

WEST VIRGINIA LEGISLATURE
2017 FIRST EXTRAORDINARY SESSION

ENGROSSED

Committee Substitute

for

House Bill 107

BY DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Originating May 18, 2017, in the Committee on Finance.]

1 A BILL to amend and reenact §11-15-3, §11-15-8a, §11-15-9, §11-15-9b and §11-15-9h of the
2 Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new
3 sections, designated §11-15-3d and §11-15-35; to amend and reenact §11-15A-2 of said
4 code; to amend and reenact §11-21-8a, §11-21-8e and §11-21-16 of said code; to amend
5 said code by adding thereto two new sections, designated §11-21-12j and §11-21-12k;
6 and to amend and reenact §11-24-23a and §11-24-23e of said code, all relating generally
7 to taxation; imposing taxes on telecommunication services and ancillary
8 telecommunication services beginning on a specified date; eliminating exemptions from
9 consumers sales and service tax as of July 1, 2017, on the first \$40,000 of consideration
10 paid for the portion of the labor component for contracting services furnished that is not
11 otherwise exempt from the sales tax for a contract for contracting services entered into on
12 or after a specified date, and providing exceptions in the event of certain declarations of
13 disasters; eliminating exemptions from sales and services tax beginning on specified
14 dates on sales of electronic data processing services and related software, on charges for
15 memberships or services provided by health and fitness organizations relating to
16 personalized fitness programs, on sales of certain primary opinion research services, and
17 on sales of services, machinery, supplies and materials directly used or consumed in the
18 business activity of communication, but exempting all sales of services, machinery,
19 supplies and materials directly used or consumed in the business activities of the buildout
20 of broadband infrastructure in the state from the tax; eliminating the transfers of sales tax
21 revenues to the State Road Fund that are collected from sales of construction and
22 maintenance materials acquired by a second party for use in the construction or
23 maintenance of a highway project beginning on specified date; providing for legislative
24 and emergency rules; exempting all military retirement from personal income tax
25 beginning on specified date; phasing in an exemption of federal Social Security benefits
26 income from personal income tax for certain resident individuals beginning on specified

27 date; increasing the personal income tax personal exemption of certain resident
28 individuals beginning on specified date; increasing amount of credit allowed against
29 personal and corporation net income taxes for qualified building rehabilitation
30 expenditures made after specified date; and establishing limitations on carryback and
31 carryforward of credit for qualified building rehabilitation expenditures; and making
32 technical corrections in various sections.

Be it enacted by the Legislature of West Virginia:

1 That §11-15-3, §11-15-8a, §11-15-9, §11-15-9b and §11-15-9h of the Code of West
2 Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding
3 thereto two new sections, designated §11-15-3d and §11-15-35; that §11-15A-2 of said code be
4 amended and reenacted; that §11-21-8a, §11-21-8e and §11-21-16 of said code be amended
5 and reenacted; that said code be amended by adding thereto two new sections, designated §11-
6 21-12j and §11-21-12k; and that §11-24-23a and §11-24-23e of said code be amended and
7 reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§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.* — The general consumer sales and service tax imposed by this article
7 shall be at the rate of ~~6¢ on the dollar~~ six percent of the sales price of sales or services tangible
8 personal property, custom software or taxable service purchased, excluding gasoline and special
9 fuel sales, which remain taxable at the rate of ~~5¢ on the dollar of sales~~ five percent.

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

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

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

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

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

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

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

19 (7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any

20 fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the

21 dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢;

22 3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional

23 part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in

24 excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For

25 example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33,

26 both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67,

27 both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to

28 \$2, both inclusive, 12¢. *Provided*, That beginning January 1, 2004, tax due under this article shall

29 be calculated as provided in subsection (d) of this subsection and this subsection (c) does not

30 apply to sales made after December 31, 2003.

