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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2002

ENROLLED

SENATE BILL NO. 285

(By Senators Bailey and Weston)

PASSED March 6, 2002

In Effect ninety days from Passage

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Senate Bill No. 285

(BY SENATORS BAILEY AND WOOTON)

[Passed March 6, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing an exemption from the consumers sales tax for the service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia department of environmental protection or the West Virginia bureau for public health or both.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE 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 the form required by
6 the tax commissioner, and deliver it to the vendor of the
7 property or service, in the manner required by the tax
8 commissioner. However, the tax commissioner may, by
9 rule, specify those exemptions authorized in this subsec-
10 tion for which exemptions certificates are not required.
11 The following sales of tangible personal property and
12 services are exempt as provided in this subsection:

13 (1) Sales of gas, steam and water delivered to consumers
14 through mains or pipes and sales of electricity;

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

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

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

33 (5) Sales of property or services to churches which make
34 no charge whatsoever for the services they render: *Pro-*
35 *vided*, That the exemption granted in this subdivision

36 applies only to services, equipment, supplies, food for
37 meals and materials directly used or consumed by these
38 organizations and does not apply to purchases of gasoline
39 or special fuel;

40 (6) Sales of tangible personal property or services to a
41 corporation or organization which has a current registra-
42 tion certificate issued under article twelve of this chapter,
43 which is exempt from federal income taxes under Section
44 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
45 amended, and which is:

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

49 (B) An elementary or secondary school which maintains
50 a regular faculty and curriculum and has a regularly
51 enrolled body of pupils or students in attendance at the
52 place in this state where its educational activities are
53 regularly carried on;

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

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

65 (E) A youth organization, such as the girl scouts of the
66 United States of America, the boy scouts of America or the
67 YMCA Indian guide/princess program and the local
68 affiliates thereof, which is organized and operated exclu-
69 sively for charitable purposes and has as its primary

70 purpose the nonsectarian character development and
71 citizenship training of its members;

72 (F) For purposes of this subsection:

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

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

75 (II) Gross receipts from fund raisers which include
76 receipts from admissions, sales of merchandise, perfor-
77 mance of services or furnishing of facilities in any activity
78 which is not an unrelated trade or business within the
79 meaning of Section 513 of the Internal Revenue Code of
80 1986, as amended;

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

84 (IV) Gross investment income as defined in Section
85 509(e) of the Internal Revenue Code of 1986, as amended;

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

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

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

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

107 (G) The exemption allowed by this subdivision does not
108 apply to sales of gasoline or special fuel or to sales of
109 tangible personal property or services to be used or
110 consumed in the generation of unrelated business income
111 as defined in Section 513 of the Internal Revenue Code of
112 1986, as amended. The provisions of this subdivision
113 apply to sales made after the thirtieth day of June, one
114 thousand nine hundred eighty-nine: *Provided*, That the
115 exemption granted in this subdivision applies only to
116 services, equipment, supplies and materials used or
117 consumed in the activities for which the organizations
118 qualify as tax exempt organizations under the Internal
119 Revenue Code and does not apply to purchases of gasoline
120 or special fuel;

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

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

150 (9) Sales of tangible personal property to a person for the
151 purpose of resale in the form of tangible personal property:
152 *Provided*, That sales of gasoline and special fuel by
153 distributors and importers is taxable except when the sale
154 is to another distributor for resale: *Provided, however*,
155 That sales of building materials or building supplies or
156 other property to any person engaging in the activity of
157 contracting, as defined in this article, which is to be
158 installed in, affixed to or incorporated by that person or
159 his or her agent into any real property, building or struc-
160 ture is not exempt under this subdivision;

161 (10) Sales of newspapers when delivered to consumers by
162 route carriers;

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

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

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

170 (14) Casual and occasional sales of property or services
171 not conducted in a repeated manner or in the ordinary
172 course of repetitive and successive transactions of like
173 character by a corporation or organization which is

174 exempt from tax under subdivision (6) of this subsection
175 on its purchases of tangible personal property or services:

176 (A) For purposes of this subdivision, the term "casual
177 and occasional sales not conducted in a repeated manner
178 or in the ordinary course of repetitive and successive
179 transactions of like character" means sales of tangible
180 personal property or services at fund raisers sponsored by
181 a corporation or organization which is exempt, under
182 subdivision (6) of this subsection, from payment of the tax
183 imposed by this article on its purchases, when the fund
184 raisers are of limited duration and are held no more than
185 six times during any twelve-month period and "limited
186 duration" means no more than eighty-four consecutive
187 hours; and

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

191 (15) Sales of property or services to a school which has
192 approval from the board of trustees of the university
193 system of West Virginia or the board of directors of the
194 state college system to award degrees, which has its
195 principal campus in this state, and which is exempt from
196 federal and state income taxes under Section 501(c)(3) of
197 the Internal Revenue Code of 1986, as amended: *Provided*,
198 That sales of gasoline and special fuel are taxable;

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

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

207 (18) Leases of motor vehicles titled pursuant to the
208 provisions of article three, chapter seventeen-a of this code

209 to lessees for a period of thirty or more consecutive days.
210 This exemption applies to leases executed on or after the
211 first day of July, one thousand nine hundred eighty-seven,
212 and to payments under long-term leases executed before
213 that date for months of the lease beginning on or after that
214 date;

215 (19) Notwithstanding the provisions of section eighteen
216 of this article or any other provision of this article to the
217 contrary, sales of propane to consumers for poultry house
218 heating purposes, with any seller to the consumer who may
219 have prior paid the tax in his or her price, to not pass on
220 the same to the consumer, but to make application and
221 receive refund of the tax from the tax commissioner
222 pursuant to rules which are promulgated after being
223 proposed for legislative approval in accordance with
224 chapter twenty-nine-a of this code by the tax commis-
225 sioner;

226 (20) Any sales of tangible personal property or services
227 purchased after the thirtieth day of September, one
228 thousand nine hundred eighty-seven, and lawfully paid for
229 with food stamps pursuant to the federal food stamp
230 program codified in 7 U.S.C. §2011 et seq., as amended, or
231 with drafts issued through the West Virginia special
232 supplement food program for women, infants and children
233 codified in 42 U.S.C. §1786;

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

236 (22) Sales of electronic data processing services and
237 related software: *Provided*, That, for the purposes of this
238 subdivision, "electronic data processing services" means:
239 (A) The processing of another's data, including all pro-
240 cesses incident to processing of data such as keypunching,
241 keystroke verification, rearranging or sorting of previously
242 documented data for the purpose of data entry or auto-
243 matic processing and changing the medium on which data
244 is sorted, whether these processes are done by the same

245 person or several persons; and (B) providing access to
246 computer equipment for the purpose of processing data or
247 examining or acquiring data stored in or accessible to the
248 computer equipment;

249 (23) Tuition charged for attending educational summer
250 camps;

251 (24) Dispensing of services performed by one corpora-
252 tion, partnership or limited liability company for another
253 corporation, partnership or limited liability company
254 when the entities are members of the same controlled
255 group or are related taxpayers as defined in Section 267 of
256 the Internal Revenue Code. "Control" means ownership,
257 directly or indirectly, of stock, equity interests or member-
258 ship interests possessing fifty percent or more of the total
259 combined voting power of all classes of the stock of a
260 corporation, equity interests of a partnership or member-
261 ship interests of a limited liability company entitled to
262 vote or ownership, directly or indirectly, of stock, equity
263 interests or membership interests possessing fifty percent
264 or more of the value of the corporation, partnership or
265 limited liability company;

266 (25) Food for the following are exempt:

267 (A) Food purchased or sold by a public or private school,
268 school-sponsored student organizations or school-spon-
269 sored parent-teacher associations to students enrolled in
270 the school or to employees of the school during normal
271 school hours; but not those sales of food made to the
272 general public;

273 (B) Food purchased or sold by a public or private college
274 or university or by a student organization officially
275 recognized by the college or university to students enrolled
276 at the college or university when the sales are made on a
277 contract basis so that a fixed price is paid for consumption
278 of food products for a specific period of time without
279 respect to the amount of food product actually consumed

280 by the particular individual contracting for the sale and no
281 money is paid at the time the food product is served or
282 consumed;

