

**H. B. 3239**

(By Delegate Carmichael)

[Introduced February 21, 2011; referred to the  
Committee on Finance.]

A BILL to amend and reenact §11-15-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §11-16-13 of said code; and to amend and reenact §11-17-3 of said code, all relating to taxation; eliminating the consumer sales and service tax on food; increasing the tax on nonintoxicating beer per barrel from \$5.50 to \$6.35; increasing the rate of tax on cigarettes from \$0.55 to \$1.35; increasing the excise tax on noncigarette tobacco products from seven percent to fourteen percent; dedicating \$5 million of the revenue for the first year to the Department of Agriculture; and dedicating revenue to the Unemployment Compensation Trust Fund.

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

That §11-15-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-16-13 of said code be amended and reenacted; and that §11-17-3 of said code be amended and

1 reenacted, all to read as follows:

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

3 **§11-15-3a. Rate Elimination of tax on food and food ingredients**  
4 **intended for human consumption. ~~reductions of tax~~**  
5 **~~beginning January 1, 2006, July 1, 2007, and July 1,~~**  
6 **~~2008.~~**

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, the rate of tax on sales,~~  
10 ~~purchases and uses of food and food ingredients intended for human~~  
11 ~~consumption after December 31, 2005, shall be five percent of its~~  
12 ~~sales price, as defined in section two, article fifteen-b of this~~  
13 ~~chapter: *Provided*, That the rate of tax on sales, purchases and~~  
14 ~~uses of food and food ingredients, as defined in said section, that~~  
15 ~~is intended for human consumption after June 30, 2007, shall be~~  
16 ~~four percent of its sales price, as defined in said section:~~

17 ~~*Provided, however*, That the rate of tax on sales, purchases and~~  
18 ~~uses of food and food ingredients as defined in said section that~~  
19 ~~is intended for human consumption after June 30, 2008, shall be~~  
20 ~~three percent of its sales price, as defined in said section.~~

21 Beginning July 1, 2011, any tax imposed, on sales, purchases  
22 and uses of food and food ingredients intended for human  
23 consumption shall be abolished.

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

9           (c) *Federal food stamp and women, infants and children*  
10 *programs, other exemptions.* -- Nothing in this section shall affect  
11 application of the exemption from tax provided in section nine of  
12 this article for food purchased by an eligible person using food  
13 stamps, electronic benefits transfer cards or vouchers issued by or  
14 pursuant to authorization of the United States Department of  
15 Agriculture to individuals participating in the federal food stamp  
16 program, by whatever name called, or the women, infants and  
17 children (WIC) program, or application of any other exemption from  
18 tax set forth in this article or article fifteen-a of this chapter.

19 **ARTICLE 16. NONINTOXICATING BEER.**

20 **§11-16-13. Barrel tax on nonintoxicating beer.**

21           (a) There is hereby levied and imposed, in addition to the  
22 license taxes provided ~~for~~ in this article, a tax of ~~five dollars~~  
23 ~~and fifty cents~~ \$6.35 on each barrel of thirty-one gallons and in

1 like ratio on each part barrel of nonintoxicating beer manufactured  
2 in this state for sale within this state, whether contained or sold  
3 in barrels, bottles or other containers, and a like tax is hereby  
4 levied and imposed upon all nonintoxicating beer manufactured  
5 outside of this state and brought into this state for sale within  
6 this state; but no nonintoxicating beer manufactured, sold or  
7 distributed in this state is subject to more than one barrel tax.  
8 The brewer manufacturing or producing nonintoxicating beer within  
9 this state for sale within this state shall pay the barrel tax on  
10 such nonintoxicating beer, and, except as provided otherwise, the  
11 distributor who is the original consignee of nonintoxicating beer  
12 manufactured or produced outside of this state, or who brings such  
13 nonintoxicating beer into this state, shall pay the barrel tax on  
14 such nonintoxicating beer manufactured or produced outside of this  
15 state: *Provided*, That the barrel tax imposed by this section shall  
16 not apply to nonintoxicating beer manufactured by a brewpub.

