

1 **H. B. 2437**

2
3 (By Delegate Hunt)

4 [Introduced February 14, 2013; referred to the
5 Committee on the Judiciary then Finance.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend and reenact §11-15-9 of the Code of West Virginia,
11 1931, as amended, relating to exempting certain handgun safety
12 or training courses from payment of the consumers sales tax;
13 and exempting certain services that provide training in
14 personal safety or defense from payment of the consumers sales
15 tax.

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

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

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

20 **§11-15-9. Exemptions.**

21 (a) *Exemptions for which exemption certificate may be issued.*

22 -- A person having a right or claim to any exemption set forth in
23 this subsection may, in lieu of paying the tax imposed by this

1 article and filing a claim for refund, execute a certificate of
2 exemption, in the form required by the Tax Commissioner, and
3 deliver it to the vendor of the property or service in the manner
4 required by the Tax Commissioner. However, the Tax Commissioner
5 may, by rule, specify those exemptions authorized in this
6 subsection for which exemption certificates are not required. The
7 following sales of tangible personal property and services are
8 exempt as provided in this subsection:

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

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

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

24 (4) Sales of vehicles which are titled by the Division of

1 Motor Vehicles and which are subject to the tax imposed by section
2 four, article three, chapter seventeen-a of this code or like tax;

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

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

14 (A) A church or a convention or association of churches as
15 defined in Section 170 of the Internal Revenue Code of 1986, as
16 amended;

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

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

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

13 (F) For purposes of this subsection:

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

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

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

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

24 (IV) Gross investment income as defined in Section 509(e) of

1 the Internal Revenue Code of 1986, as amended;

2 (V) Tax revenues levied for the benefit of a corporation or
3 organization either paid to or expended on behalf of the
4 organization; and

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

14 (ii) The term "charitable contribution" means a contribution
15 or gift to or for the use of a corporation or organization,
16 described in Section 170(c)(2) of the Internal Revenue Code of
17 1986, as amended; and

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

21 (G) The exemption allowed by this subdivision does not apply
22 to sales of gasoline or special fuel or to sales of tangible
23 personal property or services to be used or consumed in the
24 generation of unrelated business income as defined in Section 513

1 of the Internal Revenue Code of 1986, as amended. The exemption
2 granted in this subdivision applies only to services, equipment,
3 supplies and materials used or consumed in the activities for which
4 the organizations qualify as tax-exempt organizations under the
5 Internal Revenue Code and does not apply to purchases of gasoline
6 or special fuel;

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

23 (8) Sales of tangible personal property or of any taxable
24 services rendered for use or consumption in connection with the

1 commercial production of an agricultural product the ultimate sale
2 of which is subject to the tax imposed by this article or which
3 would have been subject to tax under this article: *Provided*, That
4 sales of tangible personal property and services to be used or
5 consumed in the construction of or permanent improvement to real
6 property and sales of gasoline and special fuel are not exempt:
7 *Provided, however*, That nails and fencing may not be considered as
8 improvements to real property;

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

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

21 (11) Sales of drugs, durable medical goods, mobility-enhancing
22 equipment and prosthetic devices dispensed upon prescription and
23 sales of insulin to consumers for medical purposes. The amendment
24 to this subdivision shall apply to sales made after December 31,

1 2003;

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

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

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

1 this subdivision are considered "casual and occasional sales not
2 conducted in a repeated manner or in the ordinary course of
3 repetitive and successive transactions of a like character";

4 (15) Sales of property or services to a school which has
5 approval from the board of trustees of the University System of
6 West Virginia or the board of directors of the State College System
7 to award degrees, which has its principal campus in this state and
8 which is exempt from federal and state income taxes under Section
9 501(c)(3) of the Internal Revenue Code of 1986, as amended:
10 *Provided*, That sales of gasoline and special fuel are taxable;

11 (16) Sales of lottery tickets and materials by licensed
12 lottery sales agents and lottery retailers authorized by the state
13 Lottery Commission, under the provisions of article twenty-two,
14 chapter twenty-nine of this code;

