(4) The term "durable medical goods", as used in this article, means "durable medical equipment" as defined in §11-15B-2 of this code.

(5) For purposes of this section, the term "nursing home or facility" means any institution, residence or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained, or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than 24 hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment, or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article.

(6) For purposes of this section, the term "assisted care center" means any living facility, residence or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are

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dependent upon the services of others by reason of physical or mental impairment, and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: Provided, That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article.

(7) For purposes of this section, the term "school dormitory" means housing or a unit of housing provided primarily for students as a temporary or permanent dwelling place or abode and owned, operated, or controlled by an institution of higher education, and shall be synonymous with the term "residence hall".

(8) For purposes of this section, the term "mobility enhancing equipment" means "mobility enhancing equipment" as defined in §11-15B-2 of this code.

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§11-15-9j. Direct pay permits for health care providers.

Any person having a right or claim to any exemption set forth in section nine-i of this article shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit or, as provided in section nine-d of this article and section three-d, article fifteen-a of this chapter, give to the vendor his or her West Virginia direct pay permit number.

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§11-15-9k. Annual exemption for purchases of energy efficient products.

(a) There is established an annual sales tax holiday on the sale of specified Energy Star qualified products from the taxes imposed by this article if:

(1)(A) The sales price of the specified Energy Star qualified product is $2,500 or less per purchase for noncommercial home or personal use; and

(B) The sale takes place in 2008 during a period beginning at 12:01 a.m. eastern daylight time on September 1, and ending at 11:59 p.m. eastern daylight time on September 7, ; or

(2)(A) The sales price of the specified Energy Star qualified product is$5,000 or less per purchase for noncommercial home or personal use; and

(B) The sale takes place in 2009 during a period beginning at 12:01 a.m. eastern daylight time on September 1, and ending at 11:59 p.m. eastern daylight time on November 30, ; or

(C) In 2010 during a period beginning at 12:01 a.m. eastern daylight time on September 1, and ending at 11:59 p.m. eastern daylight time on November 30, .

(b) This section does not apply to tangible personal property for use in a trade or business.

(c) Definition. -- As used in this section, the term "Energy Star qualified product" means a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at www.energystar.gov or successor address.

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§11-15-9l. Exemption for Sales of clothing and clothing accessories by tax-exempt organizations.

(a) Sales of clothing and clothing accessories by organizations that are exempt from federal income taxes under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code of 1986, as amended, and that have annual revenue obtained from the sales of less than $40,000, are exempt from the tax imposed under this article and article fifteen-a of this chapter: Provided, That the purpose of the sale is to obtain revenue for the activities and functions of the organization, and the revenue obtained is exempt from federal income tax and actually expended for that purpose: Provided, however, That the clothing and clothing accessories sold are acquired or obtained by donation only, without compensation, remuneration or consideration to the donor. The Tax Commissioner may, by rule, specify the exemption authorized in this section to be a "per se" exemption for which exemption certificates are not required.

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§11-15-9m. Discretionary designation of per se exemptions.

Notwithstanding any other provision of this code, the Tax Commissioner may, by rule, specify those exemptions authorized in this article or in other provisions of this code or applicable federal law for which exemption certificates or direct pay permits are not required.

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§11-15-9n. Exemption of qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and components, building materials and certain tangible personal property.

(a) Definitions. - For purposes of this section:

(1) "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 warehouse or distribution facility. "Building materials" does not include tools, construction equipment or any property or device which 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.

(2) "Computers and computer software" as defined in section two, article fifteen-b of this chapter means computer equipment and related software directly and primarily used to control automated machinery in the facility and the movement of goods within the facility, to facilitate customer delivery operations including shipment, preparation for shipment, order tracking and delivery inventory control, printing of packing lists and labels and any other customer order fulfillment functions.

(3) "Distribution facility" means a warehouse, facility, structure, or enclosed area which is used primarily for the storage, shipment, preparation for shipment, or any combination of such activities, of finished goods, consumer ready wares, and consumer ready merchandise.

(4) "Expansion period" means the period of time beginning one year prior to the start of the construction or expansion of the qualified, new or expanded warehouse or distribution facility, and ending one year after the substantial completion of the construction or expansion of the facility. In no event shall the expansion period exceed five years.

(5) "Full-time employment" for purposes of determining a full-time employee or a full-time equivalent employee, means employment for at least one hundred forty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

(A) For purposes of this definition, any employee paid less than state or federal minimum wage, depending on which minimum wage provision is applicable, shall be excluded from the count of employees for the purpose of determining the three hundred jobs requirement of this section.

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(B) For purposes of this definition, seasonal employees and part-time employees may be converted into full-time equivalent employees if the part-time or seasonal employee is customarily performing job duties not less than twenty hours per week for at least six months during the tax year. Persons who have worked less than twenty hours per week or who have worked less than six months during the tax year do not qualify as part-time employees or as seasonal employees.

(6) "Primary material handling equipment" means the principal machinery and equipment used directly and primarily for the handling and movement of tangible personal property in a qualified,

new or expanded warehouse or distribution facility.

(A) The following items may be considered primary material handling equipment:

(i) Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms and robots;

(ii) Mechanized systems, including containers which are an integral part thereof, whose purpose is to lift or move tangible personal property;

(iii) Automated storage and retrieval systems, including computers and software which control them, whose purpose is to lift or move tangible personal property; and

(iv) Forklifts and other off-the-road vehicles which are used to lift or move tangible personal property and which cannot be legally operated on roads and streets.

(B) "Primary material handling equipment" does not include:

(i) Motor vehicles licensed for operation on the roads and highways of this state or any other state of the United States or any other political jurisdiction;

(ii) Parts or equipment used to repair, refurbish, or recondition other equipment; or.

(iii) Equipment which replaces, in whole or in part, primary material handling equipment.

(7) "Qualified, new or expanded warehouse or distribution facility" means a new or expanded facility, subject to the following:

(A) Qualification criteria. "Qualified, new or expanded warehouse or distribution facility" means a new or expanded facility located in this state, that is a warehouse or distribution facility that will employ three hundred or more West Virginia domiciled, West Virginia residents, as full-time employees in the warehouse or distribution facility once the expansion period is complete and which is either:

(i) An existing warehouse or distribution facility that will be expanded over the expansion

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period where the total value of all real and personal property purchased or acquired over the expansion period as direct investment in the facility is $50 million or more; or

(ii) A new warehouse or distribution facility where the total value of all real and personal property purchased or acquired over the expansion period as direct investment in the facility is $50 million or more.

