

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4247

(By ~~the~~ Delegates Pitman + Prezioso

— ● —

Passed March 10, 1990

In Effect July 1, 1990 ~~Passage~~

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4247
(By DELEGATES PITROLO AND PREZIOSO)

[Passed March 10, 1990; in effect July 1, 1990.]

AN ACT to repeal section ten-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, nine and thirty-three, article fifteen of said chapter eleven; to amend and reenact section eighteen, article twenty-one of said chapter; and to further amend said article twenty-one by adding thereto a new section, designated section seventy-one-a, relating generally to taxation; repealing the authority of the tax commissioner to use staff attorneys rather than the office of attorney general; exempting governmental units of other states from payment of the sales tax; providing that charitable or nonprofit organizations are able to claim an exemption from the state sales tax for sales or donations of food made to persons in need thereof; exempting from consumers sales tax charges for opening and closing burial lots; exempting sales of livestock, poultry or other farm products from consumer sales tax under certain circumstances; exempting from consumer sales tax sales of motion pictures and video arcade games under certain circumstances; exempting sales of certain services and tangible personal property relating to aircraft under certain circumstances; providing that lump sum distributions be added to the

taxable income of resident estates or trusts; requiring pass through entities to deduct and withhold tax from distributions, whether actual or deemed distributions for federal income tax purposes, of West Virginia source income to nonresident partners, nonresident shareholders in s corporations, and nonresident beneficiaries of trusts; including corporations subject to corporation net income tax; providing administrative procedures for payment and collection of tax including liability for withheld tax; and providing for administrative procedures and effective dates.

Be it enacted by the Legislature of West Virginia:

That section ten-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, nine and thirty-three, article fifteen of said chapter be amended and reenacted; that section eighteen, article twenty-one of said chapter be amended and reenacted; and that said article twenty-one be further amended by adding thereto a new section, designated section seventy-one-a, all to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

1 For the purpose of this article:

2 (a) "Persons" means any individual, partnership,
3 association, corporation, state or its political subdivi-
4 sions or agency of either, guardian, trustee, committee,
5 executor or administrator.

6 (b) "Tax commissioner" means the state tax
7 commissioner.

8 (c) "Gross proceeds" means the amount received in
9 money, credits, property or other consideration from
10 sales and services within this state, without deduction
11 on account of the cost of property sold, amounts paid for
12 interest or discounts or other expenses whatsoever.
13 Losses shall not be deducted, but any credit or refund
14 made for goods returned may be deducted.

15 (d) "Sale," "sales" or "selling" includes any transfer of
16 the possession or ownership of tangible personal

17 property for a consideration, including a lease or rental,
18 when the transfer or delivery is made in the ordinary
19 course of the transferor's business and is made to the
20 transferee or his agent for consumption or use or any
21 other purpose.

22 (e) "Vendor" means any person engaged in this state
23 in furnishing services taxed by this article or making
24 sales of tangible personal property.

25 (f) "Ultimate consumer" or "consumer" means a
26 person who uses or consumes services or personal
27 property.

28 (g) "Business" includes all activities engaged in or
29 caused to be engaged in with the object of gain or
30 economic benefit, direct or indirect, and all activities of
31 the state and its political subdivisions which involve
32 sales of tangible personal property or the rendering of
33 services when those service activities compete with or
34 may compete with the activities of other persons.

35 (h) "Tax" includes all taxes, interest and penalties
36 levied hereunder.

37 (i) "Service" or "selected service" includes all nonpro-
38 fessional activities engaged in for other persons for a
39 consideration, which involve the rendering of a service
40 as distinguished from the sale of tangible personal
41 property, but shall not include contracting, personal
42 services or the services rendered by an employee to his
43 employer or any service rendered for resale.

44 (j) "Purchaser" means a person who purchases tang-
45 ible personal property or a service taxed by this article.

46 (k) "Personal service" includes those:

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

49 (2) Rendered to the person of an individual without,
50 at the same time, selling tangible personal property,
51 such as nursing, barbering, shoe shining, manicuring
52 and similar services.

53 (l) "Taxpayer" means any person liable for the tax

54 imposed by this article.

55 (m) "Drugs" includes all sales of drugs or appliances
56 to a purchaser, upon prescription of a physician or
57 dentist and any other professional person licensed to
58 prescribe.

59 (n) (1) "Directly used or consumed" in the activities of
60 manufacturing, transportation, transmission, communi-
61 cation or the production of natural resources means used
62 or consumed in those activities or operations which
63 constitute an integral and essential part of such
64 activities, as contrasted with and distinguished from
65 those activities or operations which are simply inciden-
66 tal, convenient or remote to such activities.

