WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1989

ENROLLED
Committee Substitute for
SENATE BILL NO. 303

(By Senator Tucker, President, et al.)

PASSED _______ April 8, _______ 1989
In Effect _______ from _______ Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 303

(Senators Tucker, Mr. President, J. Manchin, Jones and Loehr, original sponsors)

[Passed April 8, 1989; in effect from passage.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; to amend and reenact section nine, article twelve of said chapter; to amend article thirteen-d of said chapter by adding thereto a new section, designated section three-b; to amend and reenact sections two, four-b, seven, eight-a, nine, nine-b, nine-c, nine-d, eighteen and thirty-three, article fifteen of said chapter; to further amend said article fifteen by adding thereto a new section, designated section eight-b; to amend and reenact sections three-b, three-c, three-d and twenty-nine, article fifteen-a of said chapter; to further amend said article fifteen-a by adding thereto two new sections, designated sections two-a and six-a; to amend and reenact section twelve, article twenty-one of said chapter; to amend article twenty-four of said chapter by adding thereto a new section, designated section nine-c; and to amend and reenact section three, article one, chapter seventeen of said code, all relating to the Tax Act of 1989; allowing
tax commissioner to be represented by staff attorneys in legal proceedings; limiting the penalty for failure to renew business registration certificates; allowing credit for research and development projects to be applied against corporation net income taxes; amending definitions of terms used in consumers sales tax; making purchaser liable for payment of sales tax due that was not paid to vendor; equalizing sales tax burden on property used in business as between integrated and nonintegrated businesses; providing transition rules; requiring registration of security for payment of sales tax and from nonresident contractors; amending existing exemptions from sales tax and adding several new exemptions; providing methods for claiming exemptions; making issuance of direct pay permits discretionary; combining consumers sales tax and use tax direct pay permit returns; providing rules for filing such returns; dedicating sales tax on aviation fuel to state aeronautical commission for use to obtain federal funds for airports; specifying effective dates; equalizing use tax burden on property used in business as between integrated and nonintegrated businesses; providing methods for claiming use tax exemptions; making issuance of direct pay permits discretionary; combining use tax, direct pay permit and sales tax direct pay permits to be combined and providing return due dates; requiring certain other out of state retailers to collect use taxes on sales of property or taxable services to customers in this state; specifying effective dates; providing additional adjustments to federal adjusted gross income for personal income tax purposes; allowing credit against corporation net income taxes for research and development expenditures; amending definition of "road," "public road" and "highway"; making other technical corrections; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section ten-a; that section nine, article twelve of said chapter be amended and reenacted; that article
thirteen-b of said chapter be amended by adding thereto a
new section, designated section three-b; that sections two,
four-b, seven, eight-a, nine, nine-b, nine-c, nine-d, eighteen
and thirty-three, article fifteen of said chapter be amended
and reenacted; that said article be further amended by
adding thereto a new section, designated section eight-b;
that section three-b, three-c, three-d and twenty-nine,
article fifteen-a of said chapter be amended and reenacted;
that said article be further amended by adding thereto two
new sections, designated sections two-a and six-a; that
section twelve, article twenty-one of said chapter be
amended and reenacted; that article twenty-four of said
chapter be amended by adding thereto a new section,
designated section nine-c; and that section three, article
one, chapter seventeen be amended and reenacted, all to
read as follows:

CHAPTER 11. TAXATION.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-10a. Legal services.

1 Notwithstanding anything in this code to the con-
2 trary, the tax commissioner may utilize any full-time
3 attorney or attorneys employed by the tax department
4 as staff counsel to institute, prosecute, or defend any
5 suits, actions, or other legal proceedings, and it shall be
6 in the sole judgment and discretion of the tax
7 commissioner whether to utilize such staff attorney or
8 attorneys or the attorney general, whether on a case
9 by case basis or for all of the needs of the department
10 for legal services: Provided, That nothing contained
11 herein may be construed to authorize the administra-
12 tor to engage, hire or employ outside counsel without
13 first obtaining the permission of the attorney general.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-9. Penalties.

1 In addition to the provisions of article ten of this
2 chapter, any person engaging in or prosecuting any
3 business contrary to the provisions of this article,
4 whether without obtaining a business registration
5 certificate therefor before commencing the same, or
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by continuing the same after the termination of the
effective period of any such certificate may, in addi-
tion to paying the business registration tax, additions
to tax, penalties and interest, be liable for a penalty of
fifty dollars for each month or fraction thereof during
which he has been in default of the business registra-
tion tax. It shall be the duty of the tax commissioner
to collect the full amount of the business registration
tax, additions to tax, interest, and all penalties
imposed: Provided, That in no event may the total
penalty for failure to renew a business registration
certificate exceed fifty dollars per registration
certificate.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR
INDUSTRIAL EXPANSION AND REVITALIZATION
AND FOR RESEARCH AND DEVELOPMENT
PROJECTS.


For taxable years ending on and after the first day
of July, one thousand nine hundred eighty-nine, the
credits allowed under section three shall continue to
be applied as provided in section three-a. In addition,
the credit allowed under subsection (f) of section three
that remains after its application as provided in section
three-a of this article shall be applied to reduce the tax
imposed by article twenty-four of this chapter: Pro-
vided, That this credit may not reduce by more than
fifty percent the amount of the net tax liability of the
taxpayer for the taxable year under article twenty-
four of this chapter, which amount of net tax liability
shall be determined before application of the credit
allowed by thirteen-c of this chapter.

ARTICLE 15. CONSUMERS SALES TAX.


