WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987

ENROLLED

SENATE BILL NO. 760
(Originating in the Committee on Finance)

PASSED June 14, 1987
In Effect July 1, 1987
ENROLLED

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(Originating in the Committee on Finance)

[Passed June 14, 1987; to take effect July 1, 1987.]

AN ACT to amend and reenact sections two, nine, nine-b, nine-c and nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine-e; to amend and reenact sections three, three-b, three-c and three-d, article fifteen-a of said chapter; and to amend section six, article twenty-four of said chapter, all relating to revision of state tax laws; refining the definitions of certain direct use items and the definition of “transmission” for consumers sales and service tax and use tax purposes; amending the consumers sales and service tax exemption applicable to certain service providers and persons engaged in the business of commercial production of an agriculture product; clarifying and specifying the intended broad exemption to be applicable to businesses subject to gross receipts taxes for their purchases used either directly or indirectly in business in lieu of any limited exemption based on purchases directly used in business; providing for use of exemption certificates being furnished to vendors by persons engaged in the commercial production of an agricultural product, engaged in a business dispensing taxable services, by persons relying on advertising exemptions, or by purchasers of propane for
poultry house heating purposes; authorizing tax commissioner to identify exempt purchases for which even furnishing of exemption certificates not required; requiring issuance by tax commissioner or direct pay permits, temporary or permanent with payment being made to the tax commissioner rather than vendors; providing for apportionment of gross proceeds in respect of sales of property or service partly eligible for exemption and partly for nonexempt use in order to determine tax liability; providing for existing purchase contracts, executed and binding before date of terminated exemption and payments to be subsequently made or prepaid for subsequent periods on and after such termination date to remain exempt, with only new contracts entered into on and after the specified date to be subject to tax; deleting obsolete language from certain exemption in use tax law and that use tax law fully complement consumers sales tax law; and specifying applicability of obligations or securities of the United States or authorized for issuance by specified entities by the United States Congress for adjustment purposes under corporation net income tax law.

Be it enacted by the Legislature of West Virginia:

That sections two, nine, nine-b, nine-c and nine-d, 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 be further amended by adding thereto a new section, designated section nine-e; that sections three, three-b, three-c and three-d, article fifteen-a of said chapter be amended and reenacted; and that section six, article twenty-four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.


For the purpose of this article:

(a) "Persons" shall mean any individual, partnership, association, corporation, municipal corporation, guardian, trustee, committee, executor or administrator.

(b) "Tax commissioner" shall mean the state tax commissioner.

(c) "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.
(d) "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.
(e) "Vendor" shall mean any person engaged in this
state in furnishing services taxed by this article or making
sales of tangible personal property.
(f) "Ultimate consumer" or "consumer" shall mean a
person who uses or consumes services or personal property.
(g) "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.
(h) "Tax" shall include all taxes, interest and penalties
levied hereunder.
(i) "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 contracting, personal services or the
services rendered by an employee to his employer or any
service rendered for resale.
(j) "Purchaser" shall mean a person who purchases
tangible personal property or a service taxed by this article.
(k) "Personal service" shall include those:
(1) Compensated by the payment of wages in the
ordinary course of employment; and
(2) 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.
(l) "Taxpayer" shall mean any person liable for the tax imposed by this article.

(m) "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.

(n) (1) "Directly used or consumed" in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall mean used or consumed in those activities or operations which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to such activities.

(2) Uses of property or consumption of services which constitute direct use or consumption in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall include only:

(A) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources or resulting from contracting activity;

(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources or which is the subject of contracting activity;

(C) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production, or production of natural resources or which is the subject of contracting activity;

(D) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(E) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(F) Directly and physically recording the flow of property undergoing transportation, communication,
transmission, manufacturing production or production of natural resources or which is the subject of contracting activity;

(G) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(H) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(I) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(J) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources or which is the subject of contracting activity or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(K) Maintenance or repair of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity;

(L) Storage, removal or transportation of economic waste resulting from the activities of contracting, manufacturing, transportation, communication, transmission or the production of natural resources;

(M) Pollution control or environmental quality or protection activity directly relating to the activities of contracting, manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of contracting, manufacturing, transportation, communication, transmission or the production of natural resources; or

(N) Otherwise be used as an integral and essential part of transportation, communication, transmission,
(3) Uses of property or services which would not constitute direct use or consumption in the activities of contracting, manufacturing, transportation, transmission, communication or the production of natural resources shall include, but not be limited to:

(A) Heating and illumination of office buildings;
(B) Janitorial or general cleaning activities;
(C) Personal comfort of personnel;
(D) Production planning, scheduling of work, or inventory control;
(E) Marketing, general management, supervision, finance, training, accounting and administration; or
(F) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources or contracting activity, rather than an integral and essential part of such activities.

