

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2704**

(BY DELEGATE MORGAN)

[Originating in the Committee on Finance,

February 27, 2016.]



1 A BILL to amend and reenact §11-15-2, §11-15-3, §11-15-7a, §11-15-8, §11-15-8a and §11-15-  
2 9h of the Code of West Virginia, 1931, as amended; to amend said code by adding three  
3 new sections thereto, designated §11-15-8e, §11-15-8f and §11-15-9o; and to amend and  
4 reenact §11-15A-2 of said code, all relating to consumer sales and service taxes and use  
5 taxes generally; including certain activities within definition of contracting; including  
6 contracting and certain payments within definition of “service” and “selected service”;  
7 reducing rate of consumer sales and service taxes and conditioning reductions on certain  
8 events; removing reduced taxation of certain sales of mobile homes; removing exception  
9 for the imposition of tax on the value of labor relating to manufacture, sale or installation  
10 of modular dwellings; removing exemption from tax for certain professional services;  
11 removing the exception to application of tax contracting services; removing exemptions  
12 from tax for selected advertising services, certain memberships or services provided by  
13 certain health and fitness organizations, certain sales of computer hardware or software,  
14 electronic data processing services and products transferred electronically; reducing rate  
15 of use taxes and conditioning reductions on certain events; specifying effective dates;  
16 providing for emergency and legislative rules; and naming the act the West Virginia Tax  
17 Decrease Act of 2016.

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

1 That §11-15-2, §11-15-3, §11-15-7a, §11-15-8, §11-15-8a of the Code of West Virginia,  
2 1931, as amended, be amended and reenacted; that said code be amended by adding three new  
3 sections thereto, designated §11-15-8e, §11-15-8f and §11-15-9o; and that §11-15A-2 of said  
4 code be amended and reenacted, all to read as follows:

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

**§11-15-2. Definitions.**

1 (a) *General.* -- When used in this article and article fifteen-a of this chapter, words defined  
2 in subsection (b) of this section have the meanings ascribed to them in this section, except in

3 those instances where a different meaning is provided in this article or the context in which the  
4 word is used clearly indicates that a different meaning is intended by the Legislature.

5 (b) *Definitions.* —

6 (1) “Business” includes all activities engaged in or caused to be engaged in with the object  
7 of gain or economic benefit, direct or indirect, and all activities of the state and its political  
8 subdivisions which involve sales of tangible personal property or the rendering of services when  
9 those service activities compete with or may compete with the activities of other persons.

10 (2) “Communication” means all telephone, radio, light, light wave, radio telephone,  
11 telegraph and other communication or means of communication, whether used for voice  
12 communication, computer data transmission or other encoded symbolic information transfers and  
13 includes commercial broadcast radio, commercial broadcast television and cable television.

14 (3) “Contracting”:

15 (A) *In general.* — “Contracting” means and includes the furnishing of work, or both  
16 materials and work, for another (by a sole contractor, general contractor, prime contractor,  
17 subcontractor or construction manager) in fulfillment of a contract for the construction, alteration,  
18 repair, decoration or improvement of a new or existing building or structure, or any part thereof,  
19 or for removal or demolition of a building or structure, or any part thereof, or for the alteration,  
20 improvement or development of real property. Contracting also includes services provided by a  
21 construction manager so long as the project for which the construction manager provides the  
22 services results in a capital improvement to a building or structure or to real property.

23 (B) *Form of contract not controlling.* — An activity that falls within the scope of the definition  
24 of contracting constitutes contracting regardless of whether the contract governing the activity is  
25 written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-  
26 plus contract, a time and materials contract, whether or not open-ended, or any other kind of  
27 construction contract.

28 (C) *Special rules.* — For purposes of this definition:

29 (i) The term “structure” includes, but is not limited to, everything built up or composed of  
30 parts joined together in some definite manner and attached or affixed to real property or which  
31 adds utility to real property or any part thereof or which adds utility to a particular parcel of property  
32 and is intended to remain there for an indefinite period of time;

33 (ii) The term “alteration” means, and is limited to, alterations which are capital  
34 improvements to a building or structure or to real property;

35 (iii) The term “repair” means, and is limited to, repairs which are capital improvements to  
36 a building or structure or to real property;

37 (iv) The term “decoration” means, and is limited to, decorations which are capital  
38 improvements to a building or structure or to real property;

39 (v) The term “improvement” means, and is limited to, improvements which are capital  
40 improvements to a building or structure or to real property;

41 (vi) The term “capital improvement” means improvements that are affixed to or attached  
42 to and become a part of a building or structure or the real property or which add utility to real  
43 property, or any part thereof, and that last or are intended to be relatively permanent. As used  
44 herein, “relatively permanent” means lasting at least a year in duration without the necessity for  
45 regularly scheduled recurring service to maintain the capital improvement. “Regular recurring  
46 service” means regularly scheduled service intervals of less than one year;

47 (vii) Contracting does not include the furnishing of work, or both materials and work, in the  
48 nature of hookup, connection, installation or other services if the service is incidental to the retail  
49 sale of tangible personal property from the service provider’s inventory: *Provided, : Provided,*  
50 That on and after January 1, 2017, contracting does include the furnishing of work, or both  
51 materials and work, in the nature of hookup, connection, installation or other services if the service  
52 is incidental to the retail sale of tangible personal property from the service provider’s inventory:  
53 *Provided, however, That* the hookup, connection or installation of the foregoing is incidental to  
54 the sale of the same and performed by the seller thereof or performed in accordance with