67 (2) Uses of property or consumption of services which
68 constitute direct use or consumption in the activities of
69 manufacturing, transportation, transmission, communi-
70 cation or the production of natural resources includes
71 only:

72 (A) In the case of tangible personal property, physical
73 incorporation of property into a finished product
74 resulting from manufacturing production or the produc-
75 tion of natural resources;

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

79 (C) Transporting or storing property undergoing
80 transportation, communication, transmission, manufac-
81 turing production, or production of natural resources;

82 (D) Measuring or verifying a change in property
83 directly used in transportation, communication, trans-
84 mission, manufacturing production or production of
85 natural resources;

86 (E) Physically controlling or directing the physical
87 movement or operation of property directly used in
88 transportation, communication, transmission, manufac-
89 turing production or production of natural resources;

90 (F) Directly and physically recording the flow of
91 property undergoing transportation, communication,

92 transmission, manufacturing production or production
93 of natural resources;

94 (G) Producing energy for property directly used in
95 transportation, communication, transmission, manufac-
96 turing production or production of natural resources;

97 (H) Facilitating the transmission of gas, water, steam
98 or electricity from the point of their diversion to
99 property directly used in transportation, communica-
100 tion, transmission, manufacturing production or produc-
101 tion of natural resources;

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

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

112 (K) Maintenance or repair of property directly used
113 in transportation, communication, transmission, manu-
114 facturing production or production of natural resources;

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

119 (M) Pollution control or environmental quality or
120 protection activity directly relating to the activities of
121 manufacturing, transportation, communication, trans-
122 mission or the production of natural resources and
123 personnel, plant, product or community safety or
124 security activity directly relating to the activities of
125 manufacturing, transportation, communication, trans-
126 mission or the production of natural resources; or

127 (N) Otherwise be used as an integral and essential
128 part of transportation, communication, transmission,
129 manufacturing production or production of natural

130 resources.

131 (3) Uses of property or services which would not
132 constitute direct use or consumption in the activities of
133 manufacturing, transportation, transmission, communi-
134 cation or the production of natural resources includes,
135 but are not limited to:

136 (A) Heating and illumination of office buildings;

137 (B) Janitorial or general cleaning activities;

138 (C) Personal comfort of personnel;

139 (D) Production planning, scheduling of work, or
140 inventory control;

141 (E) Marketing, general management, supervision,
142 finance, training, accounting and administration; or

143 (F) An activity or function incidental or convenient to
144 transportation, communication, transmission, manufac-
145 turing production or production of natural resources,
146 rather than an integral and essential part of such
147 activities.

148 (o) "Contracting."

149 (1) *In general.*—"Contracting" means and includes the
150 furnishing of work, or both materials and work, for
151 another (by a sole contractor, general contractor, prime
152 contractor or subcontractor) in fulfillment of a contract
153 for the construction, alteration, repair, decoration or
154 improvement of a new or existing building or structure,
155 or any part thereof, or for removal or demolition of a
156 building or structure, or any part thereof, or for the
157 alteration, improvement or development of real
158 property.

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

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

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

175 (B) The term “alteration” means and is limited to
176 alterations which are capital improvements to a build-
177 ing or structure or to real property.

178 (C) The term “repair” means and is limited to repairs
179 which are capital improvements to a building or
180 structure or to real property.

181 (D) The term “decoration” means and is limited to
182 decorations which are capital improvements to a
183 building or structure or to real property.

184 (E) The term “improvement” means and is limited to
185 improvements which are capital improvements to a
186 building or structure or to real property.

187 (F) The term “capital improvement” means improve-
188 ments that are affixed to or attached to and become a
189 part of a building or structure or the real property or
190 which add utility to real property or any part thereof
191 and that last, or are intended to be relatively permanent.
192 As used herein, “relatively permanent” means lasting at
193 least a year or longer in duration without the necessity
194 for regularly scheduled recurring service to maintain
195 such capital improvement. “Regular recurring service”
196 means regularly scheduled service intervals of less than
197 one year.

198 (G) Contracting does not include the furnishing of
199 work, or both materials and work in the nature of
200 hookup, connection, installation or other services if such
201 service is incidental to the retail sale of tangible
202 personal property from the service provider’s inventory:
203 *Provided*, That such hookup, connection or installation
204 of the foregoing is incidental to the sale of the same and
205 performed by the seller thereof or performed in

206 accordance with arrangements made by the seller
207 thereof. Examples of transactions that are excluded
208 from the definition of contracting pursuant hereto
209 include, but are not limited to, the sale of wall-to-wall
210 carpeting and the installation of wall-to-wall carpeting,
211 the sale, hookup, and connection of mobile homes,
212 window air conditioning units, dishwashers, clothing
213 washing machines or dryers, other household applian-
214 ces, drapery rods, window shades, venetian blinds,
215 canvas awnings, free standing industrial or commercial
216 equipment and other similar items of tangible personal
217 property. Repairs made to the foregoing are within the
218 definition of contracting if such repairs involve perman-
219 ently affixing to or improving real property or some-
220 thing attached thereto which extends the life of the real
221 property or something affixed thereto or allows or is
222 intended to allow such real property or thing perman-
223 ently attached thereto to remain in service for a year
224 or longer.