(o) “Contracting” shall mean the furnishing of work, or both materials and work, in 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 removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. For purposes of this definition, the term “structure” shall include, but not be limited to, everything built up or composed of parts joined together in some definite manner and attached to real property, or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time.

(p) “Manufacturing” shall mean a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(q) “Transportation” shall mean the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.
(r) "Transmission" shall mean the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(s) "Communication" shall mean all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and shall include commercial broadcast radio, commercial broadcast television and cable television.

(t) "Production of natural resources" shall mean the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith.


The following sales and services shall be exempt:

(a) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;
(b) Sales of textbooks required to be used in any of the schools of this state;
(c) 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;
(d) Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;
(e) Sales of property or services to churches and bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;
(f) Sales of property or services to corporations or organizations qualified under section 501(c)(3) of the
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23 Internal Revenue Code of 1986, as amended, or under
24 section 501(c)(4) of the Internal Revenue Code of 1986, as
25 amended, who make casual and occasional sales not
26 conducted in a repeated manner or in the ordinary course of
27 repetitive and successive transactions of like character:
28 Provided, That the exemption herein granted shall apply
29 only to services, equipment, supplies and materials directly
30 used or consumed in the activities for which such
31 organizations qualify as tax exempt organizations under
32 the Internal Revenue Code by these organizations and shall
33 not apply to purchases of gasoline or special fuel;
34 (g) Sales of property or services to persons engaged in
35 this state in the business of contracting, manufacturing,
36 transportation, transmission, communication or in the
37 production of natural resources: Provided, That the
38 exemption herein granted shall apply only to services,
39 machinery, supplies and materials directly used or
40 consumed in the businesses or organizations named above,
41 and shall not apply to purchases of gasoline or special fuel:
42 Provided, however, That on and after the first day of July,
43 one thousand nine hundred eighty-seven, the exemption
44 provided in this subsection shall apply only to services,
45 machinery, supplies and materials directly used or
46 consumed in the activities of contracting, manufacturing,
47 transportation, transmission, communication or the
48 production of natural resources in the businesses or
49 organizations named above and shall not apply to
50 purchases of gasoline or special fuel;
51 (h) An isolated transaction in which any tangible
52 personal property is sold, transferred, offered for sale or
53 delivered by the owner thereof or by his representative for
54 the owner's account, such sale, transfer, offer for sale or
55 delivery not being made in the ordinary course of repeated
56 and successive transactions of like character by such owner
57 or on his account by such representative;
58 (i) Sales of tangible personal property and services
59 rendered for use or consumption in connection with the
60 business of dispensing a service subject to tax under this
61 article and sales of tangible personal property and services
62 rendered for use or consumption in connection with the
63 commercial production of an agricultural product the
64 ultimate sale of which will be subject to the tax imposed by
65 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 to real property and sales of gasoline and special fuel shall not be exempt;

(j) Sales of tangible personal property for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers shall be taxable except when the sale is to another distributor for resale;

(k) 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: Provided, That sales of gasoline and special fuel shall be taxable;

(l) 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: Provided, That sales of gasoline and special fuel shall be taxable;

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

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

(o) Sales of radio and television broadcasting time, pre-printed advertising circulars, and newspaper and outdoor advertising space for the advertisement of goods or services;

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

(q) 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 1986, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1986, as amended;

(r) 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 1986, as
amended: Provided, That sales of gasoline and special fuel shall be taxable;
(s) Sales of mobile homes to be utilized by purchasers as their principal year-round residence and dwelling:
Provided, That these mobile homes shall be subject to tax at the three percent rate;
(t) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code;
(u) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days. This exemption shall apply to leases executed on or after the first day of July, one thousand nine hundred eighty-seven, and to payments under long-term leases executed before such date, for months thereof beginning on or after such date;
(v) Notwithstanding the provisions of subsection (g) of this section or any provisions of this article to the contrary, sales of property and services to persons subject to tax under articles thirteen, thirteen-a or thirteen-b of this chapter: Provided, That the exemption herein granted shall apply both to property or services directly or not directly used or consumed in businesses, the gross receipts from which are subject to tax under such articles but shall not apply to purchases of gasoline or special fuel;
(w) Sales of propane to consumers for poultry house heating purposes, with any seller to such consumer who may have prior paid such tax in his price, to not pass on the same to the consumer, but to make application and receive refund of such tax from the tax commissioner, pursuant to rules and regulations which shall be promulgated by the tax commissioner; and notwithstanding the provisions of section eighteen of this article or any other provisions of such article to the contrary;
(x) Any sales of tangible personal property or services purchased after the thirtieth day of September, one thousand nine hundred eighty-seven, and lawfully paid for with food stamps pursuant to the federal food stamp program codified in United States Code, 2011, et seq., as amended;
(y) Sales of tickets for activities sponsored by
elementary and secondary schools located within this state;
and

(z) Sales of electronic data processing services and related software: Provided, That for the purposes of this subsection (z) "electric data processing services" means (1) the processing of another's data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing, and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and (2) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment.

