

APPROVED AND SIGNED BY THE GOVERNOR

Date 5-19-81

Time _____

MO: 2

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1981

ENROLLED

SENATE BILL NO. 2

(By Mr. McGraw, Mr. President)

PASSED May 12, 1981

In Effect Midnight, EDT, May 31, 1981



ENROLLED
Senate Bill No. 2

(By MR. MCGRAW, MR. PRESIDENT)

[Passed May 12, 1981; in effect Midnight, EDST, May 31, 1981.]

AN ACT to amend and reenact sections three and nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two and three, article fifteen-a of said chapter, all relating to increasing the consumers sales tax and use tax except for mobile homes.

Be it enacted by the Legislature of West Virginia:

That sections three 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 sections two and three, article fifteen-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-3. Amount of tax.

1 For the privilege of selling tangible personal property and
2 of dispensing certain selected services defined in sections
3 two and eight of this article, the vendor shall collect from the
4 purchaser the tax as provided under this article, and shall pay
5 the amount of tax to the tax commissioner in accordance with
6 the provisions of this article.

7 There shall be no tax on sales where the monetary
8 consideration is five cents or less. The amount of the tax shall
9 be computed as follows:

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

12 (2) On each sale, where the monetary consideration is
13 from twenty-one cents to forty cents, both inclusive, two
14 cents.

15 (3) On each sale, where the monetary consideration is
16 from forty-one cents to sixty cents, both inclusive, three
17 cents.

18 (4) On each sale, where the monetary consideration is
19 from sixty-one cents to eighty cents, both inclusive, four
20 cents.

21 (5) On each sale, where the monetary consideration is
22 from eighty-one cents to one dollar, both inclusive, five cents.

23 (6) If the sale price is in excess of one dollar, five cents on
24 each whole dollar of sale price, and upon any fractional part
25 of a dollar in excess of whole dollars, as follows: One cent on
26 the fractional part of the dollar if less than twenty-one cents;
27 two cents on the fractional part of the dollar if in excess of
28 twenty cents but less than forty-one cents; three cents on the
29 fractional part of the dollar if in excess of forty cents but less
30 than sixty-one cents; four cents on the fractional part of the
31 dollar if in excess of sixty cents but less than eighty-one
32 cents; and five cents on the fractional part of the dollar if in
33 excess of eighty cents. For example, the tax on sales from one
34 dollar and one cent to one dollar and twenty cents, both
35 inclusive, six cents; on sales from one dollar and twenty-one
36 cents to one dollar and forty cents, both inclusive, seven
37 cents; on sales from one dollar and forty-one cents to one
38 dollar and sixty cents, both inclusive, eight cents; on sales
39 from one dollar and sixty-one cents to one dollar and eighty
40 cents, both inclusive, nine cents; on sales from one dollar and
41 eighty-one cents to two dollars, both inclusive, ten cents.

42 Separate sales, such as daily or weekly deliveries, shall not
43 be aggregated for the purpose of computation of the tax even
44 though such sales are aggregated in the billing or payment
45 therefor. Notwithstanding any other provision, coin-operated
46 amusement and vending machine sales shall be aggregated
47 for the purpose of computation of this 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 consumers
6 through mains or pipes, and sales of electricity;

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

9 (4) Sales of property or services to the state, its institutions
10 or subdivisions, and to the United States, including agencies
11 of federal, state or local governments for distribution in
12 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 of
16 the code;

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

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

40 (8) Sales of tangible personal property and services
41 rendered for use or consumption in connection with the
42 conduct of the business of selling tangible personal property
43 to consumers or dispensing a service subject to tax under this
44 article or which would be subject to tax under this article but
45 for the exemption for food provided in section eleven of this
46 article and sales of tangible personal property and services
47 rendered for use or consumption in connection with the
48 commercial production of an agricultural product the

49 ultimate sale of which will be subject to the tax imposed by
50 this article or which would have been subject to tax under
51 this article but for the exemption for food provided in section
52 eleven of this article: *Provided*, That sales of tangible
53 personal property and services to be used or consumed in the
54 construction of or permanent improvement of real property
55 shall not be exempt;

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

58 (10) Sales of property or services to nationally chartered
59 fraternal or social organizations for the sole purpose of free
60 distribution in public welfare or relief work;

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

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

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

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

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

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

80 (17) Bank safety deposit boxes;

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

87 (19) Sales of mobile homes to be utilized by purchasers as
88 their principal year-round residence and dwelling: *Provided*,
89 That these mobile homes shall be subject to tax at the three
90 percent rate.

ARTICLE 15A. USE TAX.**§11-15A-2. Imposition of tax.**

1 An excise tax is hereby imposed on the use in this state of
2 tangible personal property furnished or delivered within this
3 state to consumers or users within this state on or after the
4 effective date of this article, at the rate of five percent of the
5 purchase price of such property. Said tax is hereby imposed
6 upon every person using such property within this state until
7 such tax has been paid directly to a retailer, or to the state tax
8 commissioner as hereinafter provided.

9 Purchases of tangible personal property made from the
10 government of the United States or any of its agencies by
11 ultimate consumers shall be subject to the tax imposed by
12 this section. Industrial materials and equipment owned by
13 the federal government within the state of West Virginia of a
14 character not ordinarily readily obtainable within the state,
15 shall not be subject to use tax when sold, if such industrial
16 materials and equipment would not be subject to use tax if
17 such were sold outside of the state for use in West Virginia.

18 This article shall not apply to purchases made by counties
19 or municipal corporations.

§11-15A-3. Exemptions.

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

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

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

11 3. Tangible personal property, the gross receipts from the
12 sale of which are derived from the sale of machinery, supplies
13 and materials to contractors, or to persons engaged in the
14 business of manufacturing, transportation, transmission,
15 communication or in the production of natural resources in
16 this state: *Provided*, That the exemptions granted in this
17 subdivision three are hereby suspended, nullified and made
18 inoperative during the period from the first day of April, one
19 thousand nine hundred sixty-nine to midnight of the
20 thirty-first day of March, one thousand nine hundred seventy:

21 *Provided further*, That after midnight of the thirty-first day of
22 March, one thousand nine hundred seventy, the exemptions
23 granted in this subdivision three shall again be in full force
24 and effect as if they had not been suspended, nullified and
25 made inoperative as heretofore provided.

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

31 5. Tangible personal property the sale of which in this
32 state is not subject to the West Virginia consumers sales tax.

33 6. Sales of mobile homes to be utilized by purchasers as
34 their principal year-round residence and dwelling: *Provided*,
35 That these mobile homes shall be subject to tax at the three
36 percent rate.

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take effect Midnight, EDT, May 31, 1981.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within *is approved* this the *19*

day of *May*, 1981.

[Signature]
Governor

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SECY. OF STATE