

H. B. 2685

(By Delegates Perdue, Carmichael and Armstead)
[Introduced January 20, 2011; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-11-38 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-9 of said code, all relating to estate taxes and the consumers sales and service tax; and providing exemptions therefrom when an infant dies before reaching one year of age.

Be it enacted by the Legislature of West Virginia:

That §11-11-38 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-15-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 11. ESTATE TAXES.

§11-11-38. Estates to which article applies; former law preserved.

(a) *Persons dying after June 30, 1985.* -- Except as otherwise specifically provided, the provisions of this article shall apply

1 to the estate of every person dying on or after July 1, 1985:
2 Provided, That the provisions of this article do not apply to the
3 estate of any person who dies before reaching one year of age.

4 (b) *Persons dying before July 1, 1985.* -- With respect to
5 persons dying prior to July 1, 1985, the provisions of article
6 eleven, chapter eleven of this code, in effect on January 1, 1985,
7 are hereby continued in force, and fully preserved, until their
8 objects have been fully accomplished.

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

10 **§11-15-9. Exemptions.**

11 (a) *Exemptions for which exemption certificate may be issued.*
12 -- A person having a right or claim to any exemption set forth in
13 this subsection may, in lieu of paying the tax imposed by this
14 article and filing a claim for refund, execute a certificate of
15 exemption, in the form required by the Tax Commissioner, and
16 deliver it to the vendor of the property or service in the manner
17 required by the Tax Commissioner. However, the Tax Commissioner
18 may, by rule, specify those exemptions authorized in this
19 subsection for which exemption certificates are not required. The
20 following sales of tangible personal property and services are
21 exempt as provided in this subsection:

22 (1) Sales of gas, steam and water delivered to consumers
23 through mains or pipes and sales of electricity;

1 (2) Sales of textbooks required to be used in any of the
2 schools of this state or in any institution in this state which
3 qualifies as a nonprofit or educational institution subject to the
4 West Virginia Department of Education and the Arts, the board of
5 Trustees of the University System of West Virginia or the board of
6 directors for colleges located in this state;

7 (3) Sales of property or services to this state, its
8 institutions or subdivisions, governmental units, institutions or
9 subdivisions of other states: *Provided*, That the law of the other
10 state provides the same exemption to governmental units or
11 subdivisions of this state and to the United States, including
12 agencies of federal, state or local governments for distribution in
13 public welfare or relief work;

14 (4) Sales of vehicles which are titled by the Division of
15 Motor Vehicles and which are subject to the tax imposed by section
16 four, article three, chapter seventeen-a of this code or like tax;

17 (5) Sales of property or services to churches which make no
18 charge whatsoever for the services they render: *Provided*, That the
19 exemption granted in this subdivision applies only to services,
20 equipment, supplies, food for meals and materials directly used or
21 consumed by these organizations and does not apply to purchases of
22 gasoline or special fuel;

23 (6) Sales of tangible personal property or services to a
24 corporation or organization which has a current registration

1 certificate issued under article twelve of this chapter, which is
2 exempt from federal income taxes under Section 501(c)(3) or (c)(4)
3 of the Internal Revenue Code of 1986, as amended, and which is:

4 (A) A church or a convention or association of churches as
5 defined in Section 170 of the Internal Revenue Code of 1986, as
6 amended;

7 (B) An elementary or secondary school which maintains a
8 regular faculty and curriculum and has a regularly enrolled body of
9 pupils or students in attendance at the place in this state where
10 its educational activities are regularly carried on;

11 (C) A corporation or organization which annually receives more
12 than one half of its support from any combination of gifts, grants,
13 direct or indirect charitable contributions or membership fees;

14 (D) An organization which has no paid employees and its gross
15 income from fundraisers, less reasonable and necessary expenses
16 incurred to raise the gross income (or the tangible personal
17 property or services purchased with the net income), is donated to
18 an organization which is exempt from income taxes under Section
19 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
20 amended;

21 (E) A youth organization, such as the Girl Scouts of the
22 United States of America, the Boy Scouts of America or the YMCA
23 Indian Guide/Princess Program and the local affiliates thereof,
24 which is organized and operated exclusively for charitable purposes

1 and has as its primary purpose the nonsectarian character
2 development and citizenship training of its members;

3 (F) For purposes of this subsection:

4 (i) The term "support" includes, but is not limited to:

