

SB 690 S

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

Senate Bill No. 690

(BY SENATORS UNGER AND JENKINS)

July 1, 2007
[Passed March 10, 2007; in effect ~~ninety days from passage.~~]

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[Passed March 10, 2007; to take effect July 1, 2007.]

AN ACT to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to the sales tax exemption on materials used for highway construction and maintenance.

Be it enacted by the Legislature of West Virginia:

That §11-15-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9. Exemptions.

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.* — A person having a right or claim to any
3 exemption set forth in this subsection may, in lieu of
4 paying the tax imposed by this article and filing a claim
5 for refund, execute a certificate of exemption, in the
6 form required by the Tax Commissioner, and deliver it
7 to the vendor of the property or service in the manner
8 required by the Tax Commissioner. However, the Tax
9 Commissioner may, by rule, specify those exemptions
10 authorized in this subsection for which exemption
11 certificates are not required. The following sales of
12 tangible personal property and services are exempt as
13 provided in this subsection:

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

17 (2) Sales of textbooks required to be used in any of the
18 schools of this state or in any institution in this state
19 which qualifies as a nonprofit or educational institution
20 subject to the West Virginia Department of Education
21 and the Arts, the Board of Trustees of the University
22 System of West Virginia or the board of directors for
23 colleges located in this state;

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

32 (4) Sales of vehicles which are titled by the Division of
33 Motor Vehicles and which are subject to the tax
34 imposed by section four, article three, chapter
35 seventeen-a of this code or like tax;

36 (5) Sales of property or services to churches which
37 make no charge whatsoever for the services they render:
38 *Provided*, That the exemption granted in this
39 subdivision applies only to services, equipment,
40 supplies, food for meals and materials directly used or
41 consumed by these organizations and does not apply to
42 purchases of gasoline or special fuel;

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

49 (A) A church or a convention or association of
50 churches as defined in Section 170 of the Internal
51 Revenue Code of 1986, as amended;

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

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

61 (D) An organization which has no paid employees and
62 its gross income from fundraisers, less reasonable and
63 necessary expenses incurred to raise the gross income
64 (or the tangible personal property or services purchased
65 with the net income), is donated to an organization
66 which is exempt from income taxes under Section
67 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
68 as amended;

69 (E) A youth organization, such as the Girl Scouts of
70 the United States of America, the Boy Scouts of
71 America or the YMCA Indian Guide/Princess Program
72 and the local affiliates thereof, which is organized and
73 operated exclusively for charitable purposes and has as
74 its primary purpose the nonsectarian character
75 development and citizenship training of its members;

76 (F) For purposes of this subsection:

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

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

79 (II) Gross receipts from fundraisers which include
80 receipts from admissions, sales of merchandise,
81 performance of services or furnishing of facilities in any
82 activity which is not an unrelated trade or business
83 within the meaning of Section 513 of the Internal
84 Revenue Code of 1986, as amended;

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

88 (IV) Gross investment income as defined in Section

89 509(e) of the Internal Revenue Code of 1986, as
90 amended;

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

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

104 (ii) The term "charitable contribution" means a
105 contribution or gift to or for the use of a corporation or
106 organization, described in Section 170(c)(2) of the
107 Internal Revenue Code of 1986, as amended; and

108 (iii) The term "membership fee" does not include any
109 amounts paid for tangible personal property or specific
110 services rendered to members by the corporation or
111 organization;

112 (G) The exemption allowed by this subdivision does
113 not apply to sales of gasoline or special fuel or to sales
114 of tangible personal property or services to be used or
115 consumed in the generation of unrelated business
116 income as defined in Section 513 of the Internal
117 Revenue Code of 1986, as amended. The exemption
118 granted in this subdivision applies only to services,

119 equipment, supplies and materials used or consumed in
120 the activities for which the organizations qualify as
121 tax-exempt organizations under the Internal Revenue
122 Code and does not apply to purchases of gasoline or
123 special fuel;

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

144 (8) Sales of tangible personal property or of any
145 taxable services rendered for use or consumption in
146 connection with the commercial production of an
147 agricultural product the ultimate sale of which is
148 subject to the tax imposed by this article or which
149 would have been subject to tax under this article:
150 *Provided*, That sales of tangible personal property and
151 services to be used or consumed in the construction of

152 or permanent improvement to real property and sales of
153 gasoline and special fuel are not exempt: *Provided,*
154 *however,* That nails and fencing may not be considered
155 as improvements to real property;

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

168 (10) Sales of newspapers when delivered to consumers
169 by route carriers;