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

287 (D) Food sold by a charitable or private nonprofit
288 organization, a nonprofit organization or a governmental
289 agency under a program operating in West Virginia for a
290 minimum of five years to provide food at or below cost to
291 individuals who perform a minimum of two hours of
292 community service for each unit of food purchased from
293 the organization;

294 (E) Food sold in an occasional sale by a charitable or
295 nonprofit organization, including volunteer fire depart-
296 ments and rescue squads, if the purpose of the sale is to
297 obtain revenue for the functions and activities of the
298 organization and the revenue obtained is actually ex-
299 pended for that purpose;

300 (F) Food sold by any religious organization at a social or
301 other gathering conducted by it or under its auspices, if
302 the purpose in selling the food is to obtain revenue for the
303 functions and activities of the organization and the
304 revenue obtained from selling the food is actually used in
305 carrying on those functions and activities: *Provided*, That
306 purchases made by the organizations are not exempt as a
307 purchase for resale;

308 (26) Sales of food by little leagues, midget football
309 leagues, youth football or soccer leagues, band boosters or
310 other school or athletic booster organizations supporting
311 activities for grades kindergarten through twelve and
312 similar types of organizations, including scouting groups
313 and church youth groups, if the purpose in selling the food
314 is to obtain revenue for the functions and activities of the

315 organization and the revenues obtained from selling the
316 food is actually used in supporting or carrying on func-
317 tions and activities of the groups: *Provided*, That the
318 purchases made by the organizations are not exempt as a
319 purchase for resale;

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

324 (28) Sales of or charges for the transportation of passen-
325 gers in interstate commerce;

326 (29) Sales of tangible personal property or services to
327 any person which this state is prohibited from taxing
328 under the laws of the United States or under the constitu-
329 tion of this state;

330 (30) Sales of tangible personal property or services to
331 any person who claims exemption from the tax imposed by
332 this article or article fifteen-a of this chapter pursuant to
333 the provision of any other chapter of this code;

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

336 (32) Sales of livestock, poultry or other farm products in
337 their original state by the producer of the livestock,
338 poultry or other farm products or a member of the pro-
339 ducer's immediate family who is not otherwise engaged in
340 making retail sales of tangible personal property; and sales
341 of livestock sold at public sales sponsored by breeders or
342 registry associations or livestock auction markets: *Pro-
343 vided*, That the exemptions allowed by this subdivision
344 apply to sales made on or after the first day of July, one
345 thousand nine hundred ninety, and may be claimed
346 without presenting or obtaining exemption certificates:
347 *Provided, however*, That the farmer shall maintain
348 adequate records;

349 (33) Sales of motion picture films to motion picture
350 exhibitors for exhibition if the sale of tickets or the charge
351 for admission to the exhibition of the film is subject to the
352 tax imposed by this article and sales of coin-operated
353 video arcade machines or video arcade games to a person
354 engaged in the business of providing the machines to the
355 public for a charge upon which the tax imposed by this
356 article is remitted to the tax commissioner: *Provided*, That
357 the exemption provided in this subdivision applies to sales
358 made on or after the first day of July, one thousand nine
359 hundred ninety, and may be claimed by presenting to the
360 seller a properly executed exemption certificate;

361 (34) Sales of aircraft repair, remodeling and mainte-
362 nance services when the services are to an aircraft oper-
363 ated by a certified or licensed carrier of persons or prop-
364 erty, or by a governmental entity, or to an engine or other
365 component part of an aircraft operated by a certificated or
366 licensed carrier of persons or property, or by a governmen-
367 tal entity and sales of tangible personal property that is
368 permanently affixed or permanently attached as a compo-
369 nent part of an aircraft owned or operated by a certifi-
370 cated or licensed carrier of persons or property, or by a
371 governmental entity, as part of the repair, remodeling or
372 maintenance service and sales of machinery, tools or
373 equipment, directly used or consumed exclusively in the
374 repair, remodeling or maintenance of aircraft, aircraft
375 engines or aircraft component parts, for a certificated or
376 licensed carrier of persons or property, or for a govern-
377 mental entity;