(B) Exclusions and disqualifications.

(i) Subject to the limitations and restrictions set forth in this section, "qualified, new or expanded warehouse or distribution facility" does not include a building or facility where tangible personal property is manufactured, fabricated or assembled.

(ii) Subject to the limitations and restrictions set forth in this section, "qualified, new or expanded warehouse or distribution facility" does not include a building or facility where annual calendar year retail sales of tangible personal property are made over-the-counter from such building or facility to the general public, if such sales exceed five percent of the total annual calendar year revenues of the warehouse or distribution facility during the same calendar year.

(iii) Subject to the limitations and restrictions set forth in this section, "qualified, new or expanded warehouse or distribution facility" does not include a building or facility where the average monthly full-time employment (determined by including full-time equivalent employees) for each calendar year at the facility is less than three hundred West Virginia domiciled, West Virginia residents. For purposes of determining average monthly employment for the calendar year, the taxpayer shall divide the sum of the twelve monthly averages of qualified full-time and full-time equivalent West Virginia employees at the qualified, new or expanded warehouse or distribution facility by twelve. Each monthly average is computed as the average of West Virginia employment at the beginning of each calendar month and at the end of each calendar month. Provided, That the State Tax Commissioner may specify a different method for computation of average monthly full-time employment, on a state-wide basis or on a case-by-case basis, or both, as the State Tax Commissioner may prescribe.

(8) "Qualified West Virginia employee" means a full-time employee or full-time equivalent employee who is a West Virginia domiciled West Virginia resident.

(9) "Racking and racking systems" means any system of machinery, equipment, fixtures, or portable devices whose function is to store, organize, or move tangible personal property within a warehouse or distribution facility, including, but not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices which form a necessary part of the facility's storage system, and which is used directly and primarily for the storage, handling and movement of tangible personal property in a qualified, new or expanded warehouse or distribution facility.

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(10) "Tangible personal property" means tangible personal property as defined in section two, article fifteen-b of this chapter.

(11) "Warehouse" means a facility, structure, or enclosed area which is used primarily for the storage of finished goods, consumer ready wares, and consumer ready merchandise.

(b) Exemption. -- Qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and components thereof, building materials and tangible personal property installed into or directly used or consumed in the construction, addition, alteration or improvement of a qualified, new or expanded warehouse or distribution facility, as such terms are defined in this section, purchased during the expansion period are exempt from the tax imposed by this article and article fifteen-a of this chapter. This exemption may apply either to qualified purchases made by a person or entity which will be the owner and operator of the qualified, new or expanded warehouse or distribution facility or to qualified purchases made by a lessor or lessee of the qualified, new or expanded warehouse or distribution facility. A purchase of computers and computer software, primary material handling equipment, racking and racking systems, and components thereof, building materials and tangible personal property is a qualified purchase if all requirements for exemption set forth in this section are met with relation to the purchase.

(c) Application for certification of exemption and plan describing investment to be made. --

(1) In order to qualify for the exemption authorized by this section, a taxpayer must submit an application for certification of the exemption to the State Tax Commissioner, together with a plan describing the investment to be made in the qualified, new or expanded warehouse or distribution facility. The application and plan shall be submitted on forms prescribed by the State Tax Commissioner. The plan shall demonstrate that the requirements of the law will be met.

(2) Filing date. The application for certification of the exemption and plan describing the investment to be made must be filed on or before the start of the construction or expansion of the proposed qualified, new or expanded warehouse or distribution facility.

(3) Late filing. If the taxpayer fails to timely file the application for certification of the exemption with the State Tax Commissioner, together with a plan describing the investment to be made, on or before the start of the construction or expansion of the proposed qualified, new or expanded warehouse or distribution facility, the exemption allowed by this section shall not be available for any purchases of computer and computer software, primary material handling equipment, racking and racking systems, and components thereof, building materials and tangible personal property otherwise exempt under this section that were made prior to the filing date of the application for certification of the exemption, and no refund shall be issued for any such purchase.

(4) Exemption in cases of untimely filing. Notwithstanding the untimely filing of the

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application for certification of the exemption and plan describing the investment to be made, if certification of the exemption and plan is issued by the State Tax Commissioner of an untimely filed application and plan, the exemption shall be available for qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and components thereof, building materials and tangible personal property made subsequent to the filing date of the application and plan and before the end of the expansion period.

(5) Exemption limited to expansion period purchases.

(A) Upon approval of the application and certification of the exemption, qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and components thereof, building materials and tangible personal property shall be exempt from the tax imposed by this article and article fifteen-a of this chapter. However, if the requisite investment is not made within the expansion period, or if the terms and requirements of this section are not satisfied, the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due.

(B) Limitations. Any statute of limitations set forth in article ten of this chapter for assessment made under this subsection for any such tax, penalty or interest shall not close until five years subsequent to the end of the expansion period.

(d) Any person having a right or claim to any exemption set forth in this section shall first pay to the vendor the tax imposed by this article and then apply to the State Tax Commissioner for a refund or credit or, as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number.

(e) Additional Restrictions, Assessments and Statutes of Limitations. --

(1) Over-the-counter sales restrictions.

(A) If within ten years after the end of the expansion period, over-the-counter sales are made in any one calendar year, from a warehouse or distribution facility for which qualification for exemption under this section was originally established, which over-the-counter sales, in the aggregate, exceed five percent of the total revenues of the warehouse or distribution facility during the same calendar year, the taxpayer will be disqualified from receiving the exemption under this section as of the close of the calendar year in which over-the-counter sales first exceed five percent of the total revenues of the warehouse or distribution facility during the same calendar year; and the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due had the exemption set forth in this section never been applied. This over-the-counter sales restriction shall not apply to any year subsequent to the end of the tenth year after the end of the expansion period.

(B) Limitations. Notwithstanding any other provision of this code pertaining to statute of limitations to the contrary, any statute of limitations set forth in article ten of this chapter

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for assessment for any such tax, penalty or interest shall not close until five years subsequent to the end of the calendar year in which over-the-counter sales first exceed five percent of the total revenues of the warehouse or distribution facility during the same period.

