WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

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ENROLLED
Com. Sub. for
HOUSE BILL No. 4247

(By Delegate Robert H. Cephas)

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Passed ........... March 10, 1990

In Effect ......... July 1, 1990
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ten-a, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections two, nine and thirty-three, article fifteen of said chapter be amended and reenacted; that section eighteen, article twenty-one of said chapter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.


1 For the purpose of this article:

2 (a) "Persons" means any individual, partnership, association, corporation, state or its political subdivisions or agency of either, guardian, trustee, committee, executor or administrator.

3 (b) "Tax commissioner" means the state tax commissioner.

4 (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.

5 (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
causd 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 nonpro-
fessional 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 tang-
able 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, manufacturing 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;
resources.

(3) Uses of property or services which would not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication 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, 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 hookup, 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, the sale, hook up, 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.


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; board of trustees of the university system of West Virginia, or the board of directors for colleges located in this state;

(c) Sales of property or services to the state, its institutions or subdivisions, governmental units, institutions or subdivision of other states: Provided, That the law of such other state provides the same exemption to governmental units or subdivisions of this state 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 organiza-
tions, 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 one thousand nine hundred eighty-six, 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 one thousand nine hundred eighty-six,
as amended;

(2) An elementary or secondary school which main-
tains a regular faculty and curriculum and has a
regularly enrolled body of pupils or students in attend-
ance 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 charita-
ble 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 purchased
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 one
thousand nine hundred eighty-six, as amended;

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

(6) 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 one thousand nine hundred eighty-six, 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 one thousand nine hundred eighty-six, 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 one thousand nine hundred eighty-six, 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 contribution or gift to or for the use of a corporation or organization, described in section 170(c)(2) of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended;

(C) The term “membership fee” does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;
(7) The exemption allowed by this subsection (f) does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in section 513 of the Internal Revenue Code of one thousand nine hundred eighty-six, as amended. The provisions of this subsection as amended by this act shall apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine:

Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials used or consumed in the activities for which such organizations qualify as tax exempt organizations under the Internal Revenue Code by these organizations and shall not apply to purchases of gasoline or special fuel;

(g) Sales of property or services to persons engaged in this state in the business of manufacturing, transportation, transmission, communication or in the production of natural resources: Provided, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above, and shall not apply to purchases of gasoline or special fuel: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-seven, the exemption provided in this subsection shall apply only to services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication or the production of natural resources in the businesses or organizations named above and shall not apply to purchases of gasoline or special fuel;

(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 incorporates 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 promulgate and upon such forms as the tax
commissioner may prescribe. A subcontractor who,
pursuant to a written subcontract with a prime contrac-
tor 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 char-
tered fraternal or social organizations for the sole
purpose of free distribution in public welfare or relief
work: Provided, That sales of gasoline and special fuel
shall be taxable;

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

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

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

(o) Sales of radio and television broadcasting time,
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 transactions 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 board of trustees of the university system of West Virginia or the board of directors of the state college system 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 one thousand nine hundred eighty-six, as amended: Provided, That sales of gasoline and special fuel shall be taxable;

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

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

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

(v) Notwithstanding the provisions of subsection
(g) of this section or any provisions of this article to the
contrary, sales of property and services to persons
subject to tax under 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 commis-
sioner, pursuant to rules and regulations which shall be
promulgated by the tax commissioner; and notwith-
standing 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 elemen-
tary 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 key-
punching, 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 pro-
cesses 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;

(a) 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 one thousand nine hundred eighty-six, 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 one thousand nine
hundred eighty-six, as amended;

(cc) Dispensing of services performed by one corpora-
tion 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
schools, school sponsored student organizations, or
school sponsored parent-teacher associations to students
enrolled in such school or to employees of such school
during normal school hours; but not those sales of food
made to the general public;

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

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

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

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

(ee) Sales of food by little leagues, midget football
leagues, youth football or soccer leagues and similar
types of organizations including scouting groups and
church youth groups if the purpose in selling the food
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 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.

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

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

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

(mm) Sales of aircraft repair, remodeling and main-
tenances services when such services are to an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools, or equipment, directly used or consumed exclusively in the repair, remodeling, or maintenance of aircraft, aircraft engines, or aircraft component parts, for a certificated or licensed carrier of persons or property, or for a governmental entity.