378 (35) Charges for memberships or services provided by
379 health and fitness organizations relating to personalized
380 fitness programs;

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

385 (37) Sales of services after the thirtieth day of June, one
386 thousand nine hundred ninety-seven, by public libraries or
387 by libraries at academic institutions or by libraries at
388 institutions of higher learning;

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

392 (39) Sales of primary opinion research services after the
393 thirtieth day of June, one thousand nine hundred ninety-
394 seven, when:

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

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

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

404 For the purpose of this subdivision, the term "primary
405 opinion research" means original research in the form of
406 telephone surveys, mall intercept surveys, focus group
407 research, direct mail surveys, personal interviews and
408 other data collection methods commonly used for quanti-
409 tative and qualitative opinion research studies;

410 (40) Sales of property or services after the thirtieth day
411 of June, one thousand nine hundred ninety-seven, to
412 persons within the state when those sales are for the
413 purposes of the production of value-added products:
414 *Provided*, That the exemption granted in this subdivision
415 applies only to services, equipment, supplies and materials
416 directly used or consumed by those persons engaged solely
417 in the production of value-added products: *Provided*,
418 *however*, That this exemption may not be claimed by any

419 one purchaser for more than five consecutive years, except
420 as otherwise permitted in this section.

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

428 (A) Lumber into furniture, toys, collectibles and home
429 furnishings;

430 (B) Fruits into wine;

431 (C) Honey into wine;

432 (D) Wool into fabric;

433 (E) Raw hides into semifinished or finished leather
434 products;

435 (F) Milk into cheese;

436 (G) Fruits or vegetables into a dried, canned or frozen
437 product;

438 (H) Feeder cattle into commonly accepted slaughter
439 weights;

440 (I) Aquatic animals into a dried, canned, cooked or
441 frozen product; and

442 (J) Poultry into a dried, canned, cooked or frozen prod-
443 uct;

444 (41) After the thirtieth day of June, one thousand nine
445 hundred ninety-seven, sales of music instructional services
446 by a music teacher and artistic services or artistic perfor-
447 mances of an entertainer or performing artist pursuant to
448 a contract with the owner or operator of a retail establish-
449 ment, restaurant, inn, bar, tavern, sports or other enter-

450 tainment facility or any other business location in this
451 state in which the public or a limited portion of the public
452 may assemble to hear or see musical works or other artistic
453 works be performed for the enjoyment of the members of
454 the public there assembled when the amount paid by the
455 owner or operator for the artistic service or artistic
456 performance does not exceed three thousand dollars:
457 *Provided*, That nothing contained herein may be construed
458 to deprive private social gatherings, weddings or other
459 private parties from asserting the exemption set forth in
460 this subdivision. For the purposes of this exemption,
461 artistic performance or artistic service means and is
462 limited to the conscious use of creative power, imagination
463 and skill in the creation of aesthetic experience for an
464 audience present and in attendance and includes, and is
465 limited to, stage plays, musical performances, poetry
466 recitations and other readings, dance presentation, cir-
467 cuses and similar presentations and does not include the
468 showing of any film or moving picture, gallery presenta-
469 tions of sculptural or pictorial art, nude or strip show
470 presentations, video games, video arcades, carnival rides,
471 radio or television shows or any video or audio taped
472 presentations or the sale or leasing of video or audio tapes,
473 airshows, or any other public meeting, display or show
474 other than those specified herein: *Provided, however*, That
475 nothing contained herein may be construed to exempt the
476 sales of tickets from the tax imposed in this article. The
477 state tax commissioner shall propose a legislative rule
478 pursuant to article three, chapter twenty-nine-a of this
479 code establishing definitions and eligibility criteria for
480 asserting this exemption which is not inconsistent with the
481 provisions set forth herein: *Provided further*, That nude
482 dancers or strippers may not be considered as entertainers
483 for the purposes of this exemption;

484 (42) After the thirtieth day of June, one thousand nine
485 hundred ninety-seven, charges to a member by a member-
486 ship association or organization which is exempt from
487 paying federal income taxes under Section 501(c)(3) or