55 arrangements made by the seller thereof. Examples of transactions that are excluded from the  
56 definition of contracting pursuant to this subdivision prior to January 1, 2017, and that are included  
57 in the definition of contracting on and after January 1, 2017, include, but are not limited to, the  
58 sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and  
59 connection of mobile homes, window air conditioning units, dishwashers, clothing washing  
60 machines or dryers, other household appliances, drapery rods, window shades, venetian blinds,  
61 canvas awnings, free-standing industrial or commercial equipment and other similar items of  
62 tangible personal property. Repairs made to the foregoing are within the definition of contracting  
63 if the repairs involve permanently affixing to or improving real property or something attached  
64 thereto which extends the life of the real property or something affixed thereto or allows or intends  
65 to allow the real property or thing permanently attached thereto to remain in service for a year or  
66 longer; and

67 (viii) The term “construction manager” means a person who enters into an agreement to  
68 employ, direct, coordinate or manage design professionals and contractors who are hired and  
69 paid directly by the owner or the construction manager. The business activities of a “construction  
70 manager” as defined in this subdivision constitute contracting, so long as the project for which the  
71 construction manager provides the services results in a capital improvement to a building or  
72 structure or to real property.

73 (4) “Directly used or consumed” in the activities of manufacturing, transportation,  
74 transmission, communication or the production of natural resources means used or consumed in  
75 those activities or operations which constitute an integral and essential part of the activities, as  
76 contrasted with and distinguished from those activities or operations which are simply incidental,  
77 convenient or remote to the activities.

78 (A) Uses of property or consumption of services which constitute direct use or  
79 consumption in the activities of manufacturing, transportation, transmission, communication or  
80 the production of natural resources include only:

81 (i) In the case of tangible personal property, physical incorporation of property into a  
82 finished product resulting from manufacturing production or the production of natural resources;

83 (ii) Causing a direct physical, chemical or other change upon property undergoing  
84 manufacturing production or production of natural resources;

85 (iii) Transporting or storing property undergoing transportation, communication,  
86 transmission, manufacturing production or production of natural resources;

87 (iv) Measuring or verifying a change in property directly used in transportation,  
88 communication, transmission, manufacturing production or production of natural resources;

89 (v) Physically controlling or directing the physical movement or operation of property  
90 directly used in transportation, communication, transmission, manufacturing production or  
91 production of natural resources;

92 (vi) Directly and physically recording the flow of property undergoing transportation,  
93 communication, transmission, manufacturing production or production of natural resources;

94 (vii) Producing energy for property directly used in transportation, communication,  
95 transmission, manufacturing production or production of natural resources;

96 (viii) Facilitating the transmission of gas, water, steam or electricity from the point of their  
97 diversion to property directly used in transportation, communication, transmission, manufacturing  
98 production or production of natural resources;

99 (ix) Controlling or otherwise regulating atmospheric conditions required for transportation,  
100 communication, transmission, manufacturing production or production of natural resources;

101 (x) Serving as an operating supply for property undergoing transmission, manufacturing  
102 production or production of natural resources, or for property directly used in transportation,  
103 communication, transmission, manufacturing production or production of natural resources;

104 (xi) Maintaining or repairing of property, including maintenance equipment, directly used  
105 in transportation, communication, transmission, manufacturing production or production of natural  
106 resources;

107 (xii) Storing, removal or transportation of economic waste resulting from the activities of  
108 manufacturing, transportation, communication, transmission or the production of natural  
109 resources;

110 (xiii) Engaging in pollution control or environmental quality or protection activity directly  
111 relating to the activities of manufacturing, transportation, communication, transmission or the  
112 production of natural resources and personnel, plant, product or community safety or security  
113 activity directly relating to the activities of manufacturing, transportation, communication,  
114 transmission or the production of natural resources; or

115 (xiv) Otherwise using as an integral and essential part of transportation, communication,  
116 transmission, manufacturing production or production of natural resources.

117 (B) Uses of property or services which do not constitute direct use or consumption in the  
118 activities of manufacturing, transportation, transmission, communication or the production of  
119 natural resources include, but are not limited to:

120 (i) Heating and illumination of office buildings;

121 (ii) Janitorial or general cleaning activities;

122 (iii) Personal comfort of personnel;

123 (iv) Production planning, scheduling of work or inventory control;

124 (v) Marketing, general management, supervision, finance, training, accounting and  
125 administration; or

126 (vi) An activity or function incidental or convenient to transportation, communication,  
127 transmission, manufacturing production or production of natural resources, rather than an integral  
128 and essential part of these activities.

129 (5) "Directly used or consumed" in the activities of gas storage, the generation or  
130 production or sale of electric power, the provision of a public utility service or the operation of a  
131 utility business means used or consumed in those activities or operations which constitute an

132 integral and essential part of those activities or operation, as contrasted with and distinguished  
133 from activities or operations which are simply incidental, convenient or remote to those activities.

134 (A) Uses of property or consumption of services which constitute direct use or  
135 consumption in the activities of gas storage, the generation or production or sale of electric power,  
136 the provision of a public utility service or the operation of a utility business include only:

137 (i) Tangible personal property, custom software or services, including equipment,  
138 machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in  
139 production or generation activities and equipment, machinery, supplies, tools and repair parts  
140 used to keep in operation exempt production or generation devices. For purposes of this  
141 subsection, production or generation activities shall commence from the intake, receipt or storage  
142 of raw materials at the production plant site;

143 (ii) Tangible personal property, custom software or services, including equipment,  
144 machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are  
145 used immediately in the transmission or distribution of gas, water and electricity to the public, and  
146 equipment, machinery, tools, repair parts and supplies used to keep in operation exempt  
147 transmission or distribution devices, and these vehicles and their equipment as are specifically  
148 designed and equipped for those purposes are exempt from the tax when used to keep a  
149 transmission or distribution system in operation or repair. For purposes of this subsection,  
150 transmission or distribution activities shall commence from the close of production at a production  
151 plant or wellhead when a product is ready for transmission or distribution to the public and shall  
152 conclude at the point where the product is received by the public;

153 (iii) Tangible personal property, custom software or services, including equipment,  
154 machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are  
155 used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and  
156 repair parts used to keep in operation exempt storage devices;

157 (iv) Tangible personal property, custom software or services used immediately in the  
158 storage, removal or transportation of economic waste resulting from the activities of gas storage,  
159 the generation or production or sale of electric power, the provision of a public utility service or  
160 the operation of a utility business;

161 (v) Tangible personal property, custom software or services used immediately in pollution  
162 control or environmental quality or protection activity or community safety or security directly  
163 relating to the activities of gas storage, generation or production or sale of electric power, the  
164 provision of a public utility service or the operation of a utility business.

