WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1996

ENROLLED

SENATE BILL NO. 37

(By Senators Craig and Scott)

PASSED March 9, 1996

In Effect NINETY DAYS FROM Passage
AN ACT to repeal sections nine-c and nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine of said article, all relating to sales tax; exemptions from sales tax; specifying effective dates; creating exemptions from the sales tax for dispensing of services performed by a partnership or limited liability company for another 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; creating an exemption for value added products and specifying definitions of value added products; creating an exemption for sales of musical instructional services by music teachers; creat-
ing an exemption for charges to members for membership, newsletters, seminars and instructional materials related thereto for members of certain organizations which are tax exempt under specified sections of the Internal Revenue Code; repealing the sections related to exemption certificates and direct pay permits; and exempting commissions received by manufacturers' representatives and numbering the exemptions from sales tax.

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article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section nine of said article be amended and reenacted to read as follows:

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 regulation, specify those exemptions authorized in this subsection for which exemptions certificates are not required. The following sales of tangible personal property and/or services are exempt as provided in this subsection:

1. Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

2. 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.
and the arts, board of trustees of the university system of West Virginia or the board of directors for colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions or subdivisions 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;

(4) Sales of vehicles which are titled by the division 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;

(5) Sales of tangible personal property or services to churches who make no charge whatsoever for the services they render: Provided, That the exemption herein granted shall 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;

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

(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 maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;
(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 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 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 primary 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, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

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

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

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

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

(ii) 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 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 subdivision (6) of this subsection 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 subsection as amended by this article 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;

(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 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 transac-
tions of like character by such owner or on his account
by such representative: Provided, That nothing con-
tained herein may be construed to prevent an owner who
sells, transfers or offers for sale tangible personal
property in an isolated transaction through an auction-
ceer 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 as he deems necessary for the efficient administra-
tion 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 shall not be exempt: Provided, however,
That nails and fencing shall not be considered as im-
provements to real property;

(9) 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 engag-
ing in the activity of contracting, as defined in this
article, which is to be installed in, affixed to or incorpo-
rated 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 prop-
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 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
such property in such building, structure or improve-
ment 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 subcon-
tractor who, pursuant to a written subcontract with a
prime contractor who qualifies for this exception,
provides equipment, or materials, and labor to such a
prime contractor shall be treated in the same manner as
the prime contractor is treated with respect to the prime
contract under this exception and the legislative rules
and regulations promulgated by the tax commissioner:
Provided further, That the exemption for government
contractors in the preceding proviso shall expire 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
by route carriers;

(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 subsection, 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 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;

(B) The provisions of this subsection, as amended by this article, shall 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 shall be taxable;

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

(17) Sales of lottery tickets and materials by licensed lottery agents and lottery retailers authorized by the
(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 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;

(19) 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 to the consumer, but to make application and receive a refund of such tax from 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;

(22) Sales of electronic data processing services and related software: Provided, That for the purposes of this subsection "electronic data processing services" means:

(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 such computer equipment;

(23) Tuition charged for attending educational summer camps;

(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;

(25) Food for the following shall be exempt:

(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 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;
(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 so 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 such functions and activities: Provided, That purchases made by such organizations shall not be 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 such purchases made by such organizations shall not be exempt as a purchase for resale;

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

(28) Sales of or charges for 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 consti-
(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 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;

(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 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;

(34) Sales of aircraft repair, remodeling and maintenance services when such services are to an aircraft operated by a certified 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 con-
sumed exclusively in the repair, remodeling or mainte-
nance of aircraft, aircraft engines or aircraft component
parts, for a certificated or licensed carrier of persons or
property, or for a governmental entity;
(35) Charges for memberships or services provided by
health and fitness organizations relating to personalized
physical fitness programs; and
(36) Sales of services by individuals who baby-sit for a
profit: Provided, That the gross receipts of the individual
from the performance of baby-sitting services do not
exceed five thousand dollars in a taxable year;
(37) Sales of services after the thirtieth day of June,
one thousand nine hundred ninety-seven, by public
libraries or by libraries at academic institutions or by
libraries at institutions of higher learning;
(38) Commissions received after the thirtieth day of
June, one thousand nine hundred ninety-seven, by a
manufacturer's representative;
(39) Sales of primary opinion research services after
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
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;

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 herein granted shall 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 article, the following enterprises qualify as processing raw agricultural products into value-added products:

(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
(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;
(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 nine of this article 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, as provided in section nine-b of this article, 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 tangible personal property or services to 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, 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 of 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 shall be
taxable;

(4) 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; 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 such organization or its agent into real property, or into a building or structure which is or will be used as permanent low-income housing, transitional housing, emergency homeless shelter, domestic violence shelter or emergency children and youth shelter if such shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.
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 disagreeed to this the 14th day of March, 1996.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/14/96
Time 3:40 PM