

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 555**

4 (By Senators Laird, Williams, Browning, Palumbo, Snyder, Miller,  
5 K. Facemyer, Wills, Green, Stollings, Plymale, Jenkins, Unger and  
6 Foster)

7 \_\_\_\_\_  
8 [Originating in the Committee on Finance;  
9 reported February 17, 2012.]  
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13 A BILL to amend and reenact §11-15-8d of the Code of West Virginia,  
14 1931, as amended, relating to adding an exception to the  
15 limitation on the right of a contractor to assert sales and  
16 use tax exemptions of a purchaser when the purchaser is a  
17 nonprofit youth organization.

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

19 That §11-15-8d of the Code of West Virginia, 1931, as amended,  
20 be amended and reenacted to read as follows:

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

22 **§11-15-8d. Limitations on right to assert exemptions.**

23 (a) Persons who perform "contracting" as defined in section  
24 two of this article or persons acting in an agency capacity may not  
25 assert any exemption to which the purchaser of such contracting

1 services or the principal is entitled. Any statutory exemption to  
2 which a taxpayer may be entitled is invalid unless the tangible  
3 personal property or taxable service is actually purchased by such  
4 taxpayer and is directly invoiced to and paid by such taxpayer.  
5 This section does not apply to purchases by an employee for his or  
6 her employer, purchases by a partner for his or her partnership or  
7 purchases by a duly authorized officer of a corporation, or  
8 unincorporated organization, for his or her corporation or  
9 unincorporated organization so long as the purchase is invoiced to  
10 and paid by the employer, partnership, corporation or  
11 unincorporated organization.

12 (b) *Transition rule.* -- This section does not apply to  
13 purchases of tangible personal property or taxable services in  
14 fulfillment of a purchasing agent or procurement agent contract  
15 executed and legally binding on the parties thereto prior to  
16 September 15, 1999. This transition rule does not apply to any  
17 purchases of tangible personal property or taxable services made  
18 under such a contract after August 31, 1991, and this transition  
19 rule does not apply if the primary purpose of the purchasing agent  
20 or procurement agent contract was to avoid payment of consumers  
21 sales and use taxes. Effective July 1, 2007, this section does not  
22 apply to purchases of services, machinery, supplies or materials,  
23 except gasoline and special fuel, to be directly used or consumed  
24 in the construction, alteration, repair or improvement of a new or  
25 existing building or structure by a person performing  
26 "contracting", as defined in section two of this article, if the

1 purchaser of the contracting services would be entitled to claim  
2 the refundable exemption under subdivision (2), subsection (b),  
3 section nine of this article had it purchased the services,  
4 machinery, supplies or materials. Effective July 1, 2009, this  
5 section does not apply to purchases of services, computers,  
6 servers, building materials and tangible personal property, except  
7 purchases of gasoline and special fuel, to be installed into a  
8 building or facility or directly used or consumed in the  
9 construction, alteration, repair or improvement of a new or  
10 existing building or structure by a person performing  
11 "contracting", as defined in section two of this article, if the  
12 purchaser of the contracting services would be entitled to claim  
13 the exemption under subdivision (7), subsection (a), section nine-h  
14 of this article. This section shall not apply to qualified  
15 purchases of computers and computer software, primary material  
16 handling equipment, racking and racking systems, and their  
17 components, or to qualified purchases of building materials and  
18 certain tangible personal property, as those terms are defined in  
19 section nine-n of this article, by a person performing  
20 "contracting", as defined in section two of this article, if the  
21 purchaser of the contracting services would be entitled to claim  
22 the refundable exemption under section nine-n of this article.  
23 Purchases of gasoline and special fuel shall not be treated as  
24 exempt pursuant to this section.

25 (c) Effective July 1, 2011, notwithstanding any other  
26 provision of this code to the contrary, this section shall apply as

1 to purchases of services, machinery, supplies or materials, except  
2 gasoline and special fuel, to be directly used or consumed in the  
3 construction, alteration, repair or improvement of a new or  
4 existing natural gas compressor station or gas transmission line  
5 having a diameter of twenty inches or more by a person performing  
6 "contracting", as defined in section two of this article, even  
7 though the purchaser of the contracting services would be entitled  
8 to claim the refundable exemption under subdivision (2), subsection  
9 (b), section nine of this article had it purchased the services,  
10 machinery, supplies or materials, unless the person or entity  
11 performing contracting under this subsection, as the term  
12 "contracting" is defined in section two of this article, complies  
13 with subsection (e), section four, article thirteen-s of this  
14 chapter.

15 (d) (1) Effective July 1, 2012, this section does not apply to  
16 purchases of services, building materials and tangible personal  
17 property, except purchases of gasoline and special fuel, to be  
18 installed into a building or facility or directly used or consumed  
19 in the construction, alteration, repair or improvement of a new or  
20 existing building or structure by a person performing contracting,  
21 as defined in section two of this article, if the purchaser of the  
22 contracting services is a nonprofit youth organization that would  
23 be entitled to claim the exemption under paragraph (E), subdivision  
24 (6), subsection (a), section nine of this article had it purchased  
25 the services, machinery, supplies or materials.

26 (2) For purposes of this subsection, the term "nonprofit youth

1 organization” means any nonprofit organization, including any  
2 subsidiary, affiliated or other related entity within its corporate  
3 or business structure, that has been chartered by the United States  
4 Congress to help train young people to do things for themselves and  
5 others, and that has established an area of at least six thousand  
6 contiguous acres within West Virginia in which to provide adventure  
7 or recreational activities for these young people and others.

8       (3) The exception provided in this subsection shall terminate  
9 June 30, 2022.