For the purpose of this article:

(a) "Persons" means any individual, partnership,
association, corporation, state or its political subdivi-
sions or agency of either, guardian, trustee, committee,
executor or administrator.
(b) "Tax commissioner" means the state tax commissioner;

(c) "Gross proceeds" means 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" includes 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" means 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" means a person who uses or consumes services or personal property.

(g) "Business" includes 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" includes all taxes, interest and penalties levied hereunder.

(i) "Service" or "selected service" includes 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" means a person who purchases tangible personal property or a service taxed by this article.

(k) "Personal service" includes those:

(1) Compensated by the payment of wages in the ordinary course of employment;

(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" means any person liable for the tax imposed by this article.

(m) "Drugs" includes 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 manufacturing, transportation, transmission, communication or the production of natural resources means 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 manufacturing, transportation, transmission, communication or the production of natural resources includes 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;

(B) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(C) Transporting or storing property undergoing transportation, communication, transmission, manu-
facturing production or production of natural resources;

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

(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;

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

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

(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;

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

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

(K) Maintenance or repair of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;
(L) Storage, removal or transportation of economic waste resulting from the activities of 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 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 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, manufacturing production or production of natural resources.∗

(3) Uses of property or services which would not constitute direct use or consumption in the activities of manufacturing, transportation, communication, transmission or the production of natural resources includes, but are not 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, rather than an integral and essential part of such activities.

(o) "Contracting."

1) In General. — “Contracting” means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor,
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prime contractor or subcontractor) 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.

(2) Form of contract not controlling. — An activity that falls within the scope of the definition of contracting shall constitute contracting regardless of whether such contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract (whether or not open-ended), or any other kind of construction contract.

(3) Special rules. — For purposes of this definition:

(A) The term "structure" includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property, or which adds utility to real property or any part thereof, or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time.

(B) The term "alteration" means and is limited to alterations which are capital improvements to a building or structure or to real property.

(C) The term "repair" means and is limited to repairs which are capital improvements to a building or structure or to real property.

(D) The term "decoration" means and is limited to decorations which are capital improvements to a building or structure or to real property.

(E) The term "improvement" means and is limited to improvements which are capital improvements to a building or structure or to real property.

(F) The term "capital improvement" means improvements that are affixed to or attached to and become a part of a building or structure or the real
property or which add utility to real property or any part thereof and that last, or are intended to be relatively permanent. As used herein, "relatively permanent" means lasting at least a year or longer in duration without the necessity for regularly scheduled recurring service to maintain such capital improvement. "Regular recurring service" means regularly scheduled service intervals of less than one year.

(G) Contracting does not include the furnishing of work, or both materials and work in the nature of hookup, connection, installation or other services if such service is incidental to the retail sale of tangible personal property from the service provider's inventory: Provided, That such hook-up, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant hereto include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup, and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if such repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or is intended to allow such real property or thing permanently attached thereto to remain in service for a year or longer.

(p) "Manufacturing" means 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" means 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" means 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" means 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" means 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.

§11-15-4b. Liability of purchaser; assessment and collection.

If any purchaser refuses or otherwise does not pay to the vendor the tax imposed by section three of this article, or in the case of a sale subject to section nine-c of this article, a purchaser refuses to sign and present to the vendor a proper certificate indicating the sale is not subject to this tax, or signs or presents to the vendor a false certificate, or after signing and presenting a proper certificate uses the items purchased in such manner that the sale would be subject to the tax, he shall be personally liable for the amount of tax applicable to the transaction or transactions:
12 Provided, That nothing herein relieves any purchaser
who owes the tax and who has not paid the tax
imposed by section three of this article from liability
therefor.

16 In such cases the tax commissioner has authority to
make an assessment against such purchaser, based
upon any information within his possession or that
may come into his possession. This assessment and
notice thereof shall be made and given in accordance
with sections seven and eight, article ten of this
chapter.

23 This section may not be construed as relieving the
vendor from liability for the tax.

§11-15-7. Tax on gross proceeds of sales or value of manu-
factured, etc., products.

1 (a) A person exercising the privilege of producing
for sale, profit or commercial use, any natural resour-
ces, product or manufactured product, and either
engaged in the business of selling such product not
otherwise exempted herein, or engaged in a business
or activity in which such natural resource, product or
manufactured product is used or consumed by him
and such use or consumption is not otherwise exempt
under this article, shall make returns of the gross
proceeds of such sales or, in the absence of sale, the
gross value of the natural resource, product or manu-
factured product, so used or consumed by him, and
pay the tax imposed by this article.

14 (b) The tax commissioner shall promulgate such
uniform and equitable rules as he deems necessary for
determining the gross value upon which the tax
imposed by this article is levied in the absence of a
sale, which value shall correspond as nearly as possible
to the gross proceeds from the sale of similar products
of like quality or character by the same person or by
another person.

22 (c) The provisions of this section, as amended by this
act, shall apply to natural resources, products or
manufactured products, used or consumed by the
producer or manufacturer thereof on or after the first
day of May, one thousand nine hundred eighty-nine.

(a) The provisions of this article shall not apply to contracting services. However, purchases by a contractor of tangible personal property or taxable services for use or consumption in the providing of a contracting service shall be taxable beginning the first day of March, one thousand nine hundred eighty-nine, except as otherwise provided in this article.

