

SB 37

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

SENATE BILL NO. 37

(By Senators CRAIG, SCOTT & RYAN)



PASSED MARCH 15, 1996

In Effect NINETY DAYS FROM Passage

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA
CHARLOTTE, WEST VIRGINIA

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Senate Bill No. 37

(BY SENATORS CRAIGO, SCOTT AND PLYMALE)

[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.

1 For purposes of this article:

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

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

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

14 (4) "Distributor" or "producer" means and includes
15 every person:

16 (a) Who produces, manufactures, processes or other-
17 wise alters gasoline or special fuel in this state for use or
18 for sale;

19 (b) Who engages in this state in the sale of gasoline or
20 special fuel for the purpose of resale or for distribution;
21 or

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

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

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

33 (7) "Highway" means every way or place of whatever
34 nature open to the use of the public as a matter of right
35 for the purpose of vehicular travel, which is maintained

36 by this state or some taxing subdivision or unit of this
37 state or the federal government or any of its agencies.

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

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

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

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

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

72 (13) "Purchase" means and includes any acquisition of

73 ownership of property or of a security interest for a
74 consideration.

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

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

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

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

92 (18) "Special dyed diesel fuel" means diesel fuel that is
93 required to be dyed under United States environmental
94 protection agency rules for high sulphur diesel fuel or is
95 dyed under internal revenue service rules for low sul-
96 phur fuel or pursuant to any other requirements subse-
97 quently set by the United States environmental protec-
98 tion agency or internal revenue service including any
99 invisible marker requirements that is sold for the exclu-
100 sive use or consumption in off-highway equipment and
101 is exempt from excise taxation under federal law.

102 (19) "Supply tank" means any receptacle on a motor
103 vehicle from which gasoline or special fuel is supplied
104 for the propulsion of the vehicle or equipment located
105 thereon, exclusive of a cargo tank. A supply tank in-
106 cludes a separate compartment of a cargo tank used as a
107 supply tank, and any auxiliary tank or receptacle of any
108 kind from which gasoline or special fuel is supplied for
109 the propulsion of the vehicle, whether or not the tank or

110 receptacle is directly connected to the fuel supply line of
111 the vehicle.

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

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

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

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

§11-14-5. Exemptions from tax.

1 There shall be exempted from the excise tax on gaso-
2 line or special fuel imposed by this article the following:

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

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

9 (3) All gallons of gasoline or special fuel sold to and
10 purchased by a county board of education when deliv-
11 ered in bulk quantities of five hundred gallons or more;

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

18 gasoline or special fuel for the purpose of the program:
19 *Provided*, That fueling facilities used for these purposes
20 are not capable of fueling motor vehicles and the person
21 in charge of the program has in his or her possession a
22 letter of authority from the tax commissioner certifying
23 his or her right to the exemption;

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

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

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

34 (8) All gallons of special fuel for boilers;

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

37 (10) All gallons of gasoline or special fuel used as
38 lubricants, ingredients or components of any manufac-
39 tured product or compound;

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

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

51 (13) All gallons of gasoline or special fuel sold for use
52 as aircraft fuel;

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

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

57 (16) All gallons of gasoline or special fuel sold to and
58 purchased by a unit of county government when deliv-
59 ered in bulk quantities of five hundred gallons or more;
60 and

61 (17) All gallons of special dyed diesel fuel.

§11-14-17. No dyed fuel on highways.

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

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

§11-14-17a. Spot check inspections.

1 (a) The tax commissioner or his or her appointees, may
2 stop, inspect and issue citations to operators of motor
3 vehicles for violations of this chapter at sites where fuel
4 is, or may be, produced, stored, or loaded into or con-

5 sumed by motor vehicles. These sites include, but are not
6 limited to:

7 (1) A terminal;

8 (2) A fuel storage facility that is not a terminal, such as
9 a bulk storage facility;

10 (3) A retail fuel facility;

11 (4) Highway rest stops; or

12 (5) A designated inspection area, including any state
13 highway inspection station, weigh station, agricultural
14 inspection station, mobile station or other location
15 designated by the tax commissioner.

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

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

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

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9. Exemptions.

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.* — A person having a right or claim to any exemp-
3 tion set forth in this subsection may, in lieu of paying the
4 tax imposed by this article and filing a claim for refund,
5 execute a certificate of exemption, in such form as the
6 tax commissioner may require, and deliver it to the
7 vendor of the property or service, in such manner as the
8 tax commissioner may require. However, the tax com-
9 missioner may, by rule, specify those exemptions autho-

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 (1) Sales of gas, steam and water delivered to consum-
15 ers through mains or pipes and sales of electricity;

16 (2) Sales of textbooks required to be used in any of the
17 schools of this state or in any institution in this state
18 which qualifies as a nonprofit or educational institution
19 subject to the West Virginia department of education
20 and the arts, the board of trustees of the university
21 system of West Virginia or the board of directors for
22 colleges located in this state;

23 (3) Sales of property or services to this state, its
24 institutions or subdivisions, governmental units, institu-
25 tions or subdivisions of other states: *Provided*, That the
26 law of the other state provides the same exemption to
27 governmental units or subdivisions of this state and to
28 the United States, including agencies of federal, state or
29 local governments for distribution in public welfare or
30 relief work;

31 (4) Sales of vehicles which are titled by the division of
32 motor vehicles and which are subject to the tax imposed
33 by section four, article three, chapter seventeen-a of this
34 code, or like tax;

35 (5) Sales of property or services to churches who make
36 no charge whatsoever for the services they render:
37 *Provided*, That the exemption granted in this subdivision
38 applies only to services, equipment, supplies, food for
39 meals and materials directly used or consumed by these
40 organizations, and shall not apply to purchases of
41 gasoline or special fuel;

42 (6) Sales of tangible personal property or services to a
43 corporation or organization which has a current regis-
44 tration certificate issued under article twelve of this
45 chapter, is exempt from federal income taxes under
46 Section 501(c)(3) or (c)(4) of the Internal Revenue Code

47 of 1986, as amended, and is:

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

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

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

60 (D) An organization which has no paid employees and
61 its gross income from fund raisers, less reasonable and
62 necessary expenses incurred to raise the gross income (or
63 the tangible personal property or services purchased
64 with the net income), is donated to an organization
65 which is exempt from income taxes under Section
66 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
67 as amended;

68 (E) A youth organization, such as the girl scouts of the
69 United States of America, the boy scouts of America or
70 the YMCA Indian guide/princess program and the local
71 affiliates thereof, which is organized and operated
72 exclusively for charitable purposes and has as its pri-
73 mary purpose the nonsectarian character development
74 and citizenship training of its members;

75 (F) For purposes of this subsection:

76 (i) The term "support" includes, but is not limited to:

77 (I) Gifts, grants, contributions or membership fees;

78 (II) Gross receipts from fund raisers which include
79 receipts from admissions, sales of merchandise, perfor-
80 mance of services or furnishing of facilities in any
81 activity which is not an unrelated trade or business

82 within the meaning of Section 513 of the Internal
83 Revenue Code of 1986, as amended;

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

87 (IV) Gross investment income as defined in Section
88 509(e) of the Internal Revenue Code of 1986, as amended;

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

92 (VI) The value of services or facilities (exclusive of
93 services or facilities generally furnished to the public
94 without charge) furnished by a governmental unit
95 referred to in Section 170(c)(1) of the Internal Revenue
96 Code of 1986, as amended, to an organization without
97 charge. This term does not include any gain from the sale
98 or other disposition of property which would be consid-
99 ered as gain from the sale or exchange of a capital asset,
100 or the value of an exemption from any federal, state or
101 local tax or any similar benefit;

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

106 (iii) The term "membership fee" does not include any
107 amounts paid for tangible personal property or specific
108 services rendered to members by the corporation or
109 organization; or

110 (G) The exemption allowed by this subdivision (6) does
111 not apply to sales of gasoline or special fuel or to sales of
112 tangible personal property or services to be used or
113 consumed in the generation of unrelated business income
114 as defined in Section 513 of the Internal Revenue Code
115 of 1986, as amended. The provisions of this subdivision
116 apply to sales made after the thirtieth day of June, one
117 thousand nine hundred eighty-nine: *Provided*, That the

118 exemption granted in this subdivision applies only to
119 services, equipment, supplies and materials used or
120 consumed in the activities for which the organizations
121 qualify as tax exempt organizations under the Internal
122 Revenue Code and shall not apply to purchases of
123 gasoline or special fuel;

124 (7) An isolated transaction in which any taxable
125 service or any tangible personal property is sold, trans-
126 ferred, offered for sale or delivered by the owner of the
127 property or by his or her representative for the owner's
128 account, the sale, transfer, offer for sale or delivery not
129 being made in the ordinary course of repeated and
130 successive transactions of like character by the owner or
131 on his or her account by the representative: *Provided*,
132 That nothing contained in this subdivision may be
133 construed to prevent an owner who sells, transfers or
134 offers for sale tangible personal property in an isolated
135 transaction through an auctioneer from availing himself
136 or herself of the exemption provided in this subdivision,
137 regardless where the isolated sale takes place. The tax
138 commissioner may adopt such legislative rule pursuant
139 to article three, chapter twenty-nine-a of this code as he
140 or she considers necessary for the efficient administra-
141 tion of this exemption;

142 (8) Sales of tangible personal property or of any
143 taxable services rendered for use or consumption in
144 connection with the commercial production of an
145 agricultural product the ultimate sale of which will be
146 subject to the tax imposed by this article or which would
147 have been subject to tax under this article: *Provided*,
148 That sales of tangible personal property and services to
149 be used or consumed in the construction of or permanent
150 improvement to real property and sales of gasoline and
151 special fuel are not exempt: *Provided, however*, That
152 nails and fencing shall not be considered as improve-
153 ments to real property;

154 (9) Sales of tangible personal property to a person for
155 the purpose of resale in the form of tangible personal

156 property: *Provided*, That sales of gasoline and special
157 fuel by distributors and importers is taxable except
158 when the sale is to another distributor for resale: *Pro-*
159 *vided, however*, That sales of building materials or
160 building supplies or other property to any person engag-
161 ing in the activity of contracting, as defined in this
162 article, which is to be installed in, affixed to or incorpo-
163 rated by that person or his or her agent into any real
164 property, building or structure is not exempt under this
165 subdivision, except that sales of tangible personal
166 property to a person engaging in the activity of contract-
167 ing pursuant to a written contract with the United
168 States, this state, or with a political subdivision of this
169 state, or with a public corporation created by the Legis-
170 lature or by another governmental entity pursuant to an
171 act of the Legislature, for a building or structure, or
172 improvement thereto, or other improvement to real
173 property that is or will be owned and used by the gov-
174 ernmental entity for a governmental or proprietary
175 purpose, who incorporates the property in the building,
176 structure or improvement shall, with respect to the
177 tangible personal property, nevertheless be considered to
178 be the vendor of the property to the governmental entity
179 and any person seeking to qualify for and assert this
180 exception must do so pursuant to the legislative rules as
181 the tax commissioner may promulgate and upon such
182 forms as the tax commissioner may prescribe. A subcon-
183 tractor who, pursuant to a written subcontract with a
184 prime contractor who qualifies for this exception,
185 provides equipment, or materials, and labor to a prime
186 contractor shall be treated in the same manner as the
187 prime contractor is treated with respect to the prime
188 contract under this exception and the legislative rules
189 promulgated by the tax commissioner: *Provided further*,
190 That the exemption for government contractors in the
191 preceding proviso expires on the first day of October,
192 one thousand nine hundred ninety, subject to the transi-
193 tion rules set forth in section eight-c of this article;

194 (10) Sales of newspapers when delivered to consumers

195 by route carriers;

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

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

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

203 (14) Casual and occasional sales of property or services
204 not conducted in a repeated manner or in the ordinary
205 course of repetitive and successive transactions of like
206 character by a corporation or organization which is
207 exempt from tax under subdivision (6) of this subsection
208 on its purchases of tangible personal property or ser-
209 vices:

210 (A) For purposes of this subdivision, the term "casual
211 and occasional sales not conducted in a repeated manner
212 or in the ordinary course of repetitive and successive
213 transactions of like character" means sales of tangible
214 personal property or services at fund raisers sponsored
215 by a corporation or organization which is exempt, under
216 subdivision (6) of this subsection, from payment of the
217 tax imposed by this article on its purchases, when the
218 fund raisers are of limited duration and are held no more
219 than six times during any twelve-month period and
220 limited duration means no more than eighty-four consec-
221 utive hours;

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

225 (15) Sales of property or services to a school which has
226 approval from the board of trustees of the university
227 system of West Virginia or the board of directors of the
228 state college system to award degrees, which has its
229 principal campus in this state, and which is exempt from
230 federal and state income taxes under Section 501(c)(3) of

231 the Internal Revenue Code of 1986, as amended: *Pro-*
232 *vided*, That sales of gasoline and special fuel are taxable;

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

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

241 (18) Leases of motor vehicles titled pursuant to the
242 provisions of article three, chapter seventeen-a of this
243 code to lessees for a period of thirty or more consecutive
244 days. This exemption applies to leases executed on or
245 after the first day of July, one thousand nine hundred
246 eighty-seven, and to payments under long-term leases
247 executed before that date, for months thereof beginning
248 on or after that date;

249 (19) Sales of propane to consumers for poultry house
250 heating purposes, with any seller to the consumer who
251 may have prior paid the tax in his or her price, to not
252 pass on the same to the consumer, but to make applica-
253 tion and receive refund of the tax from the tax commis-
254 sioner, pursuant to rules s which shall be promulgated by
255 the tax commissioner; notwithstanding the provisions of
256 section eighteen of this article or any other provision of
257 this article to the contrary;

258 (20) Any sales of tangible personal property or services
259 purchased after the thirtieth day of September, one
260 thousand nine hundred eighty-seven, and lawfully paid
261 for with food stamps pursuant to the federal food stamp
262 program codified in 7 U.S.C. §2011 et seq., as amended,
263 or with drafts issued through the West Virginia special
264 supplement food program for women, infants and
265 children codified in 42 U.S.C. §1786;

266 (21) Sales of tickets for activities sponsored by elemen-
267 tary and secondary schools located within this state;

268 (22) Sales of electronic data processing services and
269 related software: *Provided*, That for the purposes of this
270 subdivision "electronic data processing services" means:
271 (A) The processing of another's data, including all
272 processes incident to processing of data such as key-
273 punching, keystroke verification, rearranging or sorting
274 of previously documented data for the purpose of data
275 entry or automatic processing and changing the medium
276 on which data is sorted, whether these processes are
277 done by the same person or several persons; and (B)
278 providing access to computer equipment for the purpose
279 of processing data or examining or acquiring data stored
280 in or accessible to the computer equipment;

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

283 (24) Dispensing of services performed by one corpora-
284 tion, partnership or limited liability company for another
285 corporation, partnership or limited liability company
286 when the entities are members of the same controlled
287 group or are related taxpayers as defined in Section 267
288 of the Internal Revenue Code. Control means ownership,
289 directly or indirectly, of stock, equity interests or
290 membership interests possessing fifty percent or more of
291 the total combined voting power of all classes of the
292 stock of a corporation, equity interests of a partnership
293 or membership interests of a limited liability company
294 entitled to vote or ownership, directly or indirectly, of
295 stock, equity interests or membership interests possess-
296 ing fifty percent or more of the value of the corporation,
297 partnership or limited liability company;

298 (25) Food for the following are exempt:

299 (A) Food purchased or sold by public or private
300 schools, school sponsored student organizations or
301 school sponsored parent-teacher associations to students
302 enrolled in such school or to employees of such school
303 during normal school hours; but not those sales of food
304 made to the general public;

305 (B) Food purchased or sold by a public or private
306 college or university or by a student organization offi-
307 cially recognized by the college or university to students
308 enrolled at the college or university when the sales are
309 made on a contract basis so that a fixed price is paid for
310 consumption of food products for a specific period of
311 time without respect to the amount of food product
312 actually consumed by the particular individual contract-
313 ing for the sale and no money is paid at the time the food
314 product is served or consumed;

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

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

325 (E) Food sold by any religious organization at a social
326 or other gathering conducted by it or under its auspices,
327 if the purpose in selling the food is to obtain revenue for
328 the functions and activities of the organization and the
329 revenue obtained from selling the food is actually used
330 in carrying on those functions and activities: *Provided*,
331 That purchases made by the organizations are not
332 exempt as a purchase for resale;