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

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

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

34 third decimal place is greater than four and rounded down to the lower whole cent whenever the

35 third decimal place is four or less. The vendor may elect to compute the tax due on a transaction

36 on a per item basis or on an invoice basis provided the method used is consistently used during
37 the reporting period.

38 ~~(e)~~ (d) *No aggregation of separate sales transactions, exception for coin-operated devices.*

39 — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of
40 computation of the tax even though the sales are aggregated in the billing or payment therefor.
41 Notwithstanding any other provision of this article, coin-operated amusement and vending
42 machine sales shall be aggregated for the purpose of computation of this tax.

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

47 ~~(g)~~ (f) *Construction; custom software.* – ~~After December 31, 2003, whenever~~ Whenever
48 the words “tangible personal property” or “property” appear in this article, the same shall also
49 include the words “custom software”.

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

§11-15-3d. Imposition of consumers sales tax on telecommunications service and ancillary services.

1 (a) Notwithstanding the provisions of section eight of this article or any other provision of
2 this code, on and after July 1, 2017, “telecommunications service,” and “ancillary services” as
3 defined in article fifteen-b of this chapter, shall be subject to the consumers sales and service tax
4 imposed by this article, and the use tax imposed by article fifteen-a of this chapter: *Provided, That*
5 payment of the tax imposed under this article or under article fifteen-a of this chapter on prepaid
6 wireless services is sufficient to fulfill the mandate of this section, and prepaid wireless services
7 shall not be subjected to double taxation under this article: *Provided, however, That this section*
8 shall not be interpreted to prevent imposition of any other lawfully imposed municipal tax or fee

9 or any other tax or fee lawfully imposed under any state or federal law, or the laws of any
10 subdivision thereof on such prepaid wireless services.

11 (b) The tax imposed by this section shall be in addition to any municipal utilities tax,
12 municipal consumers sales and service tax and use tax, or other tax lawfully imposed on
13 telephone service, telecommunications service and ancillary services.

14 (c) The sale of telecommunications service and ancillary services on which tax is imposed
15 by this section shall be subject to sourcing rules set forth in sections nineteen and twenty, article
16 fifteen-b of this chapter.

17 (d) Notwithstanding the fact that a service provider did not meet the threshold amount for
18 the previous calendar year that would cause accelerated payment to be made in the current year,
19 the accelerated payment rule imposed under subsection (g), section sixteen of this article applies
20 to the tax imposed by this section, if the service provider's total combined monthly remittance of
21 the taxes levied by this article and article fifteen-a of this chapter for any calendar month beginning
22 on and after July 1, 2017, exceeds, or can reasonably be expected to exceed, \$100,000.

§11-15-8a. Contractors.

1 (a) The provisions of this article shall not apply to contracting services: Provided, That for
2 a contract for contracting services entered into on or after July 1, 2017, this exemption shall not
3 be allowable on the first \$40,000 of the labor component for the consideration paid for the portion
4 of the contracting services furnished that is not otherwise exempt from the tax under the provisions
5 of this article: Provided, however, That this exemption shall continue to be allowable on the first
6 \$40,000 of the labor component for the consideration paid for the portion of the contracting
7 services furnished when such contracting services have been made necessary as a result of a
8 disaster as defined in section two of article five of chapter fifteen of this code; when such disaster
9 resulted in a state of emergency being declared pursuant to the provisions of section six, article
10 five, chapter fifteen of this code, or, in a major disaster declaration or emergency declaration being
11 issued pursuant to the provisions of 42 U.S.C. § 5122: Provided further, That However, purchases

12 by a contractor of tangible personal property or taxable services for use or consumption in the
13 providing of a contracting service shall be taxable beginning March 1, 1989, except as otherwise
14 provided in this article.