(b) Transition rules. — The exemption from payment of tax on purchases of tangible personal property or taxable services directly used or consumed in the activity of contracting, as defined in section two of this article, which expires as of the first day of March, one thousand nine hundred eighty-nine, shall nevertheless remain in effect with respect to:

1. Tangible personal property or taxable services purchased by a contractor on or after said first day of March in fulfillment of a written contract for contracting, as defined in section two of this article, that was executed and legally binding on the parties thereto on or before the fifteenth day of February, one thousand nine hundred eighty-nine; or in fulfillment of a written contract entered into after the said fifteenth day of February pursuant to a written bid for contracting that was made on or before the said fifteenth day of February that was binding on the contractor, but only to the extent that the bid is subsequently incorporated into a written contract; or

2. Tangible personal property or taxable services purchased by a contractor on or after the said first day of March pursuant to a written contract executed on or before the fifteenth day of February, one thousand nine hundred eighty-nine, to purchase in specified quantities identified tangible personal property or specified taxable services; or

3. Tangible personal property or taxable services purchased by a contractor for consumption or use in fulfillment of a written contract entered into before the first day of September, one thousand nine hundred eighty-nine, when such contract is for the
construction of a new improvement to real property
the construction or operation of which was approved
by a federal or state regulatory body prior to the first
day of February, one thousand nine hundred eighty-nine, or pursuant to a federal grant awarded prior to
such first day of February.

(c) Renewals and extensions. — A renewal of any
contract shall constitute a new contract for purposes of
this section, and the date of entry into a contract
renewal by the parties, the date or dates of tender of
consideration and the time of performance of any
contractual obligations under a renewed contract shall
be treated as the dates for determining application of
this section to the renewed contract. Extensions of
time granted or agreed upon by the parties to a
contract for performance of the contract or for tender
of consideration under the contract shall not be
treated as contract renewals. Contracts to which such
extensions apply shall be treated under these transi­
tion rules as if the original contractual provisions for
performance and tender of consideration remain in
effect.

(d) Definitions. — For purposes of this section:

(1) The term “contract” or “contracts” means
written agreements reciting or setting forth a fixed
price consideration or a consideration based upon cost
plus a stated percentage or a stated monetary incre­
ment. This term shall not mean or include ongoing
sales contracts, contracts whereby any element of the
consideration or the property or services sold or to be
rendered in performance of the contract are unde­
dined, or determined, as to either nature or quantity,
subsequent to the making of the contract, or any open­
ended contract.

(2) The term “contract renewal” or “renewal”
means a covenant or agreement entered into or
assumed by parties which have a current contractual
relation or which have had a past contractual relation,
whereby the parties agree to incur obligations beyond
those which they were, or would have been, required,
§11-15-8b. Nonresident contractor — registration, bond, etc.

(a) Every nonresident contractor shall register with the tax commissioner, prior to engaging in the performance of a contract in this state.

(b)(1) At the time of registration, the contractor shall deposit with the tax commissioner six percent of the amount the contractor is to receive for the performance of the contract which shall be held within a Contractors Use Tax Fund pending the completion of the contract, the determination of the taxes due this state under this article and article fifteen-a of this chapter because of such contract and the payment of the tax.

(2) In lieu of the deposit, the contractor may provide a corporate surety bond to be approved by the tax commissioner as to form, sufficiency, value, amount, stability, and other features necessary to provide a guarantee of payment of the compensating tax due this state.

(c) In addition, within thirty days after registration, under this section, the contractor shall file a statement with the tax commissioner itemizing the machinery, materials, supplies, and equipment that he has or will have on hand at the time he begins the fulfillment of the contract, including where such tangible personal property has been brought, shipped, or transported from outside this state upon which neither the tax imposed by this article or article fifteen-a of this chapter has been paid, and shall pay the tax due thereon at the time of filing and thereafter shall report and pay the taxes as required by this article and article fifteen-a of this chapter.


The following sales and services are 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 or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia department of education or West Virginia board of regents;

(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 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 this code, or like tax;

(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, food for meals and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;

(f) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under article twelve of this chapter, is exempt from federal income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and is:

(1) A church or a convention or association of churches as defined in section 170 of the Internal Revenue Code of 1986, as amended;

(2) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

(3) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions, or membership fees; or
(4) An organization which has no paid employees and its gross income from fund raisers, less reasonable and necessary expenses incurred to raise such gross income (or the tangible personal property or services purchases with such net income), is donated to an organization which is exempt from income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(5) For purposes of this subsection:

(A) The term “support” includes, but is not limited to:

(i) Gifts, grants, contributions or membership fees;

(ii) Gross receipts from fund raisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business (within the meaning of section 513 of the Internal Revenue Code of 1986, as amended);

(iii) Net income from unrelated business activities, whether or not such activities are carried on regularly as a trade or business;

(iv) Gross investment income as defined in section 509(e) of the Internal Revenue Code of 1986, as amended;

(v) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of such organization; and

(vi) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of an exemption from any federal, state or local tax or any similar benefit;