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

18 (18) Notwithstanding the provisions of section eighteen or
19 eighteen-b of this article or any other provision of this article
20 to the contrary, sales of propane to consumers for poultry house
21 heating purposes, with any seller to the consumer who may have
22 prior paid the tax in his or her price, to not pass on the same to
23 the consumer, but to make application and receive refund of the tax
24 from the Tax Commissioner pursuant to rules which are promulgated

1 after being proposed for legislative approval in accordance with
2 chapter twenty-nine-a of this code by the Tax Commissioner;

3 (19) Any sales of tangible personal property or services
4 purchased and lawfully paid for with food stamps pursuant to the
5 federal food stamp program codified in 7 U. S. C. §2011, *et seq.*,
6 as amended, or with drafts issued through the West Virginia special
7 supplement food program for women, infants and children codified in
8 42 U. S. C. §1786;

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

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

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

20 (B) Providing access to computer equipment for the purpose of
21 processing data or examining or acquiring data stored in or
22 accessible to the computer equipment;

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

24 (23) Dispensing of services performed by one corporation,

1 partnership or limited liability company for another corporation,
2 partnership or limited liability company when the entities are
3 members of the same controlled group or are related taxpayers as
4 defined in Section 267 of the Internal Revenue Code. "Control"
5 means ownership, directly or indirectly, of stock, equity interests
6 or membership interests possessing fifty percent or more of the
7 total combined voting power of all classes of the stock of a
8 corporation, equity interests of a partnership or membership
9 interests of a limited liability company entitled to vote or
10 ownership, directly or indirectly, of stock, equity interests or
11 membership interests possessing fifty percent or more of the value
12 of the corporation, partnership or limited liability company;

13 (24) Food for the following are exempt:

14 (A) Food purchased or sold by a public or private school,
15 school-sponsored student organizations or school-sponsored
16 parent-teacher associations to students enrolled in the school or
17 to employees of the school during normal school hours; but not
18 those sales of food made to the general public;

19 (B) Food purchased or sold by a public or private college or
20 university or by a student organization officially recognized by
21 the college or university to students enrolled at the college or
22 university when the sales are made on a contract basis so that a
23 fixed price is paid for consumption of food products for a specific
24 period of time without respect to the amount of food product

1 actually consumed by the particular individual contracting for the
2 sale and no money is paid at the time the food product is served or
3 consumed;

4 (C) Food purchased or sold by a charitable or private
5 nonprofit organization, a nonprofit organization or a governmental
6 agency under a program to provide food to low-income persons at or
7 below cost;

8 (D) Food sold by a charitable or private nonprofit
9 organization, a nonprofit organization or a governmental agency
10 under a program operating in West Virginia for a minimum of five
11 years to provide food at or below cost to individuals who perform
12 a minimum of two hours of community service for each unit of food
13 purchased from the organization;

14 (E) Food sold in an occasional sale by a charitable or
15 nonprofit organization, including volunteer fire departments and
16 rescue squads, if the purpose of the sale is to obtain revenue for
17 the functions and activities of the organization and the revenue
18 obtained is actually expended for that purpose;

19 (F) Food sold by any religious organization at a social or
20 other gathering conducted by it or under its auspices, if the
21 purpose in selling the food is to obtain revenue for the functions
22 and activities of the organization and the revenue obtained from
23 selling the food is actually used in carrying out those functions
24 and activities: *Provided*, That purchases made by the organizations

1 are not exempt as a purchase for resale; or

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

8 (25) Sales of food by little leagues, midget football leagues,
9 youth football or soccer leagues, band boosters or other school or
10 athletic booster organizations supporting activities for grades
11 kindergarten through twelve and similar types of organizations,
12 including scouting groups and church youth groups, if the purpose
13 in selling the food is to obtain revenue for the functions and
14 activities of the organization and the revenues obtained from
15 selling the food is actually used in supporting or carrying on
16 functions and activities of the groups: *Provided*, That the
17 purchases made by the organizations are not exempt as a purchase
18 for resale;

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

22 (27) Sales of or charges for the transportation of passengers
23 in interstate commerce;

24 (28) Sales of tangible personal property or services to any

1 person which this state is prohibited from taxing under the laws of
2 the United States or under the Constitution of this state;

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

7 (30) Charges for the services of opening and closing a burial
8 lot;