170 (11) Sales of drugs, durable medical goods, mobility-
171 enhancing equipment and prosthetic devices dispensed
172 upon prescription and sales of insulin to consumers for
173 medical purposes. The amendment to this subdivision
174 shall apply to sales made after the thirty-first day of
175 December, two thousand three;

176 (12) Sales of radio and television broadcasting time,
177 preprinted advertising circulars and newspaper and
178 outdoor advertising space for the advertisement of
179 goods or services;

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

181 (14) Casual and occasional sales of property or
182 services not conducted in a repeated manner or in the
183 ordinary course of repetitive and successive
184 transactions of like character by a corporation or
185 organization which is exempt from tax under
186 subdivision (6) of this subsection on its purchases of
187 tangible personal property or services. For purposes of
188 this subdivision, the term "casual and occasional sales
189 not conducted in a repeated manner or in the ordinary
190 course of repetitive and successive transactions of like
191 character" means sales of tangible personal property or
192 services at fundraisers sponsored by a corporation or
193 organization which is exempt, under subdivision (6) of
194 this subsection, from payment of the tax imposed by
195 this article on its purchases when the fundraisers are of
196 limited duration and are held no more than six times
197 during any twelve-month period and "limited duration"
198 means no more than eighty-four consecutive hours:
199 *Provided*, That sales for volunteer fire departments and
200 volunteer school support groups, with duration of
201 events being no more than eighty-four consecutive
202 hours at a time, which are held no more than eighteen
203 times in a twelve-month period for the purposes of this
204 subdivision are considered "casual and occasional sales
205 not conducted in a repeated manner or in the ordinary
206 course of repetitive and successive transactions of a like
207 character";

208 (15) Sales of property or services to a school which has
209 approval from the Board of Trustees of the University
210 System of West Virginia or the Board of Directors of the
211 State College System to award degrees, which has its
212 principal campus in this state and which is exempt from
213 federal and state income taxes under Section 501(c)(3)
214 of the Internal Revenue Code of 1986, as amended:

215 *Provided*, That sales of gasoline and special fuel are
216 taxable;

217 (16) Sales of lottery tickets and materials by licensed
218 lottery sales agents and lottery retailers authorized by
219 the state Lottery Commission, under the provisions of
220 article twenty-two, chapter twenty-nine of this code;

221 (17) Leases of motor vehicles titled pursuant to the
222 provisions of article three, chapter seventeen-a of this
223 code to lessees for a period of thirty or more consecutive
224 days;

225 (18) Notwithstanding the provisions of section
226 eighteen or eighteen-b of this article or any other
227 provision of this article to the contrary, sales of propane
228 to consumers for poultry house heating purposes, with
229 any seller to the consumer who may have prior paid the
230 tax in his or her price, to not pass on the same to the
231 consumer, but to make application and receive refund
232 of the tax from the Tax Commissioner pursuant to rules
233 which are promulgated after being proposed for
234 legislative approval in accordance with chapter
235 twenty-nine-a of this code by the Tax Commissioner;

236 (19) Any sales of tangible personal property or
237 services purchased and lawfully paid for with food
238 stamps pursuant to the federal food stamp program
239 codified in 7 U. S. C. §2011, *et seq.*, as amended, or with
240 drafts issued through the West Virginia special
241 supplement food program for women, infants and
242 children codified in 42 U. S. C. §1786;

243 (20) Sales of tickets for activities sponsored by
244 elementary and secondary schools located within this

245 state;

246 (21) Sales of electronic data processing services and
247 related software: *Provided*, That, for the purposes of
248 this subdivision, "electronic data processing services"
249 means:

250 (A) The processing of another's data, including all
251 processes incident to processing of data such as
252 keypunching, keystroke verification, rearranging or
253 sorting of previously documented data for the purpose
254 of data entry or automatic processing and changing the
255 medium on which data is sorted, whether these
256 processes are done by the same person or several
257 persons; and

258 (B) Providing access to computer equipment for the
259 purpose of processing data or examining or acquiring
260 data stored in or accessible to the computer equipment;

261 (22) Tuition charged for attending educational
262 summer camps;

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

275 or indirectly, of stock, equity interests or membership
276 interests possessing fifty percent or more of the value of
277 the corporation, partnership or limited liability
278 company;

279 (24) Food for the following are exempt:

280 (A) Food purchased or sold by a public or private
281 school, school-sponsored student organizations or
282 school-sponsored parent-teacher associations to
283 students enrolled in the school or to employees of the
284 school during normal school hours; but not those sales
285 of food made to the general public;

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

296 (C) Food purchased or sold by a charitable or private
297 nonprofit organization, a nonprofit organization or a
298 governmental agency under a program to provide food
299 to low-income persons at or below cost;

300 (D) Food sold by a charitable or private nonprofit
301 organization, a nonprofit organization or a
302 governmental agency under a program operating in
303 West Virginia for a minimum of five years to provide
304 food at or below cost to individuals who perform a
305 minimum of two hours of community service for each

306 unit of food purchased from the organization;

307 (E) Food sold in an occasional sale by a charitable or
308 nonprofit organization, including volunteer fire
309 departments and rescue squads, if the purpose of the
310 sale is to obtain revenue for the functions and activities
311 of the organization and the revenue obtained is actually
312 expended for that purpose;

313 (F) Food sold by any religious organization at a social
314 or other gathering conducted by it or under its auspices,
315 if the purpose in selling the food is to obtain revenue for
316 the functions and activities of the organization and the
317 revenue obtained from selling the food is actually used
318 in carrying out those functions and activities: *Provided,*
319 That purchases made by the organizations are not
320 exempt as a purchase for resale; or

321 (G) Food sold by volunteer fire departments and
322 rescue squads that are exempt from federal income
323 taxes under Section 501(c)(3) or (c)(4) of the Internal
324 Revenue Code of 1986, as amended, when the purpose of
325 the sale is to obtain revenue for the functions and
326 activities of the organization and the revenue obtained
327 is exempt from federal income tax and actually
328 expended for that purpose;

329 (25) Sales of food by little leagues, midget football
330 leagues, youth football or soccer leagues, band boosters
331 or other school or athletic booster organizations
332 supporting activities for grades kindergarten through
333 twelve and similar types of organizations, including
334 scouting groups and church youth groups, if the purpose
335 in selling the food is to obtain revenue for the functions
336 and activities of the organization and the revenues
337 obtained from selling the food is actually used in

338 supporting or carrying on functions and activities of the
339 groups: *Provided*, That the purchases made by the
340 organizations are not exempt as a purchase for resale;

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

345 (27) Sales of or charges for the transportation of
346 passengers in interstate commerce;

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

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

356 (30) Charges for the services of opening and closing a
357 burial lot;

358 (31) Sales of livestock, poultry or other farm products
359 in their original state by the producer of the livestock,
360 poultry or other farm products or a member of the
361 producer's immediate family who is not otherwise
362 engaged in making retail sales of tangible personal
363 property; and sales of livestock sold at public sales
364 sponsored by breeders or registry associations or
365 livestock auction markets: *Provided*, That the
366 exemptions allowed by this subdivision may be claimed
367 without presenting or obtaining exemption certificates

368 provided the farmer maintains adequate records;

369 (32) Sales of motion picture films to motion picture
370 exhibitors for exhibition if the sale of tickets or the
371 charge for admission to the exhibition of the film is
372 subject to the tax imposed by this article and sales of
373 coin-operated video arcade machines or video arcade
374 games to a person engaged in the business of providing
375 the machines to the public for a charge upon which the
376 tax imposed by this article is remitted to the Tax
377 Commissioner: *Provided*, That the exemption provided
378 in this subdivision may be claimed by presenting to the
379 seller a properly executed exemption certificate;

380 (33) Sales of aircraft repair, remodeling and
381 maintenance services when the services are to an
382 aircraft operated by a certified or licensed carrier of
383 persons or property, or by a governmental entity, or to
384 an engine or other component part of an aircraft
385 operated by a certificated or licensed carrier of persons
386 or property, or by a governmental entity and sales of
387 tangible personal property that is permanently affixed
388 or permanently attached as a component part of an
389 aircraft owned or operated by a certificated or licensed
390 carrier of persons or property, or by a governmental
391 entity, as part of the repair, remodeling or maintenance
392 service and sales of machinery, tools or equipment
393 directly used or consumed exclusively in the repair,
394 remodeling or maintenance of aircraft, aircraft engines
395 or aircraft component parts for a certificated or licensed
396 carrier of persons or property or for a governmental
397 entity;

398 (34) Charges for memberships or services provided by
399 health and fitness organizations relating to personalized
400 fitness programs;

401 (35) Sales of services by individuals who babysit for a
402 profit: *Provided*, That the gross receipts of the
403 individual from the performance of baby-sitting
404 services do not exceed five thousand dollars in a taxable
405 year;

406 (36) Sales of services by public libraries or by libraries
407 at academic institutions or by libraries at institutions of
408 higher learning;

409 (37) Commissions received by a manufacturer's
410 representative;