165 (B) Uses of property or services which would not constitute direct use or consumption in  
166 the activities of gas storage, generation or production or sale of electric power, the provision of a  
167 public utility service or the operation of a utility business include, but are not limited to:

168 (i) Heating and illumination of office buildings;

169 (ii) Janitorial or general cleaning activities;

170 (iii) Personal comfort of personnel;

171 (iv) Production planning, scheduling of work or inventory control;

172 (v) Marketing, general management, supervision, finance, training, accounting and  
173 administration; or

174 (vi) An activity or function incidental or convenient to the activities of gas storage,  
175 generation or production or sale of electric power, the provision of public utility service or the  
176 operation of a utility business.

177 (6) "Gas storage" means the injection of gas into a storage reservoir or the storage of gas  
178 for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir  
179 engaged in by businesses subject to the business and occupation tax imposed by sections two  
180 and two-e, article thirteen of this chapter.

181 (7) "Generating or producing or selling of electric power" means the generation, production  
182 or sale of electric power engaged in by businesses subject to the business and occupation tax  
183 imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

184 (8) "Gross proceeds" means the amount received in money, credits, property or other  
185 consideration from sales and services within this state, without deduction on account of the cost  
186 of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses  
187 may not be deducted, but any credit or refund made for goods returned may be deducted.

188 (9) "Includes" and "including", when used in a definition contained in this article, does not  
189 exclude other things otherwise within the meaning of the term being defined.

190 (10) "Manufacturing" means a systematic operation or integrated series of systematic  
191 operations engaged in as a business or segment of a business which transforms or converts  
192 tangible personal property by physical, chemical or other means into a different form, composition  
193 or character from that in which it originally existed.

194 (11) "Person" means any individual, partnership, association, corporation, limited liability  
195 company, limited liability partnership or any other legal entity, including this state or its political  
196 subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator  
197 of any person.

198 (12) "Personal service" includes those: (A) Compensated by the payment of wages in the  
199 ordinary course of employment; and (B) rendered to the person of an individual without, at the  
200 same time, selling tangible personal property, such as nursing, barbering, shoe shining,  
201 manicuring and similar services.

202 (13) "Prepaid wireless calling service" means a telecommunications service that provides  
203 the right to utilize mobile wireless service as well as other nontelecommunications services,  
204 including the download of digital products delivered electronically, content and ancillary services,  
205 which must be paid for in advance that is sold in predetermined units or dollars of which the  
206 number decline with use in a known amount.

207 (14) Production of natural resources.

208 (A) "Production of natural resources" means, except for oil and gas, the performance, by  
209 either the owner of the natural resources or another, of the act or process of exploring, developing,

210 severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit  
211 or commercial use of any natural resource products and any reclamation, waste disposal or  
212 environmental activities associated therewith and the construction, installation or fabrication of  
213 ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated  
214 facilities and apparatus, by the producer or others, including contractors and subcontractors, at a  
215 coal mine or coal production facility.

216 (B) For the natural resources oil and gas, “production of natural resources” means the  
217 performance, by either the owner of the natural resources, a contractor or a subcontractor, of the  
218 act or process of exploring, developing, drilling, well-stimulation activities such as logging,  
219 perforating or fracturing, well-completion activities such as the installation of the casing, tubing  
220 and other machinery and equipment and any reclamation, waste disposal or environmental  
221 activities associated therewith, including the installation of the gathering system or other pipeline  
222 to transport the oil and gas produced or environmental activities associated therewith and any  
223 service work performed on the well or well site after production of the well has initially commenced.

224 (C) All work performed to install or maintain facilities up to the point of sale for severance  
225 tax purposes is included in the “production of natural resources” and subject to the direct use  
226 concept.

227 (D) “Production of natural resources” does not include the performance or furnishing of  
228 work, or materials or work, in fulfillment of a contract for the construction, alteration, repair,  
229 decoration or improvement of a new or existing building or structure, or any part thereof, or for  
230 the alteration, improvement or development of real property, by persons other than those  
231 otherwise directly engaged in the activities specifically set forth in this subdivision as “production  
232 of natural resources”.

233 (15) “Providing a public service or the operating of a utility business” means the providing  
234 of a public service or the operating of a utility by businesses subject to the business and  
235 occupation tax imposed by sections two and two-d, article thirteen of this chapter.

236 (16) "Purchaser" means a person who purchases tangible personal property, custom  
237 software or a service taxed by this article.

238 (17) "Sale", "sales" or "selling" includes any transfer of the possession or ownership of  
239 tangible personal property or custom software for a consideration, including a lease or rental,  
240 when the transfer or delivery is made in the ordinary course of the transferor's business and is  
241 made to the transferee or his or her agent for consumption or use or any other purpose. "Sale"  
242 also includes the furnishing of a service for consideration. Notwithstanding anything to the  
243 contrary in this code, effective after June 30, 2008, "sale" also includes the furnishing of prepaid  
244 wireless calling service for consideration.

