WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4501

(By Delegates Campbell, Boggs, Staton, Cann and Canterbury)

Passed March 13, 2004

In Effect July 1, 2004
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FOR

H. B. 4501

(BY DELEGATES CAMPBELL, BOGGS, STATON, CANN AND CANTERBURY)

[Passed March 13, 2004; in effect July 1, 2004.]

AN ACT to amend and reenact §11-15-9g of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-15-9h, all relating to the sales tax holiday on back-to-school purchases; providing an exemption from consumers sales tax for sales of computer hardware and software directly incorporated into manufactured products; creating exemptions for payment of certain licensing fees, for sales of computer hardware and software directly used in communication, for sales of electronic data processing services, for sales of certain educational software to be used in certain educational or nonprofit institutions, for sales of internet advertising of goods and services and for certain sales of high technology business services; and providing definitions.

Be it enacted by the Legislature of West Virginia:
That §11-15-9g of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-15-9h, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year two thousand four.

(a) The sale of an article of clothing or footwear designed to be worn on or about the human body and the sale of school supplies, such as pens, pencils, binders, notebooks, reference books, book bags, lunch boxes, computers, computer accessories and calculators, is exempted from the taxes imposed by this article if:

(1) The sales price of the article or school supply, except for a computer or computer accessory, is less than one hundred dollars;

(2) The sales price of a computer is less than seven hundred fifty dollars after credit for any manufacturer’s rebate or computer accessory is less than one hundred dollars after credit for any manufacturer’s rebate; and

(3) The sale takes place during a period beginning at 12:01 a.m. eastern daylight time on the first Friday in August, two thousand four, and ending at 12 midnight eastern daylight time on the following Sunday in August, two thousand four.

(b) This section does not apply to:

(1) Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed;
(2) Accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(3) The rental of clothing, footwear or school supplies;

(4) Furniture; and

(5) Tangible personal property for use in a trade or business.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of internet advertising; sales of high technology business services directly used in fulfillment of a government contract; definitions.

(a) In order to modernize the exemptions from tax contained in this article as a result of technological advances in computers and the expanded role of computers, the internet and global instant communications in business, and to encourage computer software developers, computer hardware designers, systems engineering firms, electronic data processing companies and other high technology companies to locate and expand their businesses in West Virginia the following sales of tangible personal property and software are exempt:

(1) Sales of computer hardware or software (including custom designed software) to be directly incorporated by a manufacturer into a manufactured product. For purposes of this subsection, the payment of licensing fees for the right to incorporate hardware or software developed by persons other
than the manufacturer into a manufactured product is exempt from the tax imposed by this article;

(2) Sales of computer hardware or software (including custom designed software) directly used in communication as defined in this article;

(3) Sales of electronic data processing services;

(4) Sales of educational software required to be used in any of the public schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to administration, regulation, certification or approval of the department of education, the department of education and the arts or the higher education policy commission;

(5) Sales of internet advertising of goods and services; and

(6) Sales of high technology business services to high technology businesses which enter into contracts with this state, its institutions and subdivisions, governmental units, institutions or subdivisions of other states, or with the United States, including agencies of federal, state or local governments for direct use in fulfilling the government contract.

(b) Definitions. — As used in this article, the following terms have the following meanings:

(1) “Computer hardware” means a computer, as defined in article fifteen-b of this chapter, and the directly and immediately connected physical equipment involved in the performance of data processing or communications functions, including data input, data output, data processing, data storage, and data communication apparatus that is directly and immediately connected to the computer. The term “computer hardware” does not include computer software.
(2) "High technology business" means and is limited to businesses primarily engaged in the following activities:

Computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; design and development of new manufactured products which incorporate computer hardware and software; electronic data processing; network management, maintenance, engineering, administration and security services; website management, maintenance, engineering, administration and security services and computer systems management, maintenance, engineering, administration and security services: Provided, That high technology business as defined herein is intended to include businesses which engage in the activities enumerated in this definition as their primary business activity, and not as a secondary or incidental activity and not as an activity in support of or incidental to business activity not specifically enumerated in this definition.

(3) "High technology business services" means and is limited to computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; electronic data processing; computer systems management; computer systems maintenance; computer systems engineering; computer systems administration; and computer systems security services.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originating in the House.

In effect July 1, 2004.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

The within is approved this the 1st day of April, 2004.

Governor

[Signature]