5 (I) Gifts, grants, contributions or membership fees;

6 (II) Gross receipts from fundraisers which include receipts
7 from admissions, sales of merchandise, performance of services or
8 furnishing of facilities in any activity which is not an unrelated
9 trade or business within the meaning of Section 513 of the Internal
10 Revenue Code of 1986, as amended;

11 (III) Net income from unrelated business activities, whether
12 or not the activities are carried on regularly as a trade or
13 business;

14 (IV) Gross investment income as defined in Section 509(e) of
15 the Internal Revenue Code of 1986, as amended;

16 (V) Tax revenues levied for the benefit of a corporation or
17 organization either paid to or expended on behalf of the
18 organization; and

19 (VI) The value of services or facilities (exclusive of
20 services or facilities generally furnished to the public without
21 charge) furnished by a governmental unit referred to in Section
22 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an
23 organization without charge. This term does not include any gain
24 from the sale or other disposition of property which would be

1 considered as gain from the sale or exchange of a capital asset or
2 the value of an exemption from any federal, state or local tax or
3 any similar benefit;

4 (ii) The term "charitable contribution" means a contribution
5 or gift to or for the use of a corporation or organization,
6 described in Section 170(c)(2) of the Internal Revenue Code of
7 1986, as amended; and

8 (iii) The term "membership fee" does not include any amounts
9 paid for tangible personal property or specific services rendered
10 to members by the corporation or organization;

11 (G) The exemption allowed by this subdivision does not apply
12 to sales of gasoline or special fuel or to sales of tangible
13 personal property or services to be used or consumed in the
14 generation of unrelated business income as defined in Section 513
15 of the Internal Revenue Code of 1986, as amended. The exemption
16 granted in this subdivision applies only to services, equipment,
17 supplies and materials used or consumed in the activities for which
18 the organizations qualify as tax-exempt organizations under the
19 Internal Revenue Code and does not apply to purchases of gasoline
20 or special fuel;

21 (7) An isolated transaction in which any taxable service or
22 any tangible personal property is sold, transferred, offered for
23 sale or delivered by the owner of the property or by his or her
24 representative for the owner's account, the sale, transfer, offer

1 for sale or delivery not being made in the ordinary course of
2 repeated and successive transactions of like character by the owner
3 or on his or her account by the representative: *Provided*, That
4 nothing contained in this subdivision may be construed to prevent
5 an owner who sells, transfers or offers for sale tangible personal
6 property in an isolated transaction through an auctioneer from
7 availing himself or herself of the exemption provided in this
8 subdivision, regardless of where the isolated sale takes place.
9 The Tax Commissioner may propose a legislative rule for
10 promulgation pursuant to article three, chapter twenty-nine-a of
11 this code which he or she considers necessary for the efficient
12 administration of this exemption;

13 (8) Sales of tangible personal property or of any taxable
14 services rendered for use or consumption in connection with the
15 commercial production of an agricultural product the ultimate sale
16 of which is subject to the tax imposed by this article or which
17 would have been subject to tax under this article: *Provided*, That
18 sales of tangible personal property and services to be used or
19 consumed in the construction of or permanent improvement to real
20 property and sales of gasoline and special fuel are not exempt:
21 *Provided, however*, That nails and fencing may not be considered as
22 improvements to real property;

23 (9) Sales of tangible personal property to a person for the
24 purpose of resale in the form of tangible personal property:

1 *Provided*, That sales of gasoline and special fuel by distributors
2 and importers is taxable except when the sale is to another
3 distributor for resale: *Provided, however*, That sales of building
4 materials or building supplies or other property to any person
5 engaging in the activity of contracting, as defined in this
6 article, which is to be installed in, affixed to or incorporated by
7 that person or his or her agent into any real property, building or
8 structure is not exempt under this subdivision;

9 (10) Sales of newspapers when delivered to consumers by route
10 carriers;

11 (11) Sales of drugs, durable medical goods, mobility-enhancing
12 equipment and prosthetic devices dispensed upon prescription and
13 sales of insulin to consumers for medical purposes. The amendment
14 to this subdivision shall apply to sales made after December 31,
15 2003;

16 (12) Sales of radio and television broadcasting time,
17 preprinted advertising circulars and newspaper and outdoor
18 advertising space for the advertisement of goods or services;

19 (13) Sales and services performed by day care centers;

