

SB 1003

FILED

2009 JUN 17 PM 4:32

**WEST VIRGINIA LEGISLATURE**  
SEVENTY-NINTH LEGISLATURE  
FIRST EXTRAORDINARY SESSION, 2009

OFFICE OF THE CLERK  
WEST VIRGINIA  
SECRETARY OF STATE

—●—  
**ENROLLED**

**Senate Bill No. 1003**

(BY SENATORS TOMBLIN (MR. PRESIDENT)  
AND CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed June 2, 2009; to take effect July 1, 2009.]

FILED

2009 JUN 17 PM 4:32

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

ENROLLED

## Senate Bill No. 1003

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,  
BY REQUEST OF THE EXECUTIVE)

---

[Passed June 2, 2009; to take effect July 1, 2009.]

---

**AN ACT** to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6J-1, §11-6J-2, §11-6J-3, §11-6J-4, §11-6J-5, §11-6J-6 and §11-6J-7; and to amend and reenact §11-15-8d and §11-15-9h of said code, all relating to establishing the High-Technology Business Property Valuation Act; defining terms; providing mandated salvage valuation of certain high-technology and internet advertising businesses' property; specifying method for valuation of certain property; providing for initial determination by county assessors of whether certain property is used in a high-technology business or an internet advertising business; specifying procedure for protest and appeal of determination by county assessor; requiring the West Virginia Development Office to report to the Joint Committee on Government and Finance on the economic impact of such valuation beginning in 2013; providing exceptions to

limitations on right to assert exemptions; exempting certain items from consumers sales and service tax; specifying effective dates; and requiring reports to the Legislature.

*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 §11-6J-1, §11-6J-2, §11-6J-3, §11-6J-4, §11-6J-5, §11-6J-6 and §11-6J-7; and that §11-15-8d and §11-15-9h of said code be amended and reenacted, all to read as follows:

**ARTICLE 6J. SPECIAL METHOD FOR VALUATION OF CERTAIN HIGH-TECHNOLOGY PROPERTY.**

**§11-6J-1. Short title.**

1 This article shall be known and cited as the High-  
2 Technology Business Property Valuation Act.

**§11-6J-2. Definitions.**

1 For the purposes of this article:

2 (1) "Network" means a group of two or more computer  
3 systems linked together;

4 (2) "Salvage value" means five percent of original cost;  
5 and

6 (3) "Server" means a computer or device on a network  
7 that manages network resources.

**§11-6J-3. Valuation of certain specialized high-technology property.**

1 Notwithstanding any other provision of this code to the  
2 contrary, the value of servers directly used in a high-  
3 technology business or in an internet advertising business,  
4 as defined in section nine-h, article fifteen of this chapter,  
5 and the value of tangible personal property directly used  
6 in a high-technology business or in an internet advertising

7 business, as defined in said section, for the purpose of ad  
8 valorem property taxation under this chapter and under  
9 article X of the constitution of this state, shall be its  
10 salvage value.

**§11-6J-4. Initial determination by county assessor.**

1 The assessor of the county in which a server or specific  
2 item of tangible personal property is located shall deter-  
3 mine, in writing, whether that server or specific item of  
4 tangible personal property is directly used in a high-  
5 technology business or an internet advertising business  
6 subject to valuation in accordance with this article. Upon  
7 making a determination that a taxpayer has a server or  
8 tangible personal property directly used in a high-technol-  
9 ogy business or an internet advertising business, the  
10 county assessor shall notify the Tax Commissioner of that  
11 determination and shall provide information to the Tax  
12 Commissioner as he or she requires relating to that  
13 determination.

**§11-6J-5. Protest and appeal.**

1 At any time after the property is returned for taxation,  
2 but prior to January 1 of the assessment year, any tax-  
3 payer may apply to the county assessor for information  
4 regarding the issue of whether any particular item or items  
5 of property constitute property directly used in a high-  
6 technology business or an internet advertising business  
7 under this article which should be subject to valuation in  
8 accordance with this article. If the taxpayer believes that  
9 some portion of the taxpayer's property is subject to this  
10 article, the taxpayer shall file objections in writing with  
11 the county assessor. The county assessor shall decide the  
12 matter by either sustaining the protest and making proper  
13 corrections, or by stating, in writing if requested, the  
14 reasons for the county assessor's refusal. The county  
15 assessor may, and if the taxpayer requests, the county

16 assessor shall, before January 1 of the assessment year,  
17 certify the question to the Tax Commissioner in a state-  
18 ment sworn to by both parties, or if the parties are unable  
19 to agree, in separate sworn statements. The sworn state-  
20 ment or statements shall contain a full description of the  
21 property and any other information which the Tax Com-  
22 missioner may require.