§11-15-9b. Method for claiming exemptions, refunds of tax, credit against other taxes.

(a) Any person having a right or claim to any exemption set forth in section nine of this article except those exemptions set forth in subsections (a), (b), (c), (d), (h), (i), (j), (m), (n), (o), (p), (r), (s), (t), (u), (w), (x) and (y) of said section nine or the exemption of sales of property or services to churches under subsection (e) of said section nine shall pay to the vendor the tax imposed by this article and may exercise or assert such exemption only in accordance with subsection (b) or subsection (c) of this section.

(b) Any person who has paid the tax imposed by this article and who may lawfully claim exemption from the tax under a subsection of section nine of this article not enumerated in subsection (a) of this section may exercise or assert such claim by filing a claim for refund of consumers sales and service tax overpayments on such form and in such manner as the tax commissioner may require and in accordance with the requirements of this section. The tax commissioner shall cause a refund to be made within thirty days of receipt of a lawful and accurate claim.

(c) In lieu of filing a claim for refund of consumers sales and service tax overpayments, the taxpayer may, at his option, file a claim for credit on such form and in such manner as the tax commissioner may require and credit the amount of consumers sales and service tax overpayments.
against certain payments of tax due in accordance with the
requirements of this section as follows:
(1) If the taxpayer is required to remit the tax imposed
under this article or article fifteen-a of this chapter
pursuant to section five or subsection (b) of section nine-d
of this article or subsection (b) of section three-d of said
article fifteen-a, the taxpayer may credit the amount of
consumers sales and service tax overpayments against the
remittance of the tax imposed under said articles otherwise
due;
(2) If the taxpayer is subject to the tax imposed under
article thirteen of this chapter, the taxpayer may credit the
amount of consumers sales and service tax overpayments
remaining after application of part (1) of this subsection
against the taxpayer's quarterly or monthly remittance of
the tax imposed under said article thirteen otherwise due;
or
(3) If the taxpayer is subject to the tax imposed under
article twelve-a of this chapter, the taxpayer may credit the
amount of consumers sales and service tax overpayments
remaining after application of parts (1) and (2) of this
subsection against the taxpayer's annual or semiannual
remittance of the tax imposed under said article twelve-a
otherwise due; or
(4) If the taxpayer is subject to the tax imposed under
article thirteen-a of this chapter, the taxpayer may credit
the amount of consumers sales and service tax
overpayments remaining after application of parts (1), (2),
and (3) of this subsection against the taxpayer's quarterly or
monthly remittance of the tax imposed under said article
thirteen-a otherwise due; or
(5) If the taxpayer is subject to the tax imposed under
article thirteen-b of this chapter, the taxpayer may credit
the amount of consumers sales and service tax
overpayments remaining after application of parts (1), (2),
(3) and (4) of this subsection against the taxpayer's
quarterly or monthly remittance of the tax imposed under
said article thirteen-b otherwise due; or
(6) If the taxpayer is subject to the tax imposed under
article twenty-four of this chapter, the taxpayer may credit
the amount of consumers sales and service tax
overpayments remaining after application of parts (1), (2),
(3), (4) and (5) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-four and otherwise due under section seventeen, article twenty-four of this chapter; or

(7) If the taxpayer is subject to the tax imposed under article twenty-one of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5) and (6) of this subsection against the taxpayer's installment of estimated tax imposed under said article twenty-one and otherwise due under section fifty-six, article twenty-one of this chapter; or

(8) If the taxpayer is subject to the tax imposed under article twenty-three of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6) and (7) of this subsection against the taxpayer's annual remittance of the tax imposed under said article twenty-three and otherwise due; or

(9) If the taxpayer is required to deduct and withhold tax under article twenty-one of this chapter, the taxpayer may credit the amount of consumers sales and service tax overpayments remaining after application of parts (1), (2), (3), (4), (5), (6), (7) and (8) of this subsection against the taxpayer's monthly remittance of the tax withheld under said article twenty-one and otherwise due.

(d) Any person asserting or exercising a claim of exemption from the tax imposed by this article under subsections (b) or (c) of this section shall file with the tax commissioner an application for exemption in such form as the tax commissioner shall prescribe and such affidavits, invoices, sales slips, records or documents as the tax commissioner may require to prove or verify the taxpayer's right and entitlement to such exemption. The tax commissioner may inspect or examine the records, books, papers, documents, affidavits, sales slips and invoices of a taxpayer or any other person to verify the truth and accuracy of any report or return or to ascertain whether the tax imposed by this article has been paid.