488 (c)(6) of the Internal Revenue Code of 1986, as amended,
489 for membership in the association or organization, includ-
490 ing charges to members for newsletters prepared by the
491 association or organization for distribution primarily to its
492 members, charges to members for continuing education
493 seminars, workshops, conventions, lectures or courses put
494 on or sponsored by the association or organization,
495 including charges for related course materials prepared by
496 the association or organization or by the speaker or
497 speakers for use during the continuing education seminar,
498 workshop, convention, lecture or course, but not including
499 any separate charge or separately stated charge for meals,
500 lodging, entertainment or transportation taxable under
501 this article: *Provided*, That the association or organization
502 pays the tax imposed by this article on its purchases of
503 meals, lodging, entertainment or transportation taxable
504 under this article for which a separate or separately stated
505 charge is not made. A membership association or organi-
506 zation which is exempt from paying federal income taxes
507 under Section 501(c)(3) or (c)(6) of the Internal Revenue
508 Code of 1986, as amended, may elect to pay the tax
509 imposed under this article on the purchases for which a
510 separate charge or separately stated charge could apply
511 and not charge its members the tax imposed by this article
512 or the association or organization may avail itself of the
513 exemption set forth in subdivision (9) of this subsection
514 relating to purchases of tangible personal property for
515 resale and then collect the tax imposed by this article on
516 those items from its member;

517 (43) Sales of governmental services or governmental
518 materials after the thirtieth day of June, one thousand nine
519 hundred ninety-seven, by county assessors, county sheriffs,
520 county clerks or circuit clerks in the normal course of local
521 government operations;

522 (44) Direct or subscription sales by the division of
523 natural resources of the magazine currently entitled
524 "Wonderful West Virginia" and by the division of culture

525 and history of the magazine currently entitled
526 "Goldenseal" and the journal currently entitled "West
527 Virginia History";

528 (45) Sales of soap to be used at car wash facilities;

529 (46) Commissions received by a travel agency from an
530 out-of-state vendor; and

531 (47) The service of providing technical evaluations for
532 compliance with federal and state environmental stan-
533 dards provided by environmental and industrial consul-
534 tants who have formal certification through the West
535 Virginia department of environmental protection or the
536 West Virginia bureau for public health or both. For
537 purposes of this exemption, the service of providing
538 technical evaluations for compliance with federal and
539 state environmental standards includes those costs of
540 tangible personal property directly used in providing such
541 services that are separately billed to the purchaser of such
542 services and on which the tax imposed by this article has
543 previously been paid by the service provider.

544 (b) *Refundable exemptions.* – Any person having a right
545 or claim to any exemption set forth in this subsection shall
546 first pay to the vendor the tax imposed by this article and
547 then apply to the tax commissioner for a refund or credit,
548 or, as provided in section nine-d of this article, give to the
549 vendor his or her West Virginia direct pay permit number.
550 The following sales of tangible personal property and
551 services are exempt from tax as provided in this subsec-
552 tion:

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

560 (2) Sales of services, machinery, supplies and materials
561 directly used or consumed in the activities of manufactur-
562 ing, transportation, transmission, communication, produc-
563 tion of natural resources, gas storage, generation or
564 production or selling electric power, provision of a public
565 utility service or the operation of a utility service or the
566 operation of a utility business, in the businesses or organi-
567 zations named in this subdivision and does not apply to
568 purchases of gasoline or special fuel;

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

573 (4) Sales and services, firefighting or station house
574 equipment, including construction and automotive, made
575 to any volunteer fire department organized and incorpo-
576 rated under the laws of the state of West Virginia: *Pro-*
577 *vided*, That sales of gasoline and special fuel are taxable;
578 and

579 (5) Sales of building materials or building supplies or
580 other property to an organization qualified under Section
581 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
582 amended, which are to be installed in, affixed to or
583 incorporated by the organization or its agent into real
584 property or into a building or structure which is or will be
585 used as permanent low-income housing, transitional
586 housing, an emergency homeless shelter, a domestic
587 violence shelter or an emergency children and youth
588 shelter if the shelter is owned, managed, developed or
589 operated by an organization qualified under Section
590 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
591 amended.

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

Lawrence
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *18th*
Day of *March*, 2002.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/12/02

Time 10:38am