

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1969

ENROLLED

Com. Sub. Jw
SENATE BILL NO. 164

(By Mr. *Cassidy*, original sponsor)

PASSED March 4, 1969

In Effect April 1, 1969 Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 3-17-69

164

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
2 the intent of the Legislature that the consumers sales tax
3 imposed by the provisions of article fifteen and the use tax
4 imposed by the provisions of article fifteen-a, chapter
5 eleven of the code of West Virginia, one thousand nine
6 hundred thirty-one, as amended, be complementary laws
7 and wherever possible be construed and applied to accom-
8 plish such intent as to the imposition, administration and
9 collection of such taxes.

§11-15-2. Definitions.

1 For the purpose of this article:

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

5 (2) "Tax commissioner" shall mean the state tax
6 commissioner;

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

14 (4) "Sale," "sales" or "selling" shall include any transfer
15 of the possession or ownership of tangible personal prop-
16 erty for a consideration, including a lease or rental, when
17 the transfer or delivery is made in the ordinary course of
18 the transferor's business and is made to the transferee or
19 his agent for consumption or use or any other purpose;

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

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

26 (7) "Business" shall include all activities engaged in
27 or caused to be engaged in with the object of gain or

28 economic benefit, direct or indirect, and all activities of
29 the state and its political subdivisions which involve
30 sales of tangible personal property or the rendering of
31 services when those service activities compete with or
32 may compete with the activities of other persons;

33 (8) "Tax" shall include all taxes, interest and penal-
34 ties levied hereunder;

35 (9) "Service" or "selected service" shall include all
36 nonprofessional activities engaged in for other persons
37 for a consideration, which involve the rendering of a
38 service as distinguished from the sale of tangible per-
39 sonal property, but shall not include personal services
40 or the services rendered by an employee to his employer
41 or any service rendered for resale;

42 (10) "Purchaser" shall mean a person who purchases
43 tangible personal property or a service taxed by this
44 article;

45 (11) "Personal service" shall include those:

46 (a) Compensated by the payment of wages in
47 the ordinary course of employment;

48 (b) Rendered to the person of an individual
49 without, at the same time, selling tangible personal
50 property, such as nursing, barbering, shoe shining, mani-
51 curing and similar services;

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

54 (13) "Drugs" shall include all sales of drugs or ap-
55 pliances to a purchaser, upon prescription of a physician
56 or dentist and any other professional person licensed to
57 prescribe.

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

1 For the purpose of providing additional revenue for a
2 one-year period only (April 1, 1969 through March 31,
3 1970) the provisions of this section shall, effective April
4 one, one thousand nine hundred sixty-nine, replace and
5 stand in lieu of, or be in addition to, as hereinafter indi-
6 cated, the provisions of sections two and nine of this
7 article for such period, but not thereafter, and shall
8 expire at midnight, March thirty-one, one thousand nine
9 hundred seventy.

10 The following definitions are to be read as if set forth
11 with and in addition to the definitions contained in sec-
12 tion two of this article:

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

18 (a) Coal used and consumed in the generation of elec-
19 tric energy;

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

23 (c) Central office communication equipment, station
24 connections and equipment and services connected with
25 the installation thereof, poles, wires and cables purchased
26 and used by persons engaged in the business of com-
27 munication;

28 (d) Meters, pipes, pumps, and chemicals purchased
29 and used by a person engaged in the business of supply-
30 ing water and purchases of materials and services by

31 water and sewage disposal plants owned by municipalities
32 and public service districts;

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

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

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

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

49 (i) Sales of materials and/or services which are par-
50 tially or wholly consumed or become a component part
51 or the whole of a marketable product, in the process of

52 manufacturing, including containers, caps and labels, but
53 not repair services on machinery and equipment;

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

57 (15) "Contractor" shall mean a person who sells or
58 furnishes services, or both materials and services, in
59 the fulfillment of a contract for the construction, altera-
60 tion, repair, decoration or improvement of a new or exist-
61 ing building or structure, or any part thereof, or for the
62 alteration, improvement or development of real property.

