ENROLLED

SENATE BILL NO. 37

(By Senators Craig, Scott, and Rigglean)

PASSED March 15, 1996

In Effect NINETY Days From Passage
AN ACT to repeal sections nine-b and nine-c, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections three-b and three-c, article fifteen-a of said chapter; to amend and reenact sections two and five, article fourteen of said chapter; to further amend said article by adding thereto three new sections, designated sections seventeen, seventeen-a and eighteen; and to amend and reenact section nine, article fifteen of said chapter, all relating generally to exemptions from excise taxes and compliance with those taxes; removing the gasoline and special fuels excise tax on special dyed diesel fuels used in off-highway equipment; prohibiting the operation of motor vehicles upon the highways of this state with special dyed diesel fuel as a fuel and
carried in the fuel tanks; providing for spot check inspections and where such inspections may occur; setting forth who may make these inspections; setting forth civil and criminal penalties; sales tax; exemptions from sales tax; specifying effective dates; creating exemptions from the consumers sales and service tax for services performed by a corporation, partnership or limited liability company for a related corporation, partnership or limited liability company; exempting sales by public and academic libraries; exempting sales of primary opinion research services performed for out of state clients; exempting certain purchases by persons making value added agricultural products; exempting sales of musical instructional services by music teachers; exempting charges to members for membership, newsletters, seminars and instructional materials related thereto for members of certain membership organizations which are tax exempt under specified sections of the Internal Revenue Code; repealing separate sections relating to how exemptions from tax are asserted and incorporating these requirements in the section providing the exemptions from tax; exempting commissions received by manufacturers' representatives and numbering the exemptions from sales tax; and specifying effective dates for such exemptions.

Be it enacted by the Legislature of West Virginia:

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article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections three-b and three-c, article fifteen-a of said chapter be repealed; that sections two and five, article fourteen of said chapter be amended and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

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.
§11-14-2. Definitions.
For purposes of this article:

(1) "Actual metered gallons" means, in addition to amounts computed by mechanical devices which measure and record directly in digital terms, all amounts computed by other methods of computing quantities commonly employed by persons engaged in the sale of petroleum products, including, but not limited to, tank or barge strappings and other graduated lineal devices.

(2) "Aircraft fuel" means gasoline and special fuel suitable for use in any aircraft engine.

(3) "Commissioner" or "tax commissioner" means the tax commissioner of the state of West Virginia or his or her duly authorized agent.

(4) "Distributor" or "producer" means and includes every person:
   (a) Who produces, manufactures, processes or otherwise alters gasoline or special fuel in this state for use or for sale;
   (b) Who engages in this state in the sale of gasoline or special fuel for the purpose of resale or for distribution; or
   (c) Who receives gasoline or special fuel into the cargo tank of a tank wagon in this state for use or sale by such person.

(5) "Gallon" means two hundred thirty-one cubic inches of liquid measurement, by volume: Provided, That the commissioner may by rule prescribe other measurement or definition of gallon.

(6) "Gasoline" means any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as defined in this section.

(7) "Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, which is maintained
by this state or some taxing subdivision or unit of this
state or the federal government or any of its agencies.

(8) "Importer" means every person, resident or nonres-
ident, other than a distributor, who receives gasoline or
special fuel outside this state for use, sale or consump-
tion within this state, but shall not include the fuel in the
supply tank of a motor vehicle, or a person paying the
motor carrier road tax as provided for in article
fourteen-a of this chapter.

(9) "Motor carrier" means any passenger vehicle which
has seats for more than nine passengers in addition to
the driver, or any road tractor, or any tractor truck or
any truck having more than two axles which is operated
or caused to be operated by any person on any highway
in this state.

(10) "Motor vehicle" means automobiles, motor carri-
ers, motor trucks, motorcycles and all other vehicles or
equipment, engines or machines which are operated or
propelled by combustion of gasoline or special fuel.

(11) "Person" means and includes any individual, firm,
partnership, limited partnership, joint adventure,
association, company, corporation, organization, syndi-
cate, receiver, trust or any other group or combination
acting as a unit, in the plural as well as the singular
number, and means and includes the officers, directors,
trustees or members of any firm, partnership, limited
partnership, joint adventure, association, company,
corporation, organization, syndicate, receiver, trust or
any other group or combination acting as a unit, in the
plural as well as the singular number, unless the inten-
tion to give a more limited meaning is disclosed by the
context.

