WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

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ENROLLED

SENATE BILL NO. 122

(By Mr. Bechtel, Mr. President)

PASSED March 9, 1979

In Effect July 1, 1979
ENROLLED
Senate Bill No. 122
(By MR. BROTHERON, MR. PRESIDENT)

[Passed March 9, 1979; in effect July 1, 1979.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article fifteen by adding thereto a new section, designated section eleven; and to amend and reenact section three, article fifteen-a of said chapter, all relating to consumers sales tax; providing for a phased reduction and eventual exemption of the tax on food; specifying rates of tax on food for certain ensuing fiscal years; defining terms; excluding food sold by a food service establishment from definition of food; preserving the exemption from tax of sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling food for human consumption to consumers 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 would be subject to the tax except for the exemption of food; exempting sales of insulin to consumers for medical purposes; exempting sales to certain schools approved by the board of regents to award degrees, and exempting from the use tax tangible personal property the gross receipts from the sale of which are exempt from the retail sales tax.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


1. The following sales and services shall be exempt:
2. (1) Sales of gasoline, taxable under article fourteen, chapter eleven of the code, one thousand nine hundred thirty-one;
3. (2) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;
4. (3) Sales of textbooks required to be used in any of the schools of this state;
5. (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;
6. (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;
7. (6) Sales of property or services to churches and bona fide charitable organizations who make no charge whatever for the services they render or sales of property or services to corporations or organizations qualified under section 501(c) (3) of the Internal Revenue Code of 1954, as amended, or under section 501(c) (4) of the Internal Revenue Code of 1954, as amended, who make casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character, or sales of property or services to persons engaged in this state in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources:
8. 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 or which would be subject to tax under this article but for the exemption for food provided in section eleven of 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 or which would have been subject to tax under this article but for the exemption for food provided in section eleven of this article: Provided, 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 and sales of insulin to consumers for medical purposes;

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

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

(16) 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 corporations or organizations qualified under section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or under section 501 (c) (4) of the Internal Revenue Code of 1954, as amended;

(17) Bank safety deposit boxes;

(18) Sales of property or services to a school which has approval from the West Virginia board of regents 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 1954, as amended.


(a) Exemption.—Sales of food intended for human consumption made on or after the first day of July, one thousand nine hundred eighty-one, shall be exempt from the tax imposed by this article. This exemption shall be in addition to any other exemption permitted under this article.

(b) Transition reduction of tax on July 1, 1979 and July 1, 1980.—The amount of tax imposed by section three of this article on sales of food for human consumption shall be reduced as follows:

(1) Sales of food intended for human consumption made before the first day of July, one thousand nine hundred seventy-nine, shall be taxed as provided in section three of this article.

(2) Sales of food intended for human consumption made after the thirtieth day of June, one thousand nine hundred seventy-nine, shall be taxed as follows:
(A) There shall be no tax on sales where the monetary consideration is twenty-five cents or less.

(B) On each sale, where the monetary consideration is from twenty-six cents to fifty cents, both inclusive, one cent.

(C) On each sale where the monetary consideration is from fifty-one cents to one dollar, both inclusive, two cents.

(D) On each fifty cents of monetary consideration or fraction thereof in excess of one dollar, one cent.

(3) Sales of food intended for human consumption made after the thirtieth day of June, one thousand nine hundred eighty, but before the first day of July, one thousand nine hundred eighty-one, shall be taxed as follows:

(A) There shall be no tax on sales where the monetary consideration is twenty-five cents or less.

(B) On each sale where the monetary consideration is from twenty-six cents to one dollar, both inclusive, one cent.

(C) On each one dollar or fraction thereof in excess of one dollar, one cent. Separate sales such as daily or weekly deliveries, shall not be aggregated for purpose of computation of this tax even though such sales are aggregated in the billing or the payment.

