

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 359**

4 (By Senators Browning, Helmick, Kessler (Acting President),
5 McCabe, Prezioso, Stollings, Unger, Barnes, D. Facemire, Foster,
6 Jenkins, Plymale, Klempa, Beach, Yost and Williams)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 16, 2011.]
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12 A BILL to amend and reenact §11-3-9 of the Code of West Virginia,
13 1931, as amended, relating to permitting property used
14 primarily for charitable purposes with youth service to be
15 leased or generate revenue for the nonprofit organization for
16 intervals not longer than three weeks and thirteen weeks total
17 per year to be exempt from taxation.

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

19 That §11-3-9 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted to read as follows:

21 **ARTICLE 3. ASSESSMENTS GENERALLY.**

22 **§11-3-9. Property exempt from taxation.**

23 (a) All property, real and personal, described in this
24 subsection, and to the extent limited by this section, is exempt
25 from taxation:

26 (1) Property belonging to the United States, other than
27 property permitted by the United States to be taxed under state law;

28 (2) Property belonging exclusively to the state;

1 (3) Property belonging exclusively to any county, district,
2 city, village or town in this state and used for public purposes;

3 (4) Property located in this state belonging to any city, town,
4 village, county or any other political subdivision of another state
5 and used for public purposes;

6 (5) Property used exclusively for divine worship;

7 (6) Parsonages and the household goods and furniture pertaining
8 thereto;

9 (7) Mortgages, bonds and other evidence of indebtedness in the
10 hands of bona fide owners and holders hereafter issued and sold by
11 churches and religious societies for the purposes of securing money
12 to be used in the erection of church buildings used exclusively for
13 divine worship or for the purpose of paying indebtedness thereon;

14 (8) Cemeteries;

15 (9) Property belonging to, or held in trust for, colleges,
16 seminaries, academies and free schools, if used for educational,
17 literary or scientific purposes, including books, apparatus,
18 annuities and furniture;

19 (10) Property belonging to, or held in trust for, colleges or
20 universities located in West Virginia, or any public or private
21 nonprofit foundation or corporation which receives contributions
22 exclusively for such college or university, if the property or
23 dividends, interest, rents or royalties derived therefrom are used
24 or devoted to educational purposes of such college or university;

25 (11) Public and family libraries;

26 (12) Property used for charitable purposes and not held or
27 leased out for profit: Provided, That this exemption shall apply
28 to property owned by a nonprofit youth organization qualified under

1 section 501(c) (3) or 501(c) (4) of the Internal Revenue Code of 1986,
2 as amended, and primarily and immediately used for the charitable
3 and educational purposes of providing values-based youth development
4 programs to build character, train future leaders and responsible
5 citizens, develop each individual participant's sense of personal
6 responsibility and promote physical fitness: *Provided, however, That*
7 the property may be leased to other nonprofit organizations
8 qualified under section 501(c) (3) or 501(c) (4) of the Internal
9 Revenue Code of 1986, as amended, for intervals of time no greater
10 than three weeks, and that the total number of weeks per year the
11 property may be leased may not exceed thirteen weeks and that the
12 property leased may only be used for the exempt purposes of the
13 lessee: *Provided, further, That any revenue generated from such*
14 leases shall be used to support the programs provided by the
15 property owner;

16 (13) Property used for the public purposes of distributing
17 electricity, water or natural gas or providing sewer service by a
18 duly chartered nonprofit corporation when such property is not held,
19 leased out or used for profit;

20 (14) Property used for area economic development purposes by
21 nonprofit corporations when the property is not leased out for
22 profit;

23 (15) All real estate not exceeding one acre in extent, and the
24 buildings on the real estate, used exclusively by any college or
25 university society as a literary hall, or as a dormitory or
26 clubroom, if not used with a view to profit, including, but not
27 limited to, property owned by a fraternity or sorority organization
28 affiliated with a university or college or property owned by a

1 nonprofit housing corporation or similar entity on behalf of a
2 fraternity or sorority organization affiliated with a university or
3 college, when the property is used as residential accommodations or
4 as a dormitory for members of the organization;