225 (p) "Manufacturing" means a systematic operation or
226 integrated series of systematic operations engaged in as
227 a business or segment of a business which transforms
228 or converts tangible personal property by physical,
229 chemical or other means into a different form, compo-
230 sition or character from that in which it originally
231 existed.

232 (q) "Transportation" means the act or process of
233 conveying, as a commercial enterprise, passengers or
234 goods from one place or geographical location to another
235 place or geographical location.

236 (r) "Transmission" means the act or process of causing
237 liquid, natural gas or electricity to pass or be conveyed
238 from one place or geographical location to another place
239 or geographical location through a pipeline or other
240 medium for commercial purposes.

241 (s) "Communication" means all telephone, radio, light,
242 light wave, radio telephone, telegraph and other
243 communication or means of communication, whether
244 used for voice communication, computer data transmis-
245 sion or other encoded symbolic information transfers

246 and shall include commercial broadcast radio, commer-
247 cial broadcast television and cable television.

248 (t) "Production of natural resources" means the
249 performance, by either the owner of the natural
250 resources or another, of the act or process of exploring,
251 developing, severing, extracting, reducing to possession
252 and loading for shipment for sale, profit or commercial
253 use of any natural resource products and any reclama-
254 tion, waste disposal or environmental activities asso-
255 ciated therewith.

§11-15-9. Exemptions.

1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to consu-
3 mers through mains or pipes, and sales of electricity;

4 (b) Sales of textbooks required to be used in any of
5 the schools of this state or in any institution in this state
6 which qualifies as a nonprofit or educational institution
7 subject to the West Virginia department of education;
8 board of trustees of the university system of West
9 Virginia, or the board of directors for colleges located
10 in this state;

11 (c) Sales of property or services to the state, its
12 institutions or subdivisions, governmental units, institu-
13 tions or subdivision of other states: *Provided*, That the
14 law of such other state provides the same exemption to
15 governmental units or subdivisions of this state and to
16 the United States, including agencies of federal, state or
17 local governments for distribution in public welfare or
18 relief work;

19 (d) Sales of vehicles which are titled by the depart-
20 ment of motor vehicles and which are subject to the tax
21 imposed by section four, article three, chapter seven-
22 teen-a of this code, or like tax;

23 (e) Sales of property or services to churches and bona
24 fide charitable organizations who make no charge
25 whatsoever for the services they render: *Provided*, That
26 the exemption herein granted shall apply only to
27 services, equipment, supplies, food for meals and

28 materials directly used or consumed by these organiza-
29 tions, and shall not apply to purchases of gasoline or
30 special fuel;

31 (f) Sales of tangible personal property or services to
32 a corporation or organization which has a current
33 registration certificate issued under article twelve of
34 this chapter, is exempt from federal income taxes under
35 section 501(c)(3) or (c)(4) of the Internal Revenue Code
36 of one thousand nine hundred eighty-six, as amended,
37 and is:

38 (1) A church or a convention or association of
39 churches as defined in section 170 of the Internal
40 Revenue Code of one thousand nine hundred eighty-six,
41 as amended;

42 (2) An elementary or secondary school which main-
43 tains a regular faculty and curriculum and has a
44 regularly enrolled body of pupils or students in attend-
45 ance at the place in this state where its educational
46 activities are regularly carried on;

47 (3) A corporation or organization which annually
48 receives more than one half of its support from any
49 combination of gifts, grants, direct or indirect charita-
50 ble contributions, or membership fees; or

51 (4) An organization which has no paid employees and
52 its gross income from fund raisers, less reasonable and
53 necessary expenses incurred to raise such gross income
54 (or the tangible personal property or services purchased
55 with such net income), is donated to an organization
56 which is exempt from income taxes under section
57 501(c)(3) or (c)(4) of the Internal Revenue Code of one
58 thousand nine hundred eighty-six, as amended;

59 (5) A youth organization, such as the Girl Scouts of
60 the United States of America, the Boy Scouts of
61 America, or the YMCA Indian Guide/Princess Pro-
62 gram, and the local affiliates thereof, which is organized
63 and operated exclusively for charitable purposes and
64 has as its primary purpose the nonsectarian character
65 development and citizenship training of its members.

66 (6) For purposes of this subsection:

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

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

69 (ii) Gross receipts from fund raisers which include
70 receipts from admissions, sales of merchandise, perfor-
71 mance of services or furnishing of facilities in any
72 activity which is not an unrelated trade or business
73 within the meaning of section 513 of the Internal
74 Revenue Code of one thousand nine hundred eighty-six,
75 as amended;

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

79 (iv) Gross investment income as defined in section
80 509(e) of the Internal Revenue Code of one thousand
81 nine hundred eighty-six, as amended;

82 (v) Tax revenues levied for the benefit of a corpora-
83 tion or organization either paid to or expended on behalf
84 of such organization; and