23 The Tax Commissioner shall, as soon as possible on  
24 receipt of the question, but in no case later than February  
25 28 of the assessment year, instruct the county assessor as  
26 to how the property shall be treated. The instructions  
27 issued and forwarded by mail to the county assessor are  
28 binding upon the county assessor, but either the county  
29 assessor or the taxpayer may apply to the circuit court of  
30 the county for review of the question of the applicability  
31 of this article to the property in the same fashion as is  
32 provided for appeals from the county commission in  
33 section twenty-five, article three of this chapter. The Tax  
34 Commissioner shall prescribe forms on which the ques-  
35 tions under this section shall be certified and the Tax  
36 Commissioner has the authority to pursue any inquiry and  
37 procure any information necessary for disposition of the  
38 matter.

**§11-6J-6. Effective date.**

1 This article shall be effective on and after July 1, 2009.

**§11-6J-7. Report on economic benefit.**

1 The West Virginia Development Office shall provide to  
2 the Joint Committee on Government and Finance by  
3 March 1, 2013, and on March 1 of each of the two subse-  
4 quent years, a report detailing the economic benefit of the  
5 valuation method specified in this article. The report shall  
6 include the number of new jobs created due to the provi-

7 sions of this article and the ad valorem property tax  
8 impact.

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

**§11-15-8d. Limitations on right to assert exemptions.**

1 (a) Persons who perform “contracting” as defined in  
2 section two of this article, or persons acting in an agency  
3 capacity, may not assert any exemption to which the  
4 purchaser of such contracting services or the principal is  
5 entitled. Any statutory exemption to which a taxpayer  
6 may be entitled shall be invalid unless the tangible  
7 personal property or taxable service is actually purchased  
8 by such taxpayer and is directly invoiced to and paid by  
9 such taxpayer. This section shall not apply to purchases  
10 by an employee for his or her employer; purchases by a  
11 partner for his or her partnership; or purchases by a duly  
12 authorized officer of a corporation, or unincorporated  
13 organization, for his or her corporation or unincorporated  
14 organization so long as the purchase is invoiced to and  
15 paid by the employer, partnership, corporation or unincor-  
16 porated organization.

17 (b) *Transition rule.* – This section shall not apply to  
18 purchases of tangible personal property or taxable services  
19 in fulfillment of a purchasing agent or procurement agent  
20 contract executed and legally binding on the parties  
21 thereto prior to September 15, 1999: *Provided*, That this  
22 transition rule shall not apply to any purchases of tangible  
23 personal property or taxable services made under such a  
24 contract after August 31, 1991; and this transition rule  
25 shall not apply if the primary purpose of the purchasing  
26 agent or procurement agent contract was to avoid pay-  
27 ment of consumers sales and use taxes. However, effective  
28 July 1, 2007, this section shall not apply to purchases of  
29 services, machinery, supplies or materials, except gasoline  
30 and special fuel, to be directly used or consumed in the  
31 construction, alteration, repair or improvement of a new  
32 or existing building or structure by a person performing

33 “contracting”, as defined in section two of this article, if  
34 the purchaser of the “contracting” services would be  
35 entitled to claim the refundable exemption under subdivi-  
36 sion (2), subsection (b), section nine of this article had it  
37 purchased the services, machinery, supplies or materials.  
38 Effective July 1, 2009, this section shall not apply to  
39 purchases of services, computers, servers, building materi-  
40 als and tangible personal property, except purchases of  
41 gasoline and special fuel, to be installed into a building or  
42 facility or directly used or consumed in the construction,  
43 alteration, repair or improvement of a new or existing  
44 building or structure by a person performing “contract-  
45 ing”, as defined in section two of this article, if the pur-  
46 chaser of the “contracting” services would be entitled to  
47 claim the exemption under subdivision (7), subsection (a),  
48 section nine-h of this article.