(2) Fabrication and Assembly Restriction.

(A) Subject to the restriction and limitations set forth in this subsection, a qualified new or expanded warehouse or distribution facility does not include a building or facility where tangible personal property is manufactured, fabricated or assembled. If during any calendar year within ten years after the end of the expansion period, the building or facility for which qualification for exemption under this section was originally established, is used for manufacturing, fabrication or assembly of tangible personal property, the taxpayer will be disqualified from receiving the exemption set forth in this section as of the date such manufacturing, fabrication or assembly first occurs, and the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due had the exemption set forth in this section never been applied. This restriction against manufacturing, fabrication and assembly shall not apply to any year subsequent to the tenth year after the end of the expansion period.

(B) Limitations. Notwithstanding any other provision of this code pertaining to statute of limitations to the contrary, any statute of limitations set forth in article ten of this chapter for assessment for any such tax, penalty or interest shall not close until five years subsequent to the end of the calendar year during which such manufacturing, fabrication or assembly first occurs.

(3) Minimum employment restriction.

(A) Subject to the limitations and restrictions set forth in this section, "qualified, new or expanded warehouse or distribution facility" does not include a building or facility where the average monthly full-time employment (determined including full-time equivalent employees) for each calendar year at the facility is less than three hundred West Virginia domiciled, West Virginia residents. If during any calendar year within ten years after the end of the expansion period, the average monthly full-time employment at the building or facility for which qualification for exemption under this section was originally established, is fewer than three hundred qualified West Virginia employees, then the taxpayer will be disqualified from receiving the exemption under this section as of the close of the first calendar year in which the average monthly full-time employment at the facility is less than three hundred West Virginia domiciled, West Virginia residents, and the taxpayer shall be subject to assessment for any tax, penalty or interest that would otherwise have been due had the exemption set forth in this section never been applied. This restriction against having fewer than three hundred qualified West Virginia employees shall not apply to any year subsequent to the tenth year after the end of the expansion period.

(B) Limitations. Notwithstanding any other provision of this code pertaining to statute of

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limitations to the contrary, any statute of limitations set forth in article ten of this chapter for assessment for any such tax, penalty or interest shall not close until five years subsequent to the end of the first calendar year in which the average monthly full-time employment at the facility is less than three hundred qualified West Virginia employees.

(f) Assessments Against Taxpayer. -- In circumstances where the exemption authorized under this section has been asserted by a contractor pursuant to the provisions of section eight-d of this article for purchases of computers and computer software, primary material handling equipment, racking and racking systems, and components thereof, building materials and tangible personal property, the assessment of such tax, interest and penalties shall issue against, and liability is hereby imposed upon, the purchaser of the contracting services, which is the taxpayer entitled to the exemption set forth in this section, and not against the contractor who relied in good faith upon the validity of the exemption available under this section to the purchaser of the contracting services.

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§11-15-9o. Exemption for dues, fees and assessments paid to a homeowners' association by a member; taxable expenses of homeowners' association; definitions.

(a) Membership dues, fees and assessments paid to a homeowners' association by a member thereof are exempt from the tax imposed by this article if the dues, fees and assessments are for the purpose of permitting or funding the homeowners' associations' payment of common expenses when acting in its representative capacity for its members: Provided, That purchases for resale of tangible personal property and services for use by the homeowners' association, when acting in its representative capacity for its members, are subject to the tax under this article unless the purchases are otherwise exempt under another provision of this code.

(b) For purposes of this article:

(1) "Homeowners' association" means a homeowners' association as defined in Section 528 of the Internal Revenue Code of 1986, as amended. The term "homeowners' association" also includes any unit owners' association organized under section one hundred one, article three, chapter thirty-six-b of this code.

(2) "Member" means a person having membership rights in a homeowners' association, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and having bona fide rights and privileges in the organization ordinarily conferred on members of the homeowners' association, such as the right to vote, the right to elect officers and directors and the right to hold office within the organization. The term "member" also includes a "unit owner" as that term is defined in section one hundred three, article one, chapter thirty-six-b of this code.

(3) "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves, where the association is acting on behalf of, and for the benefit of its members.

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§11-15-9p. Exemption for purchases of services and tangible personal property sold for the repair, remodeling and maintenance of aircraft operated under a fractional ownership program.

(a) The following sales are exempt from the consumers sales and service tax: Sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated under a fractional ownership program, or to an engine or other component part of an aircraft operated under a fractional ownership program; sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft operated under a fractional ownership program, as part of the repair, remodeling or maintenance service; and sales of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts for an aircraft operated under a fractional ownership program, or used exclusively in combination with the purposes specified in this subsection and the purposes specified in §11-15-9(a)(33) of this code.

(b) Any person having a right or claim to any exemption set forth in this section shall: First pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or, as provided in §11-15-9d and §11-15a-3d of this code, give to the vendor his or her West Virginia direct pay permit number: Provided, That a person having a right or claim to the exemption set forth in this section may apply to the Tax Commissioner for permission to use an exemption certificate. Upon the granting of such permission, a person having a right or claim to the exemption set forth in this section may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner.

(c) For purposes of this section, "fractional ownership program" means any system of aircraft ownership and exchange that consists of all of the following:

(1) The provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners;

(2) Two or more airworthy aircraft;

(3) One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner;

(4) Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner;

(5) A dry-lease aircraft exchange arrangement among all of the fractional owners; and

(6) Multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

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(d) The tax commissioner shall promulgate emergency rules and shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to establish eligibility requirements for the exemption established by this section.

(e) The provisions of this section shall apply to sales made on and after September 1, 2018.

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§11-15-9q. Exemption for sales by schools and volunteer school support groups.

Notwithstanding any other provisions of this code to the contrary, sales of tangible personal property and services by not-for-profit volunteer school support groups for elementary or secondary schools located in this state, which hold fund raisers for their schools that last no more than 14 consecutive days and are held not more than 18 times during any 12-month period, are exempt from the taxes imposed by §11-15-1 et seq. and §11-15A-1 et seq. of this code, if the sole purpose of the sales is to obtain revenue for the functions and activities of an elementary or secondary school located in this state. This exemption applies to such sales without regard to whether the volunteer school support organizations holds, or does not hold, an exemption under §501(c)(3) or §501(c)(4) of the Internal Revenue Code of 1986, as amended.