85 (vi) The value of services or facilities (exclusive of
86 services or facilities generally furnished to the public
87 without charge) furnished by a governmental unit
88 referred to in section 170(c)(1) of the Internal Revenue
89 Code of one thousand nine hundred eighty-six, as
90 amended, to an organization without charge. This term
91 does not include any gain from the sale or other
92 disposition of property which would be considered as
93 gain from the sale or exchange of a capital asset, or the
94 value of an exemption from any federal, state or local
95 tax or any similar benefit;

96 (B) The term “charitable contribution” means a
97 contribution or gift to or for the use of a corporation or
98 organization, described in section 170(c)(2) of the
99 Internal Revenue Code of one thousand nine hundred
100 eighty-six, as amended;

101 (C) The term “membership fee” does not include any
102 amounts paid for tangible personal property or specific
103 services rendered to members by the corporation or
104 organization;

105 (7) The exemption allowed by this subsection (f) does
106 not apply to sales of gasoline or special fuel or to sales
107 of tangible personal property or services to be used or
108 consumed in the generation of unrelated business
109 income as defined in section 513 of the Internal Revenue
110 Code of one thousand nine hundred eighty-six, as
111 amended. The provisions of this subsection as amended
112 by this act shall apply to sales made after the thirtieth
113 day of June, one thousand nine hundred eighty-nine:
114 *Provided*, That the exemption herein granted shall
115 apply only to services, equipment, supplies and mate-
116 rials used or consumed in the activities for which such
117 organizations qualify as tax exempt organizations under
118 the Internal Revenue Code by these organizations and
119 shall not apply to purchases of gasoline or special fuel;

120 (g) Sales of property or services to persons engaged
121 in this state in the business of manufacturing, transpor-
122 tation, transmission, communication or in the produc-
123 tion of natural resources: *Provided*, That the exemption
124 herein granted shall apply only to services, machinery,
125 supplies and materials directly used or consumed in the
126 businesses or organizations named above, and shall not
127 apply to purchases of gasoline or special fuel: *Provided*,
128 *however*, That on and after the first day of July, one
129 thousand nine hundred eighty-seven, the exemption
130 provided in this subsection shall apply only to services,
131 machinery, supplies and materials directly used or
132 consumed in the activities of manufacturing, transpor-
133 tation, transmission, communication or the production of
134 natural resources in the businesses or organizations
135 named above and shall not apply to purchases of
136 gasoline or special fuel;

137 (h) An isolated transaction in which any taxable
138 service or any tangible personal property is sold,
139 transferred, offered for sale or delivered by the owner
140 thereof or by his representative for the owner's account,
141 such sale, transfer, offer for sale or delivery not being
142 made in the ordinary course of repeated and successive
143 transactions of like character by such owner or on his
144 account by such representative: *Provided*, That nothing
145 contained herein may be construed to prevent an owner

146 who sells, transfers or offers for sale tangible personal
147 property in an isolated transaction through an auction-
148 eer from availing himself or herself of the exemption
149 provided herein, regardless where such isolated sale
150 takes place. The tax commissioner may adopt such
151 legislative rule pursuant to chapter twenty-nine-a of this
152 code he deems necessary for the efficient administration
153 of this exemption;

154 (i) Sales of tangible personal property or of any
155 taxable services rendered for use or consumption in
156 connection with the commercial production of an
157 agricultural product the ultimate sale of which will be
158 subject to the tax imposed by this article or which would
159 have been subject to tax under this article: *Provided,*
160 That sales of tangible personal property and services to
161 be used or consumed in the construction of or permanent
162 improvement to real property and sales of gasoline and
163 special fuel shall not be exempt;

164 (j) Sales of tangible personal property to a person for
165 the purpose of resale in the form of tangible personal
166 property: *Provided,* That sales of gasoline and special
167 fuel by distributors and importers shall be taxable
168 except when the sale is to another distributor for resale:
169 *Provided, however,* That sales of building materials or
170 building supplies or other property to any person
171 engaging in the activity of contracting, as defined in this
172 article, which is to be installed in, affixed to or
173 incorporated by such person or his agent into any real
174 property, building or structure shall not be exempt
175 under this subsection, except that sales of tangible
176 personal property to a person engaging in the activity
177 of contracting pursuant to a written contract with the
178 United States, this state, or with a political subdivision
179 thereof, or with a public corporation created by the
180 Legislature or by another government entity pursuant
181 to an act of the Legislature, for a building or structure,
182 or improvement thereto, or other improvement to real
183 property that is or will be owned and used by the
184 governmental entity for a governmental or proprietary
185 purpose, who incorporates such property in such
186 building, structure or improvement shall, with respect

187 to such tangible personal property, nevertheless be
188 deemed to be the vendor of such property to the
189 governmental entity and any person seeking to qualify
190 for and assert this exception must do so pursuant to such
191 legislative rules and regulations as the tax commissioner
192 may promulgate and upon such forms as the tax
193 commissioner may prescribe. A subcontractor who,
194 pursuant to a written subcontract with a prime contrac-
195 tor who qualifies for this exception, provides equipment,
196 or materials, and labor to such a prime contractor shall
197 be treated in the same manner as the prime contractor
198 is treated with respect to the prime contract under this
199 exception and the legislative rules and regulations
200 promulgated by the tax commissioner;

201 (k) Sales of property or services to nationally char-
202 tered fraternal or social organizations for the sole
203 purpose of free distribution in public welfare or relief
204 work: *Provided*, That sales of gasoline and special fuel
205 shall be taxable; .