411 (38) Sales of primary opinion research services when:

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

413 (B) The results of the service activities, including, but
414 not limited to, reports, lists of focus group recruits and
415 compilation of data are transferred to the client across
416 state lines by mail, wire or other means of interstate
417 commerce, for use by the client outside the State of
418 West Virginia; and

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

421 For the purpose of this subdivision, the term "primary
422 opinion research" means original research in the form
423 of telephone surveys, mall intercept surveys, focus
424 group research, direct mail surveys, personal interviews
425 and other data collection methods commonly used for
426 quantitative and qualitative opinion research studies;

427 (39) Sales of property or services to persons within the
428 state when those sales are for the purposes of the

429 production of value-added products: *Provided*, That the
430 exemption granted in this subdivision applies only to
431 services, equipment, supplies and materials directly
432 used or consumed by those persons engaged solely in the
433 production of value-added products: *Provided*,
434 *however*, That this exemption may not be claimed by
435 any one purchaser for more than five consecutive years,
436 except as otherwise permitted in this section.

437 For the purpose of this subdivision, the term
438 "value-added product" means the following products
439 derived from processing a raw agricultural product,
440 whether for human consumption or for other use. For
441 purposes of this subdivision, the following enterprises
442 qualify as processing raw agricultural products into
443 value-added products: Those engaged in the conversion
444 of:

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

447 (B) Fruits into wine;

448 (C) Honey into wine;

449 (D) Wool into fabric;

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

452 (F) Milk into cheese;

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

455 (H) Feeder cattle into commonly accepted slaughter

456 weights;

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

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

461 (40) Sales of music instructional services by a music
462 teacher and artistic services or artistic performances of
463 an entertainer or performing artist pursuant to a
464 contract with the owner or operator of a retail
465 establishment, restaurant, inn, bar, tavern, sports or
466 other entertainment facility or any other business
467 location in this state in which the public or a limited
468 portion of the public may assemble to hear or see
469 musical works or other artistic works be performed for
470 the enjoyment of the members of the public there
471 assembled when the amount paid by the owner or
472 operator for the artistic service or artistic performance
473 does not exceed three thousand dollars: *Provided*, That
474 nothing contained herein may be construed to deprive
475 private social gatherings, weddings or other private
476 parties from asserting the exemption set forth in this
477 subdivision. For the purposes of this exemption, artistic
478 performance or artistic service means and is limited to
479 the conscious use of creative power, imagination and
480 skill in the creation of aesthetic experience for an
481 audience present and in attendance and includes, and is
482 limited to, stage plays, musical performances, poetry
483 recitations and other readings, dance presentation,
484 circuses and similar presentations and does not include
485 the showing of any film or moving picture, gallery
486 presentations of sculptural or pictorial art, nude or strip
487 show presentations, video games, video arcades,
488 carnival rides, radio or television shows or any video or

489 audio taped presentations or the sale or leasing of video
490 or audio tapes, air shows or any other public meeting,
491 display or show other than those specified herein:
492 *Provided, however,* That nothing contained herein may
493 be construed to exempt the sales of tickets from the tax
494 imposed in this article. The state Tax Commissioner
495 shall propose a legislative rule pursuant to article three,
496 chapter twenty-nine-a of this code establishing
497 definitions and eligibility criteria for asserting this
498 exemption which is not inconsistent with the provisions
499 set forth herein: *Provided further,* That nude dancers or
500 strippers may not be considered as entertainers for the
501 purposes of this exemption;

502 (41) Charges to a member by a membership
503 association or organization which is exempt from
504 paying federal income taxes under Section 501(c)(3) or
505 (c)(6) of the Internal Revenue Code of 1986, as amended,
506 for membership in the association or organization,
507 including charges to members for newsletters prepared
508 by the association or organization for distribution
509 primarily to its members, charges to members for
510 continuing education seminars, workshops, conventions,
511 lectures or courses put on or sponsored by the
512 association or organization, including charges for
513 related course materials prepared by the association or
514 organization or by the speaker or speakers for use
515 during the continuing education seminar, workshop,
516 convention, lecture or course, but not including any
517 separate charge or separately stated charge for meals,
518 lodging, entertainment or transportation taxable under
519 this article: *Provided,* That the association or
520 organization pays the tax imposed by this article on its
521 purchases of meals, lodging, entertainment or
522 transportation taxable under this article for which a
523 separate or separately stated charge is not made. A