245 (18) "Service" or "selected service" includes all nonprofessional activities engaged in for  
246 other persons for a consideration, which involve the rendering of a service as distinguished from  
247 the sale of tangible personal property or custom software, but does not include contracting,  
248 personal services or the services rendered by an employee to his or her employer or any service  
249 rendered for resale: *Provided*, That the term "service" or "selected service" does not include  
250 payments received by a vendor of tangible personal property as an incentive to sell a greater  
251 volume of such tangible personal property under a manufacturer's, distributor's or other third  
252 party's marketing support program, sales incentive program, cooperative advertising agreement  
253 or similar type of program or agreement, and these payments are not considered to be payments  
254 for a "service" or "selected service" rendered, even though the vendor may engage in attendant  
255 or ancillary activities associated with the sales of tangible personal property as required under the  
256 programs or agreements: *Provided, however*, That on and after January 1, 2017, "service" or  
257 "selected service" includes contracting and includes payments received by a vendor of tangible  
258 personal property as an incentive to sell a greater volume of such tangible personal property  
259 under a manufacturer's, distributor's or other third party's marketing support program, sales  
260 incentive program, cooperative advertising agreement or similar type of program or agreement,  
261 and these payments are considered to be payments for a "service" or "selected service" rendered.

262 even where the vendor may engage in attendant or ancillary activities associated with the sales  
263 of tangible personal property as required under the programs or agreements.

264 (19) “Streamlined Sales and Use Tax Agreement” or “agreement”, when used in this  
265 article, has the same meaning as when used in article fifteen-b of this chapter, except when the  
266 context in which the word “agreement” is used clearly indicates that a different meaning is  
267 intended by the Legislature.

268 (20) “Tax” includes all taxes, additions to tax, interest and penalties levied under this article  
269 or article ten of this chapter.

270 (21) “Tax Commissioner” means the State Tax Commissioner or his or her delegate. The  
271 term “delegate” in the phrase “or his or her delegate”, when used in reference to the Tax  
272 Commissioner, means any officer or employee of the state Tax Division duly authorized by the  
273 Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the  
274 functions mentioned or described in this article or rules promulgated for this article.

275 (22) “Taxpayer” means any person liable for the tax imposed by this article or additions to  
276 tax, penalties and interest imposed by article ten of this chapter.

277 (23) “Transmission” means the act or process of causing liquid, natural gas or electricity  
278 to pass or be conveyed from one place or geographical location to another place or geographical  
279 location through a pipeline or other medium for commercial purposes.

280 (24) “Transportation” means the act or process of conveying, as a commercial enterprise,  
281 passengers or goods from one place or geographical location to another place or geographical  
282 location.

283 (25) “Ultimate consumer” or “consumer” means a person who uses or consumes services  
284 or personal property.

285 (26) “Vendor” means any person engaged in this state in furnishing services taxed by this  
286 article or making sales of tangible personal property or custom software. “Vendor” and “seller” are  
287 used interchangeably in this article.

288 (c) *Additional definitions.* — Other terms used in this article are defined in article fifteen-b  
289 of this chapter, which definitions are incorporated by reference into article fifteen of this chapter.  
290 Additionally, other sections of this article may define terms primarily used in the section in which  
291 the term is defined.

**§11-15-3. Amount of tax; allocation of tax and transfers.**

1 (a) *Vendor to collect.* — For the privilege of selling tangible personal property or custom  
2 software and for the privilege of furnishing certain selected services defined in sections two and  
3 eight of this article, the vendor shall collect from the purchaser the tax as provided under this  
4 article and article fifteen-b of this chapter, and shall pay the amount of tax to the Tax  
5 Commissioner in accordance with the provisions of this article or article fifteen-b of this chapter.

6 (b) *Amount of tax.* — (1) Except as otherwise provided under this subsection, the The  
7 general consumer sales and service tax imposed by this article shall be at the rate of 6¢ on the  
8 dollar of sales or services, excluding gasoline and special fuel sales, which remain taxable at the  
9 rate of 5¢ on the dollar of sales.

10 (2) After December 31, 2016, the general consumer sales and service tax imposed by  
11 this article shall be at the rate of 5.50 cents on the dollar of sales or services, excluding gasoline  
12 and special fuel sales, which remain taxable at the rate of 5¢ on the dollar of sales.

13 (3) After December 31, 2017, the general consumer sales and service tax imposed by this  
14 article shall be at the rate of 5.25 cents on the dollar of sales or services, excluding gasoline and  
15 special fuel sales, which remain taxable at the rate of 5¢ on the dollar of sales: *Provided, That*  
16 the reduction in tax authorized by this subdivision shall be suspended if the combined balance of  
17 funds as of June 30, 2017, in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund  
18 Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this  
19 code does not equal or exceed fifteen percent of the General Revenue Fund budgeted for the  
20 fiscal year commencing July 1, 2016: *Provided, however, That the rate reduction schedule will*  
21 resume in the calendar year immediately following any subsequent fiscal year when the combined

22 balance of funds as of June 30 of that fiscal year in the Revenue Fund Shortfall Reserve Fund  
23 and the Revenue Fund Shortfall Reserve Fund - Part B next equals or exceeds fifteen percent of  
24 the General Revenue Fund budgeted for the immediately succeeding fiscal year.

25 (4) After December 31, 2018, the general consumer sales and service tax imposed by this  
26 article shall be at the rate of five cents on the dollar of sales or services, excluding gasoline and  
27 special fuel sales, which remain taxable at the rate of 5¢ on the dollar of sales: *Provided, That*  
28 the reduction in tax authorized by this subdivision shall be suspended for one calendar year  
29 subsequent to the occurrence of the suspension of the reduction in tax authorized by subdivision  
30 (3) of this section: *Provided, however, That* the reduction in tax on the first day of any calendar  
31 year authorized by this subsection shall be suspended if the combined balance of funds as of  
32 June 30 of the preceding year in the Revenue Fund Shortfall Reserve Fund and the Revenue  
33 Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b  
34 of this code does not equal or exceed fifteen percent of the General Revenue Fund budgeted for  
35 the fiscal year commencing July 1, of the preceding year.