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§11-15-9r. Exemption for precious metals.

(a) Notwithstanding any provision of this code to the contrary, the sale of investment metal bullion or investment coins as defined in subsections (b) and (c) of this section are exempted from the taxes imposed by this article and §11-15A-1 et seq. of this code.

(b) "Investment metal bullion" means any elementary precious metal which has been put through a process of smelting or refining, including gold, silver, platinum, and palladium, and which is in such a state or condition that its value depends upon its content and not its form. "Investment metal bullion" does not include precious metal which has been assembled, fabricated, manufactured, or processed in one or more industrial, professional, aesthetic, or artistic uses.

(c) "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal and of the United States or any foreign nation with a fair market value greater than any nominal value of such coins. "Investment coins" does not include jewelry or works of art made of coins, nor does it include commemorative medallions.

WV Legislature

§11-15-9s. Exemption for certain school supplies, school instructional materials, laptop and tablet computers, and sports equipment.

(a) Effective July 1, 2021, the items identified in subdivisions (1) through (5) of this subsection are exempt from the tax imposed by this article and §11-15A-1 et seq. of this code, if the sale or purchase occurs on the first Sunday of August, or the previous Friday and Saturday, or the following Monday. The items exempt are:

(1) An item of clothing, the price of which is $125 or less;

(2) An item of school supplies, the price of which is $50 or less;

(3) An item of school instructional material, the price of which is $20 or less;

(4) Laptop and tablet computers, not purchased for use in a trade or business, the price of which is $500 or less; and

(5) Sports equipment, not purchased for use in a trade or business, the price of which is $150 or less.

(b) For purposes of this section:

(1) "Clothing" means all human wearing apparel suitable for general use. "Clothing" includes, but is not limited to, aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers, children and adult, including disposable diapers; ear muffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoe laces; slippers; sneakers; socks and stockings; steel-toed shoes; underwear; uniforms, athletic and nonathletic; and wedding apparel. "Clothing" does not include items purchased for use in a trade or business; clothing accessories or equipment; protective equipment; sports or recreational equipment; belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.

(2) "School supplies" means items commonly used by a student in a course of study. "School supplies" includes only the following items: Binders; book bags; calculators; cellophane tape; blackboard chalk; compasses; composition books; crayons; erasers; folders, expandable, pocket, plastic, and manila; glue, paste, and paste sticks; highlighters; index cards; index card boxes; legal pads; lunch boxes; markers; notebooks; paper, loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper; pencil boxes and other school supply boxes; pencil sharpeners;

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pencils; pens; protractors; rulers; scissors; and writing tablets. "School supplies" does not include any item purchased for use in a trade or business.

(3) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. "School instructional material" includes only the following items: reference books, reference maps and globes, textbooks, and workbooks. "School instructional material" does not include any material purchased for use in a trade or business.

(c) The tax commissioner shall promulgate emergency rules and shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to establish eligibility requirements for the exemptions established by this section.

WV Legislature

§11-15-9t. Exemption for purchases of services and tangible personal property sold for the repair, remodeling, and maintenance of aircraft; defining terms.

(a) The following sales are exempt from the consumers sales and service tax: Sales of aircraft repair, remodeling, and maintenance services, or to an engine or other component part of an aircraft; sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft, as part of the repair, remodeling, or maintenance service; and sales of machinery, tools, or equipment directly used or consumed exclusively in the repair, remodeling, or maintenance of aircraft, aircraft engines, or aircraft component parts for an aircraft, or used exclusively in combination with the purposes specified in this subsection and the purposes specified in §11-15-9(a)(33) of this code.

(b) Any person having a right or claim to any exemption set forth in this section shall: First, pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or, as provided in §11-15-9d and §11-15A-3d of this code, give to the vendor his or her West Virginia direct pay permit number: *Provided*, That a person having a right or claim to the exemption set forth in this section may apply to the Tax Commissioner for permission to use an exemption certificate. Upon the granting of such permission, a person having a right or claim to the exemption set forth in this section may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner.

(c) The Tax Commissioner shall promulgate emergency rules and shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code to establish eligibility requirements for the exemption established by this section.

(d) The provisions of this section shall apply to sales made on and after September 1, 2021.

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§11-15-9u. Exemption for sales of small arms and ammunitions.

(a) Notwithstanding any provision of this code to the contrary, the sale of small arms and small arms ammunition, as those terms are defined in subsections (c) and (d) of this section, are exempted from the taxes imposed by this article and by §11-15A-1 *et seq*. of this code.

(b) "Receiver or frame" means that part of a firearm containing a manufacturer assigned serial number to track and identify a firearm and which provides housing for the hammer, bolt, or breechblock, and firing mechanism and which are usually threaded at its forward portion to receive the barrel.

(c) "Small arms" means any portable firearm, including the receiver or frame of the firearm, designed to be carried and operated by a single person, including, but not limited to, rifles, shotguns, pistols, and revolvers, with no barrel greater than an internal diameter of .50 caliber or a shotgun of 10 gauge or smaller.

(d) "Small arms ammunition" means firearm ammunition designed for use in small arms.

WV Legislature

§11-15-10. Tax paid by ultimate consumer.

It is the intent of this article that the tax levied hereunder shall be passed on to and be paid by the ultimate consumer. The amount of the tax shall be added to the sales price, and shall constitute a part of that price and be collectible as such.

WV Legislature

§11-15-11. Exemption for certain organizations.

(a) Sales of taxable services by a corporation or organization that are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and that meet the requirements set forth in subsection (b) of this section, are exempt from the tax imposed by this article, except that this exemption shall not apply to sales of taxable services to the extent that income received from the sales of such services is taxable under Section 511 of the Internal Revenue Code.

(b) The exemption set forth in this section applies only to those corporations or organizations meeting the following criteria:

(1) The corporation or organization is organized and operated primarily for charitable or educational purposes and its activities and programs contribute importantly to promoting the general welfare of youth, families and the aged, improving health and fitness and providing recreational opportunities to the public;

(2) The corporation or organization offers membership or participation in its programs and activities to the general public and charges fees or dues which make its programs and activities accessible by a reasonable cross-section of the community; and

(3) The corporation or organization offers financial assistance on a regular and on-going basis to individuals unable to afford the organization's membership dues or fees.