In addition to the powers of the tax commissioner set forth in article ten of this chapter, as a further means of obtaining the records, books, papers, documents, affidavits,
sales slips or invoices of a taxpayer or any other person and
ascertaining the amount of taxes paid or due under this
article or any report, form, document or affidavit required
under this article, the commissioner shall have the power to
examine witnesses under oath; and if any witness shall fail
or refuse at the request of the commissioner to grant access
to the books, records, papers, documents, affidavits, sales
slips or invoices requested by the commissioner, the
commissioner shall certify the facts and the names to the
circuit court of the county having jurisdiction over the
party and such court shall thereupon issue a subpoena
duces tecum to such party to appear before the
commissioner, at a place designated within the jurisdiction
of such court, on a day fixed.
(e) All claims for refund of consumers sales and service
tax overpayments under subsection (b) of this section shall
be filed within the time limitation for filing claims for
refund set forth at section fourteen, article ten of this
chapter. Any claim for such refund or claim of entitlement
to such refund made or asserted after the said time
limitation shall be null and void, and if the consumers sales
and service tax overpayment has not otherwise been
credited against tax remittances in accordance with this
section, the said claims shall be forfeited.
(f) Any credit of consumers sales and service tax
overpayments against taxes under subsection (c) of this
section shall be taken within one year after the payment of
the said consumers sales and service tax by the consumer to
the vendor. Any such credit or claim of entitlement to such
credit made or asserted more than one year after the
payment of such tax by the consumer to the vendor shall be
null and void, and such consumers sales and service tax
overpayments shall be forfeited unless refunded under
subsection (b) of this section.
(g) Any assignment of the right or entitlement to a
refund or credit arising under this section shall be subject to
strict proof, and any assignee claiming a right or
entitlement to an assigned refund or credit shall submit an
affidavit in such form as the tax commissioner shall
prescribe signed by the assignor acknowledging the
assignment. The assignee shall attest to the assignment and
the terms thereof on his signed application filed under
subsection (d) of this section for refund or credit, and will be
subject to the penalties provided under West Virginia law
for perjury for any falsehood set forth therein and will be
subject to the penalties set forth in article nine of this
chapter for any violation thereof. Except as provided in this
subsection (g), no payment of a refund arising under this
section shall be made to any person other than the taxpayer
making the original overpayment of consumers sales and
service tax.

(h) No refund shall be due and no credit shall be allowed
under this section unless the taxpayer or assignee shall have
filed a claim for refund or a claim for credit, as appropriate,
with the tax commissioner in accordance with this section.

(i) Any claim for a refund of consumers sales and service
tax overpayments or for a tax credit for consumers sales and
service tax overpayments which is not timely filed or not
filed in proper form or in accordance with the requirements
of this section shall not be construed to constitute a moral
obligation of the state of West Virginia for payment. No
overpayment of consumers sales and service tax made
under this section shall be subject to subsection (d), section
seventeen, article ten of this chapter or paragraph (e)(1),
section seventeen, article ten of this chapter.

(j) The provisions of this section become effective after
the thirtieth day of June, one thousand nine hundred
eighty-seven.


Persons having a right or claim to any exemption set forth
in subsections (a), (b), (c), (d), (h), (i), (j), (m), (n), (o), (p), (r),
(s), (t), (u), (w), (x) and (y) of section nine of this article shall,
in lieu of paying the tax imposed by this article, execute a
certificate of exemption in such form as the tax
commissioner may require, and such executed exemption
certificate shall be delivered to the vendor in such manner
as the tax commissioner may require: Provided, That the
tax commissioner may identify exemptions for which
exemption certificates are not required and as soon as
practical may specify by regulation exemptions for which
exemption certificates are not required.

§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this article,
the tax commissioner shall, pursuant to rules and
regulations promulgated as soon as practical by the tax
commissioner in accordance with article three, chapter
twenty-nine-a of this code, authorize a person (as defined in
section two) that is a user, consumer, distributor or lessee to
which sales or leases of tangible personal property are made
or services provided, to pay any tax levied by this article or
article fifteen-a of this chapter directly to the tax
commissioner and waive the collection of the tax by that
person's vendor. No such authority shall be granted or
exercised except upon application to the tax commissioner
and after issuance by the tax commissioner of a direct pay
permit, except that a temporary permit may immediately
and provisionally be authorized by the tax commissioner in
respect of any interim or transitional period, with either
termination of such temporary permit thereafter or a
permanent permit to subsequently issue as promptly as
practicable, for purchases made from the vendor or vendors
identified or specified in a manner acceptable to and as
authorized by the tax commissioner. Upon issuance of such
direct pay permit, payment of the tax imposed or assertion
of the exemptions allowed by this article or article fifteen-a
of this chapter on sales and leases of tangible personal
property and sales of taxable services from such vendors
shall be made directly to the tax commissioner by the
permit holder.

