

No: 36

RECEIVED  
1988 JUL -7 PM 4:21  
OFFICE OF THE ATTORNEY GENERAL  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

318P EXTRAORDINARY SESSION, 1988

**ENROLLED**

**SENATE BILL NO.** 36

(By Senator Lehr, et al)

PASSED June 28, 1988  
In Effect July 10, 1988 ~~Emergency~~



**ENROLLED**  
**Senate Bill No. 36**

(BY SENATORS LOEHR, BURDETTE 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.**

**§11-15-11. Exemption of food intended for human consumption; 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 July*  
8 *1, 1980.* — The amount of tax imposed by section three of  
9 this article on sales of food for human consumption shall be  
10 reduced as follows:

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

15       (2) Sales of food intended for human consumption made  
16 after the thirtieth day of June, one thousand nine hundred  
17 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 is  
24 from fifty-one cents to one dollar, both inclusive, two cents.

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

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

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

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

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

41       (c) *Definition of food.* — For purposes of this section,  
42 and except as provided in subsection (d), the term “food”  
43 shall mean and include all edible foodstuffs, beverages  
44 containing no alcohol and items commonly thought of as  
45 food, including, by way of illustration and not by limitation,  
46 cereals and cereal products, meat and meat products, fish  
47 and fish products, poultry and poultry products, fresh and  
48 salt water animal products, eggs and egg products,

49 vegetables and vegetable products, fruit and fruit products,  
50 flour and flour products, sugar and sugar products, milk  
51 and milk products, cocoa and cocoa products, coffee and  
52 coffee substitutes, tea, herbs, spices, salt and salt  
53 substitutes, condiments, candy and confections,  
54 tenderizers, food coloring, bottled drinking water, sugar  
55 substitutes, oleomargarine, shortening, gelatins, baking  
56 and cooking ingredients, mushrooms, spreads, relishes,  
57 desserts, flavorings, chewing gum, edible seeds, nuts and  
58 berries.

59 (d) The term "food" shall not include medicines,  
60 vitamins and dietary supplements whether in liquid,  
61 powdered, granular, tablet, capsule, lozenge or pill form;  
62 soft drinks, soft drink mixes and syrups; spirituous, malt or  
63 vinous liquors or beer; ice; tobacco or tobacco products;  
64 vending machine sales; or food sold by a food-service  
65 establishment.

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

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

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

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

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

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

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

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

**§11-15-30. Proceeds of tax.**

1 Subject to the temporary allocations and transfers in  
2 section three-a of this article, the proceeds of the tax  
3 imposed by this article shall be deposited in the general  
4 revenue fund of the state: *Provided*, That one million  
5 dollars thereof shall be dedicated annually to the cancer  
6 center at West Virginia University and eight million dollars  
7 thereof shall be dedicated annually to the "higher  
8 education salary fund" which is hereby created in the state

9 treasury. All moneys credited to the higher education salary  
10 fund shall be expended by the board of regents for further  
11 implementation of the fee schedules established in articles  
12 twenty-two and twenty-six-b, chapter eighteen of this  
13 code.

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

*Paul A. Williams*  
.....  
Chairman Senate Committee

*Bernard V. Kelly*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 10, 1988.

*Edith C. Hulse*  
.....  
Clerk of the Senate

*Donald L. Kopp*  
.....  
Clerk of the House of Delegates

*Don Toussaint*  
.....  
President of the Senate

*Ed J. Rando*  
.....  
Speaker House of Delegates

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

*Arch A. Moore Jr.*  
.....  
Governor



PRESENTED TO THE

GOVERNOR

Date 6/30/88

Time 10:04 a.m.