WEST VIRGINIA LEGISLATURE
Regular Session 2003

ENROLLED

SENATE BILL NO. 531

(By Senator "Pass, et al")

PASSED March 8, 2003

In Effect 90 days from Passage
AN ACT to amend and reenact sections two and nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the consumers sales and services tax; clarifying that payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer, distributor or other third-party marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement are excepted from the tax; providing an expansion of the current exemption for casual and occasional sales by volunteer fire departments and volunteer school support groups from six to eighteen sales per year; and providing an exemption for certain lodging franchise assessed fees from the consumers sales and service tax.
Enr. S. B. No. 531]

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) General. — When used in this article and article fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) Definitions. —

(1) “Business” includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) “Communication” means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and includes commercial broadcast radio, commercial broadcast television and cable television.

(3) “Contracting”:

(A) In general. — “Contracting” means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor, subcontractor or construction manager) in
fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. Contracting also includes services provided by a construction manager so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(B) Form of contract not controlling. – An activity that falls within the scope of the definition of contracting constitutes contracting regardless of whether the contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract, whether or not open-ended, or any other kind of construction contract.

(C) Special rules. – For purposes of this definition:

(i) The term “structure” includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property or which adds utility to real property or any part thereof or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time;

(ii) The term “alteration” means, and is limited to, alterations which are capital improvements to a building or structure or to real property;

(iii) The term “repair” means, and is limited to, repairs which are capital improvements to a building or structure or to real property;

(iv) The term “decoration” means, and is limited to, decorations which are capital improvements to a building or structure or to real property;
(v) The term “improvement” means, and is limited to, improvements which are capital improvements to a building or structure or to real property;

(vi) The term “capital improvement” means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property, or any part thereof, and that last or are intended to be relatively permanent. As used herein, “relatively permanent” means lasting at least a year in duration without the necessity for regularly scheduled recurring service to maintain the capital improvement. “Regular recurring service” means regularly scheduled service intervals of less than one year;

(vii) Contracting does not include the furnishing of work, or both materials and work, in the nature of hookup, connection, installation or other services if the service is incidental to the retail sale of tangible personal property from the service provider’s inventory: Provided, That the hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant to this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if the repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or intends to allow the real property or thing permanently attached thereto to remain in service for a year or longer; and
The term "construction manager" means a person who enters into an agreement to employ, direct, coordinate or manage design professionals and contractors who are hired and paid directly by the owner or the construction manager. The business activities of a "construction manager" as defined in this subdivision constitute contracting, so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(4) "Directly used or consumed" in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include only:

(i) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(ii) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(iii) Transporting or storing property undergoing trans- portation, communication, transmission, manufacturing production or production of natural resources;

(iv) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;
(v) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(vi) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(vii) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(viii) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(ix) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(x) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xi) Maintaining or repairing of property, including maintenance equipment, directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xii) Storing, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;
(xiii) Engaging in pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(xiv) Otherwise using as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(B) Uses of property or services which do not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of these activities.

(5) “Directly used or consumed” in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business means used or consumed in those activities or operations which constitute an integral and essential part of those activities or operation, as
contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to those activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include only:

(i) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;

(ii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the transmission or distribution of gas, water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and these vehicles and their equipment as are specifically designed and equipped for those purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(iii) Tangible personal property, custom software or services, including equipment, machinery, apparatus,
supplies, fuel and power, appliance, pipes, wires and mains, which are used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and repair parts used to keep in operation exempt storage devices;

(iv) Tangible personal property, custom software or services used immediately in the storage, removal or transportation of economic waste resulting from the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business;

(v) Tangible personal property, custom software or services used immediately in pollution control or environmental quality or protection activity or community safety or security directly relating to the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business.

(B) Uses of property or services which would not constitute direct use or consumption in the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to the activities of gas storage, generation or production or
(6) "Gas storage" means the injection of gas into a storage reservoir or the storage of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir engaged in by businesses subject to the business and occupation tax imposed by sections two and two-e, article thirteen of this chapter.

(7) "Generating or producing or selling of electric power" means the generation, production or sale of electric power engaged in by businesses subject to the business and occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

(8) "Gross proceeds" means the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses may not be deducted, but any credit or refund made for goods returned may be deducted.

(9) "Includes" and "including", when used in a definition contained in this article, does not exclude other things otherwise within the meaning of the term being defined.

(10) "Manufacturing" means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(11) "Person" means any individual, partnership, association, corporation, limited liability company, limited liability partnership or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.
(12) "Personal service" includes those: (A) Compensated by the payment of wages in the ordinary course of employment; and (B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(13) Production of natural resource.

(A) "Production of natural resources" means, except for oil and gas, the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith and the construction, installation or fabrication of ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated facilities and apparatus, by the producer or others, including contractors and subcontractors, at a coal mine or coal production facility.

