WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2011

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 1001

(By Senators Kessler (Acting President) and Hall, By Request of the Executive)

[Passed August 5, 2011; in effect from passage.]
AN ACT to amend and reenact §11-15-3a of the Code of West Virginia, 1931, as amended; and to amend and reenact §11B-2-20 of said code, all relating generally to the consumers sales and service tax and the Revenue Shortfall Reserve Fund; specifying reduction in consumers sales and service tax on sales, purchases and uses of food and food ingredients intended for human consumption; specifying contingent elimination of the consumers sales and service tax on sales, purchases and uses of food and food ingredients intended for human consumption bases on specified levels of funding in the Revenue Shortfall Reserve Fund; and specifying maximum aggregate funding amount for the Revenue Shortfall Reserve Fund.

Be it enacted by the Legislature of West Virginia:

That §11-15-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11B-2-20 of said code be amended and reenacted, all to read as follows:
CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3a. Rate of tax on food and food ingredients intended for human consumption; reductions and cessations of tax.

(a) Rate of tax on food and food ingredients. — Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary:

(1) Rate reduction. — The rate of tax on sales, purchases and uses of food and food ingredients intended for human consumption after June 30, 2008, shall be three percent of its sales price, as defined in section two, article fifteen-b of this chapter.

(2) Additional rate reduction. — The rate of tax on sales, purchases and uses of food and food ingredients as defined in that section that is intended for human consumption after December 31, 2011, shall be two percent of its sales price, as defined in that section. After June 30, 2012, the rate of tax on sales, purchases and uses of food and food ingredients as defined in that section that is intended for human consumption shall be one percent of its sales price, as defined in that section.

(3) Contingent termination of tax on food. — The tax on sales, purchases and uses of food and food ingredients as defined in section two, article fifteen-b of this chapter that is intended for human consumption shall cease after June 30, 2013, and no such tax shall be imposed on sales, purchases and uses of food and food ingredients so defined: Provided, That the cessation of tax after June 30, 2013, authorized by this subsection shall be suspended if the balance of funds as of December 31, 2012, in the Revenue Shortfall Reserve Fund established in section twenty, article two, chapter eleven-b of this code does not equal or exceed twelve and one-half percent of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2012. Such suspension shall terminate, and the cessation of tax shall proceed, beginning
on July 1 of any calendar year beginning after December 31, 2013, in which the balance of funds as of December 31 of the preceding fiscal year in said Revenue Shortfall Reserve Fund equals or exceeds twelve and one-half percent of the General Revenue Fund budgeted for the immediately succeeding fiscal year.

(b) **Calculation of tax on fractional parts of a dollar.** — The tax computation under this section shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The seller may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(c) **Federal Food Stamp and Women, Infants and Children programs, other exemptions.** — Nothing in this section affects application of the exemption from tax provided in section nine of this article for food purchased by an eligible person using food stamps, electronic benefits transfer cards or vouchers issued by or pursuant to authorization of the United States Department of Agriculture to individuals participating in the Federal Food Stamp Program, by whatever name called, or the Women, Infants and Children (WIC) program, or application of any other exemption from tax set forth in this article or article fifteen-a of this chapter.

**CHAPTER 11B. DEPARTMENT OF REVENUE.**

**ARTICLE 2. STATE BUDGET OFFICE.**

§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.

(a) Notwithstanding any provision of this section, the Governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The Governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the
Legislature from the Revenue Shortfall Reserve Fund established in this section.

(b) A Revenue Shortfall Reserve Fund is hereby continued within the State Treasury. The Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed thirteen percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. The Revenue Shortfall Reserve Fund shall be funded as set forth in this subsection from surplus revenues, if any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time. Within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the Revenue Shortfall Reserve Fund such amount of the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended, as may be necessary to bring the balance of the Revenue Shortfall Reserve Fund to thirteen percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. If at the end of any fiscal year the Revenue Shortfall Reserve Fund is funded at an amount equal to or exceeding thirteen percent of the State's General Revenue Fund budget for the fiscal year just ended, then there shall be no further deposit by the secretary under the provisions of this section of any surplus revenues as set forth in this subsection until that time the Revenue Shortfall Reserve Fund balance is less than thirteen percent of the total appropriations from the State Fund, General Revenue.

