

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 1001**

5 (BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,

6 BY REQUEST OF THE EXECUTIVE)

7 _____
8 [Passed August 5, 2011; in effect from passage.]
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13 AN ACT to amend and reenact §11-15-3a of the Code of West Virginia,
14 1931, as amended; and to amend and reenact §11B-2-20 of said
15 code, all relating generally to the consumers sales and
16 service tax and the Revenue Shortfall Reserve Fund; specifying
17 reduction in consumers sales and service tax on sales,
18 purchases and uses of food and food ingredients intended for
19 human consumption; specifying contingent elimination of the
20 consumers sales and service tax on sales, purchases and uses
21 of food and food ingredients intended for human consumption
22 bases on specified levels of funding in the Revenue Shortfall
23 Reserve Fund; and specifying maximum aggregate funding amount
24 for the Revenue Shortfall Reserve Fund.

25 *Be it enacted by the Legislature of West Virginia:*

26 That §11-15-3a of the Code of West Virginia, 1931, as amended,

1 be amended and reenacted; and that §11B-2-20 of said code be
2 amended and reenacted, all to read as follows:

3 **CHAPTER 11. TAXATION.**

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

5 **§11-15-3a. Rate of tax on food and food ingredients intended for**
6 **human consumption; reductions and cessations of tax.**

7 (a) *Rate of tax on food and food ingredients.* --

8 Notwithstanding any provision of this article or article fifteen-a
9 of this chapter to the contrary:

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

14 (2) *Additional rate reduction.* -- The rate of tax on sales,
15 purchases and uses of food and food ingredients as defined in that
16 section that is intended for human consumption after December 31,
17 2011, shall be two percent of its sales price, as defined in that
18 section. After June 30, 2012, the rate of tax on sales, purchases
19 and uses of food and food ingredients as defined in that section
20 that is intended for human consumption shall be one percent of its
21 sales price, as defined in that section.

22 (3) *Contingent termination of tax on food.* -- The tax on
23 sales, purchases and uses of food and food ingredients as defined
24 in section two, article fifteen-b of this chapter that is intended
25 for human consumption shall cease after June 30, 2013, and no such

1 tax shall be imposed on sales, purchases and uses of food and food
2 ingredients so defined: *Provided*, That the cessation of tax after
3 June 30, 2013, authorized by this subsection shall be suspended if
4 the balance of funds as of December 31, 2012, in the Revenue
5 Shortfall Reserve Fund established in section twenty, article two,
6 chapter eleven-b of this code does not equal or exceed twelve and
7 one-half percent of the General Revenue Fund budgeted for the
8 fiscal year commencing July 1, 2012. Such suspension shall
9 terminate, and the cessation of tax shall proceed, beginning on
10 July 1 of any calendar year beginning after December 31, 2013, in
11 which the balance of funds as of December 31 of the preceding
12 fiscal year in said Revenue Shortfall Reserve Fund equals or
13 exceeds twelve and one-half percent of the General Revenue Fund
14 budgeted for the immediately succeeding fiscal year.

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

23 (c) *Federal Food Stamp and Women, Infants and Children*
24 *programs, other exemptions.* -- Nothing in this section affects
25 application of the exemption from tax provided in section nine of
26 this article for food purchased by an eligible person using food

1 stamps, electronic benefits transfer cards or vouchers issued by or
2 pursuant to authorization of the United States Department of
3 Agriculture to individuals participating in the Federal Food Stamp
4 Program, by whatever name called, or the Women, Infants and
5 Children (WIC) program, or application of any other exemption from
6 tax set forth in this article or article fifteen-a of this chapter.

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

8 **ARTICLE 2. STATE BUDGET OFFICE.**

9 **§11B-2-20. Reduction of appropriations; powers of Governor;**
10 **Revenue Shortfall Reserve Fund and permissible**
11 **expenditures therefrom.**

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

18 (b) A Revenue Shortfall Reserve Fund is hereby continued
19 within the State Treasury. The Revenue Shortfall Reserve Fund
20 shall be funded continuously and on a revolving basis in accordance
21 with this subsection up to an aggregate amount not to exceed
22 thirteen percent of the total appropriations from the State Fund,
23 General Revenue, for the fiscal year just ended. The Revenue
24 Shortfall Reserve Fund shall be funded as set forth in this
25 subsection from surplus revenues, if any, in the State Fund,