206 (l) Sales and services, fire fighting or station house
207 equipment, including construction and automotive,
208 made to any volunteer fire department organized and
209 incorporated under the laws of the state of West
210 Virginia: *Provided*, That sales of gasoline and special
211 fuel shall be taxable;

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

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

216 (o) Sales of radio and television broadcasting time,
217 preprinted advertising circulars and newspaper and
218 outdoor advertising space for the advertisement of goods
219 or services;

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

221 (q) Casual and occasional sales of property or services
222 not conducted in a repeated manner or in the ordinary
223 course of repetitive and successive transactions of like
224 character by a corporation or organization which is
225 exempt from tax under subsection (f) of this section on

226 its purchases of tangible personal property or services:

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

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

242 (r) Sales of property or services to a school which has
243 approval from the board of trustees of the university
244 system of West Virginia or the board of directors of the
245 state college system to award degrees, which has its
246 principal campus in this state, and which is exempt
247 from federal and state income taxes under section
248 501(c)(3) of the Internal Revenue Code of one thousand
249 nine hundred eighty-six, as amended: *Provided*, That
250 sales of gasoline and special fuel shall be taxable;

251 (s) Sales of mobile homes to be utilized by purchasers
252 as their principal year-round residence and dwelling:
253 *Provided*, That these mobile homes shall be subject to
254 tax at the three-percent rate;

255 (t) Sales of lottery tickets and materials by licensed
256 lottery sales agents and lottery retailers authorized by
257 the state lottery commission, under the provisions of
258 article twenty-two, chapter twenty-nine of this code;

259 (u) Leases of motor vehicles titled pursuant to the
260 provisions of article three, chapter seventeen-a of this
261 code to lessees for a period of thirty or more consecutive
262 days. This exemption shall apply to leases executed on
263 or after the first day of July, one thousand nine hundred
264 eighty-seven, and to payments under long-term leases

265 executed before such date, for months thereof beginning
266 on or after such date;

267 (v) Notwithstanding the provisions of subsection
268 (g) of this section or any provisions of this article to the
269 contrary, sales of property and services to persons
270 subject to tax under article thirteen, thirteen-a or
271 thirteen-b of this chapter: *Provided*, That the exemption
272 herein granted shall apply both to property or services
273 directly or not directly used or consumed in the conduct
274 of privileges which are subject to tax under such articles
275 but shall not apply to purchases of gasoline or special
276 fuel;

277 (w) Sales of propane to consumers for poultry house
278 heating purposes, with any seller to such consumer who
279 may have prior paid such tax in his price, to not pass
280 on the same to the consumer, but to make application
281 and receive refund of such tax from the tax commis-
282 sioner, pursuant to rules and regulations which shall be
283 promulgated by the tax commissioner; and notwith-
284 standing the provisions of section eighteen of this article
285 or any other provisions of such article to the contrary;

286 (x) Any sales of tangible personal property or services
287 purchased after the thirtieth day of September, one
288 thousand nine hundred eighty-seven, and lawfully paid
289 for with food stamps pursuant to the federal food stamp
290 program codified in 7 United States Code, §2011, et seq.,
291 as amended, or with drafts issued through the West
292 Virginia special supplemental food program for women,
293 infants and children codified in 42 United States Code,
294 §1786;

295 (y) Sales of tickets for activities sponsored by elemen-
296 tary and secondary schools located within this state;

297 (z) Sales of electronic data processing services and
298 related software: *Provided*, That for the purposes of this
299 subsection (z) "electronic data processing services"
300 means (1) the processing of another's data, including all
301 processes incident to processing of data such as key-
302 punching, keystroke verification, rearranging or sorting
303 of previously documented data for the purpose of data
304 entry or automatic processing, and changing the

305 medium on which data is sorted, whether these pro-
306 cesses are done by the same person or several persons;
307 and (2) providing access to computer equipment for the
308 purpose of processing data or examining or acquiring
309 data stored in or accessible to such computer equipment;

310 (aa) Tuition charged for attending educational
311 summer camps;

312 (bb) Sales of building materials or building supplies
313 or other property to an organization qualified under
314 section 501 (c)(3) or (c)(4) of the Internal Revenue Code
315 of one thousand nine hundred eighty-six, as amended,
316 which are to be installed in, affixed to or incorporated
317 by such organization or its agent into real property, or
318 into a building or structure which is or will be used as
319 permanent low-income housing, transitional housing,
320 emergency homeless shelter, domestic violence shelter
321 or emergency children and youth shelter if such shelter
322 is owned, managed, developed or operated by an
323 organization qualified under section 501(c)(3) or
324 (c)(4) of the Internal Revenue Code of one thousand nine
325 hundred eighty-six, as amended;