(12) "Petroleum carrier" means any person who hauls
or transports gasoline or special fuel within this state or
on any navigable rivers which are within the jurisdiction
of this state.

(13) "Purchase" means and includes any acquisition of
ownership of property or of a security interest for a consideration.

(14) "Receive" means any acquisition of ownership or possession of gasoline or special fuel.

(15) "Retail dealer" means any person not a distributor or producer who sells gasoline or special fuel from a fixed location in this state to users.

(16) "Sale" means any transfer, exchange, gift, barter or other disposition of any property or security interest for a consideration.

(17) "Special fuel" means any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term "special fuel" includes products commonly known as natural or casinghead gasoline, but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practicably suited for use as fuel in an internal combustion engine.

(18) "Special dyed diesel fuel" means diesel fuel that is required to be dyed under United States environmental protection agency rules for high sulphur diesel fuel or is dyed under internal revenue service rules for low sulphur fuel or pursuant to any other requirements subsequently set by the United States environmental protection agency or internal revenue service including any invisible marker requirements that is sold for the exclusive use or consumption in off-highway equipment and is exempt from excise taxation under federal law.

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

(20) "Tank wagon" means and includes any motor vehicle or vessel with a cargo tank or cargo tanks ordinarily used for making deliveries of gasoline or special fuel or both for sale or use.

(21) "Tax" includes, within its meaning, interest, additions to tax and penalties, unless the intention to give it a more limited meaning is disclosed by the context.

(22) "Taxpayer" means any person liable for any tax, interest, additions to tax or penalty under the provisions of this article.

(23) "User" means any person who purchases gasoline or special fuel for use as fuel and uses the fuel in an internal combustion engine owned or operated by that person.

§11-14-5. Exemptions from tax.

There shall be exempted from the excise tax on gasoline or special fuel imposed by this article the following:

(1) All gallons of gasoline or special fuel exported from this state to any other state or nation;

(2) All gallons of gasoline or special fuel sold to and purchased by the United States or any agency of the United States when delivered in bulk quantities of five hundred gallons or more;

(3) All gallons of gasoline or special fuel sold to and purchased by a county board of education when delivered in bulk quantities of five hundred gallons or more;

(4) All gallons of gasoline or special fuel sold pursuant to a government contract, in bulk quantities of five hundred gallons or more, for use in conjunction with any municipal, county, state or federal civil defense or emergency service program, or to any person on whom is imposed a requirement to maintain an inventory of
gasoline or special fuel for the purpose of the program:

Provided, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the tax commissioner certifying his or her right to the exemption;

(5) All gallons of gasoline or special fuel imported into this state in the fuel supply tank or tanks of a motor vehicle, other than in the fuel supply tank of a vehicle being hauled. This exemption does not relieve a person owning or operating as a motor carrier of any taxes imposed by article fourteen-a of this chapter;

(6) All gallons of gasoline and special fuel used and consumed in stationary off-highway turbine engines;

(7) All gallons of special fuel for heating any public or private dwelling, building or other premises;

(8) All gallons of special fuel for boilers;

(9) All gallons of gasoline or special fuel used as a dry cleaning solvent or commercial or industrial solvent;

(10) All gallons of gasoline or special fuel used as lubricants, ingredients or components of any manufactured product or compound;

(11) All gallons of gasoline or special fuel sold to any municipality or agency of a municipality for use in vehicles or equipment owned and operated by the municipality or agency of a municipality and when purchased for delivery in bulk quantities of five hundred gallons or more;

(12) All gallons of gasoline or special fuel sold to any urban mass transportation authority, created pursuant to the provisions of article twenty-seven, chapter eight of this code, for use in an urban mass transportation system;

(13) All gallons of gasoline or special fuel sold for use as aircraft fuel;
(14) All gallons of gasoline or special fuel sold for use or used as a fuel for commercial watercraft;

(15) All gallons of special fuel sold for use or consumed in railroad diesel locomotives;

(16) All gallons of gasoline or special fuel sold to and purchased by a unit of county government when delivered in bulk quantities of five hundred gallons or more; and

(17) All gallons of special dyed diesel fuel.

