

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 2704

FISCAL  
NOTE

2015 Carryover

(BY DELEGATE MORGAN AND HAMILTON)

[Introduced January 13, 2016; referred to the  
Committee on Finance.]

1 A BILL to amend and reenact §11-15-3 of the Code of West Virginia, 1931, as amended; to  
 2 amend and reenact §11-15A-2 of said code, all relating to increasing sales and use taxes  
 3 by one percent.

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

1 That §11-15-3 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; and that §11-15A-2 of said code be amended and reenacted, all to read as  
 3 follows:

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

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

1 (a) *Vendor to collect.* -B 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.* -B The general consumer sales and service tax imposed by this article  
 7 shall be at the rate of ~~64~~ 74 on the dollar of sales or services, excluding gasoline and special fuel  
 8 sales, which remain taxable at the rate of 54 on the dollar of sales: Provided, That, the one  
 9 percent increase of tax on the purchase price adopted pursuant to the reenactment of this section  
 10 during the 2015 Regular Session of the Legislature expires on June 30, 2019. Effective July 1,  
 11 2019, the tax on tangible personal property, custom software or taxable services is six percent of  
 12 the purchase price, excluding gasoline and special fuel sales, which remain taxable at the rate of  
 13 54 on the dollar of sales.

14 ~~(c) Calculation tax on fractional parts of a dollar until January 1, 2004.~~ -B There shall be

15 ~~no tax on sales where the monetary consideration is 54 or less. The amount of the tax shall be~~  
16 ~~computed as follows:~~

17 ~~(1) On each sale, where the monetary consideration is from 64 to 164, both inclusive, 14.~~

18 ~~(2) On each sale, where the monetary consideration is from 174 to 334, both inclusive, 24.~~

19 ~~(3) On each sale, where the monetary consideration is from 344 to 504, both inclusive, 34.~~

20 ~~(4) On each sale, where the monetary consideration is from 514 to 674, both inclusive, 44.~~

21 ~~(5) On each sale, where the monetary consideration is from 684 to 844, both inclusive, 54.~~

22 ~~(6) On each sale, where the monetary consideration is from 854 to \$1, both inclusive, 64.~~

23 ~~(7) If the sale price is in excess of \$1, 64 on each whole dollar of sale price, and upon any~~

24 ~~fractional part of a dollar in excess of whole dollars as follows: 14 on the fractional part of the~~

25 ~~dollar if less than 174; 24 on the fractional part of the dollar if in excess of 164 but less than 344;~~

26 ~~34 on the fractional part of the dollar if in excess of 334 but less than 514; 44 on the fractional part~~

27 ~~of the dollar if in excess of 504 but less than 684; 54 on the fractional part of the dollar if in excess~~

28 ~~of 674 but less than 854; and 64 on the fractional part of the dollar if in excess of 844. For~~

29 ~~example, the tax on sales from \$1.01 to \$1.16, both inclusive, 74; on sales from \$1.17 to \$1.33,~~

30 ~~both inclusive, 84; on sales from \$1.34 to \$1.50, both inclusive, 94; on sales from \$1.51 to \$1.67,~~

31 ~~both inclusive, 104; on sales from \$1.68 to \$1.84, both inclusive, 114 and on sales from \$1.85 to~~

32 ~~\$2, both inclusive, 124. *Provided*, That beginning January 1, 2004, tax due under this article~~

33 ~~shall be calculated as provided in subsection (d) of this subsection and this subsection (c) does~~

34 ~~not apply to sales made after December 31, 2003.~~

35 ~~(d) (c) Calculation of tax on fractional parts of a dollar after December 31, 2003. -B~~

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

37 ~~carried to the third decimal place, and the tax rounded up to the next whole cent whenever the~~

38 third decimal place is greater than four and rounded down to the lower whole cent whenever the  
 39 third decimal place is four or less. The vendor may elect to compute the tax due on a transaction  
 40 on a per item basis or on an invoice basis provided the method used is consistently used during  
 41 the reporting period.

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

47 ~~(f)~~ (e) *Rate of tax on certain mobile homes.* -B Notwithstanding any provision of this article  
 48 to the contrary, ~~after December 31, 2003,~~ the tax levied on sales of mobile homes to be used by  
 49 the owner thereof as his or her principal year-round residence and dwelling shall be an amount  
 50 equal to six percent of fifty percent of the sales price.

51 ~~(g)~~ (f) *Construction; custom software.* -B After December 31, 2003, whenever the words  
 52 Atangible personal property@ or Aproperty@ appear in this article, the same shall also include the  
 53 words Acustom software@.

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

## **ARTICLE 15A. USE TAX.**

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

1 (a) An excise tax is hereby levied and imposed on the use in this state of tangible personal  
 2 property, custom software or taxable services, to be collected and paid as provided in this article

3 or article fifteen-b of this chapter, at the rate of ~~six percent~~ seven percent of the purchase price of  
4 the property or taxable services, except as otherwise provided in this article: Provided, That, the  
5 one percent increase of tax on the purchase price adopted pursuant to the reenactment of this  
6 section during the 2015 Regular Session of the Legislature expires on June 30, 2019. Effective  
7 July 1, 2019, the tax on tangible personal property, custom software or taxable services is six  
8 percent of the purchase price.

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

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

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

25 (e) Purchases of tangible personal property or taxable services made for the government  
26 of the United States or any of its agencies by ultimate consumers is subject to the tax imposed

27 by this section. Industrial materials and equipment owned by the federal government within the  
28 State of West Virginia of a character not ordinarily readily obtainable within the state, is not subject  
29 to use tax when sold, if the industrial materials and equipment would not be subject to use taxes  
30 if sold outside of the state for use in West Virginia.

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

NOTE: The purpose of this bill is to increase the consumer sales and use taxes by one cent (from six percent to seven percent), with certain exceptions. The tax increase authorized by this bill sunsets July 1, 2019.

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