333 (26) Sales of food by little leagues, midget football
334 leagues, youth football or soccer leagues and similar
335 types of organizations, including scouting groups and
336 church youth groups, if the purpose in selling the food is
337 to obtain revenue for the functions and activities of the
338 organization and the revenues obtained from selling the
339 food is actually used in supporting or carrying on
340 functions and activities of the groups: *Provided*, That the
341 purchases made by the organizations are not exempt as
342 a purchase for resale;

343 (27) Charges for room and meals by fraternities and
344 sororities to their members: *Provided*, That the pur-
345 chases made by a fraternity or sorority are not exempt as
346 a purchase for resale;

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

349 (29) Sales of tangible personal property or services to
350 any person which this state is prohibited from taxing
351 under the laws of the United States or under the consti-
352 tution of this state;

353 (30) Sales of tangible personal property or services to
354 any person who claims exemption from the tax imposed
355 by this article or article fifteen-a of this chapter pursu-
356 ant to the provision of any other chapter of this code;

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

359 (32) Sales of livestock, poultry or other farm products
360 in their original state by the producer thereof or a
361 member of the producer's immediate family who is not
362 otherwise engaged in making retail sales of tangible
363 personal property; and sales of livestock sold at public
364 sales sponsored by breeders or registry associations or
365 livestock auction markets: *Provided*, That the exemp-
366 tions allowed by this subdivision apply to sales made on
367 or after the first day of July, one thousand nine hundred
368 ninety, and may be claimed without presenting or
369 obtaining exemption certificates: *Provided, however*,
370 That the farmer shall maintain adequate records;

371 (33) Sales of motion picture films to motion picture
372 exhibitors for exhibition if the sale of tickets or the
373 charge for admission to the exhibition of the film is
374 subject to the tax imposed by this article and sales of
375 coin-operated video arcade machines or video arcade
376 games to a person engaged in the business of providing
377 the machines to the public for a charge upon which the
378 tax imposed by this article is remitted to the tax com-
379 missioner: *Provided*, That the exemption provided in this

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 (34) Sales of aircraft repair, remodeling and mainte-
385 nance services when such services are to an aircraft
386 operated by a certified or licensed carrier of persons or
387 property, or by a governmental entity, or to an engine or
388 other component part of an aircraft operated by a
389 certificated or licensed carrier of persons or property, or
390 by a governmental entity and sales of tangible personal
391 property that is permanently affixed or permanently
392 attached as a component part of an aircraft owned or
393 operated by a certificated or licensed carrier of persons
394 or property, or by a governmental entity, as part of the
395 repair, remodeling or maintenance service and sales of
396 machinery, tools or equipment, directly used or con-
397 sumed exclusively in the repair, remodeling or mainte-
398 nance of aircraft, aircraft engines, or aircraft component
399 parts, for a certificated or licensed carrier of persons or
400 property, or for a governmental entity;

401 (35) Charges for memberships or services provided by
402 health and fitness organizations relating to personalized
403 fitness programs;

404 (36) Sales of services by individuals who baby-sit for a
405 profit: *Provided*, That the gross receipts of the individual
406 from the performance of baby-sitting services do not
407 exceed five thousand dollars in a taxable year;

408 (37) Sales of services after the thirtieth day of June,
409 one thousand nine hundred ninety-seven, by public
410 libraries or by libraries at academic institutions or by
411 libraries at institutions of higher learning;

412 (38) Commissions received after the thirtieth day of
413 June, one thousand nine hundred ninety-seven, by a
414 manufacturer's representative;

415 (39) Sales of primary opinion research services after
416 the thirtieth day of June, one thousand nine hundred

417 ninety-seven, when:

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

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

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

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

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

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

451 (A) Lumber into furniture, toys, collectibles and home
452 furnishings;