(c) The Tax Commissioner is prohibited from issuing any assessments and from taking any other action under article ten of this chapter after December 31, 1991, to collect the tax imposed by this article from an organization described in subsections (a) and (b) of this section that did not collect the tax on transactions occurring before July 1, 1992. The Tax Commissioner is also prohibited from refunding any tax collected by a qualified organization prior to July 1, 1992, that was paid over to the Tax Commissioner.

(d) For purposes of this section, the term "corporation" and the term "organization" are used interchangeably and mean a corporation or other organization that is exempt from income tax under Section 501(c)(3) of the Internal Revenue Code, as amended.

(e) Nothing in this section shall affect the application of this article to nonprofit tax-exempt hospitals.

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§11-15-12. Agreements by competing taxpayers.

To provide uniform methods of adding the average equivalent of the tax to the selling price in each sale or transaction subject to the tax, appropriate rules and regulations, except as otherwise herein provided, may be agreed upon or adopted by competing taxpayers or associations of taxpayers, except that all collections shall be made on the basis of the total transaction at the time of sale, without regard to the value of the separate items making up the total amount of the sale. Such rules and regulations, if they do not involve price fixing, shall not be deemed illegal as in restraint of trade or commerce. The Tax Commissioner shall cooperate in formulating such rules and regulations, and, in the event appropriate rules and regulations are not submitted to him within thirty days after this article takes effect, or within a reasonable extended period fixed by the Tax Commissioner, he shall himself formulate and promulgate appropriate rules and regulations to effectuate the purpose of this section.

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§11-15-13. Remittance of tax when sale on credit.

A vendor doing business wholly or partially on a credit basis shall remit to the Tax Commissioner the tax due on the credit sale for the month in which the credit transaction occurred.

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§11-15-14. When separate records of sales required.

(a) Any vendor engaged in a business subject to this tax, who is at the same time engaged in some other kind of business, occupation or profession, not taxable under this article, shall keep records to show separately the transactions used in determining the tax base taxed under this article.

(b) In the event the person fails to keep separate records there shall be levied upon the person a tax based upon the entire gross proceeds of both or all of the person's businesses.

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§11-15-15. Sales to affiliated companies or persons.

In determining gross proceeds of sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from a sale are not indicative of the true value of the subject matter of the sale, the Tax Commissioner shall prescribe uniform and equitable rules for determining the amount upon which the tax shall be levied, corresponding as nearly as possible to gross proceeds from the sale of similar products of like quality or character, where no common interest exists between the parties.

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§11-15-16. Tax return and payment; exception; requiring a combined return.

(a) Payment of tax. — Subject to the exceptions set forth in subsection (g) of this section, the taxes levied by this article are due and payable in monthly installments, on or before the twentieth day of the month next succeeding the month in which the tax accrued, except as otherwise provided in this article.

(b) Combined return required. —

(1) The Tax Commissioner shall, no later than June 15, 2008, design a return that combines filing of the taxes levied by this article and §11-15A-1 *et seq*. of this code.

(2) Beginning July 1, 2008, each person required to file a return required by this article or §11-15A-1 *et seq*. of this code, or both this article and §11-15A-1 *et seq*. of this code, shall complete and file the return required by the Tax Commissioner.

(3) The Tax Commissioner may promulgate rules pursuant to §29A-3-1 *et seq*. of this code and otherwise use any combination of notices, forms and instructions he or she determines necessary to implement the use of the form required by subsection (c) of this section.

(c) Tax return. — The taxpayer shall, on or before the twentieth day of each month, make out and mail to the Tax Commissioner a return for the preceding month, in the form prescribed by the Tax Commissioner, showing:

(1) The total gross proceeds of the vendor's business for the preceding month;

(2) The gross proceeds of the vendor's business upon which the tax is based;

(3) The amount of the tax for which the vendor is liable; and

(4) Any further information necessary in the computation and collection of the tax which the Tax Commissioner may require, except as otherwise provided in this article or §11-15B-1 *et seq*. of this code.

(d) Remittance to accompany return. — Except as otherwise provided in this article or §11-15B-1 *et seq*. of this code, a remittance for the amount of the tax shall accompany the return.

(e) Deposit of collected tax. — Tax collected by the Tax Commissioner shall be deposited as provided in §11-15-30 of this code, except that:

(1) Tax collected on sales of gasoline and special fuel shall be deposited in the State Road Fund; and

(2) Any sales tax collected by the Alcohol Beverage Control Commissioner from persons or organizations licensed under authority of §60-7-1 *et seq*. of this code shall be paid into a

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revolving fund account in the State Treasury, designated the Drunk Driving Prevention Fund, to be administered by the Commission on Drunk Driving Prevention, subject to appropriations by the Legislature.

(f) Return to be signed. — A return shall be signed by the taxpayer or the taxpayer's duly authorized agent, when a paper return is prepared and filed. When the return is filed electronically, the return shall include the digital mark or digital signature, as defined in §39A-3-1 *et seq*. of this code, or the personal identification number of the taxpayer, or the taxpayer's duly authorized agent, made in accordance with any procedural rule that may be promulgated by the Tax Commissioner.

(g) Accelerated payment. —

(1) Notwithstanding any other provision of this code to the contrary, after June 30, 2014, taxpayers whose average monthly payment of the taxes levied by this article and article fifteen-a of this chapter during the previous calendar year exceeds $100,000, shall remit the tax attributable to the first fifteen days of June each year by June 20.

(2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall remit an amount equal to the amount of tax imposed by this article and §11-15A-1 *et seq*. of this code on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first 15 days of June or, at the taxpayer's election, the taxpayer may remit an amount equal to 50 percent of the taxpayer's liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

(3) For a business which has not been in existence for a full calendar year, the total tax due from the business during the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year; and if that amount exceeds $100,000, the tax attributable to the first 15 days of June each year shall be remitted by June 20 as provided in subdivision (2) of this subsection.

(4) When a taxpayer required to make an advanced payment of tax under subdivision (1) of this subsection makes out its return for the month of June, which is due by July 20, the taxpayer may claim as a credit against liability under this article for tax on taxable transactions during the month of June the amount of the advanced payment of tax made under subdivision (1) of this subsection.

(h) Effective upon passage, the provisions of §11-15-16(g) of this code shall no longer have any force or effect.