(B) The term “charitable contribution” means a
82 contribution or gift to or for the use of a corporation
83 or organization, described in section 170(c)(2) of the
84 Internal Revenue Code of 1986, as amended;
85 (C) The term "membership fee" does not include
86 any amounts paid for tangible personal property or
87 specific services rendered to members by the corpora-
88 tion or organization;
89 (6) The exemption allowed by this subsection (f) does
90 not apply to sales of gasoline or special fuel or to sales
91 of tangible personal property or services to be used or
92 consumed in the generation of unrelated business
93 income as defined in section 513 of the Internal
94 Revenue Code of 1986, as amended. The provisions of
95 this subsection as amended by this act shall apply to
96 sales made after the thirtieth day of June, one thou-
97 sand nine hundred eight-nine: Provided, That the
98 exemption herein granted shall apply only to services,
99 equipment, supplies and materials used or consumed
100 in the activities for which such organizations qualify
101 as tax exempt organizations under the Internal Reve-
102 nue Code by these organizations and shall not apply to
103 purchases of gasoline or special fuel;
104 (g) Sales of property or services to persons engaged
105 in this state in the business of manufacturing, trans-
106 portation, transmission, communication or in the
107 production of natural resources: Provided, That the
108 exemption herein granted shall apply only to services,
109 machinery, supplies and materials directly used or
110 consumed in the businesses or organizations named
111 above, and shall not apply to purchases of gasoline or
112 special fuel: Provided, however, That on and after the
113 first day of July, one thousand nine hundred eight-
114 seven, the exemption provided in this subsection shall
115 apply only to services, machinery, supplies and mate-
116 rials directly used or consumed in the activities of
117 manufacturing, transportation, transmission, commu-
118 nication or the production of natural resources in the
119 businesses or organizations named above and shall not
120 apply to purchases of gasoline or special fuel;
121 (h) An isolated transaction in which any taxable
service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative: Provided, that nothing contained herein may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided herein, regardless where such isolated sale takes place. The tax commissioner may adopt such legislative rule pursuant to chapter twenty-nine-a of this code he deems necessary for the efficient administration of this exemption;

(i) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article or which would have been subject to tax under 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 to a person 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: Provided, however, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by such person or his agent into any real property, building or structure shall not be exempt under this subsection, except that sales of tangible personal property to a person engaging in the activity of contracting pursuant to a written contract with the United States, this state, or with a political
subdivision thereof, or with a public corporation
created by the Legislature or by another government
entity pursuant to an act of the Legislature, for a
building or structure (or improvement thereto) or
other improvement to real property that is or will be
owned and used by the governmental entity for a
governmental or proprietary purpose, who incorpo-
rates such property in such building, structure or
improvement shall, with respect to such tangible
personal property, nevertheless be deemed to be the
vendor of such property to the governmental entity
and any person seeking to qualify for and assert this
exception must do so pursuant to such legislative rules
and regulations as the tax commissioner may promul-
gate and upon such forms as the tax commissioner
may prescribe. A subcontractor who, pursuant to a
written subcontract with a prime contractor who
qualifies for this exception, provides equipment, or
materials, and labor to such a prime contractor shall
be treated in the same manner as the prime contractor
is treated with respect to the prime contract under
this exception and the legislative rules and regulations
promulgated by the tax commissioner;

(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 consu-
mers 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,
preprinted 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 transac-
tions of like character by a corporation or organization
which is exempt from tax under subsection (f) of this
section on its purchases of tangible personal property
or services:

(1) For purposes of this subsection, the term “casual
and occasional sales not conducted in repeated manner
or in the ordinary course of repetitive and successive
transactions of like character” means sales of tangible
personal property or services at fund raisers sponsored
by a corporation or organization which is exempt,
under subsection (f) of this section, from payment of
the tax imposed by this article on its purchases, when
such fund raisers are of limited duration and are held
no more than six times during any twelve-month
period and limited duration means no more than
eighty-four consecutive hours;

(2) The provisions of this subsection (q), as amended
by this act, shall apply to sales made after the thirtieth
day of June, one thousand nine hundred eighty-nine;

(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 purchas-
ers as their principal year-round residence and dwell-
ing: 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 eight 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 article 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 the conduct of privileges 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 7 United States Code, §2011, et seq., as amended, or with drafts issued through the West Virginia special supplemental food program for women, infants and children codified in 42 United States Code, §1786;

(y) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;
(z) Sales of electronic data processing services and related software: Provided, That for the purposes of this subsection (z) "electronic 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;

(aa) Tuition charged for attending educational summer camps;

(bb) Sales of building materials or building supplies or other property to an organization qualified under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by such organization or its agent into real property, or into a building or structure which is or will be used as permanent low-income housing, transitional housing, emergency homeless shelter, domestic violence shelter or emergency children and youth shelter if such shelter is owned, managed, developed or operated by an organization qualified under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(cc) Dispensing of services performed by one corporation for another corporation when both corporations are members of the same controlled group. Control means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation entitled to vote or ownership, directly or indirectly, of stock possessing fifty percent or more of the value of the corporation;

(dd) Food for the following shall be exempt:

(1) Food purchased or sold by public or private
323 schools, school sponsored student organizations, or
324 school sponsored parent-teacher associations to stu-
325 dents enrolled in such school or to employees of such
326 school during normal school hours; but not those sales
327 of food made to the general public;
328
329 (2) Food purchased or sold by a public or private
330 college or university or by a student organization
331 officially recognized by such college or university to
332 students enrolled at such college or university when
333 such sales are made on a contract basis so that a fixed
334 price is paid for consumption of food products for a
335 specific period of time without respect to the amount
336 of food product actually consumed by the particular
337 individual contracting for the sale and no money is
338 paid at the time the food product is served or
339 consumed;
340
341 (3) Food purchased or sold by a nonprofit organiza-
342 tion or a governmental agency under a program
343 funded by a state or the United States to low-income
344 elderly persons at or below cost;
345
346 (4) Food sold in an occasional sale by a charitable or
347 nonprofit organization including volunteer fire depart-
348 ments and rescue squads, if the purpose of the sale is
349 to obtain revenue for the functions and activities of
350 the organization and the revenue so obtained is
351 actually expended for that purpose;
352
353 (5) Food sold by any religious organization at a social
354 or other gathering conducted by it or under its
355 auspices, if the purpose in selling the food is to obtain
356 revenue for the functions and activities of the organi-
357 zation and the revenue obtained from selling the food
358 is actually used in carrying on such functions and
359 activities: Provided, That purchases made by such
360 organizations shall not be exempt as a purchase for
361 resale;
362
363 (ee) Sales of food by little leagues, midget football
364 leagues, youth football or soccer leagues and similar
365 types of organizations including scouting groups and
366 church youth groups if the purpose in selling the food
367 is to obtain revenue for the functions and activities of
the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: Provided, That such purchases made by a such organizations shall not be exempt as a purchase for resale;