36 (5) After December 31, 2019, the general consumer sales and service tax imposed by this  
37 article shall be at the rate of 4.75 cents on the dollar of sales or services: *Provided, That* the  
38 reduction in tax authorized by this subdivision shall be suspended for one calendar year  
39 subsequent to the occurrence of the suspension of the reduction in tax authorized by subdivision  
40 (4) of this section: *Provided, however, That* the reduction in tax on the first day of any calendar  
41 year authorized by this subsection shall be suspended if the combined balance of funds as of  
42 June 30 of the preceding year in the Revenue Fund Shortfall Reserve Fund and the Revenue  
43 Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b  
44 of this code does not equal or exceed fifteen percent of the General Revenue Fund budgeted for  
45 the fiscal year commencing July 1, of the preceding year.

46 (6) The Tax Commissioner may provide for the administration of the provisions of the  
47 amendments to this section enacted in 2016 by emergency rule pending the promulgation of  
48 legislative rules for that purpose under chapter twenty-nine-a of this code.

49 ~~(c) Calculation tax on fractional parts of a dollar until January 1, 2004. — There shall be~~  
50 ~~no tax on sales where the monetary consideration is 5¢ or less. The amount of the tax shall be~~  
51 ~~computed as follows:~~

52 ~~(1) On each sale, where the monetary consideration is from 6¢ to 16¢, both inclusive, 1¢.~~

53 ~~(2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.~~

54 ~~(3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.~~

55 ~~(4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.~~

56 ~~(5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.~~

57 ~~(6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.~~

58 ~~(7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any~~  
59 ~~fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the~~  
60 ~~dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢;~~  
61 ~~3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional~~  
62 ~~part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in~~  
63 ~~excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For~~  
64 ~~example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33,~~  
65 ~~both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67,~~  
66 ~~both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to~~  
67 ~~\$2, both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall~~  
68 ~~be calculated as provided in subsection (d) of this subsection and this subsection (c) does not~~  
69 ~~apply to sales made after December 31, 2003.~~

70 ~~(d)~~(c) *Calculation of tax on fractional parts of a dollar after December 31, 2003. —*

71 Beginning January 1, 2004, the tax computation under subsection (b) of this section shall be

72 carried to the third decimal place, and the tax rounded up to the next whole cent whenever the  
73 third decimal place is greater than four and rounded down to the lower whole cent whenever the  
74 third decimal place is four or less. The vendor may elect to compute the tax due on a transaction  
75 on a per item basis or on an invoice basis provided the method used is consistently used during  
76 the reporting period.

77 ~~(e)~~(d) *No aggregation of separate sales transactions, exception for coin-operated devices.*  
78 — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of  
79 computation of the tax even though the sales are aggregated in the billing or payment therefor.  
80 Notwithstanding any other provision of this article, coin-operated amusement and vending  
81 machine sales shall be aggregated for the purpose of computation of this tax.

82 ~~(f)~~(e) *Rate of tax on certain mobile homes.* — Notwithstanding any provision of this article  
83 to the contrary, ~~after December 31, 2003,~~ the tax levied on sales of mobile homes to be used by  
84 the owner thereof as his or her principal year-round residence and dwelling shall be an amount  
85 equal to six percent of fifty percent of the sales price: Provided, That after December 31, 2016,  
86 the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal  
87 year-round residence and dwelling shall be an amount equal to the rate established in subsection  
88 (b) of this section.

89 ~~(g)~~(f) *Construction; custom software.* — After December 31, 2003, whenever the words  
90 “tangible personal property” or “property” appear in this article, the same shall also include the  
91 words “custom software”.

92 ~~(h)~~(g) *Computation of tax on sales of gasoline and special fuel.* -- The method of  
93 computation of tax provided in this section does not apply to sales of gasoline and special fuel.

94 (h) This act shall be known as the West Virginia Tax Decrease Act of 2016.

**§11-15-7a. Tax on the manufacture, sale and installation of modular dwellings.**

1 (a) Notwithstanding the provisions of section seven of this article, persons engaged in the  
2 manufacture and sale or the manufacture, sale and installation of a modular dwelling shall pay

3 the tax imposed by this article only on the value of the building supplies and materials used in the  
4 manufacture and installation of the modular dwelling and the preparation of the site for permanent  
5 installation, and not on the labor involved in such activities: Provided, That after December 31,  
6 2016, persons engaged in the manufacture and sale or the manufacture, sale and installation of  
7 a modular dwelling shall pay the tax imposed by this article on the labor involved in such activities.

8 For purposes of this section, the value of the building supplies and materials shall be the actual  
9 cost of the building supplies and materials. If the manufacturer asserts an exemption at the time  
10 of purchase of the building supplies and materials, the manufacturer shall remit the tax due on  
11 the value of the building supplies and materials used in the manufacture of the modular dwelling  
12 at the time of sale of the modular dwelling. If the manufacturer pays the tax at the time of purchase  
13 of the building supplies and materials, the manufacturer is responsible for maintaining records  
14 evidencing payment of the tax. Failure to maintain such records will result in the tax being  
15 assessed to the manufacturer.