63 (16) "A transportation company" shall mean a person
64 engaged in the transportation of persons or property for
65 a consideration and subject to the control of the public
66 service commission or the interstate commerce com-
67 mission.

68 The following exemptions are to be read with and as
69 if set forth with the exemptions in section nine of this
70 article and are intended to replace and stand in lieu of
71 the same numbered subsections therein or be in addition
72 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

94 after the first day of April, one thousand nine hundred
95 sixty-nine;

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

100 (17) Transportation charges separately stated.

§11-15-9. Exemptions.

1 The following sales and services shall be exempt:

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

5 (2) Sales of gas, steam and water delivered to con-
6 sumers through mains or pipes, and sales of electricity;

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

9 (4) Sales of property or services to the state, its in-
10 stitutions or subdivisions, and to the United States,
11 including agencies of federal, state or local governments
12 for distribution in public welfare or relief work;

13 (5) Sales of motor vehicles which are titled by the
14 department of motor vehicles which are subject to the
15 tax imposed by section four, article three, chapter seven-
16 teen-a of the code;

17 (6) Sales of property or services to churches and
18 bona fide charitable organizations who make no charge
19 whatever for the services they render or to persons
20 engaged in this state in the business of contracting,
21 manufacturing, transportation, transmission, communica-
22 tion, or in the production of natural resources: *Provided,*
23 *however,* That the exemption herein granted shall apply
24 only to services, machinery, supplies and materials di-
25 rectly used or consumed in the businesses or organiza-
26 tions named above;

27 (7) An isolated transaction in which any tangible
28 personal property is sold, transferred, offered for sale,
29 or delivered by the owner thereof or by his representa-
30 tive for the owner's account, such sale, transfer, offer
31 for sale or delivery not being made in the ordinary
32 course of repeated and successive transactions of like
33 character by such owner or on his account by such repre-
34 sentative;

35 (8) Sales of tangible personal property and services
36 rendered for use or consumption in connection with the
37 conduct of the business of selling tangible personal
38 property to consumers or dispensing a service subject
39 to tax under this article and sales of tangible personal
40 property and services rendered for use or consumption
41 in connection with the commercial production of an
42 agricultural product the ultimate sale of which will be
43 subject to the tax imposed by this article: *Provided,*
44 *however,* That sales of tangible personal property and
45 services to be used or consumed in the construction of
46 or permanent improvement of real property shall not be
47 exempt;

48 (9) Sales of tangible personal property for the pur-
49 pose of resale in the form of tangible personal property;

50 (10) Sales of property or services to nationally char-
51 tered fraternal or social organizations for the sole purpose
52 of free distribution in public welfare or relief work;

53 (11) Sales and services, fire fighting, or station house
54 equipment, including construction and automotive, made

55 to any volunteer fire department organized and in-
56 corporated under the laws of the state of West Virginia;

57 (12) Sales of newspapers when delivered to con-
58 sumers by route carriers;

59 (13) Sales of drugs dispensed upon prescription.

§11-15-31. Severability.

1 If any of the provisions of this article are held invalid,
2 such invalidation shall not affect other provisions which
3 can be given effect without the invalid provision and to
4 this end the provisions of this article are declared to be
5 severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tompkins

Chairman Senate Committee

Clayton C. Davidson

Chairman House Committee

Originated in the Senate.

To take effect April 1, 1969.

Howard Meyer

Clerk of the Senate

A. A. Blankenship

Clerk of the House of Delegates

L. G. S. Green

President of the Senate

Sam F. Burdick

Speaker House of Delegates

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

Archie Shaare, Jr.

Governor



PRESENTED TO THE
GOVERNOR

RECEIVED

Date 3/8/69

MAR 17 10 24 AM '69

Time 4:50 p.m.

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA