

SB 701

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2004

ENROLLED

COMMITTEE SUBSTITUTE FOR COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 701

(By Senators PLYMOUTH AND JENKINS)

PASSED MARCH 13, 2004

In Effect 90 DAYS FROM Passage

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Senate Bill No. 701

(SENATORS PLYMALE AND JENKINS, *original sponsors*)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §8-13C-1, §8-13C-2, §8-13C-3, §8-13C-4, §8-13C-5, §8-13C-5a, §8-13C-6, §8-13C-7, §8-13C-8, §8-13C-9, §8-13C-10, §8-13C-11, §8-13C-12 and §8-13C-13; to amend and reenact §11-9-2, §11-9-3, §11-9-4, §11-9-5, §11-9-6, §11-9-8 and §11-9-10 of said code; and to amend and reenact §11-10-3 of said code, all relating to authorizing a qualifying municipality to impose municipal occupational tax, an alternative municipal sales and service tax and use tax and a pension relief municipal sales and service tax and use tax; establishing responsibilities of tax commissioner relating to the tax; clarifying application of other state tax laws; creating

qualifying municipal sales and service tax and use tax fund; providing that tax rate applies to purchases from printed catalogs; limiting use of certain proceeds of the taxes to application toward the unfunded liability of certain pensions; citing instances where qualifying municipalities lose certain taxing authority; limiting increase in pension benefits pending imposition of certain taxes; addressing conflicts and unconstitutionality; establishing prerequisites to imposition of certain taxes; requiring a study by the chief technology officer on the cost of implementing municipal taxes; imposing criminal penalties for certain violations relating to municipal tax; and applying tax procedure and administration act to municipal taxes.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §8-13C-1, §8-13C-2, §8-13C-3, §8-13C-4, §8-13C-5, §8-13C-5a, §8-13C-6, §8-13C-7, §8-13C-8, §8-13C-9, §8-13C-10, §8-13C-11, §8-13C-12 and §8-13C-13; that §11-9-2, §11-9-3, §11-9-4, §11-9-5, §11-9-6, §11-9-8 and §11-9-10 of said code be amended and reenacted; and that §11-10-3 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPATION TAX AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS.

§8-13C-1. Findings.

- 1 The Legislature finds that:
- 2 (a) Imposing additional taxes creates an extra burden on
- 3 the citizens of the state;
- 4 (b) Imposing additional taxes can be detrimental to the
- 5 economy of the state;
- 6 (c) Imposing additional taxes is only proper under
- 7 certain circumstances;

8 (d) For many municipalities with severe unfunded
9 liabilities of the police and fire pension funds, all available
10 sources of local revenue have been exhausted. Property
11 taxes are at the maximum allowed by the state constitu-
12 tion and local business and occupation taxes and utility
13 taxes are at the maximum rates allowed by state law.
14 Other fees have reached the economic maximum and are
15 causing relocation of business outside the municipal
16 boundaries;

17 (e) For many municipalities with severe unfunded police
18 and fire pension fund liabilities, revenue from existing
19 sources has become stagnant over the past few years with
20 no expectation of significant future growth;

21 (f) For many municipalities with severe unfunded police
22 and fire pension fund liabilities, payments required under
23 state law to fund fire and police pension funds are now
24 close to equaling the city payrolls for police and fire
25 protection and will rise to exceed those payrolls within a
26 ten-year period;

27 (g) For many municipalities with severe unfunded police
28 and fire pension fund liabilities, payments required under
29 state law to fund fire and police pension funds now
30 constitute a large percentage of those municipalities total
31 budget and will rise to an even larger percentage of the
32 available revenues in the next ten years. Payment and
33 benefit levels are dictated to the municipalities by state
34 law;

35 (h) As the required pension payments rise, many of the
36 municipalities with severe unfunded police and fire
37 pension fund liabilities will find it impossible to maintain
38 at minimum levels necessary and proper, city services
39 including, but not limited to, police and fire protection,
40 street maintenance and repair and sanitary services;

41 (i) For some of the municipalities with severe unfunded
42 liabilities of the police and fire pension funds, the combi-

43 nation of the steeply rising pension obligations and the
44 stagnant revenue sources raise the real possibility of
45 municipal bankruptcy in the near and predictable future.
46 If this happens, pensioners would either not receive the
47 full benefits which they have been promised or pressure
48 would be placed on the state to fund these programs;

49 (j) For a municipality that has the most severe unfunded
50 liability in its pension funds, paying off the unfunded
51 liability in a timely manner would cause tremendous
52 financial hardship and the loss of many services that
53 would otherwise be provided to the municipality's citizens;

54 (k) Only for a municipality that has the most severe
55 unfunded liability in its pension funds would the imposi-
56 tion of the pension relief municipal occupational tax, the
57 pension relief municipal sales and service tax, the pension
58 relief municipal use tax or any combination of those taxes
59 be an appropriate method of addressing the unfunded
60 liability; and

61 (l) Only for a municipality that does not impose or ceases
62 to impose a business and occupation or privilege tax would
63 the imposition of an alternative municipal sales and
64 service tax and an alternative municipal use tax be
65 appropriate.

§8-13C-2. Definitions.

1 For the purposes of this article:

2 (a) "Alternative municipal sales and service tax" means
3 the tax authorized to be imposed by subsection (b), section
4 four of this article only if a municipality does not impose
5 or ceases to impose the business and occupation or privi-
6 lege tax authorized in section five, article thirteen of this
7 chapter;

8 (b) "Alternative municipal use tax" means the tax
9 authorized to be imposed by subsection (b), section five of
10 this article only if a municipality does not impose or ceases

11 to impose the business and occupation or privilege tax
12 authorized in section five, article thirteen of this chapter;

13 (c) "Qualifying municipality" means any municipality,
14 as defined in section two, article one of this chapter:

15 (1) In which the weighted average of the percentages to
16 which its policemen's and firemen's pension and relief
17 funds are fully funded is three percent or less on the date
18 of adoption of the ordinance imposing the tax; and

19 (2) That has satisfied the requirements set forth in
20 section eleven of this article;

21 (d) "Pension relief municipal occupational tax" means
22 the tax authorized to be imposed by section three of this
23 article and for which the use of the proceeds of the tax are
24 restricted by section nine of this article;

25 (e) "Pension relief municipal sales and service tax"
26 means the tax authorized to be imposed by subsection (a),
27 section four of this article and for which the use of the
28 proceeds of the tax are restricted by section nine of this
29 article;

30 (f) "Pension relief municipal use tax" means the tax
31 authorized to be imposed by subsection (a), section five of
32 this article and for which the use of the proceeds of the tax
33 are restricted by section nine of this article; and

34 (g) "Taxable employee" means any individual:

35 (1) Who holds employment with an employer with a
36 place of business located within the qualifying municipal-
37 ity electing to impose the municipal payroll tax pursuant
38 to this article; and

39 (2) Whose salaries, wages, commissions and other earned
40 income that would be included in federal adjusted gross
41 income for the year is more than ten thousand dollars per
42 year.

§8-13C-3. Pension relief municipal occupational tax.

1 (a) Effective on and after the first day of July, two
2 thousand five, each qualifying municipality, as defined in
3 section two of this article, has the plenary power and
4 authority to impose, by ordinance, a pension relief municip-
5 al occupational tax on taxable employees. Any pension
6 relief municipal occupational tax imposed pursuant to this
7 section shall meet the following requirements:

8 (1) The tax shall be imposed at a rate of one percent or
9 less;

10 (2) The tax shall be imposed at a uniform rate; and

11 (3) The tax rate shall be applied only to salaries, wages,
12 commissions and other earned income of taxable employ-
13 ees that would be included in federal adjusted gross
14 income for the year. The tax rate may not be applied to
15 other forms of income including, but not limited to,
16 intangible income and net profit from a business.

17 (b) Each employer with a taxable employee, during each
18 pay period, shall withhold from the taxable employee's
19 salary the amount of the tax as computed by applying the
20 appropriate tax rate to the taxable employee's salary
21 during that pay period and remit the withholdings to the
22 appropriate municipal taxing authority.

§8-13C-4. Municipal sales and service taxes.

1 (a) Effective on and after the first day of July, two
2 thousand five, each qualifying municipality, as defined in
3 section two of this article, has the plenary power and
4 authority to impose, by ordinance, a pension relief municip-
5 al sales and service tax at a rate not to exceed one
6 percent, subject to the provisions of this article.

7 (b) Effective on and after the first day of July, two
8 thousand five, notwithstanding subsection (a) of this
9 section, and in addition thereto in the case of a qualifying
10 municipality, any municipality that does not impose, or

11 ceases to impose, the business and occupation or privilege
12 tax authorized by section five, article thirteen of this
13 chapter has the plenary power and authority to impose, by
14 ordinance, an alternative municipal sales and service tax
15 at a rate not to exceed one percent, subject to the provi-
16 sions of this article.

17 (c) Any municipal sales and service tax imposed under
18 the authority granted by this section is subject to the
19 following:

20 (1) The base of a municipal sales and service tax imposed
21 pursuant to this section shall be identical to the base of the
22 consumers sales and service tax imposed pursuant to
23 article fifteen, chapter eleven of this code on sales made
24 and services rendered within the boundaries of the munici-
25 pality, subject to the following:

26 (A) Except for the exemption provided in section nine-f,
27 article fifteen, chapter eleven of this code, all exemptions
28 and exceptions from consumers sales and service tax apply
29 to a municipal sales and service tax imposed pursuant to
30 this section; and

31 (B) Sales of gasoline and special fuel are not subject to a
32 municipal sales and service tax imposed pursuant to this
33 section;

34 (2) Any municipal sales and service tax imposed pursu-
35 ant to this section applies solely to tangible personal
36 property, custom software and services that are sourced to
37 the municipality. The sourcing rules set forth in article
38 fifteen-b, chapter eleven of this code, including any
39 amendments thereto, apply to municipal sales and use
40 taxes levied pursuant to this article;

41 (3) Any municipality that imposes a municipal sales and
42 service tax pursuant to this section or changes the rate of
43 a municipal sales and service tax imposed pursuant to this
44 section shall notify the tax commissioner pursuant to
45 section six of this article;

46 (4) Any municipality that imposes a municipal sales and
47 service tax pursuant to this section may not administer or
48 collect the tax, but shall use the services of the tax com-
49 missioner to administer, enforce and collect the tax;

50 (5) Any municipal sales and service tax imposed pursu-
51 ant to this section shall be imposed in addition to the
52 consumers sales and service tax imposed pursuant to
53 article fifteen, chapter eleven of this code on sales made
54 and services rendered within the boundaries of the munici-
55 pality and, except as exempted or excepted, all sales made
56 and services rendered within the boundaries of the munici-
57 pality shall remain subject to the tax levied by that article;
58 and

59 (6) Any municipal sales and service tax imposed pursu-
60 ant to this section shall be imposed in addition to any tax
61 imposed pursuant to section one, article eighteen, chapter
62 seven of this code, sections six and seven, article thirteen
63 of this chapter and section twelve, article thirty-eight of
64 this chapter.

§8-13C-5. Municipal use tax.

1 (a) Effective on and after the first day of July, two
2 thousand five, each qualifying municipality, as defined in
3 section two of this article, that imposes a pension relief
4 municipal sales and service tax pursuant to this article
5 shall impose, by ordinance, a pension relief municipal use
6 tax at the same rate that is set for the pension relief
7 municipal sales and service tax.

8 (b) Effective on and after the first day of July, two
9 thousand five, each municipality that imposes an alterna-
10 tive municipal sales and service tax pursuant to this article
11 shall impose, by ordinance, an alternative municipal use
12 tax at the same rate that is set for the alternative munici-
13 pal sales and service tax.

14 (c) The base of a municipal use tax imposed pursuant to
15 this section shall be identical to the base of the use tax

16 imposed pursuant to article fifteen-a, chapter eleven of
17 this code on the use of tangible personal property, custom
18 software and taxable services within the boundaries of the
19 municipality, subject to the following:

20 (1) Except for the exemption provided in section nine-f,
21 article fifteen, chapter eleven of this code, all exemptions
22 and exceptions from the use tax apply to a municipal use
23 tax imposed pursuant to this section; and

24 (2) Uses of gasoline and special fuel are not subject to a
25 municipal use tax imposed pursuant to this section when
26 the use is subject to the tax imposed by article fourteen-c,
27 chapter eleven of this code.

28 (d) Any municipality that imposes a municipal use tax
29 pursuant to this section or changes the rate of a municipal
30 use tax imposed pursuant to this section shall notify the
31 tax commissioner pursuant to section six of this article.

32 (e) Any municipality that imposes a municipal use tax
33 pursuant to this section may not administer or collect the
34 tax, but shall use the services of the tax commissioner to
35 administer, enforce and collect the taxes.

36 (f) Any municipal use tax imposed pursuant to this
37 section shall be imposed in addition to the use tax imposed
38 pursuant to article fifteen-a, chapter eleven of this code on
39 the use of tangible personal property, custom software or
40 taxable services within the boundaries of the municipality
41 and, except as exempted or excepted, all use of tangible
42 personal property, custom software or taxable services
43 within the boundaries of the municipality shall remain
44 subject to the tax levied by said article.

45 (g) Any municipal use tax imposed pursuant to this
46 section shall be imposed in addition to any tax imposed
47 pursuant to section one, article eighteen, chapter seven of
48 this code, sections six and seven, article thirteen of this
49 chapter and section twelve, article thirty-eight of this
50 chapter.

§8-13C-5a. Credit for sales tax paid to another municipality.

1 (a) *Credit against municipal use tax.* — A person is
2 entitled to a credit against a use tax imposed by a municipi-
3 pality pursuant to section five of this article on the use of
4 a particular item of tangible personal property, custom
5 software or service equal to the amount, if any, of sales tax
6 lawfully paid to another municipality for the acquisition
7 of that property or service: *Provided*, That the amount of
8 credit allowed may not exceed the amount of use tax
9 imposed on the use of the property or service in the
10 municipality of use.

11 (b) *Definitions.* — For purposes of this section:

12 (1) “Municipality” means a municipality, as defined in
13 section two, article one of this chapter, or a comparable
14 unit of local government in another state;

15 (2) “Sales tax” includes a sales tax or compensating use
16 tax lawfully imposed on the use of tangible personal
17 property, custom software or a service by the municipality
18 or county, as appropriate, in which the sale or use oc-
19 curred; and

20 (3) “State” includes the fifty states of the United States
21 and the District of Columbia but does not include any of
22 the several territories organized by Congress.

23 (c) No credit is allowed under this section for payment of
24 any sales or use taxes imposed by this state or any other
25 state.

**§8-13C-6. Notification to tax commissioner; responsibilities of
tax commissioner; application of state tax law.**

1 (a) Any municipality that imposes a municipal sales and
2 service tax and a municipal use tax pursuant to this article
3 or changes the rate of the taxes shall notify the tax
4 commissioner of the imposition of the taxes or the change

5 in the rate of the taxes within thirty days of enacting the
6 ordinance imposing the taxes or changing the rate of the
7 taxes. A municipal sales and service tax and a municipal
8 use tax imposed pursuant to this article or a change in the
9 rate of the taxes is not effective until at least ninety days
10 after the ordinance imposing the taxes is enacted.

11 (b) The tax commissioner is responsible for collecting,
12 enforcing and administering any municipal sales and
13 service tax and any municipal use tax imposed pursuant to
14 this article in the same manner as the state sales and
15 service tax imposed pursuant to article fifteen, chapter
16 eleven of this code and the state use tax imposed pursuant
17 to article fifteen-a of this code. Additionally, the tax
18 commissioner may charge a fee not to exceed the lesser of
19 the cost of the service provided or one percent of the
20 proceeds from the municipal sales and service tax.

21 (c) The state consumers sales and service tax law, set
22 forth in article fifteen, chapter eleven of this code, and the
23 amendments to that article and the rules of the tax
24 commissioner relating to the laws shall apply to a municip-
25 al sales and service tax imposed pursuant to this article
26 to the extent the rules and laws are applicable.

27 (d) The state use tax law, set forth in article fifteen-a,
28 chapter eleven of this code, and the amendments to that
29 article and the rules of the tax commissioner relating to
30 the laws shall apply to a municipal use tax imposed
31 pursuant to this article to the extent the rules and laws are
32 applicable.

33 (e) Any term used in this article or in an ordinance
34 adopted pursuant to this article that is defined in articles
35 fifteen, fifteen-a and fifteen-b, chapter eleven of this code,
36 as amended, shall have the same meaning when used in
37 this article or in an ordinance adopted pursuant to this
38 article, unless the context in which the term is used clearly
39 requires a different result.

40 (f) Any amendments to articles nine, ten, fifteen, fif-
41 teen-a and fifteen-b, chapter eleven of this code shall
42 automatically apply to a sales or use tax imposed pursuant
43 to this article, to the extent applicable.

44 (g) Each and every provision of the "West Virginia Tax
45 Procedure and Administration Act" set forth in article ten,
46 chapter eleven of this code applies to the taxes imposed
47 pursuant to this article, except as otherwise expressly
48 provided in this article, with like effect as if that act were
49 applicable only to the taxes imposed by this article and
50 were set forth in extenso in this article.

51 (h) Each and every provision of the "West Virginia Tax
52 Crimes and Penalties Act" set forth in article nine, chapter
53 eleven of this code applies to the taxes imposed pursuant
54 to this article with like effect as if that act were applicable
55 only to the taxes imposed pursuant to this article and were
56 set forth in extenso in this article.

**§8-13C-7. Municipal sales and service tax and use tax fund;
deposit and remittance of collections.**

1 (a) There is created a special revenue account in the state
2 treasury designated the "municipal sales and service tax
3 and use tax fund" which is an interest-bearing account
4 and shall be invested in the manner described in section
5 nine-c, article six, chapter twelve of this code with the
6 interest and other return earned a proper credit to the
7 fund. A separate subaccount within the fund shall be
8 established for each municipality that imposes a municipal
9 sales and service tax and use tax pursuant to this article.

10 (b) The tax commissioner shall deposit all the proceeds
11 from a municipal sales and service tax and a municipal use
12 tax collected for each municipality minus any fee for
13 collecting, enforcing and administering taxes in the
14 appropriate subaccount. All moneys collected and depos-
15 ited in the fund shall be remitted at least quarterly by the
16 state treasurer to the treasurer of the appropriate munici-
17 pality.

§8-13C-8. Printed catalogs.

1 Local tax rate changes made pursuant to sections four
2 and five of this article apply to purchases from printed
3 catalogs where the purchaser computed the tax based
4 upon the local tax rate published in the catalog only on
5 and after the first day of a calendar quarter after a
6 minimum of one hundred twenty days' notice to the seller.

§8-13C-9. Restriction on use of certain revenues.

1 (a) All proceeds from a pension relief municipal occupa-
2 tional tax, a pension relief municipal sales and service tax
3 and a pension relief municipal use tax imposed pursuant
4 to this article shall be used solely for the purpose of
5 reducing the unfunded actuarial accrued liability of
6 policemen's and firemen's pension and relief funds of the
7 qualifying municipality imposing the tax. The proceeds
8 used for this purpose shall be in addition to the minimum
9 annual contribution required by section twenty, article
10 twenty-two of this chapter.

11 (b) A qualifying municipality loses its authority to
12 impose a pension relief municipal occupational tax, a
13 pension relief municipal sales and service tax and a
14 pension relief municipal use tax pursuant to this article
15 after:

16 (1) The unfunded actuarial accrued liability of the
17 qualifying municipality's policemen's and firemen's
18 pension and relief funds is eliminated; or

19 (2) Sufficient moneys accrue from the proceeds of the
20 pension relief municipal occupational tax, the pension
21 relief municipal sales and service tax, the pension relief
22 municipal use tax or any combination of these taxes to
23 eliminate the unfunded actuarial accrued liability of the
24 qualifying municipality's policemen's and firemen's
25 pension and relief funds.

§8-13C-10. Conflict; partial unconstitutionality.

1 (a) If a court of competent jurisdiction finds that the
2 provisions of this article and the provisions of articles
3 fifteen, fifteen-a and fifteen-b, chapter eleven of this code
4 conflict and cannot be harmonized, then the provisions of
5 said articles shall control.

6 (b) If any section, subsection, subdivision, paragraph,
7 sentence, clause or phrase of this article is for any reason
8 held to be invalid, unlawful or unconstitutional, that
9 decision does not affect the validity of the remaining
10 portions of this article or any part thereof: *Provided*, That
11 if this article is held to be unconstitutional under section
12 thirty-nine, article VI of the constitution of West Virginia,
13 this severability clause shall not apply.

§8-13C-11. Additional requirements for authority to impose certain taxes.

1 (a) The authority to impose the pension relief municipal
2 occupational tax, the pension relief municipal sales and
3 service tax and the pension relief municipal use tax, all
4 provided in this article, is not effective until a municipal-
5 ity wishing to impose the taxes presents to the joint
6 committee on government and finance a plan to remove
7 the unfunded liabilities of its police and fire pension funds
8 and the necessary changes in West Virginia law have been
9 enacted to allow for implementation of the municipal plan.