(c) Definition of food.—For purposes of this section, and except as provided in subsection (d), the term “food” shall mean and include all edible foodstuffs, beverages containing no alcohol and items commonly thought of as food, including, by way of illustration and not by limitation, cereals and cereal products, meat and meat products, fish and fish products, poultry and poultry products, fresh and salt water animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, flour and flour products, sugar and sugar products, milk and milk products, cocoa and cocoa products, coffee and coffee substitutes, tea, herbs, spices, salt and salt substitutes, condiments, candy and confections, soft drinks, soft drink mixes and syrups, tenderizers, food coloring,
bottled drinking water, sugar substitutes, oleomargarine,
shortening, gelatins, baking and cooking ingredients,
mushrooms, spreads, relishes, desserts, flavorings, chewing gum, edible seeds, nuts and berries.
(d) The term “food” shall not include medicines, vitamins and dietary supplements whether in liquid, powdered, granular, tablet, capsule, lozenge, or pill form; spirituous, malt or vinous liquors or beer; ice; tobacco or tobacco products; vending machine sales; or food sold by a food-service establishment.
(e) Definition of “food-service establishment.”—For purposes of this section, and except as provided in subsection (f), the term “food-service establishment” means any fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, industrial-feeding establishment, private, public or nonprofit organization or institution routinely serving food, catering operation, commissary or any other similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any food-service establishment which operates for a limited period of time in connection with events such as, but not limited to a fair, carnival, circus, public exhibition, athletic event, or similar gathering: Provided, That delicatessen, grocery, market, dairy or bakery stores shall not be considered food-service establishments within the meaning of this section except for the sale of dinners, luncheons, barbecued chicken other than barbecued chicken sold whole and unsliced, sandwiches, snacks, hot pizzas, and other similar items which are commonly sold at snack bars, coffee shops or luncheon counters.
(f) The term “food-service establishment” shall not include:
(1) Food sold by public or private schools, school sponsored student organizations, or school sponsored parent-teacher associations to students enrolled in such school or to employees of such school during normal school hours; but not those sales of food made to the general public.
(2) Food sold by a public or private college or university or by a student organization officially recognized by such college or university to students enrolled at such college or university when such 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 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.

(3) Food sold by a nonprofit organization or a governmental agency under a program funded by a state or the United States to low-income elderly persons at or below cost.

(4) Food sold in an occasional sale by a charitable or non-profit 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 so obtained is actually expended for that purpose.

(5) 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 on such functions and activities. For the purpose of this paragraph, "religious organizations" means any organization the property of which is exempt from taxation under article ten, section one of the West Virginia Constitution.

ARTICLE 15A. USE TAX.

1 The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this article:

2 1. All articles of tangible personal property brought into the state of West Virginia by a nonresident individual thereof for his or her use or enjoyment while within the state.
2. Tangible personal property, the gross receipts from the sale of which are exempted from the retail sales tax by the terms of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one.

3. Tangible personal property, the gross receipts from the sale of which are derived from the sale of machinery, supplies and materials to contractors, or to persons engaged in the business of manufacturing, transportation, transmission, communication or in the production of natural resources in this state: Provided, That the exemptions granted in this subdivision three are hereby suspended, nullified and made inoperative during the period from the first day of April, one thousand nine hundred sixty-nine to midnight of the thirty-first day of March, one thousand nine hundred seventy: Provided further, That after midnight of the thirty-first day of March, one thousand nine hundred seventy, the exemptions granted in this subdivision three shall again be in full force and effect as if they had not been suspended, nullified and made inoperative as heretofore provided.

4. Tangible personal property, the gross receipts or the gross proceeds from the sale of which are required to be included in the measure of the tax imposed by article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one.

5. Tangible personal property, the sale of which in this state is not subject to the West Virginia consumers sales tax.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence L. Chestnut
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1979.

J.C. Billings Jr.
Clerk of the Senate

W.H. Blankenship
Clerk of the House of Delegates

C.H. McPeek Sr.
President of the Senate

M.E. McPeak Sr.
Speaker House of Delegates

The within ___________ this the ___________ day of ___________, 1979.

Governor