§11-14-17. No dyed fuel on highways.

No person may operate or maintain a motor vehicle on any public highway in this state with special dyed diesel fuel as the motor fuel contained in the fuel supply tank. This provision does not apply to: (a) Persons operating motor vehicles that have received fuel into their fuel tanks outside of this state in a jurisdiction that permits introduction of dyed taxable motor fuel of that color and type into the motor fuel tank of highway vehicles, and can show proof of such; or (b) uses of dyed fuel on the highway which are lawful under the Internal Revenue Code and regulations under that code, including state and local government vehicles and buses unless otherwise prohibited by this chapter.

Any person who violates this section is guilty of a misdemeanor, and upon conviction thereof, shall be fined ten dollars per gallon of fuel capacity of the fuel tanks or one thousand dollars, whichever is greater, for the first two violations of this section in a calendar year, and a fine of fifteen dollars per gallon of fuel capacity of the fuel tanks or two thousand dollars, whichever is greater, for each subsequent offense in the same calendar year.

§11-14-17a. Spot check inspections.

(a) The tax commissioner or his or her appointees, may stop, inspect and issue citations to operators of motor vehicles for violations of this chapter at sites where fuel is, or may be, produced, stored, or loaded into or con-
sumed by motor vehicles. These sites include, but are not limited to:

(1) A terminal;
(2) A fuel storage facility that is not a terminal, such as a bulk storage facility;
(3) A retail fuel facility;
(4) Highway rest stops; or
(5) A designated inspection area, including any state highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the tax commissioner.

(b) Nothing contained in this section may be construed to prohibit the issuance of a citation for the violation of the provisions of this article on the open highway or other than the spot check areas where the violation of this article is discovered where the motor vehicle is lawfully stopped for any other criminal violation of the laws of this state.

§11-14-18. Penalty for refusal to permit inspection.

Any person who refuses to permit the inspection authorized by section seventeen-a of this article is guilty of a violation of the rules of the state tax division and shall pay a civil penalty of five thousand dollars, in addition to any other penalty imposed in this code.

ARTICLE 15. CONSUMERS SALES TAX.


(a) Exemptions for which exemption certificate may be issued. — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in such form as the tax commissioner may require, and deliver it to the vendor of the property or service, in such manner as the tax commissioner may require. However, the tax commissioner may, by rule, specify those exemptions autho-
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10 rized in this subsection for which exemptions certificates
11 are not required. The following sales of tangible personal
12 property and/or services are exempt as provided in this
13 subsection:
14
15 (1) Sales of gas, steam and water delivered to consum-
16 ers through mains or pipes and sales of electricity;
17
18 (2) Sales of textbooks required to be used in any of the
19 schools of this state or in any institution in this state
20 which qualifies as a nonprofit or educational institution
21 subject to the West Virginia department of education
22 and the arts, the board of trustees of the university
23 system of West Virginia or the board of directors for
24 colleges located in this state;
25
26 (3) Sales of property or services to this state, its
27 institutions or subdivisions, governmental units, institu-
28 tions or subdivisions of other states: Provided, That the
29 law of the other state provides the same exemption to
30 governmental units or subdivisions of this state and to
31 the United States, including agencies of federal, state or
32 local governments for distribution in public welfare or
33 relief work;
34
35 (4) Sales of vehicles which are titled by the division of
36 motor vehicles and which are subject to the tax imposed
37 by section four, article three, chapter seventeen-a of this
38 code, or like tax;
39
40 (5) Sales of property or services to churches who make
41 no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision
42 applies only to services, equipment, supplies, food for
43 meals and materials directly used or consumed by these
44 organizations, and shall not apply to purchases of
45 gasoline or special fuel;
46
47 (6) Sales of tangible personal property or services to a
48 corporation or organization which has a current regis-
49 tration certificate issued under article twelve of this
50 chapter, is exempt from federal income taxes under
51 Section 501(c)(3) or (c)(4) of the Internal Revenue Code
of 1986, as amended, and is:

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

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

(C) A corporation or organization which annually
receives more than one half of its support from any
combination of gifts, grants, direct or indirect charitable
contributions or membership fees;