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

334 (dd) Food for the following shall be exempt:

335 (1) Food purchased or sold by public or private
336 schools, school sponsored student organizations, or
337 school sponsored parent-teacher associations to students
338 enrolled in such school or to employees of such school
339 during normal school hours; but not those sales of food
340 made to the general public;

341 (2) Food purchased or sold by a public or private
342 college or university or by a student organization
343 officially recognized by such college or university to

344 students enrolled at such college or university when
345 such sales are made on a contract basis so that a fixed
346 price is paid for consumption of food products for a
347 specific period of time without respect to the amount of
348 food product actually consumed by the particular
349 individual contracting for the sale and no money is paid
350 at the time the food product is served or consumed;

351 (3) Food purchased or sold by a charitable or private
352 nonprofit organization, a nonprofit organization or a
353 governmental agency under a program to provide food
354 to low-income persons at or below cost;

355 (4) Food sold in an occasional sale by a charitable or
356 nonprofit organization including volunteer fire depart-
357 ments and rescue squads, if the purpose of the sale is
358 to obtain revenue for the functions and activities of the
359 organization and the revenue so obtained is actually
360 expended for that purpose;

361 (5) Food sold by any religious organization at a social
362 or other gathering conducted by it or under its auspices,
363 if the purpose in selling the food is to obtain revenue
364 for the functions and activities of the organization and
365 the revenue obtained from selling the food is actually
366 used in carrying on such functions and activities:
367 *Provided*, That purchases made by such organizations
368 shall not be exempt as a purchase for resale;

369 (ee) Sales of food by little leagues, midget football
370 leagues, youth football or soccer leagues and similar
371 types of organizations including scouting groups and
372 church youth groups if the purpose in selling the food
373 is to obtain revenue for the functions and activities of
374 the organization and the revenues obtained from selling
375 the food is actually used in supporting or carrying on
376 functions and activities of the groups: *Provided*, That
377 such purchases made by such organizations shall not be
378 exempt as a purchase for resale;

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

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

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

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

394 (jj) Charges for the services of opening and closing a
395 burial lot.

396 (kk) Sales of livestock, poultry or other farm products
397 in their original state by the producer thereof (or a
398 member of the producer's immediate family) who is not
399 otherwise engaged in making retail sales of tangible
400 personal property; and sales of livestock sold at public
401 sales sponsored by breeder's or registry associations or
402 livestock auction markets: *Provided*, That the exemp-
403 tions allowed by this subsection shall apply to sales
404 made on or after the first day of July, one thousand nine
405 hundred ninety, and may be claimed without presenting
406 or obtaining exemption certificates: *Provided, however*,
407 That the farmer shall maintain adequate records.

408 (ll) Sales of motion picture films to motion picture
409 exhibitors for exhibition if the sale of tickets or the
410 charge for admission to the exhibition of the film is
411 subject to the tax imposed by this article and sales of
412 coin operated video arcade machines, or video arcade
413 games, to a person engaged in the business of providing
414 such machines to the public for a charge upon which the
415 tax imposed by this article is remitted to the tax
416 commissioner: *Provided*, That the exemption provided in
417 this subsection shall apply to sales made on or after the
418 first day of July, one thousand nine hundred ninety, and
419 may be claimed by presenting to the seller a properly
420 executed exemption certificate.

421 (mm) Sales of aircraft repair, remodeling and main-

422 tenances services when such services are to an aircraft
423 operated by a certificated or licensed carrier of persons
424 or property, or by a governmental entity, or to an engine
425 or other component part of an aircraft operated by a
426 certificated or licensed carrier of persons or property,
427 or by a governmental entity and sales of tangible
428 personal property that is permanently affixed or
429 permanently attached as a component part of an aircraft
430 owned or operated by a certificated or licensed carrier
431 of persons or property, or by a governmental entity, as
432 part of the repair, remodeling or maintenance service
433 and sales of machinery, tools, or equipment, directly
434 used or consumed exclusively in the repair, remodeling,
435 or maintenance of aircraft, aircraft engines, or aircraft
436 component parts, for a certificated or licensed carrier
437 of persons or property, or for a governmental entity.

§11-15-33. Effective date.

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

8 (b) The provisions of this article as amended or added
9 by chapter two hundred one, Acts of the Legislature one
10 thousand nine hundred eighty-nine, took effect on the
11 first day of July, one thousand nine hundred eighty-nine,
12 and applies to all sales made on or after that date:
13 *Provided*, That if an effective date is expressly provided
14 in any provision, that specific effective date shall control
15 in lieu of this general effective date provision.

16 (c) The provisions of this article as amended or added
17 by Committee Substitute for House Bill No. 4247 shall
18 take effect on the first day of July, one thousand nine
19 hundred ninety, and apply to all sales made on or after
20 that date: *Provided*, That if an effective date is expressly
21 provided in any provision of such act, that specific
22 effective date shall control in lieu of this general
23 effective date provision with respect to such provision.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-18. West Virginia taxable income of resident estate or trust.

