

1 **H. B. 3113**

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3 (By Delegates Gearheart, Frazier and Ellington)  
4 [Introduced February 11, 2011; referred to the  
5 Committee on Finance.]  
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10 A BILL to amend and reenact §11-15-9 of the Code of West Virginia,  
11 1931, as amended, relating to exempting nonprofit, tax exempt  
12 corporations or organizations affiliated with a church or  
13 association of churches from consumer sales and service tax.

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

15 That §11-15-9 of the Code of West Virginia, 1931, as amended,  
16 be amended and reenacted to read as follows:

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

18 **§11-15-9. Exemptions.**

19 (a) *Exemptions for which exemption certificate may be issued.*  
20 -- A person having a right or claim to any exemption set forth in  
21 this subsection may, in lieu of paying the tax imposed by this  
22 article and filing a claim for refund, execute a certificate of  
23 exemption, in the form required by the Tax Commissioner, and  
24 deliver it to the vendor of the property or service in the manner

1 required by the Tax Commissioner. However, the Tax Commissioner  
2 may, by rule, specify those exemptions authorized in this  
3 subsection for which exemption certificates are not required. The  
4 following sales of tangible personal property and services are  
5 exempt as provided in this subsection:

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

8 (2) Sales of textbooks required to be used in any of the  
9 schools of this state or in any institution in this state which  
10 qualifies as a nonprofit or educational institution subject to the  
11 West Virginia Department of Education and the Arts, ~~the board of~~  
12 ~~Trustees of the University System of West Virginia or the board of~~  
13 ~~directors for colleges located in this state;~~ the West Virginia  
14 Department of Education and the West Virginia Higher Education  
15 Policy Commission.

16 (3) Sales of property or services to this state, its  
17 institutions or subdivisions, governmental units, institutions or  
18 subdivisions of other states ~~Provided, That~~ so long as the law of  
19 the other state provides the same exemption to governmental units  
20 or subdivisions of this state and to the United States, including  
21 agencies of federal, state or local governments for distribution in  
22 public welfare or relief work;

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

1           (5) Sales of property or services to churches which make no  
2 charge whatsoever for the services they render. ~~Provided, That~~ The  
3 exemption granted in this subdivision applies only to services,  
4 equipment, supplies, food for meals and materials directly used or  
5 consumed by these organizations and does not apply to purchases of  
6 gasoline or special fuel;

7           (6) Sales of tangible personal property or services to a  
8 corporation or organization which has a current registration  
9 certificate issued under article twelve of this chapter, which is  
10 exempt from federal income taxes under Section 501(c)(3) or (c)(4)  
11 of the Internal Revenue Code of 1986, as amended, and which is:

12           (A) A church or a convention or association of churches as  
13 defined in Section 170 of the Internal Revenue Code of 1986, as  
14 amended, or a nonprofit corporation or organization formed by or  
15 affiliated with any such church, convention or association of  
16 churches.

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

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

24           (D) An organization which has no paid employees and its gross  
25 income from fundraisers, less reasonable and necessary expenses

1 incurred to raise the gross income (or the tangible personal  
2 property or services purchased with the net income), is donated to  
3 an organization which is exempt from income taxes under Section  
4 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as  
5 amended;

6 (E) A youth organization, such as the Girl Scouts of the  
7 United States of America, the Boy Scouts of America or the YMCA  
8 Indian Guide/Princess Program and the local affiliates thereof,  
9 which is organized and operated exclusively for charitable purposes  
10 and has as its primary purpose the nonsectarian character  
11 development and citizenship training of its members;

12 (F) For purposes of this subsection:

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

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

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

20 (III) Net income from unrelated business activities whether or  
21 not the activities are carried on regularly as a trade or business;

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

24 (V) Tax revenues levied for the benefit of a corporation or  
25 organization either paid to or expended on behalf of the

1 organization; and

2       (VI) The value of services or facilities, exclusive of  
3 services or facilities generally furnished to the public without  
4 charge, furnished by a governmental unit referred to in Section  
5 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an  
6 organization without charge. This term does not include any gain  
7 from the sale or other disposition of property which would be  
8 considered as gain from the sale or exchange of a capital asset or  
9 the value of an exemption from any federal, state or local tax or  
10 any similar benefit;

11       (ii) The term "charitable contribution" means a contribution  
12 or gift to or for the use of a corporation or organization,  
13 described in Section 170(c)(2) of the Internal Revenue Code of  
14 1986, as amended; and

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

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

1 Internal Revenue Code and does not apply to purchases of gasoline  
2 or special fuel;

3       (7) An isolated transaction in which ~~any~~ a taxable service or  
4 ~~any~~ tangible personal property is sold, transferred, offered for  
5 sale or delivered by the owner of the property or by his or her  
6 representative for the owner's account, the sale, transfer, offer  
7 for sale or delivery not being made in the ordinary course of  
8 repeated and successive transactions of like character by the owner  
9 or on his or her account by the representative. ~~Provided, That~~  
10 Nothing contained in this subdivision ~~may be construed to prevent~~  
11 prevents an owner who sells, transfers or offers for sale tangible  
12 personal property in an isolated transaction through an auctioneer  
13 from availing himself or herself of the exemption provided in this  
14 subdivision, regardless of where the isolated sale takes place.  
15 The Tax Commissioner may propose a legislative rule for  
16 promulgation pursuant to article three, chapter twenty-nine-a of  
17 this code which he or she considers necessary for the efficient  
18 administration of this exemption;