20 (14) Casual and occasional sales of property or services not
21 conducted in a repeated manner or in the ordinary course of
22 repetitive and successive transactions of like character by a
23 corporation or organization which is exempt from tax under
24 subdivision (6) of this subsection on its purchases of tangible

1 personal property or services. For purposes of this subdivision,
2 the term "casual and occasional sales not conducted in a repeated
3 manner or in the ordinary course of repetitive and successive
4 transactions of like character" means sales of tangible personal
5 property or services at fundraisers sponsored by a corporation or
6 organization which is exempt, under subdivision (6) of this
7 subsection, from payment of the tax imposed by this article on its
8 purchases when the fundraisers are of limited duration and are held
9 no more than six times during any twelve-month period and "limited
10 duration" means no more than eighty-four consecutive hours:

11 *Provided*, That sales for volunteer fire departments and volunteer
12 school support groups, with duration of events being no more than
13 eighty-four consecutive hours at a time, which are held no more
14 than eighteen times in a twelve-month period for the purposes of
15 this subdivision are considered "casual and occasional sales not
16 conducted in a repeated manner or in the ordinary course of
17 repetitive and successive transactions of a like character";

18 (15) Sales of property or services to a school which has
19 approval from the board of Trustees of the University System of
20 West Virginia or the board of Directors of the state College System
21 to award degrees, which has its principal campus in this state and
22 which is exempt from federal and state income taxes under Section
23 501(c)(3) of the Internal Revenue Code of 1986, as amended:

24 *Provided*, That sales of gasoline and special fuel are taxable;

1 (16) Sales of lottery tickets and materials by licensed
2 lottery sales agents and lottery retailers authorized by the State
3 Lottery Commission, under the provisions of article twenty-two,
4 chapter twenty-nine of this code;

5 (17) Leases of motor vehicles titled pursuant to the
6 provisions of article three, chapter seventeen-a of this code to
7 lessees for a period of thirty or more consecutive days;

8 (18) Notwithstanding the provisions of section eighteen or
9 eighteen-b of this article or any other provision of this article
10 to the contrary, sales of propane to consumers for poultry house
11 heating purposes, with any seller to the consumer who may have
12 prior paid the tax in his or her price, to not pass on the same to
13 the consumer, but to make application and receive refund of the tax
14 from the Tax Commissioner pursuant to rules which are promulgated
15 after being proposed for legislative approval in accordance with
16 chapter twenty-nine-a of this code by the Tax Commissioner;

17 (19) Any sales of tangible personal property or services
18 purchased and lawfully paid for with food stamps pursuant to the
19 federal food stamp program codified in 7 U. S. C. §2011, *et seq.*,
20 as amended, or with drafts issued through the West Virginia special
21 supplement food program for women, infants and children codified in
22 42 U. S. C. §1786;

23 (20) Sales of tickets for activities sponsored by elementary
24 and secondary schools located within this state;

1 (21) Sales of electronic data processing services and related
2 software: *Provided, That,* for the purposes of this subdivision,
3 "electronic data processing services" means:

4 (A) The processing of another's data, including all processes
5 incident to processing of data such as keypunching, keystroke
6 verification, rearranging or sorting of previously documented data
7 for the purpose of data entry or automatic processing and changing
8 the medium on which data is sorted, whether these processes are
9 done by the same person or several persons; and

10 (B) Providing access to computer equipment for the purpose of
11 processing data or examining or acquiring data stored in or
12 accessible to the computer equipment;

13 (22) Tuition charged for attending educational summer camps;

14 (23) Dispensing of services performed by one corporation,
15 partnership or limited liability company for another corporation,
16 partnership or limited liability company when the entities are
17 members of the same controlled group or are related taxpayers as
18 defined in Section 267 of the Internal Revenue Code. "Control"
19 means ownership, directly or indirectly, of stock, equity interests
20 or membership interests possessing fifty percent or more of the
21 total combined voting power of all classes of the stock of a
22 corporation, equity interests of a partnership or membership
23 interests of a limited liability company entitled to vote or
24 ownership, directly or indirectly, of stock, equity interests or

1 membership interests possessing fifty percent or more of the value
2 of the corporation, partnership or limited liability company;

3 (24) Food for the following are exempt:

4 (A) Food purchased or sold by a public or private school,
5 school-sponsored student organizations or school-sponsored parent-
6 teacher associations to students enrolled in the school or to
7 employees of the school during normal school hours; but not those
8 sales of food made to the general public;

