

1 **H. B. 4155**

2
3 (By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

4 [By Request of the Executive]

5 [Introduced January 14, 2014; referred to the
6 Committee on Roads and Transportation then Finance.]

**FISCAL
NOTE**

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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 suspending payments of the
12 refundable exemption to the West Virginia consumers sales and
13 service tax to the State Road Fund for fiscal years 2015 and
14 2016 and resuming these payments for fiscal year 2017.

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

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

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

19 **§11-15-9. Exemptions.**

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

21 -- A person having a right or claim to any exemption set forth in
22 this subsection may, in lieu of paying the tax imposed by this
23 article and filing a claim for refund, execute a certificate of
24 exemption, in the form required by the Tax Commissioner, and

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

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

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

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

22 (4) Sales of vehicles which are titled by the Division of
23 Motor Vehicles and which are subject to the tax imposed by section
24 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;

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

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

22 (D) An organization which has no paid employees and its gross
23 income from fund raisers, less reasonable and necessary expenses
24 incurred to raise the gross income (or the tangible personal

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

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

11 (F) For purposes of this subsection:

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

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

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

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

1 organization either paid to or expended on behalf of the
2 organization; and

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

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

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

19 (G) The exemption allowed by this subdivision does not apply
20 to sales of gasoline or special fuel or to sales of tangible
21 personal property or services to be used or consumed in the
22 generation of unrelated business income as defined in Section 513
23 of the Internal Revenue Code of 1986, as amended. The exemption
24 granted in this subdivision applies only to services, equipment,

1 supplies and materials used or consumed in the activities for which
2 the organizations qualify as tax-exempt organizations under the
3 Internal Revenue Code and does not apply to purchases of gasoline
4 or special fuel;

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

21 (8) Sales of tangible personal property or of any taxable
22 services rendered for use or consumption in connection with the
23 commercial production of an agricultural product the ultimate sale
24 of which is subject to the tax imposed by this article or which

1 would have been subject to tax under this article: *Provided*, That
2 sales of tangible personal property and services to be used or
3 consumed in the construction of or permanent improvement to real
4 property and sales of gasoline and special fuel are not exempt:
5 *Provided, however*, That nails and fencing may not be considered as
6 improvements to real property;

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

17 (10) Sales of newspapers when delivered to consumers by route
18 carriers;

19 (11) Sales of drugs, durable medical goods, mobility-enhancing
20 equipment and prosthetic devices dispensed upon prescription and
21 sales of insulin to consumers for medical purposes. The amendment
22 to this subdivision shall apply to sales made after December 31,
23 2003;

24 (12) Sales of radio and television broadcasting time,

1 preprinted advertising circulars and newspaper and outdoor
2 advertising space for the advertisement of goods or services;

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

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

1 repetitive and successive transactions of a like character”;

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

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

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

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

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

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

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

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

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

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

22 (23) Dispensing of services performed by one corporation,
23 partnership or limited liability company for another corporation,
24 partnership or limited liability company when the entities are

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

11 (24) Food for the following are exempt:

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

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

1 consumed;

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

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

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

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

24 (G) Food sold by volunteer fire departments and rescue squads

1 that are exempt from federal income taxes under Section 501(c)(3)
2 or (c)(4) of the Internal Revenue Code of 1986, as amended, when
3 the purpose of the sale is to obtain revenue for the functions and
4 activities of the organization and the revenue obtained is exempt
5 from federal income tax and actually expended for that purpose;

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

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

20 (27) Sales of or charges for the transportation of passengers
21 in interstate commerce;

22 (28) Sales of tangible personal property or services to any
23 person which this state is prohibited from taxing under the laws of
24 the United States or under the constitution of this state;

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

5 (30) Charges for the services of opening and closing a burial
6 lot;

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

16 (32) Sales of motion picture films to motion picture
17 exhibitors for exhibition if the sale of tickets or the charge for
18 admission to the exhibition of the film is subject to the tax
19 imposed by this article and sales of coin-operated video arcade
20 machines or video arcade games to a person engaged in the business
21 of providing the machines to the public for a charge upon which the
22 tax imposed by this article is remitted to the Tax Commissioner:
23 *Provided*, That the exemption provided in this subdivision may be
24 claimed by presenting to the seller a properly executed exemption

1 certificate;

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

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

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

24 (36) Sales of services by public libraries or by libraries at

1 academic institutions or by libraries at institutions of higher
2 learning;

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

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

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

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

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

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

18 (39) Sales of property or services to persons within the state
19 when those sales are for the purposes of the production of
20 value-added products: *Provided*, That the exemption granted in this
21 subdivision applies only to services, equipment, supplies and
22 materials directly used or consumed by those persons engaged solely
23 in the production of value-added products: *Provided, however*, That
24 this exemption may not be claimed by any one purchaser for more

1 than five consecutive years, except as otherwise permitted in this
2 section.