17 (b) On or before the tenth day of each month during the  
18 license period, every brewer or operator of a brewpub who  
19 manufactures or produces nonintoxicating beer within this state  
20 shall file a report in writing, under oath, to the Tax  
21 Commissioner, in the form prescribed by the Tax Commissioner,  
22 stating its total sales, or in the case of a brewpub, its total  
23 estimated production of nonintoxicating beer within this state  
24 during that month, and at the same time shall pay the tax levied by

1 this article on such production. On or before the tenth day of  
2 each month during the license period, every distributor who is the  
3 original consignee of nonintoxicating beer manufactured or produced  
4 outside this state or who brings such beer into this state for sale  
5 shall file a report in writing, under oath, to the Tax  
6 Commissioner, in the form prescribed by the Tax Commissioner,  
7 stating its total estimated purchases of such nonintoxicating beer  
8 during that month, and at the same time shall pay the tax thereon  
9 levied by this article for such estimated monthly purchase:  
10 *Provided*, That the Tax Commissioner may allow, or require, a brewer  
11 who manufactures or produces nonintoxicating beer outside this  
12 state to file the required report and pay the required tax on  
13 behalf of its distributor or distributors. Any brewer or  
14 distributor or operator of a brewpub who files a report under this  
15 subsection may adjust its monthly estimated sales or purchases or  
16 production report or reports by filing amended reports by the  
17 twenty-fifth day of the reporting month.

18 (c) Every brewer or distributor or operator of a brewpub who  
19 files a report under subsection (b) of this section shall file a  
20 final monthly report of said sales or purchases or production, in  
21 a form and at a time prescribed by the Tax Commissioner, stating  
22 actual nonintoxicating beer sales, purchases, or production and  
23 other information which the Tax Commissioner may require, and shall  
24 include a remittance for any barrel tax owed for actual sales or

1 purchases or production made in excess of the amount estimated for  
2 that month.

3 (d) Any brewer or distributor or operator of a brewpub who  
4 files a report pursuant to subsection (b) of this section  
5 reflecting an underestimation of twenty-five percent or more of  
6 actual sales or purchases or production of nonintoxicating beer as  
7 shown by the report filed pursuant to subsection (c) of this  
8 section shall be assessed a penalty of one percent of the total  
9 taxes due in such prior month.

10 (e) Brewers and distributors and operators of brewpubs shall  
11 keep all records which relate to the sale or purchase in this state  
12 of nonintoxicating beer for a period of three years unless written  
13 approval for earlier disposal is granted by the Tax Commissioner.

14 (f) Brewpubs shall keep such records as required by the  
15 federal government and may, in lieu of the recordkeeping and  
16 reporting requirements contained in subsections (a) through (e) of  
17 this section, file copies of the federal reports contemporaneously  
18 with the Tax Commissioner at the time of such filings with the  
19 federal government. The filing of duplicate copies of the federal  
20 reports with the State Tax Commissioner shall be deemed as  
21 compliance with subsections (a) through (e) of this section.

22 (g) Effective date. -- The changes made to this section during  
23 the 2011 session of the Legislature become effective July 1, 2011.

24 **ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.**

1 **§11-17-3. Levy of tax; ratio; dedication of proceeds.**

2 (a) *Tax on cigarettes.* -- For the purpose of providing revenue  
3 for the General Revenue Fund of the state, an excise tax is hereby  
4 levied and imposed on sales of cigarettes at the rate of ~~fifty-five~~  
5 ~~cents~~ \$1.55 on each twenty cigarettes or in like ratio on any part  
6 thereof. Only one sale of the same article shall be used in  
7 computing the amount of tax due under this subsection.

8 (b) *Tax on tobacco products other than cigarettes.* --  
9 Effective January 1, ~~2002~~ 2012, an excise tax is hereby levied and  
10 imposed on the sale or use of, other than cigarettes, tobacco  
11 products at a rate equal to ~~seven percent~~ fourteen percent of the  
12 wholesale price of each article or item of tobacco product other  
13 than cigarettes sold by the wholesaler or subjobber dealer, whether  
14 or not sold at wholesale, or if not sold, then at the same rate  
15 upon the use by the wholesaler or dealer. Only one sale of the  
16 same article shall be used in computing the amount of tax due under  
17 this subsection. Revenues received from this tax shall be  
18 deposited into the General Revenue Fund: Provided, That the first  
19 \$5 million of revenue collected, between July 1, 2011 and June 30,  
20 2012, is dedicated and shall be transferred, without legislative  
21 appropriation, to the Department of Agriculture for crop transition  
22 programs: Provided, however, That one half of all other revenue  
23 collected is dedicated and shall be transferred, without  
24 legislative appropriation, to the Unemployment Compensation Trust

1 Fund.

2 (c) *Effective date.* -- The changes ~~set forth herein~~ made to  
3 this section ~~and section four of this article shall~~ during the 2011  
4 session of the Legislature become effective ~~May 1, 2003~~ July 1,  
5 2011.

NOTE: The purpose of this bill is to abolish the food tax, increase the tax on nonintoxicating beer per barrel from \$5.50 to \$6.35, increase the tax on cigarettes to \$1.55, increase the tax on noncigarette tobacco products from seven percent to fourteen percent, and to dedicate the first \$5 million of revenue to the Department of Agriculture's crop transition program and half of the other revenue collected to the Unemployment Compensation Trust Fund.

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