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

19 ~~(1) Tangible personal property or taxable services purchased by a contractor on or after~~
20 ~~said first day of March in fulfillment of a written contract for contracting, as defined in section two~~
21 ~~of this article, that was executed and legally binding on the parties thereto on or before February~~
22 ~~15, 1989; or in fulfillment of a written contract entered into after February 15 pursuant to a written~~
23 ~~bid for contracting that was made on or before February 15 that was binding on the contractor,~~
24 ~~but only to the extent that the bid is subsequently incorporated into a written contract; or~~

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

28 ~~(3) Tangible personal property or taxable services purchased by a contractor for~~
29 ~~consumption or use in fulfillment of a written contract entered into before September 1, 1989,~~
30 ~~when such contract is for the construction of a new improvement to real property the construction~~
31 ~~or operation of which was approved by a federal or state regulatory body prior to February 1,~~
32 ~~1989, or pursuant to a federal grant awarded prior to such first day of February.~~

33 ~~(c) (b) Renewals and extensions. — A renewal of any contract shall constitute a new~~
34 ~~contract for purposes of this section, and the date of entry into a contract renewal by the parties,~~
35 ~~the date or dates of tender of consideration and the time of performance of any contractual~~
36 ~~obligations under a renewed contract shall be treated as the dates for determining application of~~
37 ~~this section to the renewed contract. Extensions of time granted or agreed upon by the parties to~~

38 a contract for performance of the contract or for tender of consideration under the contract shall
39 not be treated as contract renewals. Contracts to which such extensions apply shall be treated
40 ~~under these transition rules~~ as if the original contractual provisions for performance and tender of
41 consideration remain in effect.

42 ~~(d)~~ (c) *Definitions.* — For purposes of this section:

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

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

§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~~ Higher Education Policy Commission or the Council for
15 Community and Technical College Education for universities and colleges located in this state;

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

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

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

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

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

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

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

40 (D) An organization which has no paid employees and its gross income from fundraisers,
41 less reasonable and necessary expenses incurred to raise the gross income (or the tangible
42 personal property or services purchased with the net income), is donated to an organization which
43 is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
44 1986, as amended;

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

49 (F) For purposes of this subsection:

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

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

52 (II) Gross receipts from fundraisers which include receipts from admissions, sales of
53 merchandise, performance of services or furnishing of facilities in any activity which is not an
54 unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of
55 1986, as amended;

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

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

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

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

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

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

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

81 (7) An isolated transaction in which any taxable service or any tangible personal property
82 is sold, transferred, offered for sale or delivered by the owner of the property or by his or her
83 representative for the owner’s account, the sale, transfer, offer for sale or delivery not being made
84 in the ordinary course of repeated and successive transactions of like character by the owner or
85 on his or her account by the representative: *Provided*, That nothing contained in this subdivision

86 may be construed to prevent an owner who sells, transfers or offers for sale tangible personal
87 property in an isolated transaction through an auctioneer from availing himself or herself of the
88 exemption provided in this subdivision, regardless of where the isolated sale takes place. The
89 Tax Commissioner may propose a legislative rule for promulgation pursuant to article three,
90 chapter twenty-nine-a of this code which he or she considers necessary for the efficient
91 administration of this exemption;

92 (8) Sales of tangible personal property or of any taxable services rendered for use or
93 consumption in connection with the commercial production of an agricultural product the ultimate
94 sale of which is subject to the tax imposed by this article or which would have been subject to tax
95 under this article: *Provided*, That sales of tangible personal property and services to be used or
96 consumed in the construction of or permanent improvement to real property and sales of gasoline
97 and special fuel are not exempt: *Provided, however*, That nails and fencing may not be considered
98 as improvements to real property;