(ff) Charges for room and meals by fraternities and sororities to their members: Provided, That such purchases made by a fraternity or sorority shall not be exempt as a purchase for resale;

(gg) Sales of or charges for the transportation of passengers in interstate commerce;

(hh) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state; and

(ii) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provisions of any other chapter of this code.

§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), (f), (h), (i), (j), (m), (n), (o), (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg), (hh), and (ii) 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 overpay-
ments 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; or

(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 exemp-
tion. 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, docu-
ments, 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 desig-
nated 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 per-
jury 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), (f), (h), (i), (j), (m), (n), (o), (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg), (hh), and (ii) 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 may, pursuant to rules and regulations promulgated by him 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 commis-
sioner of a direct pay permit. 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 the vendors thereof 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 consumer sales and use tax direct pay
permit 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
consumers sales and use taxes due from the permit
holder, which amount shall be paid to the tax commis-
sioner with such return, and such other information as
the tax commissioner deems necessary: Provided, That
if the amount of consumers sales and use taxes due
averages less than one hundred dollars per month, the
tax commissioner may permit the filing of quarterly
returns in lieu of monthly returns and the amount of
tax shown thereon to be due shall be remitted on or
before the fifteenth day following the close of the
calendar quarter; and if the amount due averages less
than fifty dollars per calendar quarter, the tax com-
missioner may permit the filing of an annual direct
pay permit return and the amount of tax shown
thereon to be due shall be remitted on or before the
last day of January each year. The tax commissioner,
upon written request by the permit holder, may grant
a reasonable extension of time, upon such terms as the
tax commissioner may require, for the making and
filing of direct pay permit returns and paying the tax
due. Interest on such tax shall be chargeable on every
such extended payment at the rate specified in section
seventeen, article ten of this chapter.
(c) A permit issued pursuant to this section shall continue to be valid until expiration of the taxpayers registration year under article twelve of this chapter. This permit shall automatically be renewed when the taxpayers 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, 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 tangible personal property or services are purchased or leased 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.


(a) General. — All sales of gasoline or special fuel
by distributors or importers, except when to another
distributor for resale in this state, when delivery is
made in this state, shall be subject to the tax imposed
by this article, notwithstanding any provision of this
article to the contrary. Sales of gasoline or special fuel
by a person who paid the tax imposed by this article
on his purchases of fuel, shall not thereafter be again
taxed under the provisions of this article. This section
shall be construed so that all gallons of gasoline or
special fuel sold and delivered, or delivered, in this
state are taxed one time.

(b) Measure of tax. — The measure of tax on sales
of gasoline or special fuel by distributors or importers
shall be the average wholesale price as defined and
determined in subsection (c), section thirteen, article
fifteen-a of this chapter. For purposes of maintaining
revenue for highways, and recognizing that the tax
imposed by this article is generally imposed on gross
proceeds from sales to ultimate consumers, whereas
the tax on gasoline and special fuel herein is imposed
on the average wholesale price of such gasoline and
special fuel; in no case, for the purposes of taxation
under this article, shall such average wholesale price
be deemed to be less than ninety-seven cents per
gallon of gasoline or special fuel for all gallons of
gasoline and special fuel sold during the reporting
period, notwithstanding any provision of this article to
the contrary.

(c) Definitions. — For purposes of this section:

(1) “Aircraft” shall include any airplane or helicop-
ter that lands in this state on a regular or routine
basis, and transports passengers or freight.

(2) “Aircraft fuel” shall mean gasoline and special
fuel suitable for use in any aircraft engine.

(3) “Distributor” shall mean and include every
person:

(A) Who produces, manufactures, processes or other-
wise alters gasoline or special fuel in this state for use
or for sale; or
(B) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale or for distribution; or

(C) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for use or sale by such person.

(4) "Gasoline" shall mean and include any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as hereinafter defined, including any product obtained by blending together any one or more products, with or without other products, if the resultant product is capable of the same use.

(5) "Importer" shall mean and include every person, resident or nonresident, other than a distributor, who receives gasoline or special fuel outside this state for use, sale or consumption within this state, but shall not include the fuel in the supply tank of a motor vehicle that is not a motor carrier.

(6) "Motor carrier" shall mean and include: (A) Any passenger vehicle which has seats for more than nine passengers in addition to the driver, any road tractor, tractor truck or any truck having more than two axles, which is operated or caused to be operated, by any person on any highway in this state using gasoline or special fuel; and (B) any aircraft, barge or other watercraft, or locomotive transporting passengers or freight in or through this state.

(7) "Motor vehicle" shall mean and include automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of gasoline or special fuel.

(8) "Retail dealer of gasoline or special fuel" shall mean and include any person not a distributor, who sells gasoline or special fuel from a fixed location in this state to users.