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§11-15-17. Liability of officers of corporation, etc.

If the taxpayer is an association or corporation, the officers thereof shall be personally liable, jointly and severally, for any default on the part of the association or corporation, and payment of the tax and any additions to tax, penalties and interest thereon imposed by article ten of this chapter may be enforced against them as against the association or corporation which they represent.

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§11-15-18. Tax on gasoline and special fuel; section repealed January 1, 2004.

(a) General. -- All sales of gasoline or special fuel by distributors or importers, except when to another distributor for resale in this state, when delivery is made in this state, is subject to the tax imposed by this article, notwithstanding any provision of this article to the contrary. Sales of gasoline or special fuel by a person who paid the tax imposed by this article on his or her purchases of fuel, shall not thereafter be again taxed under the provisions of this article. This section is construed so that all gallons of gasoline or special fuel sold and delivered, or delivered, in this state are taxed one time.

(b) Measure of tax. -- The measure of tax on sales of gasoline or special fuel by distributors or importers is the average wholesale price as defined and determined in subsection (c), section thirteen, article fifteen-a of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on gasoline and special fuel is imposed on the average wholesale price of gasoline and special fuel; in no case, for the purposes of taxation under this article, shall the average wholesale price be considered to be less than 97¢ per gallon of gasoline or special fuel for all gallons of gasoline and special fuel sold during the reporting period, notwithstanding any provision of this article to the contrary.

(c) Definitions. -- For purposes of this section:

(1) "Aircraft" includes any airplane or helicopter that lands in this state on a regular or routine basis, and transports passengers or freight.

(2) "Aircraft fuel" means gasoline and special fuel suitable for use in any aircraft engine.

(3) "Distributor" means and includes every person:

(A) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this state for use or for sale;

(B) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale or for distribution; or

(C) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for use or sale by the person.

(4) "Gasoline" means and includes any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as defined in this section, including any product obtained by blending together any one or more products, with or without other products, if the resultant product is capable of the same use.

(5) "Importer" means and includes every person, resident or nonresident, other than a

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distributor, who receives gasoline or special fuel outside this state for use, sale or consumption within this state, but shall not include the fuel in the supply tank of a motor vehicle that is not a motor carrier.

(6) "Motor carrier" means and includes: (A) Any passenger vehicle which has seats for more than nine passengers in addition to the driver, any road tractor, tractor truck or any truck having more than two axles, which is operated or caused to be operated, by any person on any highway in this state using gasoline or special fuel; and (B) any aircraft, barge or other watercraft or locomotive transporting passengers or freight in or through this state.

(7) "Motor vehicle" means and includes automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of gasoline or special fuel.

(8) "Retail dealer of gasoline or special fuel" means and includes any person not a distributor, who sells gasoline or special fuel from a fixed location in this state to users.

(9) "Special fuel" means and includes any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term "special fuel" includes products commonly known as natural or casinghead gasoline and includes gasoline and special fuel for heating any private residential dwelling, building or other premises; but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practicably suited for use as fuel in an internal combustion engine.

(10) "Supply tank" means any receptacle on a motor vehicle from which gasoline or special fuel is supplied for the propulsion of the vehicle or equipment located thereon, exclusive of a cargo tank. A supply tank includes a separate compartment of a cargo tank used as a supply tank, and any auxiliary tank or receptacle of any kind or cargo tank, from which gasoline or special fuel is supplied for the propulsion of the vehicle, whether or not the tank or receptacle is directly connected to the fuel supply line of the vehicle.

(11) "Tank wagon" means and includes any motor vehicle or vessel with a cargo tank or cargo tanks ordinarily used for making deliveries of gasoline or special fuel, or both, for sale or use.

(12) "Taxpayer" means any person liable for the tax imposed by this article.

(13) "User" means any person who purchases gasoline or special fuel for use or consumption.

(d) Tax due. -- The tax on sales of gasoline and special fuel shall be paid by each taxpayer on or before the twenty-fifth day of each month, by check, bank draft, certified check or money order, payable to the Tax Commissioner for the amount of tax due for the preceding month, notwithstanding any provision of this article to the contrary.

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(e) Monthly return. -- On or before the twenty-fifth day of each month, the taxpayer shall make and file a return for the preceding month showing the information as the Tax Commissioner requires, notwithstanding any provision of this article to the contrary.

(f) Compliance. -- To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner may require distributors, importers and other persons liable for the tax imposed by this article on sales of gasoline or special fuel, to file a combined return and make a combined payment of the tax due under this article on sales of gasoline and special fuel, and the tax due under article fourteen of this chapter, on gasoline and special fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under article fourteen of this chapter is hereby changed from the last day of each month to the twenty-fifth day of each month, notwithstanding any provision in article fourteen of this chapter to the contrary.

(g) Dedication of tax to highways. -- All tax collected under the provisions of this section after deducting the amount of any refunds lawfully paid, shall be deposited in the "road fund" in the State Treasurer's office, and used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of principal and interest on state bonds issued for highway purposes: Provided, That notwithstanding any provision to the contrary, any tax collected on the sale of aircraft fuel shall be deposited in the State Treasurer's office and transferred to the state aeronautical commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

(h) Construction. -- This section is not construed as taxing any sale of gasoline or special fuel which this state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(i) Effective date. -- This section shall have no force or effect after December 31, 2003: Provided, That tax liabilities arising for periods ending before January 1, 2004, shall be determined, paid, administered, assessed and collected as if this section had not been repealed, and the rights and duties of the taxpayer and the State of West Virginia are fully and completely preserved.

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§11-15-18a. Receivership; bankruptcy; priority of tax.

All taxes due and unpaid under this article shall be paid from the first money available for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person or entity, subject to §38-10C-1 *et seq.* of this code and subject to the priority of taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article.

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§11-15-18b. Tax on motor fuel.

(a) General. — All sales of motor fuel and alternative fuel subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter, are subject to the tax imposed by this article and comprises the variable component of the tax imposed by section five, article fourteen-c of this chapter and is collected and remitted at the time the tax imposed by said section is remitted. Sales of motor fuel and alternative fuel upon which the tax imposed by this article has been paid is not again taxed under the provisions of this article. This section means that all gallons of motor fuel and equivalent gallons of alternative fuel sold and delivered or delivered in this state are taxed one time.