16 (b) Persons engaged in the sale and installation of a modular dwelling shall pay the tax  
17 imposed by this article on only the value of the materials used in the manufacture and installation  
18 of the modular dwelling and the preparation of the site for permanent installation, and not on the  
19 labor involved in such activities: Provided, That after December 31, 2016, persons engaged in  
20 the manufacture and sale or the manufacture, sale and installation of a modular dwelling shall  
21 pay the tax imposed by this article on the labor involved in such activities. For purposes of this  
22 section, the value of the materials used in the manufacture of the modular dwelling shall be the  
23 actual cost of the materials and building supplies to the manufacturer as delineated on the invoice  
24 to the purchaser. If the actual cost of the materials is not available, then the cost of the materials  
25 used in the manufacture of the modular dwelling shall be sixty percent of the total cost of the  
26 modular dwelling. A credit will be given to the purchaser for any sales or use tax that has been  
27 lawfully imposed by another state and paid by the manufacturer on the purchase of building  
28 supplies and materials used in the manufacture of the modular dwelling. If the manufacturer pays

29 the tax at the time of purchase of the building supplies and materials, the manufacturer is  
30 responsible for maintaining records evidencing payment of the tax and delineating this amount on  
31 the invoice. Failure to maintain such records will result in the credit being denied.

32 (c) *Definition of modular dwelling.* — For purposes of this article, a modular dwelling shall  
33 include, but not be limited to, single and multifamily houses, apartment units and commercial  
34 dwellings comprised of two or more sections without a permanent chassis, built to a state or model  
35 code other than the National Manufactured Housing Construction and Safety Standards Act of  
36 1974, which are primarily constructed at a location other than the permanent site at which they  
37 are to be finally assembled and which are shipped to the site with most permanent components  
38 in place.

**§11-15-8. Furnishing of services included; exceptions.**

1 (a) Except as provided in subsection (b) of this section, The the provisions of this article  
2 apply not only to selling tangible personal property and custom software, but also to the furnishing  
3 of all services, except professional and personal services, and except those services furnished  
4 by businesses subject to the control of the Public Service Commission when the service or the  
5 manner in which it is delivered is subject to regulation by the Public Service Commission.

6 (2) Notwithstanding any other provision of this section to the contrary, on and after January  
7 1, 2017, the consumers sales and service tax imposed by this article and the use tax imposed by  
8 article fifteen-a of this chapter a shall apply to the furnishing of professional services rendered by  
9 lawyers, certified public accountants, public accountants, architects, professional engineers and  
10 veterinarians. In addition, services for which a professional license is required and which are  
11 provided by corporations, regardless of whether such corporations are professional or business  
12 are subject to the consumers sales and service tax imposed by this article and the use tax  
13 imposed by article fifteen-a of this chapter. The Tax Commissioner may provide for the  
14 administration of the provisions of this subdivision by emergency rule pending the promulgation  
15 of legislative rules for that purpose under chapter twenty-nine-a of this code.

**§11-15-8a. Contractors.**

16 (a) The provisions of this article shall not apply to contracting services. However,  
17 purchases by a contractor of tangible personal property or taxable services for use or  
18 consumption in the providing of a contracting service shall be taxable beginning March 1, 1989,  
19 except as otherwise provided in this article: Provided, That after December 31, 2016, the  
20 provisions of this article apply to contracting services.

21 (b) Transition rules until January 1, 2017. — The exemption from payment of tax on  
22 purchases of tangible personal property or taxable services directly used or consumed in the  
23 activity of contracting, as defined in section two of this article, which expires as of March 1, 1989,  
24 shall nevertheless remain in effect with respect to:

25 (1) Tangible personal property or taxable services purchased by a contractor on or after  
26 said first day of March in fulfillment of a written contract for contracting, as defined in section two  
27 of this article, that was executed and legally binding on the parties thereto on or before February  
28 15, 1989; or in fulfillment of a written contract entered into after February 15 pursuant to a written  
29 bid for contracting that was made on or before February 15 that was binding on the contractor,  
30 but only to the extent that the bid is subsequently incorporated into a written contract; or

31 (2) Tangible personal property or taxable services purchased by a contractor on or after  
32 March 1 pursuant to a written contract executed on or before February 15, 1989, to purchase in  
33 specified quantities identified tangible personal property or specified taxable services; or

34 (3) Tangible personal property or taxable services purchased by a contractor for  
35 consumption or use in fulfillment of a written contract entered into before September 1, 1989,  
36 when such contract is for the construction of a new improvement to real property the construction  
37 or operation of which was approved by a federal or state regulatory body prior to February 1,  
38 1989, or pursuant to a federal grant awarded prior to such first day of February.

39 (c) Renewals and extensions. — A renewal of any contract shall constitute a new contract  
40 for purposes of this section, and the date of entry into a contract renewal by the parties, the date

41 or dates of tender of consideration and the time of performance of any contractual obligations  
42 under a renewed contract shall be treated as the dates for determining application of this section  
43 to the renewed contract. Extensions of time granted or agreed upon by the parties to a contract  
44 for performance of the contract or for tender of consideration under the contract shall not be  
45 treated as contract renewals. Contracts to which such extensions apply shall be treated under  
46 these transition rules as if the original contractual provisions for performance and tender of  
47 consideration remain in effect.

48 (d) Definitions. — For purposes of this section:

49 (1) The term “contract” or “contracts” means written agreements reciting or setting forth a  
50 fixed price consideration or a consideration based upon cost plus a stated percentage or a stated  
51 monetary increment. This term shall not mean or include ongoing sales contracts, contracts  
52 whereby any element of the consideration or the property or services sold or to be rendered in  
53 performance of the contract are undefined, or determined, as to either nature or quantity,  
54 subsequent to the making of the contract, or any open-ended contract.

55 (2) The term “contract renewal” or “renewal” means a covenant or agreement entered into  
56 or assumed by parties which have a current contractual relation or which have had a past  
57 contractual relation, whereby the parties agree to incur obligations beyond those which they were,  
58 or would have been, required, at the minimum, to carry out under their current or past contractual  
59 relation.