(9) "Special fuel" shall mean and include any gas or
liquid, other than gasoline, used or suitable for use as
fuel in an internal combustion engine. The term
"special fuel" shall include products commonly known
as natural or casinghead gasoline and shall include
gasoline and special fuel for heating any private
residential dwelling, building or other premises; but
shall not include any petroleum product or chemical
compound such as alcohol, industrial solvent, heavy
furnace oil, lubricant, etc., not commonly used nor
practically suited for use as fuel in an internal
combustion engine.

(10) "Supply tank" shall mean any receptacle on a
motor vehicle from which gasoline or special fuel is
supplied for the propulsion of the vehicle or equip-
ment located thereon, exclusive of a cargo tank. A
supply tank includes a separate compartment of a
cargo tank used as a supply tank, and any auxiliary
tank or receptacle of any kind or cargo tank, from
which gasoline or special fuel is supplied for the
propulsion of the vehicle, whether or not such tank or
receptacle is directly connected to the fuel supply line
of the vehicle.

(11) "Tank wagon" shall mean and include any
motor vehicle or vessel with a cargo tank or cargo
tanks ordinarily used for making deliveries of gasoline
or special fuel, or both, for sale or use.

(12) "Taxpayer" shall mean any person liable for the
tax imposed by this article.

(13) "User" shall mean any person who purchases
gasoline or special fuel for use or consumption.

(a) Tax due. — The tax on sales of gasoline and
special fuel shall be paid by each taxpayer on or before
the twenty-fifth day of each month, by check, bank
draft, certified check or money order, payable to the
tax commissioner for the amount of tax due for the
preceding month, notwithstanding any provision of
this article to the contrary.

(e) Monthly return. — On or before the twenty-fifth
day of each month, the taxpayer shall make and file a
return for the preceding month showing such information as the tax commissioner may require, notwithstanding any provision of this article to the contrary.

(f) Compliance. — To facilitate ease of administration and compliance by taxpayers, the tax commissioner may require distributors, importers and other persons liable for the tax imposed by this article on sales of gasoline or special fuel, to file a combined return and make a combined payment of the tax due under this article on sales of gasoline and special fuel, and the tax due under article fourteen of this chapter, on gasoline and special fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under article fourteen of this chapter is hereby changed from the last day of each month to the twenty-fifth day of each month, notwithstanding any provision in article fourteen of this chapter to the contrary.

(g) Dedication of tax to highways. — All tax collected under the provisions of this section after deducting the amount of any refunds lawfully paid, shall be deposited in the "road fund" in the state treasurer's office, and shall be used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of principal and interest on state bonds issued for highway purposes: Provided, That notwithstanding any provision to the contrary, any tax collected on the sale of aircraft fuel shall be deposited in the state treasurer's office and transferred to the state aeronautical commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

(h) Construction. — This section shall not be construed as taxing any sale of gasoline or special fuel which this state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.
Effective date. — The provisions of chapter one hundred seventy-nine of the Acts of the Legislature, one thousand nine hundred eighty-three, shall take effect on the first day of April, one thousand nine hundred eighty-three. The amendments to this section made by the Legislature in the Regular Session, one thousand nine hundred eighty-nine, shall be effective on the first day of July, one thousand nine hundred eighty-nine.

§11-15-33. Effective Date.

(a) The provisions of this article as amended or added by Senate Bill No. 1 took effect on the first day of March, one thousand nine hundred eighty-nine, and apply to all sales made on or after that date: Provided, That if an effective date was expressly provided in a provision of such act, that specific effective date controlled in lieu of this general effective date provision.

(b) The provisions of this article as amended or added by this act shall take effect on the first day of July, one thousand nine hundred eighty-nine, and apply to all sales made on or after that date: Provided, That if an effective date is expressly provided in such provision, that specific effective date shall control in lieu of this general effective date provision.

ARTICLE 15A. USE TAX.

§11-15A-2a. Tax on value of property used or consumed in this state.

(a) Except as otherwise provided, a person who produces for sale, profit or commercial use, any natural resource, product or manufactured product, and uses or consumes such natural resource, product or manufactured product, in this state shall make returns of the gross value of the natural resource, product or manufactured product, so used or consumed by him in this state, and pay the tax imposed by this article, when such use or consumption is not otherwise exempt under this article.

(b) The tax commissioner shall promulgate such
uniform and equitable rules as he deems necessary for determining the gross value upon which the tax imposed by this article is levied in the absence of a sale, which value shall correspond as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by the same person or by another person.

(c) A person who purchases or leases machinery or equipment or other tangible personal property for use in another state and then uses or consumes such property in this state shall pay the tax imposed by this article on the value of the property so used or consumed in this state. The tax commissioner shall promulgate such uniform and equitable rules as he deems necessary for determining the measure of the tax imposed by this article with respect to such property.

(d) The provisions of this section shall apply to property used or consumed in this state on or after the first day of May, one thousand nine hundred eighty-nine.

§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), (f), (h), (i), (j), (m), (n), (o), (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd), (ee), (ff) (gg), (ih) and (ii) 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 under section three of 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 accor-
dance 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 require-
ments 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; or

(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 subsec-
tion 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 semian-
nual 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 exemp-
tion. 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, docu-
ments, 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 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 of the party, and such court shall
thereupon issue a subpoena duces tecum to such party
to appear before the commissioner, at a place desig-
nated 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 credited 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 this 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), (f), (h), (i), (j), (m), (o), (p), (q), (r), (s), (t), (u), (w), (x), (y), (z), (aa), (cc), (dd), (ee), (ff), (gg), (hh) and (ii), section nine, 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.