9 (B) Food purchased or sold by a public or private college or
10 university or by a student organization officially recognized by
11 the college or university to students enrolled at the college or
12 university when the sales are made on a contract basis so that a
13 fixed price is paid for consumption of food products for a specific
14 period of time without respect to the amount of food product
15 actually consumed by the particular individual contracting for the
16 sale and no money is paid at the time the food product is served or
17 consumed;

18 (C) Food purchased or sold by a charitable or private
19 nonprofit organization, a nonprofit organization or a governmental
20 agency under a program to provide food to low-income persons at or
21 below cost;

22 (D) Food sold by a charitable or private nonprofit
23 organization, a nonprofit organization or a governmental agency
24 under a program operating in West Virginia for a minimum of five

1 years to provide food at or below cost to individuals who perform
2 a minimum of two hours of community service for each unit of food
3 purchased from the organization;

4 (E) Food sold in an occasional sale by a charitable or
5 nonprofit organization, including volunteer fire departments and
6 rescue squads, if the purpose of the sale is to obtain revenue for
7 the functions and activities of the organization and the revenue
8 obtained is actually expended for that purpose;

9 (F) Food sold by any religious organization at a social or
10 other gathering conducted by it or under its auspices, if the
11 purpose in selling the food is to obtain revenue for the functions
12 and activities of the organization and the revenue obtained from
13 selling the food is actually used in carrying out those functions
14 and activities: *Provided*, That purchases made by the organizations
15 are not exempt as a purchase for resale; or

16 (G) Food sold by volunteer fire departments and rescue squads
17 that are exempt from federal income taxes under Section 501(c)(3)
18 or (c)(4) of the Internal Revenue Code of 1986, as amended, when
19 the purpose of the sale is to obtain revenue for the functions and
20 activities of the organization and the revenue obtained is exempt
21 from federal income tax and actually expended for that purpose;

22 (25) Sales of food by little leagues, midget football leagues,
23 youth football or soccer leagues, band boosters or other school or
24 athletic booster organizations supporting activities for grades

1 kindergarten through twelve and similar types of organizations,
2 including scouting groups and church youth groups, if the purpose
3 in selling the food is to obtain revenue for the functions and
4 activities of the organization and the revenues obtained from
5 selling the food is actually used in supporting or carrying on
6 functions and activities of the groups: *Provided*, That the
7 purchases made by the organizations are not exempt as a purchase
8 for resale;

9 (26) Charges for room and meals by fraternities and sororities
10 to their members: *Provided*, That the purchases made by a
11 fraternity or sorority are not exempt as a purchase for resale;

12 (27) Sales of or charges for the transportation of passengers
13 in interstate commerce;

14 (28) Sales of tangible personal property or services to any
15 person which this state is prohibited from taxing under the laws of
16 the United States or under the Constitution of this state;

17 (29) Sales of tangible personal property or services to any
18 person who claims exemption from the tax imposed by this article or
19 article fifteen-a of this chapter pursuant to the provision of any
20 other chapter of this code;

21 (30) Charges for the services of opening and closing a burial
22 lot;

23 (31) Sales of livestock, poultry or other farm products in
24 their original state by the producer of the livestock, poultry or

1 other farm products or a member of the producer's immediate family
2 who is not otherwise engaged in making retail sales of tangible
3 personal property; and sales of livestock sold at public sales
4 sponsored by breeders or registry associations or livestock auction
5 markets: *Provided*, That the exemptions allowed by this subdivision
6 may be claimed without presenting or obtaining exemption
7 certificates provided the farmer maintains adequate records;

8 (32) Sales of motion picture films to motion picture
9 exhibitors for exhibition if the sale of tickets or the charge for
10 admission to the exhibition of the film is subject to the tax
11 imposed by this article and sales of coin-operated video arcade
12 machines or video arcade games to a person engaged in the business
13 of providing the machines to the public for a charge upon which the
14 tax imposed by this article is remitted to the Tax Commissioner:
15 *Provided*, That the exemption provided in this subdivision may be
16 claimed by presenting to the seller a properly executed exemption
17 certificate;

18 (33) Sales of aircraft repair, remodeling and maintenance
19 services when the services are to an aircraft operated by a
20 certified or licensed carrier of persons or property, or by a
21 governmental entity, or to an engine or other component part of an
22 aircraft operated by a certificated or licensed carrier of persons
23 or property, or by a governmental entity and sales of tangible
24 personal property that is permanently affixed or permanently