**§11-15-8e. Furnishing of selected advertising services included.**

1 Notwithstanding the provisions of subdivision (12), section nine of this article to the  
2 contrary, on and after January 1, 2017, the consumers sales and service tax imposed by this  
3 article and the use tax imposed by article fifteen-a of this chapter shall apply to sales of radio and  
4 television broadcasting time, preprinted advertising circulars and newspaper and outdoor  
5 advertising space for the advertisement of goods or services by means of advertising that is  
6 broadcast from, printed at, or distributed from, a location in this State if the advertising is primarily

7 intended to be disseminated to consumers located in this State and is only secondarily or  
8 incidentally disseminated to bordering jurisdictions. For purposes of this section, advertising  
9 which is broadcast from a radio or television station located in this State or is printed in or  
10 distributed by a newspaper published in this State is rebuttably presumed to be primarily intended  
11 for dissemination to consumers located in this State. The Tax Commissioner may provide for the  
12 administration of the provisions of this section by emergency rule pending the promulgation of  
13 legislative rules for that purpose under chapter twenty-nine-a of this code.

**§11-15-8f. Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs included; exceptions.**

1 Notwithstanding the provisions of subdivision (34), section nine of this article to the  
2 contrary, on and after January 1, 2017, except for sales of taxable services described under  
3 section eleven of this article, the consumers sales and service tax imposed by this article and the  
4 use tax imposed by article fifteen-a of this chapter shall apply to charges for memberships or  
5 services provided by health and fitness organizations relating to personalized fitness programs.

**§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of Internet advertising; sales of high-technology business services directly used in fulfillment of a government contract; sales of tangible personal property for direct use in a high-technology business or Internet advertising business; definitions.**

1 (a) In order to modernize the exemptions from tax contained in this article as a result of  
2 technological advances in computers and the expanded role of computers, the Internet and global  
3 instant communications in business and to encourage computer software developers, computer

4 hardware designers, systems engineering firms, electronic data processing companies and other  
5 high-technology companies to locate and expand their businesses in West Virginia, the following  
6 sales of tangible personal property and software are exempt:

7 (1) Sales of computer hardware or software (including custom designed software) to be  
8 directly incorporated by a manufacturer into a manufactured product. For purposes of this  
9 subsection, the payment of licensing fees for the right to incorporate hardware or software  
10 developed by persons other than the manufacturer into a manufactured product is exempt from  
11 the tax imposed by this article: Provided, That the exemption provided by this subdivision is  
12 terminated on and after January 1, 2017;

13 (2) Sales of computer hardware or software (including custom designed software) directly  
14 used in communication as defined in this article: Provided, That the exemption provided by this  
15 subdivision is terminated on and after January 1, 2017;

16 (3) Sales of electronic data processing services: Provided, That the exemption provided  
17 by this subdivision is terminated on and after January 1, 2017;

18 (4) Sales of educational software required to be used in any of the public schools of this  
19 state or in any institution in this state which qualifies as a nonprofit or educational institution  
20 subject to administration, regulation, certification or approval of the Department of Education, the  
21 Department of Education and the Arts or the Higher Education Policy Commission;

22 (5) Sales of Internet advertising of goods and services;

23 (6) Sales of high-technology business services to high-technology businesses which enter  
24 into contracts with this state, its institutions and subdivisions, governmental units, institutions or  
25 subdivisions of other states, or with the United States, including agencies of federal, state or local  
26 governments for direct use in fulfilling the government contract; and

27 (7) Sales of prewritten computer software, computers, computer hardware, servers and  
28 building materials and tangible personal property to be installed into a building or facility for direct  
29 use in a high-technology business or an Internet advertising business.

30 (b) *Definitions.* —

31 As used in this article, the following terms have the following meanings:

32 (1) “Computer hardware” means a computer, as defined in article fifteen-b of this chapter,  
33 and the directly and immediately connected physical equipment involved in the performance of  
34 data processing or communications functions, including data input, data output, data processing,  
35 data storage, and data communication apparatus that is directly and immediately connected to  
36 the computer. The term “computer hardware” does not include computer software.

37 (2) “High-technology business” means and is limited to businesses primarily engaged in  
38 the following activities: Computer hardware design and development; computer software design,  
39 development, customization and upgrade; computer systems design and development; website  
40 design and development; network design and development; design and development of new  
41 manufactured products which incorporate computer hardware and software; electronic data  
42 processing; network management, maintenance, engineering, administration and security  
43 services; website management, maintenance, engineering, administration and security services  
44 and computer systems management, maintenance, engineering, administration and security  
45 services. High-technology business as defined herein is intended to include businesses which  
46 engage in the activities enumerated in this definition as their primary business activity, and not as  
47 a secondary or incidental activity and not as an activity in support of or incidental to business  
48 activity not specifically enumerated in this definition.

49 (3) “High-technology business services” means and is limited to computer hardware  
50 design and development; computer software design, development, customization and upgrade;  
51 computer systems design and development; website design and development; network design  
52 and development; electronic data processing; computer systems management; computer  
53 systems maintenance; computer systems engineering; computer systems administration and  
54 computer systems security services.

55 (4) "Internet advertising business" means a for-profit business that is engaged, for  
56 monetary remuneration, in the primary business activity of announcing, or calling public attention  
57 to, goods or services in order to induce the public to purchase those goods or services, and which  
58 uses the Internet as its sole advertising communications medium. For purposes of this definition,  
59 Internet advertising must be the primary business activity of the business and not a secondary or  
60 incidental activity and not an activity in support of or incidental to other business activity.

61 (5) "Network" means a group of two or more computer systems linked together.

62 (6) "Server" means a computer or device on a network that manages network resources.

63 (c) The amendments to this section made in the first extraordinary session of the  
64 Legislature in 2009 shall apply to purchases made on and after July 1, 2009.

**§11-15-9o. Sales or use tax on products transferred electronically.**

1 The tax imposed under this article and the tax imposed under article fifteen-a are each  
2 hereby imposed separately on products transferred electronically. For purposes of this section,  
3 the term "transferred electronically" means obtained by the purchaser by means other than  
4 tangible storage media. The Tax Commissioner may provide for the administration of the  
5 provisions of this subdivision by emergency rule pending the promulgation of legislative rules for  
6 that purpose under chapter twenty-nine-a of this code.

