

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

**Introduced**

### **House Bill 4294**

**FISCAL  
NOTE**

BY DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Introduced January 27, 2016; Referred  
to the Committee on Roads and Transportation then  
Finance.]

1 A BILL to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating  
 2 to sales tax exemption for certain sales of materials acquired for use in a highway  
 3 construction or maintenance project; and specifying elimination for the fiscal year  
 4 beginning July 1, 2015, of the refundable exemption for sales of construction and  
 5 maintenance material acquired by a second party for use in the construction or  
 6 maintenance of a highway project, with retroactive effect for the elapsed portion of that  
 7 fiscal year, and resumption thereof for the fiscal year beginning July 1, 2016.

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

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

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

**§11-15-9. Exemptions.**

1 (a) *Exemptions for which exemption certificate may be issued.* -- A person having a right  
 2 or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by  
 3 this article and filing a claim for refund, execute a certificate of exemption, in the form required by  
 4 the Tax Commissioner, and deliver it to the vendor of the property or service in the manner  
 5 required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those  
 6 exemptions authorized in this subsection for which exemption certificates are not required. The  
 7 following sales of tangible personal property and services are exempt as provided in this  
 8 subsection:

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

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

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

20           (4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are  
21 subject to the tax imposed by section four, article three, chapter seventeen-a of this code or like  
22 tax;

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

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

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

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

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

39           (D) An organization which has no paid employees and its gross income from fundraisers,  
40 less reasonable and necessary expenses incurred to raise the gross income (or the tangible

41 personal property or services purchased with the net income), is donated to an organization which  
42 is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of  
43 1986, as amended;

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

48 (F) For purposes of this subsection:

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

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

51 (II) Gross receipts from fundraisers which include receipts from admissions, sales of  
52 merchandise, performance of services or furnishing of facilities in any activity which is not an  
53 unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of  
54 1986, as amended;

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

57 (IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code  
58 of 1986, as amended;

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

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

67 (ii) The term “charitable contribution” means a contribution or gift to or for the use of a  
68 corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986,  
69 as amended; and

70 (iii) The term “membership fee” does not include any amounts paid for tangible personal  
71 property or specific services rendered to members by the corporation or organization;

72 (G) The exemption allowed by this subdivision does not apply to sales of gasoline or  
73 special fuel or to sales of tangible personal property or services to be used or consumed in the  
74 generation of unrelated business income as defined in Section 513 of the Internal Revenue Code  
75 of 1986, as amended. The exemption granted in this subdivision applies only to services,  
76 equipment, supplies and materials used or consumed in the activities for which the organizations  
77 qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to  
78 purchases of gasoline or special fuel;

79 (7) An isolated transaction in which any taxable service or any tangible personal property  
80 is sold, transferred, offered for sale or delivered by the owner of the property or by his or her  
81 representative for the owner’s account, the sale, transfer, offer for sale or delivery not being made  
82 in the ordinary course of repeated and successive transactions of like character by the owner or  
83 on his or her account by the representative: *Provided*, That nothing contained in this subdivision  
84 may be construed to prevent an owner who sells, transfers or offers for sale tangible personal  
85 property in an isolated transaction through an auctioneer from availing himself or herself of the  
86 exemption provided in this subdivision, regardless of where the isolated sale takes place. The  
87 Tax Commissioner may propose a legislative rule for promulgation pursuant to article three,  
88 chapter twenty-nine-a of this code which he or she considers necessary for the efficient  
89 administration of this exemption;

90 (8) Sales of tangible personal property or of any taxable services rendered for use or  
91 consumption in connection with the commercial production of an agricultural product the ultimate  
92 sale of which is subject to the tax imposed by this article or which would have been subject to tax

93 under this article: *Provided*, That sales of tangible personal property and services to be used or  
94 consumed in the construction of or permanent improvement to real property and sales of gasoline  
95 and special fuel are not exempt: *Provided, however*, That nails and fencing may not be considered  
96 as improvements to real property;