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

9 (A) Lumber into furniture, toys, collectibles and home
10 furnishings;

11 (B) Fruits into wine;

12 (C) Honey into wine;

13 (D) Wool into fabric;

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

15 (F) Milk into cheese;

16 (G) Fruits or vegetables into a dried, canned or frozen
17 product;

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

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

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

22 (40) Sales of music instructional services by a music teacher
23 and artistic services or artistic performances of an entertainer or
24 performing artist pursuant to a contract with the owner or operator

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

1 imposed in this article. The state Tax Commissioner shall propose
2 a legislative rule pursuant to article three, chapter twenty-nine-a
3 of this code establishing definitions and eligibility criteria for
4 asserting this exemption which is not inconsistent with the
5 provisions set forth herein: *Provided further*, That nude dancers
6 or strippers may not be considered as entertainers for the purposes
7 of this exemption;

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

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

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

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

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

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

23 (46) The service of providing technical evaluations for
24 compliance with federal and state environmental standards provided

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

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

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

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

23 (b) *Refundable exemptions.* -- Any person having a right or
24 claim to any exemption set forth in this subsection shall first pay

1 to the vendor the tax imposed by this article and then apply to the
2 Tax Commissioner for a refund or credit, or as provided in section
3 nine-d of this article, give to the vendor his or her West Virginia
4 direct pay permit number. The following sales of tangible personal
5 property and services are exempt from tax as provided in this
6 subsection:

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

13 (2) Sales of services, machinery, supplies and materials
14 directly used or consumed in the activities of manufacturing,
15 transportation, transmission, communication, production of natural
16 resources, gas storage, generation or production or selling
17 electric power, provision of a public utility service or the
18 operation of a utility service or the operation of a utility
19 business, in the businesses or organizations named in this
20 subdivision and does not apply to purchases of gasoline or special
21 fuel;

22 (3) Sales of property or services to nationally chartered
23 fraternal or social organizations for the sole purpose of free
24 distribution in public welfare or relief work: *Provided*, That

1 sales of gasoline and special fuel are taxable;

2 (4) Sales and services, fire-fighting or station house
3 equipment, including construction and automotive, made to any
4 volunteer fire department organized and incorporated under the laws
5 of the State of West Virginia: *Provided*, That sales of gasoline
6 and special fuel are taxable;

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

18 (6) (A) Sales of construction and maintenance materials
19 acquired by a second party for use in the construction or
20 maintenance of a highway project: *Provided*, That in lieu of any
21 refund or credit to the person that paid the tax imposed by this
22 article, the Tax Commissioner shall pay to the Division of Highways
23 for deposit into the State Road Fund of the state reimbursement for
24 the tax in the amount estimated under the provisions of this

1 subdivision: *Provided, however,* That by June 15 of each fiscal
2 year, the ~~division~~ Division of Highways shall provide to the Tax
3 Department an itemized listing of highways projects with the amount
4 of funds expended for highway construction and maintenance. The
5 Commissioner of Highways shall request reimbursement of the tax
6 based on an estimate that forty percent of the total gross funds
7 expended by the agency during the fiscal period were for the
8 acquisition of materials used for highway construction and
9 maintenance. The amount of the reimbursement shall be calculated
10 at six percent of the forty percent.

11 (B) For fiscal years 2015 and 2016, the exemption and the
12 reimbursement of moneys to the Division of Highways for deposit
13 into the State Road Fund set forth in paragraph (A) of this
14 subdivision is suspended. For the fiscal years 2015 and 2016, the
15 Tax Commissioner shall pay the amount specified in paragraph (A) of
16 this subdivision into the General Fund, and shall not pay such
17 amount to the Division of Highways for deposit into the State Road
18 Fund.

19 (C) For fiscal years 2017 and beyond, the exemption and the
20 reimbursement of moneys to the Division of Highways for deposit
21 into the State Road Fund set forth in paragraph (A) of this
22 subdivision shall resume. For fiscal years 2017 and beyond, the
23 Tax Commissioner shall pay to the Division of Highways for deposit
24 into the State Road Fund the amount specified in paragraph (A) of

1 this subdivision in accordance with the procedures set forth
2 therein.

NOTE: The purpose of this bill is to suspend payments of the refundable exemption to the West Virginia consumers sales and service tax to the State Road Fund for fiscal years 2015 and 2016 and to resume these payments for fiscal year 2017.

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