**ARTICLE 15A. USE TAX.**

**§11-15A-2. Imposition of tax; ~~six percent~~ tax rate; inclusion of services as taxable;  
transition rules; allocation of tax and transfers.**

1 (a) (1) Except as otherwise provided under this subsection, an An excise tax is hereby  
2 levied and imposed on the use in this state of tangible personal property, custom software or  
3 taxable services, to be collected and paid as provided in this article or article fifteen-b of this  
4 chapter, at the rate of six percent of the purchase price of the property or taxable services, except  
5 as otherwise provided in this article.

6           (2) After December 31, 2016, an excise tax is hereby levied and imposed on the use in  
7 this state of tangible personal property, custom software or taxable services, to be collected and  
8 paid as provided in this article or article fifteen-b of this chapter, at the rate of 5.50 percent of the  
9 purchase price of the property or taxable services, except as otherwise provided in this article.

10           (3) After December 31, 2017, an excise tax is hereby levied and imposed on the use in  
11 this state of tangible personal property, custom software or taxable services, to be collected and  
12 paid as provided in this article or article fifteen-b of this chapter, at the rate of 5.25 percent of the  
13 purchase price of the property or taxable services, except as otherwise provided in this article:

14 *Provided, That the reduction in tax authorized by this subdivision shall be suspended if the*  
15 *combined balance of funds as of June 30, 2017, in the Revenue Fund Shortfall Reserve Fund*  
16 *and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two,*  
17 *chapter eleven-b of this code does not equal or exceed fifteen percent of the General Revenue*  
18 *Fund budgeted for the fiscal year commencing July 1, 2016: *Provided, however, That the rate**  
19 *reduction schedule will resume in the calendar year immediately following any subsequent fiscal*  
20 *year when the combined balance of funds as of June 30 of that fiscal year in the Revenue Fund*  
21 *Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B next equals or*  
22 *exceeds fifteen percent of the General Revenue Fund budgeted for the immediately succeeding*  
23 *fiscal year.*

24           (4) After December 31, 2018, an excise tax is hereby levied and imposed on the use in  
25 this state of tangible personal property, custom software or taxable services, to be collected and  
26 paid as provided in this article or article fifteen-b of this chapter, at the rate of five percent of the  
27 purchase price of the property or taxable services, except as otherwise provided in this article:

28 *Provided, That the reduction in tax authorized by this subdivision shall be suspended for one*  
29 *calendar year subsequent to the occurrence of the suspension of the reduction in tax authorized*  
30 *by subdivision (3) of this section: *Provided, however, That the reduction in tax on the first day of**  
31 *any calendar year authorized by this subsection shall be suspended if the combined balance of*

32 funds as of June 30 of the preceding year in the Revenue Fund Shortfall Reserve Fund and the  
33 Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter  
34 eleven-b of this code does not equal or exceed fifteen percent of the General Revenue Fund  
35 budgeted for the fiscal year commencing July 1, of the preceding year.

36 (5) After December 31, 2019, an excise tax is hereby levied and imposed on the use in  
37 this state of tangible personal property, custom software or taxable services, to be collected and  
38 paid as provided in this article or article fifteen-b of this chapter, at the rate of 4.75 percent of the  
39 purchase price of the property or taxable services, except as otherwise provided in this article:  
40 Provided, That the reduction in tax authorized by this subdivision shall be suspended for one  
41 calendar year subsequent to the occurrence of the suspension of the reduction in tax authorized  
42 by subdivision (4) of this section: Provided, however, That the reduction in tax on the first day of  
43 any calendar year authorized by this subsection shall be suspended if the combined balance of  
44 funds as of June 30 of the preceding year in the Revenue Fund Shortfall Reserve Fund and the  
45 Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter  
46 eleven-b of this code does not equal or exceed fifteen percent of the General Revenue Fund  
47 budgeted for the fiscal year commencing July 1, of the preceding year.

48 (6) The Tax Commissioner may provide for the administration of the provisions of the  
49 amendments to this section enacted in 2016 by emergency rule pending the promulgation of  
50 legislative rules for that purpose under chapter twenty-nine-a of this code.

51 (b) *Calculation of tax on fractional parts of a dollar.* — The tax computation under  
52 subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to  
53 the next whole cent whenever the third decimal place is greater than four and rounded down to  
54 the lower whole cent whenever the third decimal place is four or less. The vendor may elect to  
55 compute the tax due on a transaction on a per item basis or on an invoice basis provided the  
56 method used is consistently used during the reporting period.

57 (c) "Taxable services," for the purposes of this article, means services of the nature that  
58 are subject to the tax imposed by article fifteen of this chapter. In this article, wherever the words  
59 "tangible personal property" or "property" appear, the same shall include the words "or taxable  
60 services," where the context so requires.

61 (d) Use tax is hereby imposed upon every person using tangible personal property, custom  
62 software or taxable service within this state. That person's liability is not extinguished until the  
63 tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged  
64 in business in this state, or by a foreign retailer who is authorized by the Tax Commissioner to  
65 collect the tax imposed by this article, relieves the purchaser from further liability for the tax to  
66 which the receipt refers.

67 (e) Purchases of tangible personal property or taxable services made for the government  
68 of the United States or any of its agencies by ultimate consumers is subject to the tax imposed  
69 by this section. Industrial materials and equipment owned by the federal government within the  
70 State of West Virginia of a character not ordinarily readily obtainable within the state, is not subject  
71 to use tax when sold, if the industrial materials and equipment would not be subject to use taxes  
72 if sold outside of the state for use in West Virginia.

73 (f) This article does not apply to purchases made by counties or municipal corporations.