(b) Measure of tax. — The measure of tax imposed by this article is as follows:

(1) On sales of motor fuel, the average wholesale price as defined and determined in section five, article fourteen-c of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on motor fuel herein is imposed on the average wholesale price of the motor fuel; in no case, for the purposes of taxation under this article, may the average wholesale price be determined to be less than 97 cents per gallon of motor fuel for all gallons of motor fuel sold during the reporting period, notwithstanding any provision of this article to the contrary. On and after January 1, 2010, for the purpose of taxation under this article, in no case may the average wholesale price be determined to be less than $2.34 per gallon of motor fuel for all gallons of motor fuel sold during the reporting period notwithstanding any provision of this article to the contrary: Provided, That on and after July 1, 2017, in no case may the average wholesale price be determined to be less than $3.04 per gallon of motor fuel for all gallons of motor fuel sold during the reporting period notwithstanding any provision of this article to the contrary and on and after July 1, 2017, the tax per gallon may not be less than 15.2 cents per gallon of motor fuel. Any limitation on the average wholesale price of motor fuel contained in this subsection shall not be applicable to alternative fuel.

(2) On sales of alternative fuel, the average wholesale price as defined and determined in section five, article fourteen-c of this chapter.

(c) Definitions. — For purposes of this article, the terms “gasoline” and “special fuel” and “alternative fuel” are defined as provided in section two, article fourteen-c of this chapter. Other terms used in this section have the same meaning as when used in a similar context in said article.

(d) Tax return and tax due. —

(1) The tax imposed by this article on sales of motor fuel shall be paid by each taxpayer on or before the last day of the calendar month by check, bank draft, certified check or money order payable to the Tax Commissioner for the amount of tax due for the preceding month notwithstanding any provision of this article to the contrary. The commissioner may require

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all or certain taxpayers to file tax returns and payments electronically. The return required by the commissioner shall accompany the payment of tax. If no tax is due, the return required by the commissioner shall be completed and filed on or before the last day of the month.

(2) The tax due under this article comprising the variable component of the tax due under article fourteen-c of this chapter on alternative fuel, is due and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is due, collected and remitted.

(e) Compliance. — To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner shall require persons liable for the tax imposed by this article on sales of motor fuel to file a combined return and make a combined payment of the tax due under this article on sales of motor fuel and the tax due under article fourteen-c of this chapter on motor fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under article fourteen-c of this chapter is the last day of each month notwithstanding any provision in said article to the contrary. The Tax Commissioner may prescribe reporting and payment requirements for tax due under this article on alternative fuel which accommodate the due dates and requirements prescribed in this article and article fourteen-c of this chapter, either under a separate return and payment or a combined return and payment, within the discretion of the Tax Commissioner.

(f) Dedication of tax. — All tax collected under the provisions of this section, after deducting the amount of refunds lawfully paid, shall be deposited in the road fund in the State Treasurer’s office and used only for the purpose of construction, reconstruction, maintenance and repair of highways and payment of principal and interest on state bonds issued for highway purposes. Notwithstanding any provision to the contrary, tax collected on the sale of aviation fuel after deducting the amount of refunds lawfully paid shall be deposited in the State Treasurer’s office and transferred to the state Aeronautical Commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

(g) Construction. — This section does not tax a sale of motor fuel which this state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(h) Effective date. — The provisions of this section take effect on January 1, 2004. The provisions of this section enacted during the 2007 legislative session take effect on January 1, 2008.The provisions of this section enacted during the 2013 regular legislative session take effect on January 1, 2014. The amendments of this section enacted during the first extraordinary session of 2017 take effect on July 1, 2017.

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§11-15-19. Other times for filing returns.

The Tax Commissioner may, upon written request, authorize a taxpayer whose books and records are not kept on a monthly basis to file returns at times other than those specified in section sixteen, but in no event shall a taxpayer make less than one return a calendar month, except as provided by section twenty or as may be authorized in writing by the Tax Commissioner.

WV Legislature

§11-15-20. Quarterly and annual returns.

(a) When the total consumers sales and use tax remittance for which a person is liable does not exceed an average monthly amount over the taxable year of $250, he or she may pay the tax and make a quarterly return on or before the twentieth day of the first month in the next succeeding quarter in lieu of monthly returns: Provided, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amount established in this subsection.

(b) When the total consumers sales and use tax remittance for which a person is liable does not in the aggregate exceed $600 for the taxable year, he or she may pay the tax and make an annual return on or before thirty days after the end of his or her taxable year for federal and state income tax purposes: Provided, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amount established in this subsection.

(c) The amendments to this section enacted in the year 2006 are effective for tax years beginning on or after January 1, 2006.

WV Legislature

§11-15-21. Annual return; extension of time.

(a) Date due. -- On or before thirty days after the end of the tax year, each person liable for the payment of any tax due under this article shall make and file an annual return in such form as may be required by the Tax Commissioner, showing:

(1) Total gross proceeds of his business for preceding tax year,

(2) Gross proceeds upon which the tax for that year was computed, and

(3) Any other information necessary in the computation or collection of the tax that the Tax Commissioner may require.

(b) Supporting schedule for consolidated return. -- Whenever a person operates two or more places of business and files a consolidated monthly return, a schedule shall be attached to the consolidated annual return showing, for each place of business, total sales and charges for rendering services, total transactions subject to tax and total tax collections.

(c) Payment. -- After deducting the amount of prior payments during the tax year, the taxpayer shall forward the annual return along with payment of any remaining tax, due for the preceding tax year, to the Tax Commissioner. The taxpayer or his duly authorized agent shall verify the return under oath.

(d) Extension of time. -- The Tax Commissioner for good cause shown, may, on written application of a taxpayer, extend the time for making any return required by the provisions of this article.

WV Legislature

§11-15-22. Consolidated returns.

A person operating two or more places of business of like character from which are made or dispensed sales or services which are taxable hereunder shall file consolidated returns covering all such sales or services.

WV Legislature

§11-15-23. Keeping and preserving of records.

Each taxpayer shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices, bills of lading and such other pertinent documents in such form as the Tax Commissioner may by regulation require. Such records and other documents shall be preserved for a period of time not less than three years, unless the Tax Commissioner shall consent in writing to their destruction within that period or by order require that they be kept longer.