1 General Revenue, as the surplus revenues may accrue from time to
2 time. Within sixty days of the end of each fiscal year, the
3 secretary shall cause to be deposited into the Revenue Shortfall
4 Reserve Fund such amount of the first fifty percent of all surplus
5 revenues, if any, determined to have accrued during the fiscal year
6 just ended, as may be necessary to bring the balance of the Revenue
7 Shortfall Reserve Fund to thirteen percent of the total
8 appropriations from the State Fund, General Revenue, for the fiscal
9 year just ended. If at the end of any fiscal year the Revenue
10 Shortfall Reserve Fund is funded at an amount equal to or exceeding
11 thirteen percent of the State's General Revenue Fund budget for the
12 fiscal year just ended, then there shall be no further deposit by
13 the secretary under the provisions of this section of any surplus
14 revenues as set forth in this subsection until that time the
15 Revenue Shortfall Reserve Fund balance is less than thirteen
16 percent of the total appropriations from the State Fund, General
17 Revenue.

18 (c) Not earlier than November 1 of each calendar year, if the
19 state's fiscal circumstances are such as to otherwise trigger the
20 authority of the Governor to reduce appropriations under this
21 section or section twenty-one or twenty-two of this article, then
22 in that event the Governor may notify the presiding officers of
23 both houses of the Legislature in writing of his or her intention
24 to convene the Legislature pursuant to section nineteen, article VI
25 of the Constitution of West Virginia for the purpose of requesting
26 the introduction of a supplementary appropriation bill or to

1 request a supplementary appropriation bill at the next preceding
2 regular session of the Legislature to draw money from the surplus
3 Revenue Shortfall Reserve Fund to meet any anticipated revenue
4 shortfall. If the Legislature fails to enact a supplementary
5 appropriation from the Revenue Shortfall Reserve Fund during any
6 special legislative session called for the purposes set forth in
7 this section or during the next preceding regular session of the
8 Legislature, then the Governor may proceed with a reduction of
9 appropriations pursuant to sections twenty-one and twenty-two of
10 this article. Should any amount drawn from the Revenue Shortfall
11 Reserve Fund pursuant to an appropriation made by the Legislature
12 prove insufficient to address any anticipated shortfall, then the
13 Governor may also proceed with a reduction of appropriations
14 pursuant to sections twenty-one and twenty-two of this article.

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

20 (e) Prior to the thirty-first day of October in any fiscal
21 year in which revenues are inadequate to make timely payments of
22 the state's obligations, the Governor may by executive order, after
23 first notifying the presiding officers of both houses of the
24 Legislature in writing, borrow funds from the Revenue Shortfall
25 Reserve Fund. The amount of funds borrowed under this subsection
26 shall not exceed one and one-half percent of the general revenue

1 estimate for the fiscal year in which the funds are to be borrowed,
2 or the amount the Governor determines is necessary to make timely
3 payment of the state's obligations, whichever is less. Any funds
4 borrowed pursuant to this subsection shall be repaid, without
5 interest, and redeposited to the credit of the Revenue Shortfall
6 Reserve Fund within ninety days of their withdrawal.

7 (f) There is hereby created in the State Treasury the Revenue
8 Shortfall Reserve Fund - Part B. The Revenue Shortfall Reserve
9 Fund - Part B shall consist of moneys transferred from the West
10 Virginia Tobacco Settlement Medical Trust Fund pursuant to the
11 provisions of section two, article eleven-a, chapter four of this
12 code, repayments made of the loan from the West Virginia Tobacco
13 Settlement Medical Trust Fund to the Physician's Mutual Insurance
14 Company pursuant to the provisions of article twenty-f, chapter
15 thirty-three of this code, and all interest and other return earned
16 on the moneys in the Revenue Shortfall Reserve Fund - Part B.
17 Moneys in the Revenue Shortfall Reserve Fund - Part B may be
18 expended solely for the purposes set forth in subsection (d) of
19 this section, subject to the following conditions:

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

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

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

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

18 (h) (1) Of the moneys in the Revenue Shortfall Reserve Fund,
19 \$100 million, or such greater amount as may be certified as
20 necessary by the director of the budget for the purposes of
21 subsection (e) of this section, shall be made available to the West
22 Virginia Board of Treasury Investments for management and
23 investment of the moneys in accordance with the provisions of
24 article six-c, chapter twelve of this code. All other moneys in
25 the Revenue Shortfall Reserve Fund shall be made available to the
26 West Virginia Investment Management Board for management and

1 investment of the moneys in accordance with the provisions of
2 article six, chapter twelve of this code. Any balance of the
3 Revenue Shortfall Reserve Fund including accrued interest and other
4 return earned thereon at the end of any fiscal year shall not
5 revert to the General Fund but shall remain in the Revenue
6 Shortfall Reserve Fund for the purposes set forth in this section.

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