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

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

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

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

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

113 (14) Casual and occasional sales of property or services not conducted in a repeated
114 manner or in the ordinary course of repetitive and successive transactions of like character by a
115 corporation or organization which is exempt from tax under subdivision (6) of this subsection on
116 its purchases of tangible personal property or services. For purposes of this subdivision, the term
117 “casual and occasional sales not conducted in a repeated manner or in the ordinary course of
118 repetitive and successive transactions of like character” means sales of tangible personal property
119 or services at fundraisers sponsored by a corporation or organization which is exempt, under
120 subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases
121 when the fundraisers are of limited duration and are held no more than six times during any
122 twelve-month period and “limited duration” means no more than eighty-four consecutive hours:
123 *Provided*, That sales for volunteer fire departments and volunteer school support groups, with
124 duration of events being no more than eighty-four consecutive hours at a time, which are held no
125 more than eighteen times in a twelve-month period for the purposes of this subdivision are
126 considered “casual and occasional sales not conducted in a repeated manner or in the ordinary
127 course of repetitive and successive transactions of a like character”;

128 (15) Sales of property or services to a school which has approval from the ~~board of~~
129 ~~Trustees of the University System of West Virginia or the board of Directors of the state College~~
130 ~~System~~ Higher Education Policy Commission or the Council for Community and Technical
131 College Education to award degrees, which has its principal campus in this state and which is
132 exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue
133 Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel are taxable as
134 provided in section eighteen-b of this article and article fourteen-c of this chapter;

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

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

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

147 (19) Any sales of tangible personal property or services purchased and lawfully paid for
148 with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, *et seq.*,
149 as amended, or with drafts issued through the West Virginia Special Supplement Food Program
150 for women, infants and children codified in 42 U. S. C. §1786;

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

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

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

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

161 ~~(22)~~ (21) Tuition charged for attending educational summer camps;

162 ~~(23)~~ (22) Dispensing of services performed by one corporation, partnership or limited
163 liability company for another corporation, partnership or limited liability company when the entities

164 are members of the same controlled group or are related taxpayers as defined in Section 267 of
165 the Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity
166 interests or membership interests possessing fifty percent or more of the total combined voting
167 power of all classes of the stock of a corporation, equity interests of a partnership or membership
168 interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock,
169 equity interests or membership interests possessing fifty percent or more of the value of the
170 corporation, partnership or limited liability company;

171 ~~(24)~~ (23) Food for the following are exempt:

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

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

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

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

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

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

198 (G) Food sold by volunteer fire departments and rescue squads that are exempt from
199 federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
200 amended, when the purpose of the sale is to obtain revenue for the functions and activities of the
201 organization and the revenue obtained is exempt from federal income tax and actually expended
202 for that purpose;

203 ~~(25)~~ (24) Sales of food by little leagues, midget football leagues, youth football or soccer
204 leagues, band boosters or other school or athletic booster organizations supporting activities for
205 grades kindergarten through twelve and similar types of organizations, including scouting groups
206 and church youth groups, if the purpose in selling the food is to obtain revenue for the functions
207 and activities of the organization and the revenues obtained from selling the food is actually used
208 in supporting or carrying on functions and activities of the groups: *Provided*, That the purchases
209 made by the organizations are not exempt as a purchase for resale;

210 ~~(26)~~ (25) Charges for room and meals by fraternities and sororities to their members:
211 *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for
212 resale;

213 ~~(27)~~ (26) Sales of or charges for the transportation of passengers in interstate commerce;

214 ~~(28)~~ (27) Sales of tangible personal property or services to any person which this state is
215 prohibited from taxing under the laws of the United States or under the Constitution of this state;

216 ~~(29)~~ (28) Sales of tangible personal property or services to any person who claims
217 exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the
218 provision of any other chapter of this code;

219 ~~(30)~~ (29) Charges for the services of opening and closing a burial lot;

220 ~~(34)~~ (30) Sales of livestock, poultry or other farm products in their original state by the
221 producer of the livestock, poultry or other farm products or a member of the producer's immediate
222 family who is not otherwise engaged in making retail sales of tangible personal property; and
223 sales of livestock sold at public sales sponsored by breeders or registry associations or livestock
224 auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed
225 without presenting or obtaining exemption certificates provided the farmer maintains adequate
226 records;