1 attached as a component part of an aircraft owned or operated by a
2 certificated or licensed carrier of persons or property, or by a
3 governmental entity, as part of the repair, remodeling or
4 maintenance service and sales of machinery, tools or equipment
5 directly used or consumed exclusively in the repair, remodeling or
6 maintenance of aircraft, aircraft engines or aircraft component
7 parts for a certificated or licensed carrier of persons or property
8 or for a governmental entity;

9 (34) Charges for memberships or services provided by health
10 and fitness organizations relating to personalized fitness
11 programs;

12 (35) Sales of services by individuals who babysit for a
13 profit: *Provided*, That the gross receipts of the individual from
14 the performance of baby-sitting services do not exceed \$5,000 in a
15 taxable year;

16 (36) Sales of services by public libraries or by libraries at
17 academic institutions or by libraries at institutions of higher
18 learning;

19 (37) Commissions received by a manufacturer's representative;

20 (38) Sales of primary opinion research services when:

21 (A) The services are provided to an out-of-state client;

22 (B) The results of the service activities, including, but not
23 limited to, reports, lists of focus group recruits and compilation
24 of data are transferred to the client across state lines by mail,

1 wire or other means of interstate commerce, for use by the client
2 outside the State of West Virginia; and

3 (C) The transfer of the results of the service activities is
4 an indispensable part of the overall service.

5 For the purpose of this subdivision, the term "primary opinion
6 research" means original research in the form of telephone surveys,
7 mall intercept surveys, focus group research, direct mail surveys,
8 personal interviews and other data collection methods commonly used
9 for quantitative and qualitative opinion research studies;

10 (39) Sales of property or services to persons within the state
11 when those sales are for the purposes of the production of value-
12 added products: *Provided*, That the exemption granted in this
13 subdivision applies only to services, equipment, supplies and
14 materials directly used or consumed by those persons engaged solely
15 in the production of value-added products: *Provided, however*, That
16 this exemption may not be claimed by any one purchaser for more
17 than five consecutive years, except as otherwise permitted in this
18 section.

19 For the purpose of this subdivision, the term "value-added
20 product" means the following products derived from processing a raw
21 agricultural product, whether for human consumption or for other
22 use. For purposes of this subdivision, the following enterprises
23 qualify as processing raw agricultural products into value-added
24 products: Those engaged in the conversion of:

- 1 (A) Lumber into furniture, toys, collectibles and home
2 furnishings;
- 3 (B) Fruits into wine;
- 4 (C) Honey into wine;
- 5 (D) Wool into fabric;
- 6 (E) Raw hides into semifinished or finished leather products;
- 7 (F) Milk into cheese;
- 8 (G) Fruits or vegetables into a dried, canned or frozen
9 product;
- 10 (H) Feeder cattle into commonly accepted slaughter weights;
- 11 (I) Aquatic animals into a dried, canned, cooked or frozen
12 product; and
- 13 (J) Poultry into a dried, canned, cooked or frozen product;
- 14 (40) Sales of music instructional services by a music teacher
15 and artistic services or artistic performances of an entertainer or
16 performing artist pursuant to a contract with the owner or operator
17 of a retail establishment, restaurant, inn, bar, tavern, sports or
18 other entertainment facility or any other business location in this
19 state in which the public or a limited portion of the public may
20 assemble to hear or see musical works or other artistic works be
21 performed for the enjoyment of the members of the public there
22 assembled when the amount paid by the owner or operator for the
23 artistic service or artistic performance does not exceed \$3,000.00:
24 *Provided*, That nothing contained herein may be construed to deprive

1 private social gatherings, weddings or other private parties from
2 asserting the exemption set forth in this subdivision. For the
3 purposes of this exemption, artistic performance or artistic
4 service means and is limited to the conscious use of creative
5 power, imagination and skill in the creation of aesthetic
6 experience for an audience present and in attendance and includes,
7 and is limited to, stage plays, musical performances, poetry
8 recitations and other readings, dance presentation, circuses and
9 similar presentations and does not include the showing of any film
10 or moving picture, gallery presentations of sculptural or pictorial
11 art, nude or strip show presentations, video games, video arcades,
12 carnival rides, radio or television shows or any video or audio
13 taped presentations or the sale or leasing of video or audio tapes,
14 air shows or any other public meeting, display or show other than
15 those specified herein: *Provided, however,* That nothing contained
16 herein may be construed to exempt the sales of tickets from the tax
17 imposed in this article. The State Tax Commissioner shall propose
18 a legislative rule pursuant to article three, chapter twenty-nine-a
19 of this code establishing definitions and eligibility criteria for
20 asserting this exemption which is not inconsistent with the
21 provisions set forth herein: *Provided further,* That nude dancers
22 or strippers may not be considered as entertainers for the purposes
23 of this exemption;