524 membership association or organization which is
525 exempt from paying federal income taxes under Section
526 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986,
527 as amended, may elect to pay the tax imposed under
528 this article on the purchases for which a separate charge
529 or separately stated charge could apply and not charge
530 its members the tax imposed by this article or the
531 association or organization may avail itself of the
532 exemption set forth in subdivision (9) of this subsection
533 relating to purchases of tangible personal property for
534 resale and then collect the tax imposed by this article on
535 those items from its member;

536 (42) Sales of governmental services or governmental
537 materials by county Assessors, county sheriffs, county
538 clerks or circuit clerks in the normal course of local
539 government operations;

540 (43) Direct or subscription sales by the Division of
541 Natural Resources of the magazine currently entitled
542 *Wonderful West Virginia* and by the Division of Culture
543 and History of the magazine currently entitled
544 *Goldenseal* and the journal currently entitled *West*
545 *Virginia History*;

546 (44) Sales of soap to be used at car wash facilities;

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

549 (46) The service of providing technical evaluations for
550 compliance with federal and state environmental
551 standards provided by environmental and industrial
552 consultants who have formal certification through the
553 West Virginia Department of Environmental Protection
554 or the West Virginia Bureau for Public Health or both.

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

562 (47) Sales of tangible personal property and services
563 by volunteer fire departments and rescue squads that
564 are exempt from federal income taxes under Section
565 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
566 as amended, if the sole purpose of the sale is to obtain
567 revenue for the functions and activities of the
568 organization and the revenue obtained is exempt from
569 federal income tax and actually expended for that
570 purpose;

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

577 (49) Sales of the regulation size United States flag and
578 the regulation size West Virginia flag for display.

579 (b) *Refundable exemptions.* — Any person having a
580 right or claim to any exemption set forth in this
581 subsection shall first pay to the vendor the tax imposed
582 by this article and then apply to the Tax Commissioner
583 for a refund or credit, or as provided in section nine-d
584 of this article, give to the vendor his or her West
585 Virginia direct pay permit number. The following sales
586 of tangible personal property and services are exempt

587 from tax as provided in this subsection:

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

596 (2) Sales of services, machinery, supplies and
597 materials directly used or consumed in the activities of
598 manufacturing, transportation, transmission,
599 communication, production of natural resources, gas
600 storage, generation or production or selling electric
601 power, provision of a public utility service or the
602 operation of a utility service or the operation of a utility
603 business, in the businesses or organizations named in
604 this subdivision and does not apply to purchases of
605 gasoline or special fuel;

606 (3) Sales of property or services to nationally
607 chartered fraternal or social organizations for the sole
608 purpose of free distribution in public welfare or relief
609 work: *Provided*, That sales of gasoline and special fuel
610 are taxable;

611 (4) Sales and services, fire-fighting or station house
612 equipment, including construction and automotive,
613 made to any volunteer fire department organized and
614 incorporated under the laws of the State of West
615 Virginia: *Provided*, That sales of gasoline and special
616 fuel are taxable;

617 (5) Sales of building materials or building supplies or

618 other property to an organization qualified under
619 Section 501(c)(3) or (c)(4) of the Internal Revenue Code
620 of 1986, as amended, which are to be installed in,
621 affixed to or incorporated by the organization or its
622 agent into real property or into a building or structure
623 which is or will be used as permanent low-income
624 housing, transitional housing, an emergency homeless
625 shelter, a domestic violence shelter or an emergency
626 children and youth shelter if the shelter is owned,
627 managed, developed or operated by an organization
628 qualified under Section 501(c)(3) or (c)(4) of the Internal
629 Revenue Code of 1986, as amended; and

630 (6) Sales of construction and maintenance materials
631 acquired by a second party for use in the construction
632 or maintenance of a highway project: *Provided*, That in
633 lieu of any refund or credit to the person that paid the
634 tax imposed by this article, the Tax Commissioner shall
635 pay to the Division of Highways for deposit into the
636 State Road Fund of the state reimbursement for the tax
637 in the amount estimated under the provisions of this
638 subdivision: *Provided, however*, That by the fifteenth
639 day of June of each fiscal year, the division shall
640 provide to the Tax Department an itemized listing of
641 highways projects with the amount of funds expended
642 for highway construction and maintenance. The
643 Commissioner of Highways shall request reimbursement
644 of the tax based on an estimate that forty percent of the
645 total gross funds expended by the agency during the
646 fiscal period were for the acquisition of materials used
647 for highway construction and maintenance. The amount
648 of the reimbursement shall be calculated at six percent
649 of the forty percent.

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 July 1, 2007.

[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 *4th* Day of *April*, 2007.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 02 2007

Time 3:40 pm