227 ~~(32)~~ (31) Sales of motion picture films to motion picture exhibitors for exhibition if the sale
228 of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by
229 this article and sales of coin-operated video arcade machines or video arcade games to a person
230 engaged in the business of providing the machines to the public for a charge upon which the tax
231 imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption
232 provided in this subdivision may be claimed by presenting to the seller a properly executed
233 exemption certificate;

234 ~~(33)~~ (32) Sales of aircraft repair, remodeling and maintenance services when the services
235 are to an aircraft operated by a certified or licensed carrier of persons or property, or by a
236 governmental entity, or to an engine or other component part of an aircraft operated by a
237 certificated or licensed carrier of persons or property, or by a governmental entity and sales of
238 tangible personal property that is permanently affixed or permanently attached as a component
239 part of an aircraft owned or operated by a certificated or licensed carrier of persons or property,

240 or by a governmental entity, as part of the repair, remodeling or maintenance service and sales
241 of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling
242 or maintenance of aircraft, aircraft engines or aircraft component parts for a certificated or licensed
243 carrier of persons or property or for a governmental entity;

244 ~~(34) Charges for memberships or services provided by health and fitness organizations~~
245 ~~relating to personalized fitness programs;~~

246 ~~(35)~~ (33) Sales of services by individuals who babysit for a profit: *Provided*, That the gross
247 receipts of the individual from the performance of baby-sitting services do not exceed \$5,000 in a
248 taxable year;

249 ~~(36)~~ (34) Sales of services by public libraries or by libraries at academic institutions or by
250 libraries at institutions of higher learning;

251 ~~(37)~~ (35) Commissions received by a manufacturer's representative;

252 ~~(38)~~ (36) Sales of primary opinion research services when:

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

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

258 (C) The transfer of the results of the service activities is an indispensable part of the overall
259 service: *Provided*, That this exemption shall not be allowable on and after July 1, 2017.

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

264 ~~(39)~~ (37) Sales of property or services to persons within the state when those sales are
265 for the purposes of the production of value-added products: *Provided*, That the exemption granted

266 in this subdivision applies only to services, equipment, supplies and materials directly used or
267 consumed by those persons engaged solely in the production of value-added products: *Provided,*
268 *however,* That this exemption may not be claimed by any one purchaser for more than five
269 consecutive years, except as otherwise permitted in this section.

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

- 274 (A) Lumber into furniture, toys, collectibles and home furnishings;
- 275 (B) Fruits into wine;
- 276 (C) Honey into wine;
- 277 (D) Wool into fabric;
- 278 (E) Raw hides into semifinished or finished leather products;
- 279 (F) Milk into cheese;
- 280 (G) Fruits or vegetables into a dried, canned or frozen product;
- 281 (H) Feeder cattle into commonly accepted slaughter weights;
- 282 (I) Aquatic animals into a dried, canned, cooked or frozen product; and
- 283 (J) Poultry into a dried, canned, cooked or frozen product;
- 284 ~~(40)~~ (38) Sales of music instructional services by a music teacher and artistic services or
285 artistic performances of an entertainer or performing artist pursuant to a contract with the owner
286 or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment
287 facility or any other business location in this state in which the public or a limited portion of the
288 public may assemble to hear or see musical works or other artistic works be performed for the
289 enjoyment of the members of the public there assembled when the amount paid by the owner or
290 operator for the artistic service or artistic performance does not exceed \$3,000: *Provided,* That
291 nothing contained herein may be construed to deprive private social gatherings, weddings or other

292 private parties from asserting the exemption set forth in this subdivision. For the purposes of this
293 exemption, artistic performance or artistic service means and is limited to the conscious use of
294 creative power, imagination and skill in the creation of aesthetic experience for an audience
295 present and in attendance and includes, and is limited to, stage plays, musical performances,
296 poetry recitations and other readings, dance presentation, circuses and similar presentations and
297 does not include the showing of any film or moving picture, gallery presentations of sculptural or
298 pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio
299 or television shows or any video or audio taped presentations or the sale or leasing of video or
300 audio tapes, air shows or any other public meeting, display or show other than those specified
301 herein: *Provided, however,* That nothing contained herein may be construed to exempt the sales
302 of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a
303 legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions
304 and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set
305 forth herein: *Provided further,* That nude dancers or strippers may not be considered as
306 entertainers for the purposes of this exemption;