1 The West Virginia taxable income of a resident estate
2 or trust means its federal taxable income as defined in
3 the laws of the United States for the taxable year, with
4 the following modifications:

5 (1) There shall be subtracted six hundred dollars as
6 the West Virginia exemption of the estate or trust, and
7 there shall be added the amount of its federal deduction
8 for a personal exemption.

9 (2) There shall be subtracted the modification des-
10 cribed in section twelve (c) (3), with respect to gains
11 from the sale or other disposition of property, to the
12 extent such gains are excluded from distributable net
13 income of the estate or trust for federal income tax
14 purposes.

15 (3) There shall be added or subtracted (as the case
16 may be) the share of the estate or trust in the West
17 Virginia fiduciary adjustment determined under section
18 nineteen.

19 (4) There shall be added to federal adjusted gross
20 income, unless already included therein, the amount of
21 a lump sum distribution for which the taxpayer has
22 elected under section 402(e) of the Internal Revenue
23 Code of one thousand nine hundred eighty-six, as
24 amended, to be separately taxed for federal income tax
25 purposes: *Provided*, That the provisions of this subdivi-
26 sion shall be effective for taxable year after beginning
27 the thirty-first day of December, one thousand nine
28 hundred ninety.

§11-21-71a. Withholding tax on effectively connected income of nonresident partners, shareholders or beneficiaries.

1 (a) *General Rule.*—For the privilege of doing business
2 in this state or deriving rents or royalties from realty
3 property located in this state, including natural resour-
4 ces in place and standing timber, a partnership, s

5 corporation, or trust, treated as a pass through entity
6 for federal income tax purposes, which has effectively
7 connected taxable income for the taxable year any
8 portion of which is allocable to a nonresident partner,
9 nonresident shareholder, or nonresident beneficiary, as
10 the case may be, shall pay a withholding tax under this
11 section.

12 (b) *Amount of withholding tax.*

13 (1) *In general.*—The amount of the withholding tax
14 payable by any partnership, s corporation, or trust,
15 under subsection (a) shall be equal to the applicable
16 percentage of the effectively connected taxable income
17 of the partnership, s corporation, or trust, as the case
18 may be, which is allocable to a nonresident partner,
19 nonresident shareholder, or nonresident beneficiary of a
20 trust.

21 (2) *Applicable percentage.*—For purposes of subdivi-
22 sion (1), the term “applicable percentage” means:

23 (A) Four percent in the case of the portion of the
24 effectively connected taxable income which is allocable
25 to nonresident persons who are not corporations, and

26 (B) Nine percent in the case of the portion of effec-
27 tively connected taxable income which is allocable to
28 nonresident persons who are corporations taxable under
29 article twenty-four of this chapter.

30 (c) *Payment of withheld tax.*—Each partnership, s
31 corporation, or trust, required to withhold tax under
32 this section shall pay the amount required to be
33 withheld to the tax commissioner no later than:

34 (1) *S corporations.*—The fifteenth day of the third
35 month following the close of the taxable year of the s
36 corporation with the annual information return due
37 under article twenty-four of this chapter unless para-
38 graph (3) applies.

39 (2) *Partnerships and trusts.*—The fifteenth day of the
40 fourth month following the close of the taxable year of
41 the partnership or trust, with the annual return of the
42 partnership or trust due under this article, unless

43 paragraph (3) applies.

44 (3) *Composite returns*.—The fifteenth day of the
45 fourth month of the taxable year with the composite
46 return filed under section fifty-one-a of this article.

47 (d) *Effectively connected taxable income*.—For pur-
48 poses of this section, the term “effectively connected
49 taxable income” means the federal taxable income or
50 portion thereof of a partnership, s corporation, or trust,
51 as the case may be, which is derived from or attribu-
52 table to West Virginia sources as determined under
53 section thirty-two of this article and such regulations as
54 the tax commissioner may prescribe, whether such
55 amount is actually distributed or is deemed to have been
56 distributed for federal income tax purposes.

57 (e) *Treatment of nonresident partners, s corporation*
58 *shareholders or beneficiaries of a trust*.

59 (1) *Allowance of credit*.—Each nonresident partner,
60 nonresident shareholder, or nonresident beneficiary,
61 shall be allowed a credit for such partner’s or share-
62 holder’s or beneficiary’s share of the tax withheld by the
63 partnership, s corporation, or trust, under this section:
64 *Provided*, That when the distribution is to a corporation
65 taxable under article twenty-four of this chapter, the
66 credit allowed by this section shall be applied against
67 the corporation’s liability for tax under article twenty-
68 four of this chapter.

