

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-27-79

Time 10:30 A.M.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

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ENROLLED

SENATE BILL NO. 122

(By Mr. Brotherton, Mr. President)

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PASSED March 9 1979

In Effect July 1, 1979 ~~Passage~~



no: 122

ENROLLED

Senate Bill No. 122

(By MR. BROTHERTON, 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.

§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 institu-
10 tions or subdivisions, and to the United States, including
11 agencies of federal, state or local governments for distribu-
12 tion 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 tax
15 imposed by section four, article three, chapter seventeen-a
16 of the code;

17 (6) Sales of property or services to churches and bona
18 fide charitable organizations who make no charge what-
19 ever for the services they render or sales of property or
20 services to corporations or organizations qualified under
21 section 501(c) (3) of the Internal Revenue Code of 1954,
22 as amended, or under section 501(c) (4) of the Internal
23 Revenue Code of 1954, as amended, who make casual and
24 occasional sales not conducted in a repeated manner or
25 in the ordinary course of repetitive and successive trans-
26 actions of like character, or sales of property or services
27 to persons engaged in this state in the business of con-
28 tracting, manufacturing, transportation, transmission,
29 communication, or in the production of natural resources:
30 *Provided, however,* That the exemption herein granted
31 shall apply only to services, machinery, supplies and ma-
32 terials directly used or consumed in the businesses or
33 organizations named above;

34 (7) An isolated transaction in which any tangible
35 personal property is sold, transferred, offered for sale, or
36 delivered by the owner thereof or by his representative
37 for the owner's account, such sale, transfer, offer for sale
38 or delivery not being made in the ordinary course of
39 repeated and successive transactions of like character by
40 such owner or on his account by such representative;

41 (8) Sales of tangible personal property and services
42 rendered for use or consumption in connection with the
43 conduct of the business of selling tangible personal prop-
44 erty to consumers or dispensing a service subject to tax
45 under this article or which would be subject to tax under
46 this article but for the exemption for food provided in
47 section eleven of this article and sales of tangible per-
48 sonal property and services rendered for use or con-
49 sumption in connection with the commercial production
50 of an agricultural product the ultimate sale of which will
51 be subject to the tax imposed by this article or which
52 would have been subject to tax under this article but
53 for the exemption for food provided in section eleven of
54 this article: *Provided*, That sales of tangible personal
55 property and services to be used or consumed in the con-
56 struction of or permanent improvement of real property
57 shall not be exempt;

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

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

63 (11) Sales and services, fire fighting, or station house
64 equipment, including construction and automotive, made
65 to any volunteer fire department organized and incor-
66 porated under the laws of the state of West Virginia;

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

69 (13) Sales of drugs dispensed upon prescription and
70 sales of insulin to consumers for medical purposes;

71 (14) Sales of radio and television broadcasting time,

72 newspaper and outdoor advertising space for the adver-
73 tisement of goods or services;

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

75 (16) Casual and occasional sales of property or services
76 not conducted in a repeated manner or in the ordinary
77 course of repetitive and successive transactions of like
78 character by corporations or organizations qualified
79 under section 501 (c) (3) of the Internal Revenue Code
80 of 1954, as amended, or under section 501 (c) (4) of the
81 Internal Revenue Code of 1954, as amended;

82 (17) Bank safety deposit boxes;

83 (18) Sales of property or services to a school which
84 has approval from the West Virginia board of regents to
85 award degrees, which has its principal campus in this
86 state, and which is exempt from federal and state income
87 taxes under section 501 (c) (3) of the Internal Revenue
88 Code of 1954, as amended.

**§11-15-11. Exemption of food intended for human consump-
tion; transition reduction of tax; definitions and
exceptions.**

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

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

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

15 (2) Sales of food intended for human consumption
16 made after the thirtieth day of June, one thousand nine
17 hundred seventy-nine, shall be taxed as follows:

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

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

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

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

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

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

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

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

43 (c) *Definition of food.*—For purposes of this section,
44 and except as provided in subsection (d), the term “food”
45 shall mean and include all edible foodstuffs, beverages
46 containing no alcohol and items commonly thought of as
47 food, including, by way of illustration and not by limita-
48 tion, cereals and cereal products, meat and meat products,
49 fish and fish products, poultry and poultry products, fresh
50 and salt water animal products, eggs and egg products,
51 vegetables and vegetable products, fruit and fruit prod-
52 ucts, flour and flour products, sugar and sugar products,
53 milk and milk products, cocoa and cocoa products, coffee
54 and coffee substitutes, tea, herbs, spices, salt and salt sub-
55 stitutes, condiments, candy and confections, soft drinks,
56 soft drink mixes and syrups, tenderizers, food coloring,

57 bottled drinking water, sugar substitutes, oleomargarine,
58 shortening, gelatins, baking and cooking ingredients,
59 mushrooms, spreads, relishes, desserts, flavorings, chew-
60 ing gum, edible seeds, nuts and berries.