307 ~~(44)~~ (39) Charges to a member by a membership association or organization which is
308 exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal
309 Revenue Code of 1986, as amended, for membership in the association or organization, including
310 charges to members for newsletters prepared by the association or organization for distribution
311 primarily to its members, charges to members for continuing education seminars, workshops,
312 conventions, lectures or courses put on or sponsored by the association or organization, including
313 charges for related course materials prepared by the association or organization or by the speaker
314 or speakers for use during the continuing education seminar, workshop, convention, lecture or
315 course, but not including any separate charge or separately stated charge for meals, lodging,
316 entertainment or transportation taxable under this article: *Provided,* That the association or
317 organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment

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

326 ~~(42)~~ (40) Sales of governmental services or governmental materials by county assessors,
327 county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

328 ~~(43)~~ (41) Direct or subscription sales by the Division of Natural Resources of the magazine
329 currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the
330 magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

331 ~~(44)~~ (42) Sales of soap to be used at car wash facilities;

332 ~~(45)~~ (43) Commissions received by a travel agency from an out-of-state vendor;

333 ~~(46)~~ (44) The service of providing technical evaluations for compliance with federal and
334 state environmental standards provided by environmental and industrial consultants who have
335 formal certification through the West Virginia Department of Environmental Protection or the West
336 Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing
337 technical evaluations for compliance with federal and state environmental standards includes
338 those costs of tangible personal property directly used in providing such services that are
339 separately billed to the purchaser of such services and on which the tax imposed by this article
340 has previously been paid by the service provider;

341 ~~(47)~~ (45) Sales of tangible personal property and services by volunteer fire departments
342 and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4)
343 of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain

344 revenue for the functions and activities of the organization and the revenue obtained is exempt
345 from federal income tax and actually expended for that purpose;

346 ~~(48)~~ (46) Lodging franchise fees, including royalties, marketing fees, reservation system
347 fees or other fees assessed after December 1, 1997, that have been or may be imposed by a
348 lodging franchiser as a condition of the franchise agreement; and

349 ~~(49)~~ (47) Sales of the regulation size United States flag and the regulation size West
350 Virginia flag for display.

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

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

360 (2) Sales of services, machinery, supplies and materials directly used or consumed in the
361 activities of manufacturing, transportation, transmission, communication, production of natural
362 resources, gas storage, generation or production or selling electric power, provision of a public
363 utility service or the operation of a utility service or the operation of a utility business, in the
364 businesses or organizations named in this subdivision and does not apply to purchases of
365 gasoline or special fuel: *Provided*, That beginning on July 1, 2017, all sales of services, machinery,
366 supplies and materials directly used or consumed in the business activity of communication shall
367 be subject to the tax imposed by this article: *Provided*, however, That all sales of services,
368 machinery, supplies and materials directly used or consumed in the business activities of the

369 buildout of broadband infrastructure in the state shall not be subject to the tax imposed by this
370 article.;

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

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

377 (5) Sales of building materials or building supplies or other property to an organization
378 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended,
379 which are to be installed in, affixed to or incorporated by the organization or its agent into real
380 property or into a building or structure which is or will be used as permanent low-income housing,
381 transitional housing, an emergency homeless shelter, a domestic violence shelter or an
382 emergency children and youth shelter if the shelter is owned, managed, developed or operated
383 by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
384 1986, as amended. ~~and~~