**§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; sales of tangible personal property for direct use in a high-technology business or internet advertising business; definitions.**

1 (a) In order to modernize the exemptions from tax  
2 contained in this article as a result of technological  
3 advances in computers and the expanded role of comput-  
4 ers, the internet and global instant communications in  
5 business and to encourage computer software developers,  
6 computer hardware designers, systems engineering firms,  
7 electronic data processing companies and other high-  
8 technology companies to locate and expand their busi-

9 nesses in West Virginia, the following sales of tangible  
10 personal property and software are exempt:

11 (1) Sales of computer hardware or software (including  
12 custom designed software) to be directly incorporated by  
13 a manufacturer into a manufactured product. For pur-  
14 poses of this subsection, the payment of licensing fees for  
15 the right to incorporate hardware or software developed  
16 by persons other than the manufacturer into a manufac-  
17 tured product is exempt from the tax imposed by this  
18 article;

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

22 (3) Sales of electronic data processing services;

23 (4) Sales of educational software required to be used in  
24 any of the public schools of this state or in any institution  
25 in this state which qualifies as a nonprofit or educational  
26 institution subject to administration, regulation, certifica-  
27 tion or approval of the Department of Education, the  
28 Department of Education and the Arts or the Higher  
29 Education Policy Commission;

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

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

38 (7) Sales of prewritten computer software, computers,  
39 computer hardware, servers and building materials and  
40 tangible personal property to be installed into a building

41 or facility for direct use in a high-technology business or  
42 an internet advertising business.

43 (b) *Definitions.*—

44 As used in this article, the following terms have the  
45 following meanings:

46 (1) “Computer hardware” means a computer, as defined  
47 in article fifteen-b of this chapter, and the directly and  
48 immediately connected physical equipment involved in the  
49 performance of data processing or communications  
50 functions, including data input, data output, data process-  
51 ing, data storage, and data communication apparatus that  
52 is directly and immediately connected to the computer.  
53 The term “computer hardware” does not include computer  
54 software.

55 (2) “High-technology business” means and is limited to  
56 businesses primarily engaged in the following activities:  
57 Computer hardware design and development; computer  
58 software design, development, customization and upgrade;  
59 computer systems design and development; website design  
60 and development; network design and development; design  
61 and development of new manufactured products which  
62 incorporate computer hardware and software; electronic  
63 data processing; network management, maintenance,  
64 engineering, administration and security services; website  
65 management, maintenance, engineering, administration  
66 and security services and computer systems management,  
67 maintenance, engineering, administration and security  
68 services. High-technology business as defined herein is  
69 intended to include businesses which engage in the  
70 activities enumerated in this definition as their primary  
71 business activity, and not as a secondary or incidental  
72 activity and not as an activity in support of or incidental  
73 to business activity not specifically enumerated in this  
74 definition.

75 (3) "High-technology business services" means and is  
76 limited to computer hardware design and development;  
77 computer software design, development, customization  
78 and upgrade; computer systems design and development;  
79 website design and development; network design and  
80 development; electronic data processing; computersystems  
81 management; computer systems maintenance; computer  
82 systems engineering; computer systems administration and  
83 computer systems security services.

84 (4) "Internet advertising business" means a for-profit  
85 business that is engaged, for monetary remuneration, in  
86 the primary business activity of announcing, or calling  
87 public attention to, goods or services in order to induce the  
88 public to purchase those goods or services, and which uses  
89 the internet as its sole advertising communications  
90 medium. For purposes of this definition, internet advertis-  
91 ing must be the primary business activity of the business  
92 and not a secondary or incidental activity and not an  
93 activity in support of or incidental to other business  
94 activity.

95 (5) "Network" means a group of two or more computer  
96 systems linked together.

97 (6) "Server" means a computer or device on a network  
98 that manages network resources.

99 (c) The amendments to this section made in the first  
100 extraordinary session of the Legislature in 2009 shall  
101 apply to purchases made on and after July 1, 2009.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2009.

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

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

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

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

The within..... is approved ..... this the 17<sup>th</sup>  
Day of June ....., 2009.

*[Handwritten Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

JUN 16 2009

Time 9:00am