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

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

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

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

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

111 (14) Casual and occasional sales of property or services not conducted in a repeated  
112 manner or in the ordinary course of repetitive and successive transactions of like character by a  
113 corporation or organization which is exempt from tax under subdivision (6) of this subsection on  
114 its purchases of tangible personal property or services. For purposes of this subdivision, the term  
115 "casual and occasional sales not conducted in a repeated manner or in the ordinary course of  
116 repetitive and successive transactions of like character" means sales of tangible personal  
117 property or services at fundraisers sponsored by a corporation or organization which is exempt,  
118 under subdivision (6) of this subsection, from payment of the tax imposed by this article on its

119 purchases when the fundraisers are of limited duration and are held no more than six times during  
120 any twelve-month period and “limited duration” means no more than eighty-four consecutive  
121 hours: *Provided*, That sales for volunteer fire departments and volunteer school support groups,  
122 with duration of events being no more than eighty-four consecutive hours at a time, which are  
123 held no more than eighteen times in a twelve-month period for the purposes of this subdivision  
124 are considered “casual and occasional sales not conducted in a repeated manner or in the  
125 ordinary course of repetitive and successive transactions of a like character”;

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

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

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

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

143 (19) Any sales of tangible personal property or services purchased and lawfully paid for  
144 with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, *et seq.*,

145 as amended, or with drafts issued through the West Virginia special supplement food program for  
146 women, infants and children codified in 42 U. S. C. §1786;

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

149 (21) Sales of electronic data processing services and related software: *Provided*, That, for  
150 the purposes of this subdivision, “electronic data processing services” means:

151 (A) The processing of another’s data, including all processes incident to processing of  
152 data such as keypunching, keystroke verification, rearranging or sorting of previously documented  
153 data for the purpose of data entry or automatic processing and changing the medium on which  
154 data is sorted, whether these processes are done by the same person or several persons; and

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

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

158 (23) Dispensing of services performed by one corporation, partnership or limited liability  
159 company for another corporation, partnership or limited liability company when the entities are  
160 members of the same controlled group or are related taxpayers as defined in Section 267 of the  
161 Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, equity interests  
162 or membership interests possessing fifty percent or more of the total combined voting power of  
163 all classes of the stock of a corporation, equity interests of a partnership or membership interests  
164 of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity  
165 interests or membership interests possessing fifty percent or more of the value of the corporation,  
166 partnership or limited liability company;

167 (24) Food for the following are exempt:

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



171 the general public;

172 (B) Food purchased or sold by a public or private college or university or by a student  
173 organization officially recognized by the college or university to students enrolled at the college  
174 or university when the sales are made on a contract basis so that a fixed price is paid for  
175 consumption of food products for a specific period of time without respect to the amount of food  
176 product actually consumed by the particular individual contracting for the sale and no money is  
177 paid at the time the food product is served or consumed;

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

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

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

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

194 (G) Food sold by volunteer fire departments and rescue squads that are exempt from  
195 federal income taxes under Section 501(c) (3) or (c) (4) of the Internal Revenue Code of 1986, as  
196 amended, when the purpose of the sale is to obtain revenue for the functions and activities of the

197 organization and the revenue obtained is exempt from federal income tax and actually expended  
198 for that purpose;

199 (25) Sales of food by little leagues, midget football leagues, youth football or soccer  
200 leagues, band boosters or other school or athletic booster organizations supporting activities for  
201 grades kindergarten through twelve and similar types of organizations, including scouting groups  
202 and church youth groups, if the purpose in selling the food is to obtain revenue for the functions  
203 and activities of the organization and the revenues obtained from selling the food is actually used  
204 in supporting or carrying on functions and activities of the groups: *Provided*, That the purchases  
205 made by the organizations are not exempt as a purchase for resale;

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

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

209 (28) Sales of tangible personal property or services to any person which this state is  
210 prohibited from taxing under the laws of the United States or under the Constitution of this state;

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

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

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

221 (32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of  
222 tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by

