

H. B. 3052

(By Delegates Shott, McCuskey and Gearheart)
[Introduced March 22, 2013; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §11-22-1 of the Code of West Virginia,
1931, as amended, relating to exempting from excise taxation
the transfer of real property from an individual to a wholly-
owned subsidiary or limited liability company.

Be it enacted by the Legislature of West Virginia:

That §11-22-1 the Code of West Virginia, 1931, as amended, be
amended and reenacted, all to read as follows:

**ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL
PROPERTY.**

§11-22-1. Definitions.

As used in this chapter:

(1) "Association" means a partnership, limited partnership or
any other form of unincorporated enterprise, owned or conducted by
two or more persons.

1 (2) "Corporation" means a corporation or joint-stock
2 association, organized under the laws of this state, the United
3 States or any other state, territory or foreign country or
4 dependency including, but not limited to, banking institutions.

5 (3) "Commissioner" means the State Tax Commissioner.

6 (4) "Document" means any deed, or instrument or writing by
7 which any real property within this state or any interest in real
8 property is granted, conveyed or otherwise transferred to the
9 grantee, purchaser or any other person; but does not include wills,
10 transfer of real property where the value of the property
11 transferred is \$100 or less, testamentary or inter vivos trusts,
12 deeds of partition, deeds made pursuant to mergers of corporations,
13 limited liability companies, partnerships, limited partnerships,
14 testamentary or inter vivos trusts, deeds made pursuant to
15 conversions to limited liability companies from corporations,
16 partnerships, limited partnerships or trusts, deeds made by a
17 subsidiary corporation to its parent corporation for no
18 consideration other than the cancellation or surrender of the
19 subsidiary's stock, deeds made pursuant to transfers from an
20 individual to his or her wholly owned corporation for no
21 consideration other than the issuance of stock, deeds made pursuant
22 to transfers from an individual to his or her wholly owned limited
23 liability company for no consideration other than the issuance of
24 unit interest, leases, transfers between husband and wife,

1 transfers between parent and child or transfers between parent and
2 child and his or her spouse, without consideration, transfers
3 between grandparent and grandchild or transfers between grandparent
4 and grandchild and his or her spouse, without consideration,
5 transfers without consideration between a principal and straw party
6 for any purpose, gifts to or transfers from or between voluntary
7 charitable or educational associations or trustees of voluntary
8 charitable or educational associations and like nonprofit
9 corporations having the same or similar purposes, quitclaim or
10 corrective deeds without consideration, transfers to or from the
11 United States, the State of West Virginia, or to or from any of
12 their instrumentalities, agencies or political subdivisions, by
13 gift, dedication, deed or condemnation proceedings, or mortgages or
14 deeds of trust given as security for a debt.

15 (5) "Limited liability company" means a limited liability
16 company organized under the laws of this state, the United States
17 or by any other state, territory or the District of Columbia.

18 (6) "Person" means every natural person, association or
19 corporation. Whenever used in any clause prescribing and imposing
20 a fine or imprisonment, or both, the term "person" as applied to
21 associations, means the partners or members of the association,
22 and, as applied to corporations, the officers of the corporation.

23 (7) "Transaction" means the delivering, accepting or
24 presenting for recording of a document.

1 (8) "Value" means in the case of any document not a gift, the
2 amount of the full actual consideration for the document, paid or
3 to be paid, including the amount of any lien or liens assumed; in
4 the case of a gift, or any other document without consideration,
5 the actual monetary value of the property conveyed or transferred.
6 In the event any document includes real property or any interest in
7 real property lying outside the State of West Virginia or includes
8 personal property, value is the proportion of the consideration
9 paid in case of the transfer for consideration, or the proportion
10 of the true and actual value in case of a gift, which the actual
11 value of the real property located in West Virginia bears to the
12 total actual value of all the property, real or personal,
13 transferred by the document. The value as defined in this
14 subdivision shall be stated in the declaration of consideration or
15 value provided for in section six of this article.

NOTE: The purpose of this bill is to exempt from excise
taxation the transfer of real property from an individual to a
wholly-owned subsidiary or limited liability company.

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