24 (41) Charges to a member by a membership association or

1 organization which is exempt from paying federal income taxes under
2 Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986,
3 as amended, for membership in the association or organization,
4 including charges to members for newsletters prepared by the
5 association or organization for distribution primarily to its
6 members, charges to members for continuing education seminars,
7 workshops, conventions, lectures or courses put on or sponsored by
8 the association or organization, including charges for related
9 course materials prepared by the association or organization or by
10 the speaker or speakers for use during the continuing education
11 seminar, workshop, convention, lecture or course, but not including
12 any separate charge or separately stated charge for meals, lodging,
13 entertainment or transportation taxable under this article:
14 *Provided*, That the association or organization pays the tax imposed
15 by this article on its purchases of meals, lodging, entertainment
16 or transportation taxable under this article for which a separate
17 or separately stated charge is not made. A membership association
18 or organization which is exempt from paying federal income taxes
19 under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of
20 1986, as amended, may elect to pay the tax imposed under this
21 article on the purchases for which a separate charge or separately
22 stated charge could apply and not charge its members the tax
23 imposed by this article or the association or organization may
24 avail itself of the exemption set forth in subdivision (9) of this

1 subsection relating to purchases of tangible personal property for
2 resale and then collect the tax imposed by this article on those
3 items from its member;

4 (42) Sales of governmental services or governmental materials
5 by county assessors, county sheriffs, county clerks or circuit
6 clerks in the normal course of local government operations;

7 (43) Direct or subscription sales by the Division of Natural
8 Resources of the magazine currently entitled *Wonderful West*
9 *Virginia* and by the Division of Culture and History of the magazine
10 currently entitled *Goldenseal* and the journal currently entitled
11 *West Virginia History*;

12 (44) Sales of soap to be used at car wash facilities;

13 (45) Commissions received by a travel agency from an out-of-
14 state vendor;

15 (46) The service of providing technical evaluations for
16 compliance with federal and state environmental standards provided
17 by environmental and industrial consultants who have formal
18 certification through the West Virginia Department of Environmental
19 Protection or the West Virginia Bureau for Public Health or both.
20 For purposes of this exemption, the service of providing technical
21 evaluations for compliance with federal and state environmental
22 standards includes those costs of tangible personal property
23 directly used in providing such services that are separately billed
24 to the purchaser of such services and on which the tax imposed by

1 this article has previously been paid by the service provider;

2 (47) Sales of tangible personal property and services by
3 volunteer fire departments and rescue squads that are exempt from
4 federal income taxes under Section 501(c)(3) or (c)(4) of the
5 Internal Revenue Code of 1986, as amended, if the sole purpose of
6 the sale is to obtain revenue for the functions and activities of
7 the organization and the revenue obtained is exempt from federal
8 income tax and actually expended for that purpose;

9 (48) Lodging franchise fees, including royalties, marketing
10 fees, reservation system fees or other fees assessed after December
11 1, 1997, that have been or may be imposed by a lodging franchiser
12 as a condition of the franchise agreement; ~~and~~

13 (49) Sales of the regulation size United States flag and the
14 regulation size West Virginia flag for display; and

15 (50) Sales of personal property and services associated with
16 the burial of an infant who dies before reaching the age of one
17 year. For purposes of this subdivision, such personal property and
18 services include:

19 (A) Sales of caskets;

20 (B) Sales of burial vaults or boxes;

21 (C) Sales of clothing for dressing the deceased;

22 (D) Sales or rentals of folding chairs to be used at funerals
23 or other services;

24 (E) Sales or rentals of tarpaulins for use at funerals or

1 services;

2 (F) Sales or rentals of candelabra for use at funerals or
3 services;

4 (G) Sales or rentals of candles for use at funerals or
5 services;

6 (H) Sales of wreaths or door sprays;