§11-15A-6a. Collection by certain other retailers.

(a) Duty to collect tax. — For purposes of this article and for collection of use tax required under section six of this article, a retailer engaging in business in this state also means and includes any of the following:

(1) Any retailer soliciting orders from persons located in this state for the sale of tangible personal property or taxable services by means of a telecommunication or television shopping system which utilizes a telephone or mail ordering system, including toll free telephone numbers, reverse charge telephone systems or other telephone ordering systems and which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this state: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a constitutionally sufficient nexus for a state to require such a retailer collect and
(2) Any retailer who solicits orders from persons located in this state for the sale of tangible personal property or taxable services by means of advertising that is broadcast from, printed at, or distributed from, a location in this state if the advertising is primarily intended to be disseminated to consumers located in this state and is only secondarily or incidentally disseminated to bordering jurisdictions. For purposes of this paragraph, advertising which is broadcast from a radio or television station located in this state or is printed in or distributed by a newspaper published in this state is rebuttably presumed to be primarily intended for dissemination to consumers located in this state: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(3) Any retailer soliciting orders from persons located in this state for the sale of tangible personal property or taxable services by mail if the solicitations are substantial and recurring and if the retailer economically benefits from any banking, financing, debt collection, telecommunication or marketing activities occurring in this state or economically benefits from the location in this state of an authorized installation, servicing or repair facility, regardless of whether such facility is owned or operated by such retailer or by a related or unrelated person: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(4) Any retailer having a franchisee or licensee operating in this state under the retailer's trade name, if the franchisee or licensee is required to collect the
tax imposed by this article or article fifteen of this chapter: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(5) Any retailer who, pursuant to a contract with a cable television operator located in this state, solicits from persons located in this state orders for the sale of tangible personal property or taxable services by means of advertising which is transmitted or distributed over a cable television system in this state: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(b) Exemption from payment of business registration tax. — Any retailer required to collect use tax under the provisions of subsection (a) of this section shall be required to obtain a business registration certificate, as provided in article twelve of this chapter, but shall be exempt from payment of the tax levied by subsection (b), section three of said article twelve, unless the retailer has sufficient presence in this state so that required payment of the tax does not violate any provision of the constitution or laws of this state or of the United States.

(c) Effective date. — The provisions of this section shall become effective the first day of July, one thousand nine hundred eighty-nine, and apply to sales of tangible personal property or taxable services made on or after that date.

§11-15A-3d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article, the tax commissioner may, pursuant to rules and regulations promulgated by him 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 commis-
sioner of a direct pay permit. 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 the vendors thereof 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 consumers sales and use tax direct pay
permit 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: Provided, That if the amount of consumers
sales and use taxes due averages less than one hun-
dred dollars per month, the tax commissioner may
permit the filing of quarterly returns in lieu of
monthly returns and the amount of tax shown thereon
to be due shall be remitted on or before the fifteenth
day following the close of the calendar quarter; and if
the amount due averages less than fifty dollars per
calendar quarter, the tax commissioner may permit
the filing of an annual direct pay permit return and
the amount of tax shown thereon to be due shall be
remitted on or before the last day of January each
year. The tax commissioner, upon written request
filed by the permit holder before the due date of the
return, may grant a reasonable extension of time,
upon such terms as the tax commissioner may require, for the making and filing of direct pay permit returns and paying the tax due. Interest on such tax shall be chargeable on every such extended payment at the rate specified in section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section shall continue to be valid until expiration of the taxpayer’s registration year under article twelve of this chapter. This permit shall automatically be renewed when the taxpayer’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 tangible personal property or services are purchased of such cancellation or surrender. Upon receipt of such notice, the vendor shall be subject to the provisions of this chapter, without
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§11-15A-29. Effective date.

1 (a) The provisions of this article as amended or added by Senate Bill No. 1 took effect on the first day of March, one thousand nine hundred eighty-nine, and apply to all purchases made or used in this state on or after that date: Provided, That if an effective date was expressly provided in a provision of such act, that specific effective date controlled in lieu of this general effective date provision.

2 (b) The provisions of this article as amended or added by this act shall take effect on the first day of July, one thousand nine hundred eighty-nine, and apply to all purchases made or used in this state on or after that date: Provided, That if an effective date is expressly provided in such provision, that specific effective date shall control in lieu of this general effective date provision.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) General. — The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

2 (b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income unless already included therein the following items:

3 (1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

4 (2) Interest or dividend income on obligations or securities of any authority, commission or instrumen-
(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount allowed as a deduction from federal gross income under section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and

(7) 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 adjusted gross 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 modification; five-year property — ten percent; ten-year property — fifteen percent; fifteen-year public utility property — twenty-five percent; and fifteen-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: Provided, however, that this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and

(8) The amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the state of West Virginia to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the state of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, 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: Provided, however, That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to forty percent of such portion of the gain: Provided further, That this modification shall not be made for taxable years
beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(4) 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;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes: Provided, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first two thousand dollars of benefits received under the West Virginia public employees retirement system, the West Virginia state teachers retirement system and all forms of military retirement including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six; and the first two thousand dollars of benefits received under any federal retirement system to which Title 4 USC § 111 applies: Provided, however, That the total modification under this paragraph shall not exceed two thousand dollars per person receiving such retirement benefits and this limitation shall apply to all returns or amended returns filed after the last day of December, one thousand nine hundred eighty-eight;