(D) An organization which has no paid employees and
its gross income from fund raisers, less reasonable and
necessary expenses incurred to raise the gross income (or
the tangible personal property or services purchased
with the net income), is donated to an organization
which is exempt from income taxes under Section
501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
as amended;

(E) 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 program and the local
affiliates thereof, which is organized and operated
exclusively for charitable purposes and has as its pri-
mary purpose the nonsectarian character development
and citizenship training of its members;

(F) For purposes of this subsection:
(i) 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, perfor-
mance of services or furnishing of facilities in any
activity which is not an unrelated trade or business
within the meaning of Section 513 of the Internal
Revenue Code of 1986, as amended;

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

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

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

(VI) The value of services or facilities (exclusive of
services or facilities generally furnished to the public
without charge) furnished by a governmental unit
referred to in Section 170(c)(1) of the Internal Revenue
Code of 1986, as amended, to an organization without
charge. This term does not include any gain from the sale
or other disposition of property which would be consid-
ered 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;

(ii) The term "charitable contribution" means a contri-
bution or gift to or for the use of a corporation or organi-
ization, described in Section 170(c)(2) of the Internal
Revenue Code of 1986, as amended;

(iii) 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; or

(G) The exemption allowed by this subdivision (6) 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 1986, as amended. The provisions of this subdivision
apply to sales made after the thirtieth day of June, one
thousand nine hundred eighty-nine: Provided, That the
exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax exempt organizations under the Internal Revenue Code and shall not apply to purchases of gasoline or special fuel;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: Provided, That nothing contained in this subdivision 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 in this subdivision, regardless where the isolated sale takes place. The tax commissioner may adopt such legislative rule pursuant to article three, chapter twenty-nine-a of this code as he or she considers necessary for the efficient administration of this exemption;

(8) 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 are not exempt: Provided, however, That nails and fencing shall not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal
Provided, That sales of gasoline and special fuel by distributors and importers is 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 that person or his or her agent into any real property, building or structure is not exempt under this subdivision, 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 of this state, or with a public corporation created by the Legislature or by another governmental 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 the property in the building, structure or improvement shall, with respect to the tangible personal property, nevertheless be considered to be the vendor of the property to the governmental entity and any person seeking to qualify for and assert this exception must do so pursuant to the legislative rules 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 contractor who qualifies for this exception, provides equipment, or materials, and labor to 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 promulgated by the tax commissioner: Provided further, That the exemption for government contractors in the preceding proviso expires on the first day of October, one thousand nine hundred ninety, subject to the transition rules set forth in section eight-c of this article; (10) Sales of newspapers when delivered to consumers
(11) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(12) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

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

(14) 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 subdivision (6) of this subsection on its purchases of tangible personal property or services:

(A) For purposes of this subdivision, the term "casual and occasional sales not conducted in a 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 subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases, when the 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;

(B) The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine;

(15) 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 1986, as amended: Provided, That sales of gasoline and special fuel are taxable;

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

(17) 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;

(18) 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 applies 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 that date, for months thereof beginning on or after that date;

(19) Sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the tax commissioner, pursuant to rules which shall be promulgated by the tax commissioner; notwithstanding the provisions of section eighteen of this article or any other provision of this article to the contrary;

(20) 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 U.S.C. §2011 et seq., as amended, or with drafts issued through the West Virginia special supplement food program for women, infants and children codified in 42 U.S.C. §1786;

(21) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;
268  (22) Sales of electronic data processing services and related software: *Provided,* That for the purposes of this subdivision "electronic data processing services" means:

269  (A) 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 processes are done by the same person or several persons; and (B) providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

281  (23) Tuition charged for attending educational summer camps;

283  (24) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. Control means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company;

298  (25) Food for the following are exempt:

299  (A) 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;
(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the 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;

(C) 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;

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

(E) 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 those functions and activities: Provided, That purchases made by the organizations are not exempt as a purchase for resale;

(26) 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 the purchases made by the organizations are not exempt as a purchase for resale;
(27) Charges for room and meals by fraternities and sororities to their members: Provided, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

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

(29) 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;

