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

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.

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

§11-6J-2. Definitions.

For the purposes of this article:

(1) “Network” means a group of two or more computer systems linked together;

(2) “Salvage value” means five percent of original cost;

and

(3) “Server” means a computer or device on a network that manages network resources.

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

Notwithstanding any other provision of this code to the contrary, the value of servers directly used in a high-technology business or in an internet advertising business, as defined in section nine-h, article fifteen of this chapter, and the value of tangible personal property directly used in a high-technology business or in an internet advertising
business, as defined in said section, for the purpose of ad
valorem property taxation under this chapter and under
article X of the constitution of this state, shall be its
salvage value.

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

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

§11-6J-5. Protest and appeal.

1 At any time after the property is returned for taxation,
but prior to January 1 of the assessment year, any tax-
payer may apply to the county assessor for information
regarding the issue of whether any particular item or items
of property constitute property directly used in a high-
technology business or an internet advertising business
under this article which should be subject to valuation in
accordance with this article. If the taxpayer believes that
some portion of the taxpayer’s property is subject to this
article, the taxpayer shall file objections in writing with
the county assessor. The county assessor shall decide the
matter by either sustaining the protest and making proper
corrections, or by stating, in writing if requested, the
reasons for the county assessor’s refusal. The county
assessor may, and if the taxpayer requests, the county
assessor shall, before January 1 of the assessment year, certify the question to the Tax Commissioner in a statement sworn to by both parties, or if the parties are unable to agree, in separate sworn statements. The sworn statement or statements shall contain a full description of the property and any other information which the Tax Commissioner may require.

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

§11-6J-6. Effective date.

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


The West Virginia Development Office shall provide to the Joint Committee on Government and Finance by March 1, 2013, and on March 1 of each of the two subsequent years, a report detailing the economic benefit of the valuation method specified in this article. The report shall include the number of new jobs created due to the provi-
sions of this article and the ad valorem property tax impact.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

(a) Persons who perform "contracting" as defined in section two of this article, or persons acting in an agency capacity, may not assert any exemption to which the purchaser of such contracting services or the principal is entitled. Any statutory exemption to which a taxpayer may be entitled shall be invalid unless the tangible personal property or taxable service is actually purchased by such taxpayer and is directly invoiced to and paid by such taxpayer. This section shall not apply to purchases by an employee for his or her employer; purchases by a partner for his or her partnership; or purchases by a duly authorized officer of a corporation, or unincorporated organization, for his or her corporation or unincorporated organization so long as the purchase is invoiced to and paid by the employer, partnership, corporation or unincorporated organization.

(b) Transition rule. — This section shall not apply to purchases of tangible personal property or taxable services in fulfillment of a purchasing agent or procurement agent contract executed and legally binding on the parties thereto prior to September 15, 1999: Provided, That this transition rule shall not apply to any purchases of tangible personal property or taxable services made under such a contract after August 31, 1991; and this transition rule shall not apply if the primary purpose of the purchasing agent or procurement agent contract was to avoid payment of consumers sales and use taxes. However, effective July 1, 2007, this section shall not apply to purchases of services, machinery, supplies or materials, except gasoline and special fuel, to be directly used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure by a person performing...
“contracting”, as defined in section two of this article, if the purchaser of the “contracting” services would be entitled to claim the refundable exemption under subdivision (2), subsection (b), section nine of this article had it purchased the services, machinery, supplies or materials. Effective July 1, 2009, this section shall not apply to purchases of services, computers, servers, building materials and tangible personal property, except purchases of gasoline and special fuel, to be installed into a building or facility or directly used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure by a person performing “contracting”, as defined in section two of this article, if the purchaser of the “contracting” services would be entitled to claim the exemption under subdivision (7), subsection (a), 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.

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

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

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

(3) Sales of electronic data processing services;

(4) Sales of educational software required to be used in any of the public schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to administration, regulation, certification or approval of the Department of Education, the Department of Education and the Arts or the Higher Education Policy Commission;

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

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

(7) Sales of prewritten computer software, computers, computer hardware, servers and building materials and tangible personal property to be installed into a building
(b) Definitions.—

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

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

(2) “High-technology business” means and is limited to businesses primarily engaged in the following activities: computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; design and development of new manufactured products which incorporate computer hardware and software; electronic data processing; network management, maintenance, engineering, administration and security services; website management, maintenance, engineering, administration and security services and computer systems management, maintenance, engineering, administration and security services. High-technology business as defined herein is intended to include businesses which engage in the activities enumerated in this definition as their primary business activity, and not as a secondary or incidental activity and not as an activity in support of or incidental to business activity not specifically enumerated in this definition.
(3) "High-technology business services" means and is limited to computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; electronic data processing; computer systems management; computer systems maintenance; computer systems engineering; computer systems administration and computer systems security services.

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

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

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

(c) The amendments to this section made in the first extraordinary session of the Legislature in 2009 shall 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.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2009.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within...is approved...this the 17th Day of June, 2009.

Governor