(b) On or before the fifteenth day of each month, every
permit holder shall make and file with the tax
commissioner a return for the preceding month in the form
prescribed by the tax commissioner showing the total value
of the tangible personal property so used, the amount of
taxable services purchased, the amount of tax due from the
permit holder, which amount shall be paid to the tax
commissioner with such return, and such other information
as the tax commissioner deems necessary. The tax
commissioner, upon written request by the permit holder,
may grant a reasonable extension of time for the making
and filing of returns and paying the tax. Interest on such tax
shall be chargeable on every such extended payment at the
rate determined in accordance with section seventeen,
article ten of this chapter.

(c) A permit issued pursuant to this section shall
continue to be valid until expiration of the business's
registration year under article twelve of this chapter. This permit shall automatically be renewed when the business's business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has not been canceled shall not be required to pay the tax to the vendor as otherwise provided in this article or article fifteen-a of this chapter. Such persons shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of such notice, such vendor shall be absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases or storage of tangible personal property and sales of services to such permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of each such purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held such permit, and such person shall promptly so notify in writing vendors from whom purchases, leases and storage of tangible personal property are made of such cancellation or surrender. Upon receipt of such notice, the vendor shall be subject to the provisions of this chapter, without regard to this section, with respect to all sales, distributions, leases or storage of tangible personal property, thereafter made to or for such person.

§11-15-9e. Apportionment of purchase price; existing contracts protected.

Whenever a purchaser will use acquired tangible personal property, a service, or the results of a service for both exempt and nonexempt purposes, the gross proceeds of such sale paid to the vendor for such property or service shall be apportioned between the exempt and nonexempt uses, in a manner established as reasonable by the tax commissioner, by regulations the tax commissioner may
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prescribe, for the purpose of determining the tax liability in respect of such purchase.

Contracts existing, executed and binding prior to the first day of July, one thousand nine hundred eighty-seven for the purchase of tangible personal property or services, by lease or otherwise, and in connection with which an exemption from tax was applicable to such purchase prior to such date but terminated on and after the same; no new tax liability shall arise in respect of payments to be subsequently made under such a contract nor to payments prepaid thereunder for any periods subsequent to such date, but only new contracts entered into on and after the first day of July, one thousand nine hundred eighty-seven, shall be liable for tax under the provisions of this article or of article fifteen-a of this chapter where such a prior applicable exemption has been so terminated.

ARTICLE 15A. USE TAX.


(a) The use in this state of the following tangible personal property and services is hereby specifically exempted from the tax imposed by this article to the extent specified:

(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 temporarily within this state or while passing through this state, except gasoline and special fuel: Provided, That fuel contained in the supply tank of a motor vehicle that is not a motor carrier shall not be taxable.

(2) Tangible personal property or services, the gross receipts from the sale of which are exempt from the sales tax by the terms of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and the property or services are being used for the purpose for which it was exempted.

(3) Tangible personal property or services, 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, as amended, and upon which the tax imposed by said article fifteen has been paid.
(4) Tangible personal property or services, the sale of which in this state is not subject to the West Virginia consumers sales tax.

(5) Mobile homes utilized by the owners thereof as their principal year-round residence and dwelling: Provided, That use of these mobile homes shall be subject to tax at the three percent rate.

(b) The provisions of this section, as amended, shall apply on and after the first day of July, one thousand nine hundred eighty-seven.

§11-15A-3b. Method for claiming exemptions, refunds of tax, credit against other taxes.

(a) Any person having a right or claim to an exemption from the tax imposed by this article by reason of any exemption set forth in section nine, article fifteen of this chapter except those exemptions set forth in subsections (a), (b), (c), (d), (h), (i), (j), (m), (n), (o), (p), (r), (s), (t), (u), (w), (x) and (y) of said section nine shall pay to the vendor the tax imposed by this article and may exercise or assert such exemption only in accordance with subsection (b) or subsection (c) of this section.

(b) Any person who has paid the tax imposed by this article any exemption set forth under a subsection of section nine of article fifteen not enumerated in subsection (a) of this section may exercise or assert such claim by filing a claim for refund of use tax overpayments on such form and in such manner as the tax commissioner may require and in accordance with the requirements of this section.

