WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

SENATE BILL NO. 164

(By Mr. Cans Charnes, original sponsor)

PASSED March 4, 1969

In Effect April 1, 1969... Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, III
SECRETARY OF STATE
THIS DATE 3-12-69
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 164
(MR. CARRIGAN, original sponsor)

(Passed March 4, 1969; in effect April 1, 1969.)

AN ACT to amend and reenact sections two, three-a and nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections one-a and thirty-one, all relating to definitions of terms in and exemption under the consumers sales and service tax.

Be it enacted by the Legislature of West Virginia:

That sections two, three-a and nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that
said article fifteen be further amended by adding thereto two new sections, designated sections one-a and thirty-one, all to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-1a. Legislative findings.

1 The Legislature hereby finds and declares that 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, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be complementary laws and wherever possible be construed and applied to accomplish such intent as to the imposition, administration and collection of such taxes.


1 For the purpose of this article:

2 (1) "Persons" shall mean any individual, partnership, association, corporation, municipal corporation, guardian, trustee, committee, executor or administrator;

3 (2) "Tax commissioner" shall mean the state tax commissioner;
(3) "Gross proceeds" shall mean 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 shall not be deducted, but any credit or refund made for goods returned may be deducted;

(4) "Sale," "sales" or "selling" shall include any transfer of the possession or ownership of tangible personal property 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 agent for consumption or use or any other purpose;

(5) "Vendor" shall mean any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property;

(6) "Ultimate consumer" or "consumer" shall mean a person who uses or consumes services or personal property;

(7) "Business" shall include 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;
(8) "Tax" shall include all taxes, interest and penalties levied hereunder;
(9) "Service" or "selected service" shall include 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, but shall not include personal services or the services rendered by an employee to his employer or any service rendered for resale;
(10) "Purchaser" shall mean a person who purchases tangible personal property or a service taxed by this article;
(11) "Personal service" shall include those:
(a) Compensated by the payment of wages in the ordinary course of employment;
(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;

(12) "Taxpayer" shall mean any person liable for the tax imposed by this article;

(13) "Drugs" shall include all sales of drugs or appliances to a purchaser, upon prescription of a physician or dentist and any other professional person licensed to prescribe.

§11-15-3a. Temporary additional definitions, additional exemptions and replacement exemptions.

For the purpose of providing additional revenue for a one-year period only (April 1, 1969 through March 31, 1970) the provisions of this section shall, effective April one, one thousand nine hundred sixty-nine, replace and stand in lieu of, or be in addition to, as hereinafter indicated, the provisions of sections two and nine of this article for such period, but not thereafter, and shall expire at midnight, March thirty-one, one thousand nine hundred seventy.
The following definitions are to be read as if set forth with and in addition to the definitions contained in section two of this article:

(14) "Raw materials" shall mean materials which are partially or wholly consumed or become a component part or the whole of a marketable product. Raw materials shall also include the following property and/or services and as limited, apply to the following specified businesses:

(a) Coal used and consumed in the generation of electric energy;

(b) Poles, wires and cables purchased and used by a person engaged in the business of transmitting and/or distributing electrical energy;

(c) Central office communication equipment, station connections and equipment and services connected with the installation thereof, poles, wires and cables purchased and used by persons engaged in the business of communication;

(d) Meters, pipes, pumps, and chemicals purchased and used by a person engaged in the business of supplying water and purchases of materials and services by
water and sewage disposal plants owned by municipalities
and public service districts;

(e) Sales of materials and services used and consumed
by municipally-owned electric power plants which gen-
erate and/or distribute electrical energy;

(f) Sales of meters, pipes and compressors used and
consumed by persons engaged in the business of selling
oil, liquified or natural gas;

(g) Materials and services furnished by a contractor
which are incorporated into the marketable product and
transferred to a purchaser; the term “marketable prod-
uct” shall include any partially or wholly-completed
project or permanent improvement to real property by a
contractor;

(h) Materials and services purchased and wholly con-
sumed and/or rendered wholly non-usable or non-re-
coverable by persons engaged in the business of produc-
ing coal or other natural resources;

(i) Sales of materials and/or services which are par-
tially or wholly consumed or become a component part
or the whole of a marketable product, in the process of
manufacturing, including containers, caps and labels, but not repair services on machinery and equipment;

(j) Purchases of tangible personal property to be used by a transportation company or person as or in rolling stock.

(15) "Contractor" shall mean a person who sells or furnishes services, or both materials and services, in the 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.

(16) "A transportation company" shall mean a person engaged in the transportation of persons or property for a consideration and subject to the control of the public service commission or the interstate commerce commission.

The following exemptions are to be read with and as if set forth with the exemptions in section nine of this article and are intended to replace and stand in lieu of the same numbered subsections therein or be in addition to such exemptions contained therein:
73 Subsections:
74 (6) Sales of property or services to churches and bona
75 fide charitable organizations who make no charge what-
76 ever for the services they render: Provided, however,
77 That the exemption herein granted shall apply only to
78 services, machinery, supplies and materials directly used
79 or consumed in the organizations named above;
80 (8) Sales of tangible personal property and services
81 rendered for use or consumption in connection with the
82 commercial production of an agricultural product the
83 ultimate sale of which will be subject to the tax imposed
84 by this article: Provided, however, That sales of tangible
85 personal property and services to be used or consumed
86 in the construction of or permanent improvement of real
87 property shall not be exempt;
88 (9) Sales of tangible personal property and/or services
89 for the purpose of resale in the form of tangible personal
90 property and/or services;
91 (14) Sales of raw materials;
92 (15) Sales of raw materials and services, or services,
93 only, by a contractor, under contracts entered into on or
after the first day of April, one thousand nine hundred sixty-nine;

(16) Sales of tangible personal property or services for the acquisition, construction, development and maintenance of water pollution control facilities and air pollution control facilities;

(17) Transportation charges separately stated.


The following sales and services shall be exempt:

(1) Sales of gasoline, taxable under article fourteen, chapter eleven of the code, one thousand nine hundred thirty-one;

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

(3) Sales of textbooks required to be used in any of the schools of this state;

(4) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;
(5) Sales of motor vehicles which are titled by the department of motor vehicles which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;

(6) Sales of property or services to churches and bona fide charitable organizations who make no charge whatever for the services they render or to persons engaged in this state in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources: Provided, however, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above;

(7) An isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative;
(8) 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 tax under this article and sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article: Provided, however, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property shall not be exempt;

(9) Sales of tangible personal property for the purpose of resale in the form of tangible personal property;

(10) 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;

(11) Sales and services, fire fighting, 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;

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

(13) Sales of drugs dispensed upon prescription.


If any of the provisions of this article are held invalid, such invalidation shall not affect other provisions which can be given effect without the invalid provision and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Young
Chairman Senate Committee

Clayton C. Davis
Chairman House Committee

Originated in the Senate.

To take effect April 1, 1969.

Howard Massey
Clerk of the Senate

J. A. Blankenship
Clerk of the House of Delegates

Lloyd Queen
President of the Senate

J. F. Barrow
Speaker House of Delegates

The within approved this the 12th day of March, 1969.

Arch. Snare
Governor
PRESENTED TO THE GOVERNOR

Date 3/8/69
Time 4:50 p.m.

HRS 17-19 29 MAR '69

STATE OF WEST VIRGINIA