9 (31) Sales of livestock, poultry or other farm products in
10 their original state by the producer of the livestock, poultry or
11 other farm products or a member of the producer's immediate family
12 who is not otherwise engaged in making retail sales of tangible
13 personal property; and sales of livestock sold at public sales
14 sponsored by breeders or registry associations or livestock auction
15 markets: *Provided*, That the exemptions allowed by this subdivision
16 may be claimed without presenting or obtaining exemption
17 certificates provided the farmer maintains adequate records;

18 (32) Sales of motion picture films to motion picture
19 exhibitors for exhibition if the sale of tickets or the charge for
20 admission to the exhibition of the film is subject to the tax
21 imposed by this article and sales of coin-operated video arcade
22 machines or video arcade games to a person engaged in the business
23 of providing the machines to the public for a charge upon which the
24 tax imposed by this article is remitted to the Tax Commissioner:

1 *Provided*, That the exemption provided in this subdivision may be
2 claimed by presenting to the seller a properly executed exemption
3 certificate;

4 (33) Sales of aircraft repair, remodeling and maintenance
5 services when the services are to an aircraft operated by a
6 certified or licensed carrier of persons or property, or by a
7 governmental entity, or to an engine or other component part of an
8 aircraft operated by a certificated or licensed carrier of persons
9 or property, or by a governmental entity and sales of tangible
10 personal property that is permanently affixed or permanently
11 attached as a component part of an aircraft owned or operated by a
12 certificated or licensed carrier of persons or property, or by a
13 governmental entity, as part of the repair, remodeling or
14 maintenance service and sales of machinery, tools or equipment
15 directly used or consumed exclusively in the repair, remodeling or
16 maintenance of aircraft, aircraft engines or aircraft component
17 parts for a certificated or licensed carrier of persons or property
18 or for a governmental entity;

19 (34) Charges for memberships or services provided by health
20 and fitness organizations relating to personalized fitness
21 programs;

22 (35) Sales of services by individuals who babysit for a
23 profit: *Provided*, That the gross receipts of the individual from
24 the performance of baby-sitting services do not exceed \$5,000 in a

1 taxable year;

2 (36) Sales of services by public libraries or by libraries at
3 academic institutions or by libraries at institutions of higher
4 learning;

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

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

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

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

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

15 For the purpose of this subdivision, the term "primary opinion
16 research" means original research in the form of telephone surveys,
17 mall intercept surveys, focus group research, direct mail surveys,
18 personal interviews and other data collection methods commonly used
19 for quantitative and qualitative opinion research studies;

20 (39) Sales of property or services to persons within the state
21 when those sales are for the purposes of the production of
22 value-added products: *Provided*, That the exemption granted in this
23 subdivision applies only to services, equipment, supplies and
24 materials directly used or consumed by those persons engaged solely

1 in the production of value-added products: *Provided, however,* That
2 this exemption may not be claimed by any one purchaser for more
3 than five consecutive years, except as otherwise permitted in this
4 section.

5 For the purpose of this subdivision, the term "value-added
6 product" means the following products derived from processing a raw
7 agricultural product, whether for human consumption or for other
8 use. For purposes of this subdivision, the following enterprises
9 qualify as processing raw agricultural products into value-added
10 products: Those engaged in the conversion of:

11 (A) Lumber into furniture, toys, collectibles and home
12 furnishings;

13 (B) Fruits into wine;

14 (C) Honey into wine;

15 (D) Wool into fabric;

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

17 (F) Milk into cheese;

18 (G) Fruits or vegetables into a dried, canned or frozen
19 product;

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

21 (I) Aquatic animals into a dried, canned, cooked or frozen
22 product; and

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

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

1 and artistic services or artistic performances of an entertainer or
2 performing artist pursuant to a contract with the owner or operator
3 of a retail establishment, restaurant, inn, bar, tavern, sports or
4 other entertainment facility or any other business location in this
5 state in which the public or a limited portion of the public may
6 assemble to hear or see musical works or other artistic works be
7 performed for the enjoyment of the members of the public there
8 assembled when the amount paid by the owner or operator for the
9 artistic service or artistic performance does not exceed \$3,000:
10 *Provided*, That nothing contained herein may be construed to deprive
11 private social gatherings, weddings or other private parties from
12 asserting the exemption set forth in this subdivision. For the
13 purposes of this exemption, artistic performance or artistic
14 service means and is limited to the conscious use of creative
15 power, imagination and skill in the creation of aesthetic
16 experience for an audience present and in attendance and includes,
17 and is limited to, stage plays, musical performances, poetry
18 recitations and other readings, dance presentation, circuses and
19 similar presentations and does not include the showing of any film
20 or moving picture, gallery presentations of sculptural or pictorial
21 art, nude or strip show presentations, video games, video arcades,
22 carnival rides, radio or television shows or any video or audio
23 taped presentations or the sale or leasing of video or audio tapes,
24 air shows or any other public meeting, display or show other than