(30) 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 provision of any other chapter of this code;

(31) Charges for the services of opening and closing a burial lot;

(32) 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 breeders or registry associations or livestock auction markets: Provided, That the exemptions allowed by this subdivision 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;

(33) 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 the 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
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380 subdivision apply to sales made on or after the first day
381 of July, one thousand nine hundred ninety, and may be
382 claimed by presenting to the seller a properly executed
383 exemption certificate;
384
385 (34) Sales of aircraft repair, remodeling and mainte-
386 nance services when such services are to an aircraft
387 operated by a certified or licensed carrier of persons or
388 property, or by a governmental entity, or to an engine or
389 other component part of an aircraft operated by a
390 certificated or licensed carrier of persons or property, or
391 by a governmental entity and sales of tangible personal
392 property that is permanently affixed or permanently
393 attached as a component part of an aircraft owned or
394 operated by a certificated or licensed carrier of persons
395 or property, or by a governmental entity, as part of the
396 repair, remodeling or maintenance service and sales of
397 machinery, tools or equipment, directly used or con-
398 sumed exclusively in the repair, remodeling or mainte-
399 nance of aircraft, aircraft engines, or aircraft component
400 parts, for a certificated or licensed carrier of persons or
401 property, or for a governmental entity;
402
403 (35) Charges for memberships or services provided by
404 health and fitness organizations relating to personalized
405 fitness programs;
406
407 (36) Sales of services by individuals who baby-sit for a
408 profit: Provided, That the gross receipts of the individual
409 from the performance of baby-sitting services do not
410 exceed five thousand dollars in a taxable year;
411
412 (37) Sales of services after the thirtieth day of June,
413 one thousand nine hundred ninety-seven, by public
414 libraries or by libraries at academic institutions or by
415 libraries at institutions of higher learning;
416
417 (38) Commissions received after the thirtieth day of
418 June, one thousand nine hundred ninety-seven, by a
419 manufacturer's representative;
420
421 (39) Sales of primary opinion research services after
422 the thirtieth day of June, one thousand nine hundred
ninety-seven, when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision the term "primary opinion research" means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly utilized for quantitative and qualitative opinion research studies;

(40) Sales of property or services after the thirtieth day of June, one thousand nine hundred ninety-seven, to persons within the state when those sales are for the purposes of the production of value-added products: Provided, That the exemption granted in this subdivision apply only to services, equipment, supplies and materials directly used or consumed by such persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term "value-added product" means the following products derived from processing a raw agricultural product, whether for human consumption or for other use: For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;
(B) Fruits into wine;
(C) Honey into wine;
(D) Wool into fabric;
(E) Raw hides into semi-finished or finished leather products;
(F) Milk into cheese;
(G) Fruits or vegetables into a dried, canned or frozen product;
(H) Feeder cattle into commonly accepted slaughter weights;
(I) Aquatic animals into a dried, canned, cooked or frozen product; and
(J) Poultry into a dried, canned, cooked or frozen product;

(41) Sales of music instructional services after the thirtieth day of June, one thousand nine hundred ninety-seven, by a music teacher; and

(42) After the thirtieth day of June, one thousand nine hundred ninety-seven, charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: Provided, That
the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made.

A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or, the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member.

(b) Refundable exemptions. — Any person having a right or claim to any exemption set forth in this subsection, shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor such person's West Virginia direct pay permit number. The following sales of tangible personal property and/or services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision apply only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service
or the operation of a utility business, in the businesses or
organizations named above and shall not apply to
purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered
fraternal or social organizations for the sole purpose of
free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel are taxable;

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

(5) Sales of building materials or building supplies or
other property to an organization qualified under
Section 501(c)(3) or (c)(4) of the Internal Revenue Code
of 1986, as amended, which are to be installed in, affixed
to or incorporated by the organization or its agent into
real property, or into a building or structure which is or
will be used as permanent low-income housing, transi-
tional housing, emergency homeless shelter, domestic
violence shelter or emergency children and youth shelter
if the shelter is owned, managed, developed or operated
by an organization qualified under Section 501(c)(3) or
(c)(4) of the Internal Revenue Code of 1986, as amended.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ....................... this the .......... , 1996.

governor

Governor