WEST VIRGINIA LEGISLATURE

EXTRAORDINARY SESSION, 1988

ENROLLED

SENATE BILL NO. 36

(By Senator)

PASSED

In Effect

June 28, 1988

July 10, 1988
ENROLLED

Senate Bill No. 36

(BY SENATORS LOEHR, BURDETT AND LUCHT)

[Passed June 28, 1988; to take effect July 10, 1988.]

AN ACT to amend and reenact sections eleven and thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; relating to removing the exemption for soft drinks, soft drink mixes and syrups from the consumers sales tax; dedicating a portion of revenues from said tax and creating a higher education salary fund in the state treasury.

Be it enacted by the Legislature of West Virginia:

That sections eleven and thirty, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.


1. (a) Exemption. — Sales of food intended for human consumption made on or after the first day of July, one thousand nine hundred eighty-one, shall be exempt from the tax imposed by this article. This exemption shall be in addition to any other exemption permitted under this article.
(b) Transition reduction of tax on July 1, 1979 and July 1, 1980. — The amount of tax imposed by section three of this article on sales of food for human consumption shall be reduced as follows:

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

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

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

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

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

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

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

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

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

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

(c) Definition of food. — For purposes of this section, and except as provided in subsection (d), the term "food" shall mean and include all edible foodstuffs, beverages containing no alcohol and items commonly thought of as food, including, by way of illustration and not by limitation, cereals and cereal products, meat and meat products, fish and fish products, poultry and poultry products, fresh and salt water animal products, eggs and egg products,
(d) The term "food" shall not include medicines, vitamins and dietary supplements whether in liquid, powdered, granular, tablet, capsule, lozenge or pill form; soft drinks, soft drink mixes and syrups; spirituous, malt or vinous liquors or beer; ice; tobacco or tobacco products; vending machine sales; or food sold by a food-service establishment.

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

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

(1) Food sold by public or private schools, school sponsored student organizations, or school sponsored

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parent-teacher associations to students enrolled in such
school or to employees of such school during normal school
hours; but not those sales of food made to the general
public.

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

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

(4) Food sold in an occasional sale by a charitable or
nonprofit organization, including volunteer fire
departments and rescue squads, if the purpose of the sale is
to obtain revenue for the functions and activities of the
organization and the revenue so obtained is actually
expended for that purpose.

(5) Food sold by any religious organization at a social or
other gathering conducted by it or under its auspices, if the
purpose in selling the food is to obtain revenue for the
functions and activities of the organization and the revenue
obtained from selling the food is actually used in carrying
on such functions and activities. For the purpose of this
paragraph, "religious organizations" means any
organization the property of which is exempt from taxation
under article ten, section one of the West Virginia
constitutions.


Subject to the temporary allocations and transfers in
section three-a of this article, the proceeds of the tax
imposed by this article shall be deposited in the general
revenue fund of the state: Provided, That one million
dollars thereof shall be dedicated annually to the cancer
center at West Virginia University and eight million dollars
thereof shall be dedicated annually to the "higher
education salary fund" which is hereby created in the state
treasury. All moneys credited to the higher education salary
fund shall be expended by the board of regents for further
implementation of the fee schedules established in articles
twenty-two and twenty-six-b, chapter eighteen of this
code.
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 10, 1988.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 6th day of July, 1988.  

Governor