19       (8) Sales of tangible personal property or of any taxable  
20 services rendered for use or consumption in connection with the  
21 commercial production of an agricultural product, the ultimate sale  
22 of which is subject to the tax imposed by this article or which  
23 would have been subject to tax under this article: *Provided, That*  
24 sales of tangible personal property and services to be used or  
25 consumed in the construction of or permanent improvement to real

1 property and sales of gasoline and special fuel are not exempt:  
2 *Provided, however,* That nails and fencing may not be considered as  
3 improvements to real property;

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

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

16 (11) Sales of drugs, durable medical goods, mobility-enhancing  
17 equipment and prosthetic devices dispensed upon prescription and  
18 sales of insulin to consumers for medical purposes. The amendment  
19 to this subdivision shall apply to sales made after December 31,  
20 2003;

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

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

25 (14) Casual and occasional sales of property or services not

1 conducted in a repeated manner or in the ordinary course of  
2 repetitive and successive transactions of like character by a  
3 corporation or organization which is exempt from tax under  
4 subdivision (6) of this subsection on its purchases of tangible  
5 personal property or services. For purposes of this subdivision,  
6 the term "casual and occasional sales not conducted in a repeated  
7 manner or in the ordinary course of repetitive and successive  
8 transactions of like character" means sales of tangible personal  
9 property or services at fundraisers sponsored by a corporation or  
10 organization which is exempt, under subdivision (6) of this  
11 subsection, from payment of the tax imposed by this article on its  
12 purchases when the fundraisers are of limited duration and are held  
13 no more than six times during any twelve-month period and "limited  
14 duration" means no more than eighty-four consecutive hours:  
15 *Provided*, That sales for volunteer fire departments and volunteer  
16 school support groups, with duration of events being no more than  
17 eighty-four consecutive hours at a time, which are held no more  
18 than eighteen times in a twelve-month period for the purposes of  
19 this subdivision are considered "casual and occasional sales not  
20 conducted in a repeated manner or in the ordinary course of  
21 repetitive and successive transactions of a like character";

22 (15) Sales of property or services to a school which has  
23 approval from the ~~board of Trustees of the University System of~~  
24 ~~West Virginia or the board of Directors of the state College System~~  
25 West Virginia Higher Education Policy Commission to award degrees,



1 which has its principal campus in this state and which is exempt  
2 from federal and state income taxes under Section 501(c)(3) of the  
3 Internal Revenue Code of 1986, as amended ~~Provided, That~~ except  
4 that sales of gasoline and special fuel are taxable;

5 (16) Sales of lottery tickets and materials by licensed  
6 lottery sales agents and lottery retailers authorized by the state  
7 Lottery Commission under the provisions of article twenty-two,  
8 chapter twenty-nine of this code;

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

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

21 (19) Any sales of tangible personal property or services  
22 purchased and lawfully paid for with food stamps pursuant to the  
23 federal food stamp program codified in 7 U. S. C. §2011, *et seq.*,  
24 as amended, or with drafts issued through the West Virginia Special  
25 Supplement Food Program for Women, Infants and Children codified in

1 42 U. S. C. §1786;

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

4 (21) Sales of electronic data processing services and related  
5 software. ~~Provided, That,~~ For the purposes of this subdivision,  
6 "electronic data processing services" means:

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

13 (B) Providing access to computer equipment for the purpose of  
14 processing data or examining or acquiring data stored in or  
15 accessible to the computer equipment;

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

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

1 interests of a limited liability company entitled to vote or  
2 ownership, directly or indirectly, of stock, equity interests or  
3 membership interests possessing fifty percent or more of the value  
4 of the corporation, partnership or limited liability company;

5 (24) Food for the following are exempt:

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

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

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

24 (D) Food sold by a charitable or private nonprofit  
25 organization, a nonprofit organization or a governmental agency

1 under a program operating in West Virginia for a minimum of five  
2 years to provide food at or below cost to individuals who perform  
3 a minimum of two hours of community service for each unit of food  
4 purchased from the organization;

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

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

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

23 (25) Sales of food by little leagues, midget football leagues,  
24 youth football or soccer leagues, band boosters or other school or  
25 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  
25 other farm products or a member of the producer's immediate family

1 who is not otherwise engaged in making retail sales of tangible  
2 personal property and sales of livestock sold at public sales  
3 sponsored by breeders or registry associations or livestock auction  
4 markets. ~~Provided, That~~ The exemptions allowed by this subdivision  
5 may be claimed without presenting or obtaining exemption  
6 certificates provided the farmer maintains adequate records;

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

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

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

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

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

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

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

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

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

20 (B) The results of the service activities, including, but not  
21 limited to, reports, lists of focus group recruits and compilation  
22 of data are transferred to the client across state lines by mail,  
23 wire or other means of interstate commerce for use by the client  
24 outside the State of West Virginia; and

25 (C) The transfer of the results of the service activities is

1 an indispensable part of the overall service.