(B) For the natural resources oil and gas, "production of natural resources" means the performance, by either the owner of the natural resources, a contractor or a subcontractor, of the act or process of exploring, developing, drilling, well-stimulation activities such as logging, perforating or fracturing, well-completion activities such as the installation of the casing, tubing and other machinery and equipment and any reclamation, waste disposal or environmental activities associated therewith, including the installation of the gathering system or other pipeline to transport the oil and gas produced or environmental activities associated therewith and any service work performed on the well or well site after production of the well has initially commenced.

(C) All work performed to install or maintain facilities up to the point of sale for severance tax purposes is
(D) "Production of natural resources" does not include
the performance or furnishing of work, or materials or
work, in fulfillment of a contract for the construction,
alteration, repair, decoration or improvement of a new or
existing building or structure, or any part thereof, or for
the alteration, improvement or development of real
property, by persons other than those otherwise directly
engaged in the activities specifically set forth in this
subdivision (13) as "production of natural resources".

(14) "Providing a public service or the operating of a
utility business" means the providing of a public service or
the operating of a utility by businesses subject to the
business and occupation tax imposed by sections two and
two-d, article thirteen of this chapter.

(15) "Purchaser" means a person who purchases tangible
personal property, custom software or a service taxed by
this article.

(16) "Sale", "sales" or "selling" includes any transfer of
the possession or ownership of tangible personal property
or custom software for a consideration, including a lease
or rental, when the transfer or delivery is made in the
ordinary course of the transferor's business and is made to
the transferee or his or her agent for consumption or use or
any other purpose. "Sale" also includes the furnishing of
a service for consideration.

(17) "Service" or "selected service" includes all nonpro-
fessional activities engaged in for other persons for a
consideration, which involve the rendering of a service as
distinguished from the sale of tangible personal property
or custom software, but does not include contracting,
personal services or the services rendered by an employee
to his or her employer or any service rendered for resale:

Provided, That the term "service" or "selected service"
does not include payments received by a vendor of tangible
personal property as an incentive to sell a greater volume
of such tangible personal property under a manufacturer's,
distributor’s or other third-party’s marketing support
program, sales incentive program, cooperative advertising
agreement or similar type of program or agreement, and
these payments are not considered to be payments for a
“service” or “selected service” rendered, even though the
vendor may engage in attendant or ancillary activities
associated with the sales of tangible personal property as
required under the programs or agreements.

(18) “Streamlined sales and use tax agreement” or
“agreement,” when used in this article, shall have the same
meaning as when used in article fifteen-b of this chapter,
except when the context in which the word agreement is
used clearly indicates that a different meaning is intended
by the Legislature.

(19) “Tax” includes all taxes, additions to tax, interest
and penalties levied under this article or article ten of this
chapter.

(20) “Tax commissioner” means the state tax commis-
sioner or his or her delegate. The term “delegate” in the
phrase “or his or her delegate”, when used in reference to
the tax commissioner, means any officer or employee of
the state tax division duly authorized by the tax commis-
sioner directly, or indirectly by one or more redelegations
of authority, to perform the functions mentioned or
described in this article or rules promulgated for this
article.

(21) “Taxpayer” means any person liable for the tax
imposed by this article or additions to tax, penalties and
interest imposed by article ten of this chapter.

(22) “Transmission” means the act or process of causing
liquid, natural gas or electricity to pass or be conveyed
from one place or geographical location to another place
or geographical location through a pipeline or other medium for commercial purposes.

(23) "Transportation" means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(24) "Ultimate consumer" or "consumer" means a person who uses or consumes services or personal property.

(25) "Vendor" means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article.

(c) Additional definitions. – Other terms used in this article are defined in article fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.


(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 the form required by the tax commissioner, and deliver it to the vendor of the property or service in the manner required by the tax commissioner. However, the tax commissioner may, by rule, specify those exemptions authorized in this subsection for which exemptions certificates are not required. The following sales of tangible personal property and 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, the 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 the 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 property or services to churches which make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food for meals and materials directly used or consumed by these organizations and does 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, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which 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 the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the girl scouts of the United States of America, the boy scouts of America or the YMCA Indian guide/princess program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its 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 the activities are carried on regularly as a trade or business;
(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;
(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and
(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be 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; and
(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;
(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The provisions of this subdivision apply to sales made after the thirtieth day of June, one thousand nine hundred eighty-nine: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal
Revenue Code and does not apply to purchases of gasoline or special fuel;

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

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

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

(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 subdivision, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fund raisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fund raisers are of limited duration and are held no more than six times during any twelve-month period and “limited duration” means no more than eighty-four consecutive hours: Provided, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than eighty-four consecutive hours at a time, which are held no more than eighteen times in a
twelve-month period for the purposes of this subdivision
are considered "casual and occasional sales not conducted
in a repeated manner or in the ordinary course of repeti-
tive and successive transactions of a like character; and

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

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

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

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

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

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

(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 elemen-
tary and secondary schools located within this state;