223 this article and sales of coin-operated video arcade machines or video arcade games to a person  
224 engaged in the business of providing the machines to the public for a charge upon which the tax  
225 imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption  
226 provided in this subdivision may be claimed by presenting to the seller a properly executed  
227 exemption certificate;

228 (33) Sales of aircraft repair, remodeling and maintenance services when the services are  
229 to an aircraft operated by a certified or licensed carrier of persons or property, or by a  
230 governmental entity, or to an engine or other component part of an aircraft operated by a  
231 certificated or licensed carrier of persons or property, or by a governmental entity and sales of  
232 tangible personal property that is permanently affixed or permanently attached as a component  
233 part of an aircraft owned or operated by a certificated or licensed carrier of persons or property,  
234 or by a governmental entity, as part of the repair, remodeling or maintenance service and sales  
235 of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling  
236 or maintenance of aircraft, aircraft engines or aircraft component parts for a certificated or licensed  
237 carrier of persons or property or for a governmental entity;

238 (34) Charges for memberships or services provided by health and fitness organizations  
239 relating to personalized fitness programs;

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

243 (36) Sales of services by public libraries or by libraries at academic institutions or by  
244 libraries at institutions of higher learning;

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

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

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

248 (B) The results of the service activities, including, but not limited to, reports, lists of focus

249 group recruits and compilation of data are transferred to the client across state lines by mail, wire  
250 or other means of interstate commerce, for use by the client outside the State of West Virginia;  
251 and

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

254 For the purpose of this subdivision, the term “primary opinion research” means original  
255 research in the form of telephone surveys, mall intercept surveys, focus group research, direct  
256 mail surveys, personal interviews and other data collection methods commonly used for  
257 quantitative and qualitative opinion research studies;

258 (39) Sales of property or services to persons within the state when those sales are for the  
259 purposes of the production of value-added products: *Provided*, That the exemption granted in this  
260 subdivision applies only to services, equipment, supplies and materials directly used or consumed  
261 by those persons engaged solely in the production of value-added products: *Provided, however*,  
262 That this exemption may not be claimed by any one purchaser for more than five consecutive  
263 years, except as otherwise permitted in this section.

264 For the purpose of this subdivision, the term “value-added product” means the following  
265 products derived from processing a raw agricultural product, whether for human consumption or  
266 for other use. For purposes of this subdivision, the following enterprises qualify as processing raw  
267 agricultural products into value-added products: Those engaged in the conversion of:

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

269 (B) Fruits into wine;

270 (C) Honey into wine;

271 (D) Wool into fabric;

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

273 (F) Milk into cheese;

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

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

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

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

278 (40) Sales of music instructional services by a music teacher and artistic services or artistic

279 performances of an entertainer or performing artist pursuant to a contract with the owner or

280 operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility

281 or any other business location in this state in which the public or a limited portion of the public

282 may assemble to hear or see musical works or other artistic works be performed for the enjoyment

283 of the members of the public there assembled when the amount paid by the owner or operator for

284 the artistic service or artistic performance does not exceed \$3,000: *Provided*, That nothing

285 contained herein may be construed to deprive private social gatherings, weddings or other private

286 parties from asserting the exemption set forth in this subdivision. For the purposes of this

287 exemption, artistic performance or artistic service means and is limited to the conscious use of

288 creative power, imagination and skill in the creation of aesthetic experience for an audience

289 present and in attendance and includes, and is limited to, stage plays, musical performances,

290 poetry recitations and other readings, dance presentation, circuses and similar presentations and

291 does not include the showing of any film or moving picture, gallery presentations of sculptural or

292 pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio

293 or television shows or any video or audio taped presentations or the sale or leasing of video or

294 audio tapes, air shows or any other public meeting, display or show other than those specified

295 herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales

296 of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a

297 legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions

298 and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set

299 forth herein: *Provided further*, That nude dancers or strippers may not be considered as

300 entertainers for the purposes of this exemption;