10 (b) Notwithstanding any other provision of this code to
11 the contrary, no cost-of-living increases or other benefit
12 increases, and no new benefits, may be granted to or
13 received by any member or beneficiary of a policemen's
14 and firemen's pension and relief funds of a municipality
15 during any period that the municipality imposes a pension
16 relief municipal occupational tax, a pension relief municip-
17 al sales and service tax, the pension relief municipal use
18 tax or any combination thereof authorized under this
19 chapter.

§8-13C-12. Limited authority to impose tax.

1 (a) Notwithstanding any other provision of this code to
2 the contrary, no county, board, political subdivision or any
3 other agency or entity other than a municipality may
4 impose an alternative municipal sales and service tax, an
5 alternative municipal use tax, a pension relief municipal
6 occupational tax, a pension relief municipal sales and
7 service tax, a pension relief municipal use tax or any
8 combination of these taxes.

9 (b) No subsequent amendment to this code shall super-
10 sede the provisions of subsection (a) of this section unless
11 the amendment specifically states that the provisions of
12 said subsection of this section are superseded.

§8-13C-13. Study.

1 The chief technology officer, appointed pursuant to
2 article one-b, chapter five of this code, shall conduct a
3 study on the cost for the tax commissioner to implement
4 the taxes that may be imposed pursuant to this article.
5 The chief technology officer shall report the findings and
6 recommendations to the joint committee on government
7 and finance before the first day of December, two thou-
8 sand four.

CHAPTER 11. TAXATION.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

1 (a) The provisions of this article apply to the following
2 taxes imposed by this chapter: (1) Inheritance and transfer
3 taxes and estate taxes imposed by article eleven of this
4 chapter; (2) business registration tax imposed by article
5 twelve of this chapter; (3) minimum severance tax on coal
6 imposed by article twelve-b of this chapter; (4) corporate
7 license tax imposed by article twelve-c of this chapter; (5)
8 business and occupation tax imposed by article thirteen of
9 this chapter; (6) severance tax imposed by article thir-

10 teen-a of this chapter; (7) telecommunications tax imposed
11 by article thirteen-b of this chapter; (8) gasoline and
12 special fuels excise tax imposed by article fourteen of this
13 chapter; (9) motor fuels excise tax imposed by article
14 fourteen-c of this chapter; (10) motor carrier road tax
15 imposed by article fourteen-a of this chapter; (11) inter-
16 state fuel tax agreement authorized by article fourteen-b
17 of this chapter; (12) consumers sales and service tax
18 imposed by article fifteen of this chapter; (13) use tax
19 imposed by article fifteen-a of this chapter; (14) tobacco
20 products excise tax imposed by article seventeen of this
21 chapter; (15) soft drinks tax imposed by article nineteen of
22 this chapter; (16) personal income tax imposed by article
23 twenty-one of this chapter; (17) business franchise tax
24 imposed by article twenty-three of this chapter; (18)
25 corporation net income tax imposed by article twenty-four
26 of this chapter; and (19) health care provider tax imposed
27 by article twenty-seven of this chapter.

28 (b) The provisions of this article also apply to the West
29 Virginia tax procedure and administration act in article
30 ten of this chapter and to any other articles of this chapter
31 when application is expressly provided for by the Legisla-
32 ture.

33 (c) The provisions of this article also apply to municipal
34 sales and use taxes imposed pursuant to article thirteen-c,
35 chapter eight of this code; the charitable bingo fee imposed
36 by sections six and six-a, article twenty, chapter
37 forty-seven of this code; the charitable raffle fee imposed
38 by section seven, article twenty-one of said chapter; and
39 the charitable raffle boards and games fees imposed by
40 section three, article twenty-three of said chapter.

41 (d) Each and every provision of this article applies to the
42 articles of this chapter listed in subsections (a), (b) and (c)
43 of this section, with like effect, as if the provisions of this
44 article were applicable only to the tax and were set forth
45 in extenso in this article.

§11-9-3. Definitions.

1 For the purposes of this article, the term:

2 (1) "Person" means any individual, firm, partnership,
3 limited partnership, copartnership, joint venture, associa-
4 tion, corporation, municipal corporation, organization,
5 receiver, estate, trust, guardian, executor, administrator
6 and any officer, employee or member of any of the forego-
7 ing who, as an officer, employee or member, is under a
8 duty to perform or is responsible for the performance or
9 nonperformance of the act in respect of which a violation
10 occurs under this article.