5 (16) All property belonging to benevolent associations not
6 conducted for private profit;

7 (17) Property belonging to any public institution for the
8 education of the deaf, ~~dumb~~ or blind or any hospital not held or
9 leased out for profit;

10 (18) Houses of refuge and mental health facility or orphanage;

11 (19) Homes for children or for the aged, friendless or infirm
12 not conducted for private profit;

13 (20) Fire engines and implements for extinguishing fires, and
14 property used exclusively for the safekeeping thereof, and for the
15 meeting of fire companies;

16 (21) All property on hand to be used in the subsistence of
17 livestock on hand at the commencement of the assessment year;

18 (22) Household goods to the value of \$200, whether or not held
19 or used for profit;

20 (23) Bank deposits and money;

21 (24) Household goods, which for purposes of this section means
22 only personal property and household goods commonly found within the
23 house and items used to care for the house and its surrounding
24 property, when not held or used for profit;

25 (25) Personal effects, which for purposes of this section means
26 only articles and items of personal property commonly worn on or
27 about the human body or carried by a person and normally thought to
28 be associated with the person when not held or used for profit;

1 (26) Dead victuals laid away for family use;

2 (27) All property belonging to the state, any county, district,
3 city, village, town or other political subdivision or any state
4 college or university which is subject to a lease purchase agreement
5 and which provides that, during the term of the lease purchase
6 agreement, title to the leased property rests in the lessee so long
7 as lessee is not in default or shall not have terminated the lease
8 as to the property;

9 (28) Personal property, including vehicles that qualify for a
10 farm use exemption certificate pursuant to section two, article
11 three, chapter seventeen-a of this code and livestock, employed
12 exclusively in agriculture, as defined in article ten, section one
13 of the West Virginia Constitution: *Provided*, That this exemption
14 only applies in the case of such personal property used on a farm
15 or farming operation that annually produces for sale agricultural
16 products, as defined in rules of the Tax Commissioner; and

17 (29) Any other property or security exempted by any other
18 provision of law.

19 (b) Notwithstanding the provisions of subsection (a) of this
20 section, no property is exempt from taxation which has been
21 purchased or procured for the purpose of evading taxation whether
22 temporarily holding the same over the first day of the assessment
23 year or otherwise.

24 (c) Real property which is exempt from taxation by subsection
25 (a) of this section shall be entered upon the assessor's books,
26 together with the true and actual value thereof, but no taxes may
27 be levied upon the property or extended upon the assessor's books.

28 (d) Notwithstanding any other provisions of this section, this

1 section does not exempt from taxation any property owned by, or held
2 in trust for, educational, literary, scientific, religious or other
3 charitable corporations or organizations, including any public or
4 private nonprofit foundation or corporation existing for the support
5 of any college or university located in West Virginia, unless such
6 property, or the dividends, interest, rents or royalties derived
7 therefrom, is used primarily and immediately for the purposes of the
8 corporations or organizations.

9 (e) The Tax Commissioner shall, by issuance of rules, provide
10 each assessor with guidelines to ensure uniform assessment practices
11 statewide to effect the intent of this section.

12 (f) Inasmuch as there is litigation pending regarding
13 application of this section to property held by fraternities and
14 sororities, amendments to this section enacted in 1998 shall apply
15 to all cases and controversies pending on the date of such
16 enactment.

17 (g) The amendment to subdivision (27), subsection (a) of this
18 section, passed during the 2005 regular session of the Legislature,
19 shall apply to all applicable lease purchase agreements in existence
20 upon the effective date of the amendment.

NOTE: The purpose of this bill is to exempt from taxation property which is owned by a charitable organization owned by a nonprofit youth serving organization which is leased or used to generate revenue for the nonprofit organization so long that any lease is for intervals of time no greater than three weeks, and that the total number of weeks leased out per year does not exceed thirteen weeks.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

This bill was recommended for introduction and passage during the 2011 Regular Session of the Legislature by the Joint Commission on Economic Development.