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

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

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

22 (A) Lumber into furniture, toys, collectibles and home  
23 furnishings;

24 (B) Fruits into wine;

25 (C) Honey into wine;



1 (D) Wool into fabric;

2 (E) Raw hides into semifinished or finished leather products;

3 (F) Milk into cheese;

4 (G) Fruits or vegetables into a dried, canned or frozen

5 product;

6 (H) Feeder cattle into commonly accepted slaughter weights;

7 (I) Aquatic animals into a dried, canned, cooked or frozen

8 product; and

9 (J) Poultry into a dried, canned, cooked or frozen product;

10 (40) Sales of music instructional services by a music teacher

11 and artistic services or artistic performances of an entertainer or

12 performing artist pursuant to a contract with the owner or operator

13 of a retail establishment, restaurant, inn, bar, tavern, sports or

14 other entertainment facility or any other business location in this

15 state in which the public or a limited portion of the public may

16 assemble to hear or see musical works or other artistic works be

17 performed for the enjoyment of the members of the public there

18 assembled when the amount paid by the owner or operator for the

19 artistic service or artistic performance does not exceed \$3,000.

20 ~~Provided, That~~ Nothing contained herein ~~may be construed to deprive~~

21 deprives private social gatherings, weddings or other private

22 parties from asserting the exemption set forth in this subdivision.

23 For the purposes of this exemption, artistic performance or

24 artistic service means and is limited to the conscious use of

25 creative power, imagination and skill in the creation of aesthetic

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

19 (41) Charges to a member by a membership association or  
20 organization which is exempt from paying federal income taxes under  
21 Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986,  
22 as amended, for membership in the association or organization,  
23 including charges to members for newsletters prepared by the  
24 association or organization for distribution primarily to its  
25 members, charges to members for continuing education seminars,

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

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

25       (43) Direct or subscription sales by the Division of Natural

1 Resources of the magazine currently entitled *Wonderful West*  
2 *Virginia* and by the Division of Culture and History of the magazine  
3 currently entitled *Goldenseal* and the journal currently entitled  
4 *West Virginia History*;

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

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

8 (46) The service of providing technical evaluations for  
9 compliance with federal and state environmental standards provided  
10 by environmental and industrial consultants who have formal  
11 certification through the West Virginia Department of Environmental  
12 Protection or the West Virginia Bureau for Public Health or both.  
13 For purposes of this exemption, the service of providing technical  
14 evaluations for compliance with federal and state environmental  
15 standards includes those costs of tangible personal property  
16 directly used in providing such services that are separately billed  
17 to the purchaser of such services and on which the tax imposed by  
18 this article has previously been paid by the service provider;

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

1           (48) Lodging franchise fees, including royalties, marketing  
2 fees, reservation system fees or other fees assessed after December  
3 1, 1997, that have been or may be imposed by a lodging franchiser  
4 as a condition of the franchise agreement; and

5           (49) Sales of the regulation size United States flag and the  
6 regulation size West Virginia flag for display.

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

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

21           (2) Sales of services, machinery, supplies and materials  
22 directly used or consumed in the activities of manufacturing,  
23 transportation, transmission, communication, production of natural  
24 resources, gas storage, generation or production or selling  
25 electric power, provision of a public utility service or the

1 operation of a utility service or the operation of a utility  
2 business, in the businesses or organizations named in this  
3 subdivision and does not apply to purchases of gasoline or special  
4 fuel;

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

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

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

25 (6) Sales of construction and maintenance materials acquired

1 by a second party for use in the construction or maintenance of a  
2 highway project: *Provided*, That in lieu of any refund or credit to  
3 the person that paid the tax imposed by this article, the Tax  
4 Commissioner shall pay to the Division of Highways for deposit into  
5 the State Road Fund of the state reimbursement for the tax in the  
6 amount estimated under the provisions of this subdivision:  
7 *Provided, however*, That by June 15 of each fiscal year, the  
8 division shall provide to the Tax Department an itemized listing of  
9 highways projects with the amount of funds expended for highway  
10 construction and maintenance. The Commissioner of Highways shall  
11 request reimbursement of the tax based on an estimate that forty  
12 percent of the total gross funds expended by the agency during the  
13 fiscal period were for the acquisition of materials used for  
14 highway construction and maintenance. The amount of the  
15 reimbursement shall be calculated at six percent of the forty  
16 percent.

NOTE: The purpose of this bill is to provide a consumer sales and service tax exemption to nonprofit, tax exempt corporations or organization affiliated with a church of association of churches.

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