11 (2) "Return or report" means any return or report
12 required to be filed by any article of this chapter imposing
13 any tax to which this article applies as specified in section
14 two of this article or by any other article of this code
15 pursuant to which a tax or fee is imposed that is collected
16 by the tax commissioner as specified in section two of this
17 article.

18 (3) "Tax" or "taxes" means any tax to which this article
19 applies, as specified in section two of this article, and
20 includes additions to tax, penalties and interest unless the
21 intention to give it a more limited meaning is disclosed by
22 the context in which the term "tax" or "taxes" is used.

23 (4) "Tax commissioner" or "commissioner" means the
24 tax commissioner of the state of West Virginia or his or her
25 delegate.

26 (5) "This chapter" means chapter eleven of the code of
27 West Virginia, one thousand nine hundred thirty-one, as
28 amended, and shall include only those articles of chapter
29 eleven of this code listed in section two of this article.

30 (6) "Willfully" means the intentional violation of a
31 known legal duty to perform any act, required to be
32 performed by any provision of this chapter or article
33 thirteen-c, chapter eight of this code, in respect of which

34 the violation occurs: *Provided*, That the mere failure to
35 perform any act shall not be a willful violation under this
36 article. A willful violation of this article requires that the
37 defendant had knowledge of or notice of a duty to perform
38 an act and that the defendant, with knowledge of or notice
39 of that duty, intentionally failed to perform the act.

40 (7) "Evade" means to willfully and fraudulently commit
41 any act with the intent of depriving the state of payment
42 of any tax which there is a known legal duty to pay under
43 this chapter.

44 (8) "Fraud" means any false representation or conceal-
45 ment as to any material fact made by any person with the
46 knowledge that it is not true and correct, with the intent
47 that the representation or concealment be relied upon by
48 the state.

§11-9-4. Failure to pay tax or file return or report.

1 Any person required by any provision of this chapter, or
2 article thirteen-c, chapter eight of this code to pay any tax,
3 or to file any return or report, who willfully fails to pay
4 the tax, or willfully fails to file the return or report, more
5 than thirty days after the date the tax is required to be
6 paid by law, is guilty of a misdemeanor and, upon conviction
7 thereof, shall be fined not less than one hundred
8 dollars nor more than two thousand five hundred dollars.
9 Each failure to pay tax, or file a return or report, more
10 than thirty days after its due date for any tax period is a
11 separate offense under this section and punishable accordingly:
12 *Provided*, That thirty days prior to instituting
13 criminal proceedings under this section, the tax commis-
14 sioner shall give the person written notice of any failure to
15 pay a tax or to file a return or report. Notice shall be
16 served on the person by certified mail or by personal
17 service. The provisions of this section shall not apply to
18 the business franchise registration tax imposed by article
19 twelve of chapter eleven.

§11-9-5. Failure to account for and pay over another's tax.

1 Any person required by any provision of this chapter or
2 article thirteen-c, chapter eight of this code to collect, or
3 withhold, account for and pay over any tax, who willfully
4 fails to truthfully account for and pay over the tax in the
5 manner required by law, more than thirty days after the
6 date the tax is required to be accounted for and paid over
7 by law, is guilty of a felony if the amount of tax not paid
8 over is one thousand dollars or more and, upon conviction
9 thereof, shall be fined not less than five thousand dollars
10 nor more than twenty-five thousand dollars or imprisoned
11 in a correctional facility not less than one nor more than
12 three years, or, in the discretion of the court be confined in
13 jail not more than one year, or both fined and imprisoned;
14 or is guilty of a misdemeanor, if the amount of tax not
15 paid over is less than one thousand dollars, and, upon
16 conviction thereof, shall be fined not less than five hun-
17 dred dollars nor more than five thousand dollars or
18 imprisoned in jail not more than six months, or both fined
19 and imprisoned. Each failure to account for and pay over
20 tax for any tax period under this section is a separate
21 offense and punishable accordingly: *Provided*, That thirty
22 days prior to instituting a criminal proceeding under this
23 section, the tax commissioner shall give the person written
24 notice of the failure to truthfully account for and pay over
25 tax. Notice shall be served on the person by certified mail
26 or personal service.

§11-9-6. Failure to collect or withhold tax.