(c) Not earlier than November 1 of each calendar year, if the state's fiscal circumstances are such as to otherwise trigger the authority of the Governor to reduce appropriations under this section or section twenty-one or twenty-two of this article, then in that event the Governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section nineteen, article VI of the Constitution of West Virginia for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplemen-
tary appropriation bill at the next preceding regular session
of the Legislature to draw money from the surplus Revenue
Shortfall Reserve Fund to meet any anticipated revenue
shortfall. If the Legislature fails to enact a supplementary
appropriation from the Revenue Shortfall Reserve Fund
during any special legislative session called for the purposes
set forth in this section or during the next preceding regular
session of the Legislature, then the Governor may proceed
with a reduction of appropriations pursuant to sections
twenty-one and twenty-two of this article. Should any
amount drawn from the Revenue Shortfall Reserve Fund
pursuant to an appropriation made by the Legislature prove
insufficient to address any anticipated shortfall, then the
Governor may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this
article.

(d) Upon the creation of the fund, the Legislature is
authorized and may make an appropriation from the Reve-
 nue Shortfall Reserve Fund for revenue shortfalls, for
emergency revenue needs caused by acts of God or natural
disasters or for other fiscal needs as determined solely by the
Legislature.

(e) Prior to the thirty-first day of October in any fiscal year
in which revenues are inadequate to make timely payments
of the state's obligations, the Governor may by executive
order, after first notifying the presiding officers of both
houses of the Legislature in writing, borrow funds from the
Revenue Shortfall Reserve Fund. The amount of funds
borrowed under this subsection shall not exceed one and
one-half percent of the general revenue estimate for the
fiscal year in which the funds are to be borrowed, or the
amount the Governor determines is necessary to make timely
payment of the state's obligations, whichever is less. Any
funds borrowed pursuant to this subsection shall be repaid,
without interest, and redeposited to the credit of the Revenue
Shortfall Reserve Fund within ninety days of their with-
drawal.
(f) There is hereby created in the State Treasury the Revenue Shortfall Reserve Fund – Part B. The Revenue Shortfall Reserve Fund – Part B shall consist of moneys transferred from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of section two, article eleven-a, chapter four of this code, repayments made of the loan from the West Virginia Tobacco Settlement Medical Trust Fund to the Physician’s Mutual Insurance Company pursuant to the provisions of article twenty-f, chapter thirty-three of this code, and all interest and other return earned on the moneys in the Revenue Shortfall Reserve Fund – Part B. Moneys in the Revenue Shortfall Reserve Fund – Part B may be expended solely for the purposes set forth in subsection (d) of this section, subject to the following conditions:

(1) No moneys in the Revenue Shortfall Reserve Fund – Part B nor any interest or other return earned thereon may be expended for any purpose unless all moneys in the Revenue Shortfall Reserve Fund described in subsection (b) of this section have first been expended, except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund – Part B may be expended as provided in subdivision (2) of this subsection; and

(2) Notwithstanding any other provision of this section to the contrary, the Legislature may appropriate any interest and other return earned thereon that may accrue on the moneys in the Revenue Shortfall Reserve Fund – Part B after June 30, 2025, for expenditure for the purposes set forth in section three, article eleven-a, chapter four of this code; and

(3) Any appropriation made from Revenue Shortfall Reserve Fund – Part B shall be made only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

(g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund – Part B prescribed in subsection (f) of this section, in appropriating moneys pursuant to the provisions of this section, the Legislature
may in any fiscal year appropriate from the Revenue Short-
fall Reserve Fund and the Revenue Shortfall Reserve Fund –
Part B a total amount up to, but not exceeding, ten percent
of the total appropriations from the State Fund, General
Revenue, for the fiscal year just ended.

(h)(1) Of the moneys in the Revenue Shortfall Reserve
Fund, $100 million, or such greater amount as may be
certified as necessary by the director of the budget for the
purposes of subsection (e) of this section, shall be made
available to the West Virginia Board of Treasury Investments
for management and investment of the moneys in accordance
with the provisions of article six-c, chapter twelve of this
code. All other moneys in the Revenue Shortfall Reserve
Fund shall be made available to the West Virginia Invest-
ment Management Board for management and investment of
the moneys in accordance with the provisions of article six,
chapter twelve of this code. Any balance of the Revenue
Shortfall Reserve Fund including accrued interest and other
return earned thereon at the end of any fiscal year shall not
revert to the General Fund but shall remain in the Revenue
Shortfall Reserve Fund for the purposes set forth in this
section.

(2) All of the moneys in the Revenue Shortfall Reserve
Fund – Part B shall be made available to the West Virginia
Investment Management Board for management and invest-
ment of the moneys in accordance with the provisions of
article six, chapter twelve of this code. Any balance of the
Revenue Shortfall Reserve Fund – Part B, including accrued
interest and other return earned thereon at the end of any
fiscal year, shall not revert to the General Fund but shall
remain in the Revenue Shortfall Reserve Fund – Part B for
the purposes set forth in this section.
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 from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
Acting President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 23rd Day of August, 2011.

[Signature]
Governor
PRESENTED TO THE GOVERNOR

AUG 17 2011

Time 9:30 AM