(c) In lieu of filing a claim for refund of use tax overpayments, the taxpayer may, at his option, file a claim for credit on such form and in such manner as the tax commissioner may require and credit the amount of use tax overpayments against certain payments of tax due in accordance with the requirements of this section as follows:

(1) If the taxpayer is required to remit the tax imposed under this article or article fifteen of this chapter pursuant to section five or subsection (b) of section nine-d of said article fifteen or subsection (b) of section three-d of this article, the taxpayer may credit the amount of use tax overpayments against the remittance of the tax imposed under said articles otherwise due;
(2) If the taxpayer is subject to the tax imposed under article thirteen of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of part (1) of this subsection against the taxpayer’s quarterly or monthly remittance of the tax imposed under said article thirteen otherwise due; or

(3) If the taxpayer is subject to the tax imposed under article twelve-a of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1) and (2) of this subsection against the taxpayer’s annual or semiannual remittance of the tax imposed under said article twelve-a otherwise due; or

(4) If the taxpayer is subject to the tax imposed under article thirteen-a of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2) and (3) of this subsection against the taxpayer’s quarterly or monthly remittance of the tax imposed under said article thirteen-a otherwise due; or

(5) If the taxpayer is subject to the tax imposed under article thirteen-b of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3) and (4) of this subsection against the taxpayer’s quarterly or monthly remittance of the tax imposed under said article thirteen-b otherwise due; or

(6) If the taxpayer is subject to the tax imposed under article twenty-four of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4) and (5) of this subsection against the taxpayer’s installment of estimated tax imposed under said article twenty-four and otherwise due under section seventeen, article twenty-four of this chapter; or

(7) If the taxpayer is subject to the tax imposed under article twenty-one of this chapter, the taxpayer may credit the amount of use tax overpayments remaining after application of parts (1), (2), (3), (4), (5) and (6) of this subsection against the taxpayer’s installment of estimated tax imposed under said article twenty-one and otherwise due under section fifty-six, article twenty-one of this chapter; or

(8) If the taxpayer is subject to the tax imposed under article twenty-three of this chapter, the taxpayer may
credit the amount of use tax overpayments remaining after
application of parts (1), (2), (3), (4), (5), (6) and (7) of this
subsection against the taxpayer's annual remittance of the
tax imposed under said article twenty-three and otherwise
due; or
(9) If the taxpayer is required to deduct and withhold
tax under article twenty-one of this chapter, the taxpayer
may credit the amount of use tax overpayments remaining
after application of parts (1), (2), (3), (4), (5), (6), (7) and (8) of
this subsection against the taxpayer's monthly remittance
of the tax withheld under said article twenty-one and
otherwise due.
(d) Any person asserting or exercising a claim of
exemption from the tax imposed by this article under
subsections (b) or (c) of this section shall file with the tax
commissioner an application for exemption in such form as
the tax commissioner shall prescribe and such affidavits,
invoices, sales slips, records or documents as the tax
commissioner may require to prove or verify the taxpayer's
right and entitlement to such exemption. The tax
commissioner may inspect or examine the records, books,
papers, documents, affidavits, sales slips and invoices of a
taxpayer or any other person to verify the truth and
accuracy of any report or return or to ascertain whether the
tax imposed by this article or article fifteen of this chapter
has been paid.
In addition to the powers of the tax commissioner set
forth in article ten of this chapter, as a further means of
obtaining the records, books, papers, documents, affidavits,
sales slips or invoices of a taxpayer or any other person and
ascertaining the amount of taxes paid or due under this
article or article fifteen of this chapter or any report, form,
document or affidavit required under this article or article
fifteen of this chapter, the commissioner shall have the
to examine witnesses under oath; and if any witness
shall fail or refuse at the request of the commissioner to
grant access to the books, records, papers, documents,
affidavits, sales slips or invoices requested by the
commissioner, the commissioner shall certify the facts and
the names to the circuit court of the county having
jurisdiction of the party, and such court shall thereupon
issue a subpoena duces tecum to such party to appear before
the commissioner, at a place designated within the
jurisdiction of such court, on a day fixed.

(e) All claims for refund of use tax overpayments under
subsection (b) of this section shall be filed within the time
limitation for filing claims for refund set forth at section
fourteen, article ten of this chapter. Any claim for such
refund or claim of entitlement to such refund made or
asserted after the said time limitation shall be null and void,
and if the use tax overpayment has not otherwise been
ccredited against tax remittances in accordance with this
section, the said claims shall be forfeited.

(f) Any credit of use tax overpayments against taxes
under subsection (c) of this section shall be taken within one
year after the payment of the tax by the taxpayer to the
vendor. Any such credit or claim of entitlement to such
credit made or asserted more than one year after the
payment of such tax by the taxpayer to the vendor shall be
null and void, and such tax overpayments shall be forfeited.

(g) Any assignment of the right or entitlement to a
refund or credit arising under this section shall be subject to
strict proof, and any assignee claiming a right or
entitlement to an assigned refund or credit shall submit an
affidavit in such form as the tax commissioner shall
prescribe signed by the assignor acknowledging the
assignment. The assignee shall attest to the assignment and
the terms thereof of his signed application filed under
subsection (e) of this section for refund or credit, and will be
subject to the penalties provided under West Virginia law
for perjury for any falsehood set forth therein and will be
subject to the penalties set forth in article nine of this
chapter for any violation thereof. Except as provided in
subsection (h), no payment of a refund arising under this
section shall be made to any person other than the taxpayer
making the original overpayment of consumers sales and
service tax.