69 (2) *Credit treated as distributed to partner shareholder*
70 *or beneficiary*.—Except as provided in regulations, a
71 nonresident partner’s share, a nonresident shareholder’s
72 share, or a nonresident beneficiary’s share, of any
73 withholding tax paid by the partnership, s corporation,
74 or trust, under this section shall be treated as distrib-
75 uted to such partner by such partnership, or to such
76 shareholder by such s corporation, or to such beneficiary
77 by such trust, on the earlier of:

78 (A) The day on which such tax was paid by the
79 partnership, s corporation, or trust; or

80 (B) The last day of the taxable year for which such
81 tax was paid by partnership, s corporation or trust.

82 (f) *Regulations.*—The tax commissioner shall pres-
83 cribe such regulations as may be necessary to carry out
84 the purposes of this section.

85 (g) *Information statement.*—Every person required to
86 deduct and withhold tax under this section shall furnish
87 to each nonresident partner, or nonresident shareholder,
88 or nonresident beneficiary, as the case may be, on or
89 before the fifteenth day of February of the succeeding
90 taxable year of the partner, shareholder, or beneficiary,
91 a written statement as prescribed by the tax commis-
92 sioner showing the amount of distributions by such
93 partnership, s corporation, or trust to such nonresident
94 partner, or nonresident shareholder, or nonresident
95 beneficiary for federal income tax purposes; the amount
96 deducted and withheld as tax under this section; and
97 such other information as the tax commissioner may
98 require.

99 (h) *Liability for withheld tax.*—Every person required
100 to deduct and withhold tax under this section is hereby
101 made liable for the payment of such tax. The amount
102 of tax required to be withheld and paid over to the tax
103 commissioner shall be considered the tax of the partner-
104 ship, s corporation, or trust, as the case may be, for
105 purposes of articles nine and ten of this chapter. Any
106 amount of tax withheld under this section shall be held
107 in trust for the tax commissioner. No partner, s
108 corporation shareholder, or beneficiary of a trust, shall
109 have a right of action against the partnership, s
110 corporation, or trust, in respect to any moneys deducted
111 and withheld from such person's distributive share and
112 paid over to the tax commissioner in compliance with
113 or in intended compliance with this section.

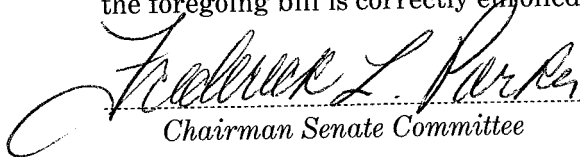
114 (i) *Failure to withhold.*—If any partnership, s corpo-
115 ration, or trust, fails to deduct and withhold tax as
116 required by this section, and thereafter the tax against
117 which such tax may be credited is paid, the tax so
118 required to be deducted and withheld under this section
119 shall not be collected from the partnership, s corpora-
120 tion, or trust, as the case may be, but the partnership,
121 s corporation, or trust, shall not be relieved from
122 liability for any penalties, interest, on additions to tax

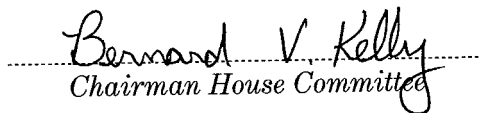
123 otherwise applicable in respect of such failure to
124 withhold.

125 (j) *Effective date.*—The provisions of this section shall
126 apply to taxable years ending after the effective date of
127 this act.

Enr. Com. Sub. for H. B. 4247] 26

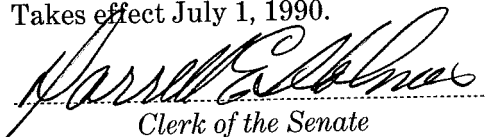
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

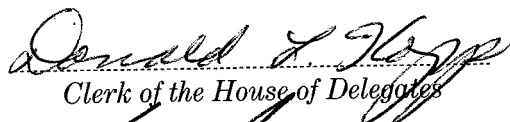

Chairman Senate Committee

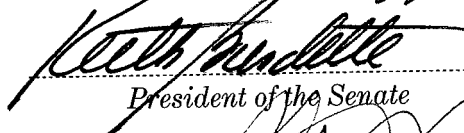

Chairman House Committee

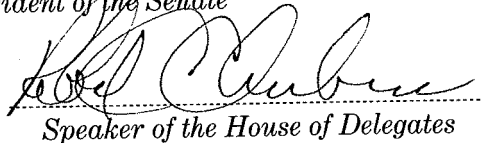
Originating in the House.

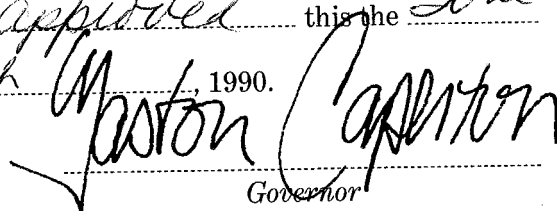
Takes effect July 1, 1990.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 30th
day of March, 1990.

Governor

PRESENTED TO THE

GOVERNOR

Date

3/27/40

Time

10:15 am

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OFFICE OF THE
SECRETARY OF THE
NAVY