61 (d) The term "food" shall not include medicines, vita-
62 mins and dietary supplements whether in liquid, pow-
63 dered, granular, tablet, capsule, lozenge, or pill form;
64 spirituous, malt or vinous liquors or beer; ice; tobacco or
65 tobacco products; vending machine sales; or food sold by
66 a food-service establishment.

67 (e) *Definition of "food-service establishment."*—For
68 purposes of this section, and except as provided in sub-
69 section (f), the term "food-service establishment" means
70 any fixed or mobile restaurant, coffee shop, cafeteria,
71 short-order cafe, luncheonette, grill, tearoom, sandwich
72 shop, soda fountain, tavern, bar, cocktail lounge, night
73 club, industrial-feeding establishment, private, public or
74 nonprofit organization or institution routinely serving
75 food, catering operation, commissary or any other similar
76 place in which food or drink is prepared for sale or for
77 service on the premises or elsewhere; and any food-ser-
78 vice establishment which operates for a limited period of
79 time in connection with events such as, but not limited to
80 a fair, carnival, circus, public exhibition, athletic event, or
81 similar gathering: *Provided*, That delicatessen, grocery,
82 market, dairy or bakery stores shall not be considered
83 food-service establishments within the meaning of this
84 section except for the sale of dinners, luncheons, barbe-
85 cued chicken other than barbecued chicken sold whole
86 and unsliced, sandwiches, snacks, hot pizzas, and other
87 similar items which are commonly sold at snack bars,
88 coffee shops or luncheon counters.

89 (f) The term "food-service establishment" shall not
90 include:

91 (1) Food sold by public or private schools, school
92 sponsored student organizations, or school sponsored par-
93 ent-teacher associations to students enrolled in such
94 school or to employees of such school during normal
95 school hours; but not those sales of food made to the
96 general public.

97 (2) Food sold by a public or private college or uni-
98 versity or by a student organization officially recognized
99 by such college or university to students enrolled at such
100 college or university when such sales are made on a
101 contract basis so that a fixed price is paid for consumption
102 of food products for a specific period of time without
103 respect to the amount of food product actually consumed
104 by the particular individual contracting for the sale and
105 no money is paid at the time the food product is served
106 or consumed.

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

111 (4) Food sold in an occasional sale by a charitable
112 or non-profit organization, including volunteer fire de-
113 partments and rescue squads, if the purpose of the sale
114 is to obtain revenue for the functions and activities of the
115 organization and the revenue so obtained is actually ex-
116 pended for that purpose.

117 (5) Food sold by any religious organization at a social
118 or other gathering conducted by it or under its auspices,
119 if the purpose in selling the food is to obtain revenue for
120 the functions and activities of the organization and the
121 revenue obtained from selling the food is actually used in
122 carrying on such functions and activities. For the purpose
123 of this paragraph, "religious organizations" means any
124 organization the property of which is exempt from tax-
125 ation under article ten, section one of the West Virginia
126 Constitution.

ARTICLE 15A. USE TAX.

§11-15A-3. Exemptions.

1 The use in this state of the following tangible per-
2 sonal property is hereby specifically exempted from
3 the tax imposed by this article:

4 1. All articles of tangible personal property brought
5 into the state of West Virginia by a nonresident indi-
6 vidual thereof for his or her use or enjoyment while
7 within the state.

8 - 2. Tangible personal property, the gross receipts from
9 the sale of which are exempted from the retail sales
10 tax by the terms of article fifteen, chapter eleven of
11 the code of West Virginia, one thousand nine hundred
12 thirty-one.

13 3. Tangible personal property, the gross receipts from
14 the sale of which are derived from the sale of machinery,
15 supplies and materials to contractors, or to persons en-
16 gaged in the business of manufacturing, transportation,
17 transmission, communication or in the production of
18 natural resources in this state: *Provided*, That the exemp-
19 tions granted in this subdivision three are hereby sus-
20 pended, nullified and made inoperative during the period
21 from the first day of April, one thousand nine hundred
22 sixty-nine to midnight of the thirty-first day of March,
23 one thousand nine hundred seventy: *Provided further*,
24 That after midnight of the thirty-first day of March,
25 one thousand nine hundred seventy, the exemptions
26 granted in this subdivision three shall again be in full
27 force and effect as if they had not been suspended,
28 nullified and made inoperative as heretofore provided.

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

34 5. Tangible personal property, the sale of which in
35 this state is not subject to the West Virginia consumers
36 sales tax.

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

James L. Davis
Chairman Senate Committee

Clarence T. Gustafson
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1979.

J. C. Dillenburg
Clerk of the Senate

V. A. Bloukens
Clerk of the House of Delegates

W. B. H. H. H. H.
President of the Senate

Clide M. Seeger
Speaker House of Delegates

The within is approved this the 27
day of March, 1979.

John J. Repp
Governor

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