(h) No refund shall be due and no credit shall be allowed
unless the taxpayer or assignee shall have filed a claim for
refund or a claim for credit, as appropriate, with the tax
commissioner in accordance with this section.

(i) Any claim for a refund of use tax overpayments or a
tax credit for use tax overpayments which is not timely filed
or not filed in proper form or in accordance with the
requirements of this section shall not be construed to constitute a moral obligation of the state of West Virginia for payment. No overpayment of use tax made under this section shall be subject to subsection (d), section seventeen, article ten of this chapter, or paragraph (e)(1), section seventeen, article ten of this chapter.

(j) The provisions of this section become effective after the thirtieth day of June, one thousand nine hundred eighty-seven.

§11-15A-3c. Delivery of a certificate of exemption in lieu of tax.

Persons having a right or claim under section three of this article, to any exemption set forth in subsections (a), (b), (c), (d), (h), (i), (j), (m), (n), (o), (p), (r), (s), (t), (u), (w), (x) and (y) of section nine of article fifteen of this chapter shall, in lieu of paying the tax imposed by this article, execute a certificate of exemption in such form as the tax commissioner may require, and such executed exemption certificate shall be delivered to the vendor in such manner as the tax commissioner may require: Provided, That the tax commissioner may identify exemptions for which exemption certificates are not required and as soon as practical may specify by regulation exemptions for which exemption certificates are not required.

§11-5A-3d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the tax commissioner shall, pursuant to rules and regulations promulgated as soon as practical by the tax commissioner in accordance with article three, chapter twenty-nine-a of this code, authorize a person (as defined in section two of article fifteen) that is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided to pay any tax levied by this article or article fifteen of this chapter directly to the tax commissioner and waive the collection of the tax by that person's vendor. No such authority shall be granted or exercised except upon application to the tax commissioner and after issuance by the tax commissioner of a direct pay permit, except that a temporary permit may immediately and provisionally be authorized by the tax
commissioner in respect of any interim or transitional period, with either termination of such temporary permit thereafter or a permanent permit to subsequently issue as promptly as practicable, for purchases made from the vendor or vendors identified or specified in a manner acceptable to and as authorized by the tax commissioner. Upon issuance of such direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen of this chapter on sales and leases of tangible personal property and sales of taxable services from such vendors shall be made directly to the tax commissioner by the permit holder.

(b) On or before the fifteenth day of each month, every permit holder shall make and file with the tax commissioner a return for the preceding month in the form prescribed by the tax commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of tax due from the permit holder, which amount shall be paid to the tax commissioner with such return, and such other information as the tax commissioner deems necessary. The tax commissioner, upon written request by the permit holder, may grant a reasonable extension of time for the making and filing of returns and paying the tax. Interest on such tax shall be chargeable on every such extended payment at the rate determined in accordance with section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section shall continue to be valid until expiration of the business's registration year under article twelve of this chapter. This permit shall automatically be renewed when the business's business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the tax commissioner.

(d) Persons who hold a direct payment permit which has not been canceled shall not be required to pay the tax to the vendor as otherwise provided in this article or article fifteen of this chapter. Such persons shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the tax commissioner. Upon receipt of such notice, such vendor shall be absolved from all duties and liabilities imposed by
this chapter for the collection and remittance of the tax
with respect to sales, distributions, leases or storage of
tangible personal property and sales of services to such
permit holder. Vendors who make sales upon which the tax
is not collected by reason of the provisions of this section
shall maintain records in such manner that the amount
involved and identity of each such purchaser may be
ascertained.
(e) Upon the expiration, cancellation or surrender of a
direct payment permit, the provisions of this chapter,
without regard to this section, shall thereafter apply to the
person who previously held such permit, and such person
shall promptly so notify in writing vendors from whom
purchases, leases and storage of tangible personal property
are made of such cancellation or surrender. Upon receipt of
such notice, the vendor shall be subject to the provisions of
this chapter, without regard to this section, with respect to
all sales, distributions, leases or storage of tangible
personal property, thereafter made to or for such person.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable
income.