(22) Sales of electronic data processing services and
related software: Provided, That, for the purposes of this
subdivision, “electronic data processing services” means:
(A) The processing of another’s data, including all pro-
cesses incident to processing of data such as keypunching,
keystroke verification, rearranging or sorting of previously
documented data for the purpose of data entry or auto-
matic processing and changing the medium on which data
is sorted, whether these processes are done by the same
person or several persons; and (B) providing access to
computer equipment for the purpose of processing data or
examining or acquiring data stored in or accessible to the
computer equipment;

(23) Tuition charged for attending educational summer
camps;

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

273 (25) Food for the following are exempt:

274 (A) Food purchased or sold by a public or private school,
275 school-sponsored student organizations or school-spon-
276 sored parent-teacher associations to students enrolled in
277 the school or to employees of the school during normal
278 school hours; but not those sales of food made to the
279 general public;

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

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

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

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

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

(G) Food sold after the thirty-first day of July, two
thousand two, by volunteer fire departments and rescue
squads that are exempt from federal income taxes under
section 501(c)(3) or (c)(4) of the Internal Revenue Code of
1986, as amended, when the purpose of the sale is to obtain
revenue for the functions and activities of the organization
and the revenue obtained is exempt from federal income
tax and actually expended for that purpose;

(26) Sales of food by little leagues, midget football
leagues, youth football or soccer leagues, band boosters or
other school or athletic booster organizations supporting
activities for grades kindergarten through twelve 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 func-
tions and activities of the groups: Provided, That the purchases made by the organizations are not exempt as a purchase for resale;

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

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

(29) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state;

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

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

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

(33) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge
for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the tax commissioner: Provided, That the exemption provided in this subdivision applies 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 the 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 consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts, for a certificated or licensed carrier of persons or property, or for a governmental entity;

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

(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

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

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

(40) Sales of property or services after the thirtieth day
of June, one thousand nine hundred ninety-seven, to
persons within the state when those sales are for the
purposes of the production of value-added products:
Provided, That the exemption granted in this subdivision
applies only to services, equipment, supplies and materials
directly used or consumed by those persons engaged solely
in the production of value-added products: Provided,
however, That this exemption may not be claimed by any
one purchaser for more than five consecutive years, except
as otherwise permitted in this section.
For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use: For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products:

Those engaged in the conversion of:

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

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

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

(F) Milk into cheese;

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

(H) Feeder cattle into commonly accepted slaughter weights;

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

(J) Poultry into a dried, canned, cooked or frozen product;

(41) After the thirtieth day of June, one thousand nine hundred ninety-seven, sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic
works be performed for the enjoyment of the members of
the public there assembled when the amount paid by the
owner or operator for the artistic service or artistic
performance does not exceed three thousand dollars:

Provided, That nothing contained herein may be construed
to deprive private social gatherings, weddings or other
private parties from asserting the exemption set forth in
this subdivision. For the purposes of this exemption,
artistic performance or artistic service means and is
limited to the conscious use of creative power, imagination
and skill in the creation of aesthetic experience for an
audience present and in attendance and includes, and is
limited to, stage plays, musical performances, poetry
recitations and other readings, dance presentation, cir-
cuses and similar presentations and does not include the
showing of any film or moving picture, gallery presenta-
tions of sculptural or pictorial art, nude or strip show
presentations, video games, video arcades, carnival rides,
radio or television shows or any video or audio taped
presentations or the sale or leasing of video or audio tapes,
airshows, or any other public meeting, display or show
other than those specified herein: Provided, however, That
nothing contained herein may be construed to exempt the
sales of tickets from the tax imposed in this article. The
state tax commissioner shall propose a legislative rule
pursuant to article three, chapter twenty-nine-a of this
code establishing definitions and eligibility criteria for
asserting this exemption which is not inconsistent with the
provisions set forth herein: Provided further, That nude
dancers or strippers may not be considered as entertainers
for the purposes of this exemption;

(42) After the thirtieth day of June, one thousand nine
hundred ninety-seven, charges to a member by a member-
ship 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, includ-
ing charges to members for newsletters prepared by the
association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: Provided, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

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

(44) Direct or subscription sales by the division of natural resources of the magazine currently entitled “Wonderful West Virginia” and by the division of culture and history of the magazine currently entitled “Goldenseal” and the journal currently entitled “West Virginia History”;}
(45) Sales of soap to be used at car wash facilities;

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

(47) 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. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider; and

(48) Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, during fund-raising activities held after the thirty-first day of July, two thousand two, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(49) Lodging franchise fees, including royalties, marketing fees, reservation system fees or other fees assessed after the first day of December, one thousand nine hundred ninety-seven, that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and

(50) Sales of the regulation size United States flag and the regulation size West Virginia flag for display.
Refundable exemptions. – Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

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

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

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

4. Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: Provided, That sales of gasoline and special fuel are taxable; and
(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.
The 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 2nd day of April, 2003.

Governor