- 453 (B) Fruits into wine;
454 (C) Honey into wine;
455 (D) Wool into fabric;
456 (E) Raw hides into semi-finished or finished leather
457 products;
458 (F) Milk into cheese;
459 (G) Fruits or vegetables into a dried, canned or frozen
460 product;
461 (H) Feeder cattle into commonly accepted slaughter
462 weights;
463 (I) Aquatic animals into a dried, canned, cooked or
464 frozen product; and
465 (J) Poultry into a dried, canned, cooked or frozen
466 product;
467 (41) Sales of music instructional services after the
468 thirtieth day of June, one thousand nine hundred ninety-
469 seven, by a music teacher; and
470 (42) After the thirtieth day of June, one thousand nine
471 hundred ninety-seven, charges to a member by a mem-
472 bership association or organization which is exempt
473 from paying federal income taxes under Section 501(c)(3)
474 or (c)(6) of the Internal Revenue Code of 1986, as
475 amended, for membership in the association or organiza-
476 tion, including charges to members for newsletters
477 prepared by the association or organization for distribu-
478 tion primarily to its members, charges to members for
479 continuing education seminars workshops, conventions,
480 lectures or courses put on or sponsored by the associa-
481 tion or organization, including charges for related course
482 materials prepared by the association or organization or
483 by the speaker or speakers for use during the continuing
484 education seminar, workshop, convention, lecture or
485 course, but not including any separate charge or sepa-
486 rately stated charge for meals, lodging, entertainment or
487 transportation taxable under this article: *Provided*, That

488 the association or organization pays the tax imposed by
489 this article on its purchases of meals, lodging, entertain-
490 ment or transportation taxable under this article for
491 which a separate or separately stated charge is not made.
492 A membership association or organization which is
493 exempt from paying federal income taxes under Section
494 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986,
495 as amended, may elect to pay the tax imposed under this
496 article on the purchases for which a separate charge or
497 separately stated charge could apply and not charge its
498 members the tax imposed by this article or, the associa-
499 tion or organization may avail itself of the exemption set
500 forth in subdivision (9) of this subsection relating to
501 purchases of tangible personal property for resale and
502 then collect the tax imposed by this article on those
503 items from its member.

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

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

520 (2) Sales of services, machinery, supplies and materials
521 directly used or consumed in the activities of manufac-
522 turing, transportation, transmission, communication,
523 production of natural resources, gas storage, generation
524 or production or selling electric power, provision of a
525 public utility service or the operation of a utility service

526 or the operation of a utility business, in the businesses or
527 organizations named above and shall not apply to
528 purchases of gasoline or special fuel;

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

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

539 (5) Sales of building materials or building supplies or
540 other property to an organization qualified under
541 Section 501(c)(3) or (c)(4) of the Internal Revenue Code
542 of 1986, as amended, which are to be installed in, affixed
543 to or incorporated by the organization or its agent into
544 real property, or into a building or structure which is or
545 will be used as permanent low-income housing, transi-
546 tional housing, emergency homeless shelter, domestic
547 violence shelter or emergency children and youth shelter
548 if the shelter is owned, managed, developed or operated
549 by an organization qualified under Section 501(c)(3) or
550 (c)(4) of the Internal Revenue Code of 1986, as amended.

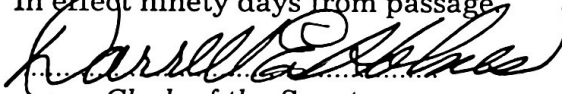
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

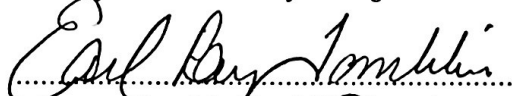

Chairman House Committee

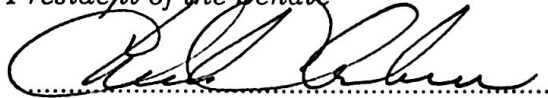
Originated in the Senate.

In effect ninety days from passage

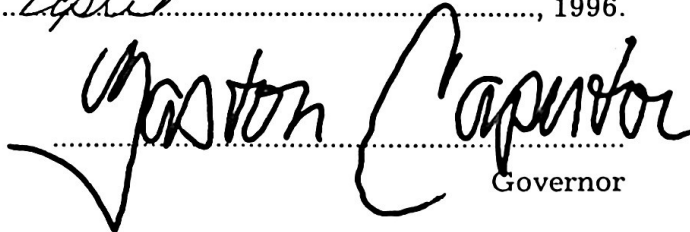

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 1st
day of April, 1996.


Governor

PRESENTED TO THE

GOVERNOR,

Date 3/22/46

Time 2:44 pm