7 (I) Sales or rentals of funeral cars or the providing of
8 funeral car services;

9 (J) Sales or rentals of limousines or the service of providing
10 limousines for transportation to the cemetery or to other memorial
11 or similar services;

12 (K) Sales or rentals of flower cars or the providing of flower
13 car services;

14 (L) Sales of the service of procuring burial permits;

15 (M) Sales of the service of procuring, obtaining or providing
16 certified copies of death certificates;

17 (N) Sales of chapel service or the service of procuring such
18 service;

19 (O) Sales of flowers or the service of providing, procuring or
20 handling of flowers;

21 (P) Rental of tents for use at the funeral or at other
22 memorial or similar services;

23 (Q) Rentals of temporary vaults;

24 (R) Rentals of, or sales of the service of providing, lowering

1 devices for use at the grave;

2 (S) Sales of the service of arranging or providing the
3 services of clergymen, singers, organists or other similar
4 services;

5 (T) Billings for reimbursement of out-of-town funeral
6 director's charges; and

7 (U) Sales of the service of placing of death notices in
8 newspapers or in other media.

9 (b) *Refundable exemptions.* -- Any person having a right or
10 claim to any exemption set forth in this subsection shall first pay
11 to the vendor the tax imposed by this article and then apply to the
12 Tax Commissioner for a refund or credit, or as provided in section
13 nine-d of this article, give to the vendor his or her West Virginia
14 direct pay permit number. The following sales of tangible personal
15 property and services are exempt from tax as provided in this
16 subsection:

17 (1) Sales of property or services to bona fide charitable
18 organizations who make no charge whatsoever for the services they
19 render: *Provided*, That the exemption granted in this subdivision
20 applies only to services, equipment, supplies, food, meals and
21 materials directly used or consumed by these organizations and does
22 not apply to purchases of gasoline or special fuel;

23 (2) Sales of services, machinery, supplies and materials
24 directly used or consumed in the activities of manufacturing,

1 transportation, transmission, communication, production of natural
2 resources, gas storage, generation or production or selling
3 electric power, provision of a public utility service or the
4 operation of a utility service or the operation of a utility
5 business, in the businesses or organizations named in this
6 subdivision and does not apply to purchases of gasoline or special
7 fuel;

8 (3) Sales of property or services to nationally chartered
9 fraternal or social organizations for the sole purpose of free
10 distribution in public welfare or relief work: *Provided*, That
11 sales of gasoline and special fuel are taxable;

12 (4) Sales and services, fire fighting or station house
13 equipment, including construction and automotive, made to any
14 volunteer fire department organized and incorporated under the laws
15 of the State of West Virginia: *Provided*, That sales of gasoline
16 and special fuel are taxable;

17 (5) Sales of building materials or building supplies or other
18 property to an organization qualified under Section 501(c)(3) or
19 (c)(4) of the Internal Revenue Code of 1986, as amended, which are
20 to be installed in, affixed to or incorporated by the organization
21 or its agent into real property or into a building or structure
22 which is or will be used as permanent low-income housing,
23 transitional housing, an emergency homeless shelter, a domestic
24 violence shelter or an emergency children and youth shelter if the

1 shelter is owned, managed, developed or operated by an organization
2 qualified under Section 501(c) (3) or (c) (4) of the Internal Revenue
3 Code of 1986, as amended; and

4 (6) Sales of construction and maintenance materials acquired
5 by a second party for use in the construction or maintenance of a
6 highway project: *Provided*, That in lieu of any refund or credit to
7 the person that paid the tax imposed by this article, the Tax
8 Commissioner shall pay to the Division of Highways for deposit into
9 the State Road Fund of the state reimbursement for the tax in the
10 amount estimated under the provisions of this subdivision:

11 *Provided, however*, That by June 15 of each fiscal year, the
12 division shall provide to the Tax Department an itemized listing of
13 highways projects with the amount of funds expended for highway
14 construction and maintenance. The Commissioner of Highways shall
15 request reimbursement of the tax based on an estimate that forty
16 percent of the total gross funds expended by the agency during the
17 fiscal period were for the acquisition of materials used for
18 highway construction and maintenance. The amount of the
19 reimbursement shall be calculated at six percent of the forty
20 percent.

NOTE: The purpose of this bill is to provide an exemption from estate taxes and from the Consumer Sales and Service Tax for certain expenses of any infant who dies before reaching one year of age.

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