1 Any person required by any provision of this chapter or
2 article thirteen-c, chapter eight of this code to collect or
3 withhold any tax, who willfully fails to collect or withhold
4 the tax in the manner required by law, is guilty of a
5 misdemeanor and, upon conviction thereof, shall be fined
6 not less than one hundred dollars nor more than five
7 hundred dollars or imprisoned in jail not more than six
8 months, or both fined and imprisoned. Each month or
9 fraction thereof during which the failure continues is a

10 separate offense under this section and punishable accord-
11 ingly.

§11-9-8. Willful failure to maintain records or supply information; misuse of exemption certificate.

1 If any person: (1) Willfully fails to maintain any records,
2 or supply any information, in the manner required by this
3 chapter or article thirteen-c, chapter eight of this code or
4 regulations therefor promulgated in accordance with law,
5 to compute, assess, withhold or collect any tax imposed by
6 this chapter; or (2) presents to any vendor a certificate for
7 the purpose of obtaining an exemption from the tax
8 imposed by article fifteen or fifteen-a of this chapter or
9 article thirteen-c, chapter eight of this code and then
10 knowingly uses the item or service purchased in a manner
11 that is not exempt from the tax without remitting the tax
12 in the manner required by law, that person is guilty of a
13 misdemeanor and, upon conviction thereof, shall be fined
14 not less than one hundred dollars nor more than one
15 thousand dollars or imprisoned in jail not more than six
16 months, or both fined and imprisoned.

§11-9-10. Attempt to evade tax.

1 If any person: (1) Knowingly files a false or fraudulent
2 return, report or other document under any provision of
3 this chapter or article thirteen-c, chapter eight of this
4 code; or (2) willfully delivers or discloses to the tax
5 commissioner any list, return, account, statement, record
6 or other document known by him or her to be fraudulent
7 or false as to any material matter with the intent of
8 obtaining or assisting another person in obtaining any
9 credit, refund, deduction, exemption or reduction in tax
10 not otherwise permitted by this chapter or article thir-
11 teen-c, chapter eight of this code; or (3) willfully attempts
12 in any other manner to evade any tax imposed by this
13 chapter or article thirteen-c, chapter eight of this code or
14 the payment thereof, is guilty of a felony and, notwith-
15 standing any other provision of the code, upon conviction

16 thereof, shall be fined not less than one thousand dollars
17 nor more than ten thousand dollars or imprisoned in a
18 correctional facility not less than one nor more than three
19 years or, in the discretion of the court, be confined in jail
20 not more than one year, or both fined and imprisoned.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

1 (a) The provisions of this article apply to inheritance and
2 transfer taxes, estate tax and interstate compromise and
3 arbitration of inheritance and death taxes, business
4 registration tax, annual tax on incomes of certain carriers,
5 minimum severance tax on coal, corporate license tax,
6 business and occupation tax, severance tax, telecommuni-
7 cations tax, interstate fuel tax, consumers sales and service
8 tax, use tax, tobacco products excise tax, soft drinks tax,
9 personal income tax, business franchise tax, corporation
10 net income tax, gasoline and special fuel excise tax, motor
11 fuels excise tax, motor carrier road tax, health care
12 provider tax and tax relief for elderly homeowners and
13 renters administered by the state tax commissioner. This
14 article shall not apply to ad valorem taxes on real and
15 personal property or any other tax not listed in this
16 section, except that in the case of ad valorem taxes on real
17 and personal property, when any return, claim, statement
18 or other document is required to be filed, or any payment
19 is required to be made within a prescribed period or before
20 a prescribed date, and the applicable law requires delivery
21 to the office of the sheriff of a county of this state, the
22 methods prescribed in section five-f of this article for
23 timely filing and payment to the tax commissioner or state
24 tax department are the same methods utilized for timely
25 filing and payment with the sheriff.

26 (b) The provisions of this article apply to beer barrel tax
27 levied by article sixteen of this chapter and to wine liter
28 tax levied by section four, article eight, chapter sixty of
29 this code.

30 (c) The provisions of this article apply to any other
31 article of this chapter when the application is expressly
32 provided for by the Legislature.

33 (d) The provisions of this article apply to municipal sales
34 and use taxes imposed under article thirteen-c, chapter
35 eight of this code and collected by the tax commissioner.

23 [Enr. Com. Sub. for Com. Sub. for S. B. No. 701

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

[Signature]
.....
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 *6th*
Day of *April*, 2004.
[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

DATE 3-31-04

TIME 10:45 AM