1 those specified herein: *Provided, however,* That nothing contained
2 herein may be construed to exempt the sales of tickets from the tax
3 imposed in this article. The State Tax Commissioner shall propose
4 a legislative rule pursuant to article three, chapter twenty-nine-a
5 of this code establishing definitions and eligibility criteria for
6 asserting this exemption which is not inconsistent with the
7 provisions set forth herein: *Provided further,* That nude dancers
8 or strippers may not be considered as entertainers for the purposes
9 of this exemption;

10 (41) Charges to a member by a membership association or
11 organization which is exempt from paying federal income taxes under
12 Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986,
13 as amended, for membership in the association or organization,
14 including charges to members for newsletters prepared by the
15 association or organization for distribution primarily to its
16 members, charges to members for continuing education seminars,
17 workshops, conventions, lectures or courses put on or sponsored by
18 the association or organization, including charges for related
19 course materials prepared by the association or organization or by
20 the speaker or speakers for use during the continuing education
21 seminar, workshop, convention, lecture or course, but not including
22 any separate charge or separately stated charge for meals, lodging,
23 entertainment or transportation taxable under this article:
24 *Provided,* That the association or organization pays the tax imposed

1 by this article on its purchases of meals, lodging, entertainment
2 or transportation taxable under this article for which a separate
3 or separately stated charge is not made. A membership association
4 or organization which is exempt from paying federal income taxes
5 under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of
6 1986, as amended, may elect to pay the tax imposed under this
7 article on the purchases for which a separate charge or separately
8 stated charge could apply and not charge its members the tax
9 imposed by this article or the association or organization may
10 avail itself of the exemption set forth in subdivision (9) of this
11 subsection relating to purchases of tangible personal property for
12 resale and then collect the tax imposed by this article on those
13 items from its member;

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

17 (43) Direct or subscription sales by the Division of Natural
18 Resources of the magazine currently entitled *Wonderful West*
19 *Virginia* and by the Division of Culture and History of the magazine
20 currently entitled *Goldenseal* and the journal currently entitled
21 *West Virginia History*;

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

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

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

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

19 (48) Lodging franchise fees, including royalties, marketing
20 fees, reservation system fees or other fees assessed after December
21 1, 1997, that have been or may be imposed by a lodging franchiser
22 as a condition of the franchise agreement; ~~and~~

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

1 (50) Sales of services that provide the handgun training set
2 forth in section four, article seven, chapter sixty-one of this
3 code.

4 (51) Sales of services which provide training in personal
5 safety or defense if those services are available to the general
6 public and offered by an official law-enforcement organization,
7 community college, junior college, college or private or public
8 institution or organization, training school or the National Rifle
9 Association utilizing instructors duly certified by the State of
10 West Virginia or such institution, organization or association.

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

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

1 (2) Sales of services, machinery, supplies and materials
2 directly used or consumed in the activities of manufacturing,
3 transportation, transmission, communication, production of natural
4 resources, gas storage, generation or production or selling
5 electric power, provision of a public utility service or the
6 operation of a utility service or the operation of a utility
7 business, in the businesses or organizations named in this
8 subdivision and does not apply to purchases of gasoline or special
9 fuel;

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

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

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

1 transitional housing, an emergency homeless shelter, a domestic
2 violence shelter or an emergency children and youth shelter if the
3 shelter is owned, managed, developed or operated by an organization
4 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue
5 Code of 1986, as amended; and

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

NOTE: The purpose of this bill is to exempt certain handgun safety or training courses from payment of the consumer sales tax. The bill also exempts certain services that provide training in personal safety or defense from payment of the consumer sales tax.

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