WV Legislature

§11-15-24.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15-24a.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15-24b.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15-24c.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15-24d.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15-24e.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15-24f.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15-25. Records of nonresidents doing business in state.

A nonresident person or foreign corporation engaged in a business within this state in the conduct of which the tax levied by this article becomes due, shall keep within this state adequate records concerning the operation of the business, and all taxes collected in the course of the business. The amount of the tax collected shall not be transmitted outside of this state without the written consent of, and in accordance with the conditions prescribed by the Tax Commissioner.

WV Legislature

§11-15-26. Records of Tax Commissioner; preservation of returns.

The Tax Commissioner shall keep full and accurate records of all moneys received by him He shall preserve all returns filed with him hereunder for five years.

WV Legislature

§11-15-27.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15-27a.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15-28.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15-29.

Repealed.

Acts, 1984 Reg. Sess., Ch. 170.

WV Legislature

§11-15-30. Proceeds of tax; appropriation of certain revenues.

(a) The proceeds of the tax imposed by this article shall be deposited in the General Revenue Fund of the state except as otherwise expressly provided in this article.

(b) *School Major Improvement Fund*. — After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in §11-15-16 of this code, on the first day of each month, there shall be dedicated monthly from the collections of this tax the amount of $416,667, and the amount dedicated shall be deposited on a monthly basis into the School Major Improvement Fund created pursuant to §18-9D-6 of this code: *Provided,* That for fiscal year 2016, the amount so dedicated and deposited annually under this subsection is reduced by $2,000,004, and the amount so dedicated and deposited monthly is reduced to $250,000 for fiscal year 2016. This reduction shall cease for fiscal years beginning after June 30, 2016: *Provided, however,* That for fiscal year 2017, the amount so dedicated and deposited annually under this subsection is reduced by $999,996, and the amount so dedicated and deposited monthly is reduced to $333,334 for fiscal year 2017. This reduction shall cease for fiscal years beginning after June 30, 2017.

(c) *School Construction Fund.* — After the payment or commitment of the proceeds or collections of this tax for the purposes set forth in §11-15-16 of this code:

(1) On the first day of each month, there shall be dedicated monthly from the collections of this tax the amount of $1,416,667 and the amount dedicated shall be deposited into the School Construction Fund created pursuant to §18-9D-6 of this code.

(2) Except as provided in subdivision (3) of this subsection, effective July 1, 1998, there shall be dedicated from the collections of this tax an amount equal to any annual difference that may occur between the debt service payment for the 1997 fiscal year for school improvement bonds issued under the Better School Building Amendment under the provisions of §18-9C-1 *et. seq.* of this code and the amount of funds required for debt service on these school improvement bonds in any current fiscal year thereafter. This annual difference shall be prorated monthly, added to the monthly deposit in subdivision (1) of this subsection and deposited into the School Construction Fund created pursuant to §18-9D-6 of this code.

(3) After June 30, 2015, the provisions of subdivisions (1) and (2) of this subsection shall have no force or effect. After June 30, 2015, there shall be dedicated from the collections of this tax the amount of $27,216,996 annually. This amount shall be prorated monthly and deposited into the School Construction Fund created pursuant to §18-9D-6 of this code: *Provided,* That for fiscal year 2016, the amount so dedicated annually under this subdivision is reduced by $6 million. This reduction shall cease for fiscal years beginning after June 30, 2016: *Provided, however,* That for fiscal year 2017, the amount so dedicated and deposited annually under this subdivision is reduced by $3 million. This reduction shall cease for fiscal years beginning after June 30, 2017. Amendments to this subdivision enacted in the 2016 regular legislative session are retroactive, in accordance with dates and fiscal years

WV Legislature

specified herein.

(d) *Prepaid wireless calling service*. — The proceeds or collections of this tax from the sale of prepaid wireless service are dedicated as follows:

(1) The tax imposed by this article upon the sale of prepaid wireless calling service is in lieu of the wireless enhanced 911 fee, the public safety fee, and the wireless tower fee imposed by §24-6-6b of this code.

(2) Within 30 days following the end of each calendar month, the Tax Commissioner shall remit to the Public Service Commission the proceeds of the tax imposed by this article upon the sale of prepaid wireless calling service in the preceding month, determined as follows: For purposes of determining the amount of those monthly proceeds, the Tax Commissioner shall use an amount equal to one twelfth of the wireless enhanced 911 fees, the public safety fees, and the wireless tower fees collected from prepaid wireless calling service under §24-6-6b of this code during the period beginning on July 1, 2020, and ending on June 30, 2021. Beginning on July 1, 2022, the Tax Commissioner shall adjust this amount annually by an amount proportionate to the increase or decrease in the enhanced wireless 911 fees, the public safety fees, and the wireless tower fees paid to the Public Service Commission under said section during the previous 12 months. The Public Service Commission shall receive, deposit, and disburse the proceeds in the manner prescribed in said section.

WV Legislature

§11-15-30a.

Repealed.

Acts, 1994, 1st Ex. Sess., Ch. 25.

WV Legislature

§11-15-31. Construction and severability.

(a) Construction. –- If a court of competent jurisdiction finds that the provisions of this article and of article fifteen-b of this chapter conflict and cannot be harmonized, then the provisions of article fifteen-b shall control.

(b) Severability. -– If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision may not affect the validity of the remaining portions of this article or any part thereof.

WV Legislature

§11-15-32. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the tax imposed by this article fifteen with like effect as if said act were applicable only to the tax imposed by this article fifteen and were set forth in extenso in this article fifteen.

WV Legislature

§11-15-33. Effective date.

The provisions of this article as amended or added during the regular legislative session in the year 2003 shall take effect January 1, 2004, and apply to all sales made on or after that date and to all returns and payments due on or after that day.

WV Legislature

§11-15-34. Tourism development project tax credit.

(a) There is allowed as a credit against the consumers sales and service tax collected and required to be remitted pursuant to this article from the operation of an approved tourism development project as defined in section three, article two-e, chapter five-b of this code, the amount determined under section eight, article two-e, chapter five-b of this code relating to the tourism development project tax credit.

(b) The Tax Commissioner may propose legislative rules in accordance with article three, chapter twenty-nine-a of this code designed to require the filing of forms designed by the Tax Commissioner to reflect the intent of this section and article two-e, chapter five-b of this code.

WV Legislature