1 (a) General. — In determining West Virginia taxable
income of a corporation, its taxable income as defined for
federal income tax purposes shall be adjusted and
determined before the apportionment provided by section
seven of this article, by the items specified in this section.
(b) Adjustments increasing federal taxable income. —
There shall be added to federal taxable income, unless
already included in the computation of federal taxable
income, the following items except that adjustment (5) shall
be required only with respect to tax periods ending after the
thirty-first day of December, one thousand nine hundred
eighty-one:
(1) Interest or dividends on obligations or securities of
any state or of a political subdivision or authority thereof;
(2) Interest or dividend income on obligations or
securities of any authority, commission or instrumentality
of the United States which the laws of the United States
exempt from federal income tax but not from state income
taxes;
(3) Income taxes imposed by this state or any other
taxing jurisdiction, to the extent deductible in determining
federal taxable income and not credited against federal
income tax, and the taxes imposed by this state for which
credit against the taxes imposed by section four is allowed
by section nine; and

(4) The deferral value of certain income that is not
recognized for federal tax purposes, which value shall be an
amount equal to a percentage of the amount allowed as a
deduction in determining federal taxable income pursuant
to the accelerated cost recovery system under section 168 of
the Internal Revenue Code for the federal taxable year, with
the percentage of the federal deduction to be added as
follows with respect to the following recovery property:
three-year property — no modifications; five-year property
— ten percent; ten-year property — fifteen percent; fifteen-
year public utility property — twenty-five percent; and
fifteen-year or eighteen-year real property — thirty-five
percent: Provided, That this modification shall not apply to
any person whose federal deduction is determined by the
use of the straight line method, or to any taxable year
beginning after the thirtieth day of June, one thousand nine
hundred eighty-seven.

(c) Adjustments decreasing federal taxable income. —
There shall be subtracted from federal taxable income:

(1) Any gain from the sale or other disposition of
property having a higher fair market value on the first day
of July, one thousand nine hundred sixty-seven, than the
adjusted basis at said date for federal income tax purposes:
Provided, That the amount of this adjustment is limited to
that portion of any such gain which does not exceed the
difference between such fair market value and such
adjusted basis;

(2) The amount of any refund or credit for overpayment
of income taxes imposed by this state or any other taxing
jurisdiction, to the extent properly included in gross income
for federal income tax purposes;

(3) The amount of dividends received, to the extent
included in federal taxable income: Provided, That this
modification shall not be made for taxable years beginning
after the thirtieth day of June, one thousand nine hundred
eighty-seven;
62 (4) Thirty-seven and one-half percent of the excess of
63 net long-term capital gain over net short-term capital loss
64 as defined in the laws of the United States: Provided, That
65 this modification shall not be made for taxable years
66 beginning after the thirtieth day of June, one thousand nine
67 hundred eighty-seven;
68 (5) The amount added to federal taxable income due to
69 the elimination of the reserve method for computation of
70 the bad debt deduction; and
71 (6) The full amount of interest expense actually
72 disallowed in determining federal taxable income which
73 was incurred or continued to purchase or carry obligations
74 or securities of any state or of any political subdivision
75 thereof.
76 (d) Adjustment resulting from recomputation of net
77 operating loss deduction. — In determining the West
78 Virginia taxable income of a corporation entitled to a net
79 operating loss deduction for the taxable year for federal
80 income tax purposes, there shall be added to or subtracted
81 from the federal taxable income the amount of an
82 adjustment reflecting a recomputation of such net
83 operating loss deduction in which the adjustments required
84 by subsections (b) and (c) are made for each taxable year
85 involved in the computation of such net operating loss
86 deduction.
87 (e) Special adjustments for expenditures for water and
88 air pollution control facilities.
89 (1) If the taxpayer so elects under subdivision (2) of this
90 subsection, there shall be:
91 (A) Subtracted from federal taxable income the total of
92 the amounts paid or incurred during the taxable year for the
93 acquisition, construction or development within this state
94 of water pollution control facilities and air pollution
95 control facilities as defined in section 48 (h) (12) (B) and (C)
96 of the Internal Revenue Code, and
97 (B) Added to federal taxable income the total of the
98 amounts of any allowances for depreciation and
99 amortization of such water pollution control facilities and
100 air pollution control facilities, as so defined, to the extent
101 deductible in determining federal taxable income.
102 (2) The election referred to in subdivision (1) of this
103 subsection shall be made in the return filed within the time
prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope of application of such election shall be defined, as the tax commission may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall (instead of being made to the taxpayer's federal taxable income before allocation and apportionment as provided in section seven) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(f) Allowance for certain government obligations and obligations secured by residential property. — The West Virginia taxable income of a taxpayer subject to this article as adjusted in accordance with parts (b), (c), (d) and (e) of this section shall be further adjusted by multiplying such taxable income after such adjustment by parts (b), (c), (d) and (e) by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy;
(B) Obligations or securities of this state and any political subdivision or authority thereof;

(C) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(D) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(2) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of Federal Form 1120, which are filed by the taxpayer with the Internal Revenue Service.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 1987.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 27th day of June, 1987.

Governor