(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any West Virginia police, West Virginia firemen’s retirement system or the West Virginia department of public safety death, disability and retirement
fund, including any survivorship annuities derived
therefrom, to the extent includible in gross income for
federal income tax purposes;

(7) Federal adjusted gross income in the amount of
eight thousand dollars received from any source after
the thirty-first day of December, one thousand nine
hundred eighty-six, by any person who has attained
the age of sixty-five on or before the last day of the
taxable year, or by any person certified by proper
authority as permanently and totally disabled, regard-
less of age, on or before the last day of the taxable
year, to the extent includible in federal adjusted gross
income for federal tax purposes: Provided, That if a
person has a medical certification from a prior year
and he is still permanently and totally disabled, a copy
of the original certificate is acceptable as proof of
disability. A copy of the form filed for the federal
disability income tax exclusion is acceptable: Provided,
however, That

(i) Where the total modification under subdivisions
(1), (2), (5) and (6) of this subsection is eight thousand
dollars per person or more, no deduction shall be
allowed under this subdivision; and

(ii) Where the total modification under subdivisions
(1), (2), (5) and (6) of this subsection is less than eight
thousand dollars per person, the total modification
allowed under this subdivision for all gross income
received by such person shall be limited to the
difference between eight thousand dollars and the sum
of modifications under such subdivisions;

(8) Federal adjusted gross income in the amount of
eight thousand dollars received from any source after
the thirty-first day of December, one thousand nine
hundred eighty-six, by the surviving spouse of any
person who had attained the age of sixty-five or who
had been certified as permanently and totally disabled,
to the extent includible in federal adjusted gross
income for federal tax purposes: Provided, That

(i) Where the total modification under subdivisions
(1), (2), (5), (6) and (7) of this subsection is eight
thousand dollars or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of such subdivisions;

(9) Any pay or allowances received, after the thirty-first day of December, one thousand nine hundred seventy-nine, by West Virginia residents who have not attained the age of sixty-five, as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars: Provided, however, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(10) Gross income to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code for federal income tax purposes: Provided, That this modification shall not be made for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-six;

(11) The amount of any lottery prize awarded by the West Virginia state lottery commission, to the extent properly included in gross income for federal income tax purposes; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer’s share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under
this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or
deduction of a partnership or an S corporation, shall
be determined under section seventeen of this article.

(f) Husband and wife. — If husband and wife
determine their federal income tax on a joint return
but determine their West Virginia income taxes
separately, they shall determine their West Virginia
adjusted gross incomes separately as if their federal
adjusted gross incomes had been determined
separately.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-9c. Research and development credit against primary
tax.

1 A credit shall be allowed against the primary tax
imposed by this article, which shall be the research
and development credit as provided in sections three
and three-b, article thirteen-d of this chapter for
taxable years beginning after the thirty-first day of
December, one thousand nine hundred eighty-eight:
Provided, That the amount of this credit may not
reduce by more than fifty percent of the amount of
the net tax liability of the taxpayer for the taxable
year: Provided, however, That one-tenth of the entire
amount of the eligible investment, upon which the
credit is predicated pursuant to sections three and
three-b, article thirteen-d of this chapter, taken as a
deduction in determining its federal taxable income
for the taxable year shall be an adjustment increasing
federal taxable income under section six of this article:
Provided further, That the taxpayer may at its option
elect in lieu of claiming the credit allowable by this
section to not increase its federal taxable income
under section six of this article and thereby take as a
full deduction under this article for the taxable year
the amount of its eligible investment in research and
development for the taxable year, which was taken as
a deduction on its federal return for such taxable year.
CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 6. DEFINITIONS.

§17-1-3. "Road"; "public road"; "highway."

1 The words or terms "road," "public road," or "highway" shall be deemed to include, but shall not be limited to, the right of way, roadbed and all necessary culverts, sluices, drains, ditches, waterways, embankments, slopes, retaining walls, bridges, tunnels and viaducts necessary for the maintenance of travel, dispatch of freight and communication between individuals and communities; and such public road or highway shall be taken to include any road to which the public has access and which it is not denied the right to use, or any road or way leading from any other public road over the land of another person, and which shall have been established pursuant to law. Any road shall be conclusively presumed to have been established when it has been used by the public for a period of ten years or more, and public moneys or labor have been expended thereon, whether there be any record of its conveyance, dedication or appropriation to public use or not. In the absence of any other mark or record, the center of the traveled way shall be taken as the center of the road and the right of way shall be designated therefrom an equal distance on each side, but a road may be constructed on any part of the located right of way when it is deemed advisable so to do.

2 The Legislature notes that there are public highways that run over the surface of this land, over and through the navigable streams, rivers and waterways on this earth and above the surface of this earth in the form of highways in the sky, commonly known as airways. The Legislature finds that each of these types of public highways are essential to the development of this state and that the health and safety of each of the citizens of this state are affected daily by the availability of each of these three types of public highways, and that it is the best interests of the people of this state that each of these be recognized and included within
the meaning of public highways. The Legislature further recognizes that airports are an important and integral part of the public highways existing above the surface of this state, and that airports are necessary to access such highways, and therefore airports, including runways, taxiways, parking ramps, access roads and air traffic control facilities located at airports, are hereby declared to be part of the public highway system of this state.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick J. Rum
Chairman Senate Committee

Bernard W. Kelly
Chairman House Committee

Originated in the Senate.

In effect from passage.

Joel C. White
Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Tony R.随格
President of the Senate

Speaker House of Delegates

The within is approved this the 27th
day of April 1989.

Governor