§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 chapter two hundred one, Acts of the Legislature one thousand nine hundred eighty-nine, took effect on the first day of July, one thousand nine hundred eighty-nine, and applies to all sales made on or after that date: Provided, That if an effective date is expressly provided in any provision, that specific effective date shall control in lieu of this general effective date provision.

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

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

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

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

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

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

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

(a) General Rule.—For the privilege of doing business in this state or deriving rents or royalties from realty property located in this state, including natural resources in place and standing timber, a partnership, s
corporation, or trust, treated as a pass through entity for federal income tax purposes, which has effectively connected taxable income for the taxable year any portion of which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary, as the case may be, shall pay a withholding tax under this section.

(b) Amount of withholding tax.

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

(2) Applicable percentage.—For purposes of subdivision (1), the term “applicable percentage” means:

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

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

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

(1) S corporations.—The fifteenth day of the third month following the close of the taxable year of the s corporation with the annual information return due under article twenty-four of this chapter unless paragraph (3) applies.

(2) Partnerships and trusts.—The fifteenth day of the fourth month following the close of the taxable year of the partnership or trust, with the annual return of the partnership or trust due under this article, unless
paragraph (3) applies.

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

(d) Effectively connected taxable income.—For purposes of this section, the term "effectively connected taxable income" means the federal taxable income or portion thereof of a partnership, s corporation, or trust, as the case may be, which is derived from or attributable to West Virginia sources as determined under section thirty-two of this article and such regulations as the tax commissioner may prescribe, whether such amount is actually distributed or is deemed to have been distributed for federal income tax purposes.

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

(1) Allowance of credit.—Each nonresident partner, nonresident shareholder, or nonresident beneficiary, shall be allowed a credit for such partner's or shareholder's or beneficiary's share of the tax withheld by the partnership, s corporation, or trust, under this section: Provided, That when the distribution is to a corporation taxable under article twenty-four of this chapter, the credit allowed by this section shall be applied against the corporation's liability for tax under article twenty-four of this chapter.

(2) Credit treated as distributed to partner shareholder or beneficiary.—Except as provided in regulations, a nonresident partner's share, a nonresident shareholder's share, or a nonresident beneficiary's share, of any withholding tax paid by the partnership, s corporation, or trust, under this section shall be treated as distributed to such partner by such partnership, or to such shareholder by such s corporation, or to such beneficiary by such trust, on the earlier of:

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

(B) The last day of the taxable year for which such tax was paid by partnership, s corporation or trust.
(f) Regulations.—The tax commissioner shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(g) Information statement.—Every person required to deduct and withhold tax under this section shall furnish to each nonresident partner, or nonresident shareholder, or nonresident beneficiary, as the case may be, on or before the fifteenth day of February of the succeeding taxable year of the partner, shareholder, or beneficiary, a written statement as prescribed by the tax commissioner showing the amount of distributions by such partnership, s corporation, or trust to such nonresident partner, or nonresident shareholder, or nonresident beneficiary for federal income tax purposes; the amount deducted and withheld as tax under this section; and such other information as the tax commissioner may require.

(h) Liability for withheld tax.—Every person required to deduct and withhold tax under this section is hereby made liable for the payment of such tax. The amount of tax required to be withheld and paid over to the tax commissioner shall be considered the tax of the partnership, s corporation, or trust, as the case may be, for purposes of articles nine and ten of this chapter. Any amount of tax withheld under this section shall be held in trust for the tax commissioner. No partner, s corporation shareholder, or beneficiary of a trust, shall have a right of action against the partnership, s corporation, or trust, in respect to any moneys deducted and withheld from such person’s distributive share and paid over to the tax commissioner in compliance with or in intended compliance with this section.

(i) Failure to withhold.—If any partnership, s corporation, or trust, fails to deduct and withhold tax as required by this section, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld under this section shall not be collected from the partnership, s corporation, or trust, as the case may be, but the partnership, s corporation, or trust, shall not be relieved from liability for any penalties, interest, on additions to tax
otherwise applicable in respect of such failure to withhold.

(j) **Effective date.**—The provisions of this section shall apply to taxable years ending after the effective date of this act.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Frederick L. Parks
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect July 1, 1990.

J. Marshall Ackerman
Clerk of the Senate

Donald E. Kepp
Clerk of the House of Delegates

Keith Rudliffe
President of the Senate

Robert C. Kittlee
Speaker of the House of Delegates

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

Governor
PRESENTED TO THE
GOVERNOR
Date 3/27/48
Time 10:35 am

RECEIVED
Mar 20
10:11 AM