301           (41) Charges to a member by a membership association or organization which is exempt  
302 from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code  
303 of 1986, as amended, for membership in the association or organization, including charges to  
304 members for newsletters prepared by the association or organization for distribution primarily to  
305 its members, charges to members for continuing education seminars, workshops, conventions,  
306 lectures or courses put on or sponsored by the association or organization, including charges for  
307 related course materials prepared by the association or organization or by the speaker or  
308 speakers for use during the continuing education seminar, workshop, convention, lecture or  
309 course, but not including any separate charge or separately stated charge for meals, lodging,  
310 entertainment or transportation taxable under this article: *Provided*, That the association or  
311 organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment  
312 or transportation taxable under this article for which a separate or separately stated charge is not  
313 made. A membership association or organization which is exempt from paying federal income  
314 taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may  
315 elect to pay the tax imposed under this article on the purchases for which a separate charge or  
316 separately stated charge could apply and not charge its members the tax imposed by this article  
317 or the association or organization may avail itself of the exemption set forth in subdivision (9) of  
318 this subsection relating to purchases of tangible personal property for resale and then collect the  
319 tax imposed by this article on those items from its member;

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

322           (43) Direct or subscription sales by the Division of Natural Resources of the magazine  
323 currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the  
324 magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

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

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

327 (46) The service of providing technical evaluations for compliance with federal and state  
328 environmental standards provided by environmental and industrial consultants who have formal  
329 certification through the West Virginia Department of Environmental Protection or the West  
330 Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing  
331 technical evaluations for compliance with federal and state environmental standards includes  
332 those costs of tangible personal property directly used in providing such services that are  
333 separately billed to the purchaser of such services and on which the tax imposed by this article  
334 has previously been paid by the service provider;

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

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

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

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

350 (1) Sales of property or services to bona fide charitable organizations who make no charge  
351 whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision  
352 applies only to services, equipment, supplies, food, meals and materials directly used or

353 consumed by these organizations and does not apply to purchases of gasoline or special fuel;

354 (2) Sales of services, machinery, supplies and materials directly used or consumed in the  
355 activities of manufacturing, transportation, transmission, communication, production of natural  
356 resources, gas storage, generation or production or selling electric power, provision of a public  
357 utility service or the operation of a utility service or the operation of a utility business, in the  
358 businesses or organizations named in this subdivision and does not apply to purchases of  
359 gasoline or special fuel;

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

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

366 (5) Sales of building materials or building supplies or other property to an organization  
367 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended,  
368 which are to be installed in, affixed to or incorporated by the organization or its agent into real  
369 property or into a building or structure which is or will be used as permanent low-income housing,  
370 transitional housing, an emergency homeless shelter, a domestic violence shelter or an  
371 emergency children and youth shelter if the shelter is owned, managed, developed or operated  
372 by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of  
373 1986, as amended; and

374 (6) Sales of construction and maintenance materials acquired by a second party for use  
375 in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or  
376 credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to  
377 the Division of Highways for deposit into the State Road Fund of the state reimbursement for the  
378 tax in the amount estimated under the provisions of this subdivision: *Provided, however*, That by



379 ~~the~~ June 15 of each fiscal year, the division shall provide to the Tax Department an itemized listing  
380 of highways projects with the amount of funds expended for highway construction and  
381 maintenance. The Commissioner of Highways shall request reimbursement of the tax based on  
382 an estimate that forty percent of the total gross funds expended by the agency during the fiscal  
383 period were for the acquisition of materials used for highway construction and maintenance. The  
384 amount of the reimbursement shall be calculated at six percent of the forty percent: Provided  
385 further, That the exemption authorized under this subdivision (6) is eliminated for the fiscal year  
386 beginning on July 1, 2015, with retroactive effect back to July 1, 2015, and the exemption  
387 authorized under this subdivision (6) shall then resume beginning on July 1, 2016.

NOTE: The purpose of this bill is to eliminate the consumers sales and service tax exemption on purchases of certain materials by a second party in construction or maintenance of a highways project for the 2016 fiscal year, and to resume the exemption for the 2017 fiscal year and thereafter.

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