385 ~~(6) Sales of construction and maintenance materials acquired by a second party for use~~
386 ~~in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or~~
387 ~~credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to~~
388 ~~the Division of Highways for deposit into the State Road Fund of the state reimbursement for the~~
389 ~~tax in the amount estimated under the provisions of this subdivision: *Provided, however*, That by~~
390 ~~June 15 of each fiscal year, the division shall provide to the Tax Department an itemized listing of~~
391 ~~highways projects with the amount of funds expended for highway construction and maintenance.~~
392 ~~The Commissioner of Highways shall request reimbursement of the tax based on an estimate that~~
393 ~~forty percent of the total gross funds expended by the agency during the fiscal period were for the~~

394 ~~acquisition of materials used for highway construction and maintenance. The amount of the~~
395 ~~reimbursement shall be calculated at six percent of the forty percent.~~

396 (c) *Effective date.* – The amendments to this section in 2017 shall take effect beginning
397 July 1, 2017, and apply to sales made on and after that date: *Provided*, That except for the
398 amendment to subdivision (2), subsection (b) of this section, the amendments to subsection (b)
399 of this section shall take effect June 1, 2017, and shall be construed to prohibit all future transfers
400 to the State Road Fund established in the State Treasury pursuant to section fifty-two, article six
401 of the Constitution, under this section of taxes imposed by this article and article fifteen-a of this
402 chapter.

§11-15-9b. Exemption for purchases of tangible personal property and services for direct use in research and development.

1 (a) Sales of tangible personal property and services after June 30, 2002, directly used or
2 consumed in the activity of research and development are exempt from tax imposed by this article.
3 Any person having a right or claim to the exemption set forth in this section shall first pay to the
4 vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or
5 credit or give to the vendor the person's West Virginia direct pay permit number in accordance
6 with the provisions of section nine-d of this article.

7 (b) For purposes of this article:

8 (1) "Directly used or consumed in the activity of research and development" means used
9 or consumed in those activities or operations which constitute an integral and essential part of
10 research and development, as contrasted with and distinguished from those activities or
11 operations which are simply incidental, convenient or remote to research and development.

12 (A) Uses of property or consumption of services which constitute direct use or
13 consumption in the activity of research and development include only:

14 (i) In the case of tangible personal property, physical incorporation of property into tangible
15 personal property that is the subject of, or directly used in, research and development;

16 (ii) Causing a direct physical, chemical or other change upon property that is the subject
17 of, or directly used in, research and development;

18 (iii) Transporting or storing property that is the subject of, or directly used in, research and
19 development;

20 (iv) Measuring or verifying a change in property that is the subject of, or directly used in,
21 research and development;

22 (v) Physically controlling or directing the physical movement or operation of property that
23 is the subject of, or directly used in, research and development;

24 (vi) Directly and physically recording the flow of property that is the subject of, or directly
25 used in, research and development;

26 (vii) Producing energy for property that is the subject of, or directly used in, research and
27 development;

28 (viii) Controlling or otherwise regulating atmospheric or other environmental conditions
29 required for research and development;

30 (ix) Serving as an operating supply for property that is the subject of, or directly used in,
31 research and development;

32 (x) Maintenance or repair of property, including maintenance equipment, that is directly
33 used in research and development;

34 (xi) Storage, removal or transportation of economic or other waste resulting from the
35 activity of research and development;

36 (xii) Pollution control or environmental quality or environmental protection activity directly
37 relating to the activity of research and development, and personnel, plant, property or community
38 safety or security activity directly relating to the activity of research and development; or

39 (xiii) Otherwise being used as an integral and essential part of research and development.

40 (B) Uses of property or services which do not constitute direct use or consumption in the
41 activity of research and development include, but are not limited to:

- 42 (i) Heating and illumination of office buildings;
- 43 (ii) Janitorial or general cleaning activities;
- 44 (iii) Personal comfort of personnel;
- 45 (iv) Planning or scheduling of work or inventory control;
- 46 (v) Marketing, general management, supervision, finance, training, accounting and
- 47 administration; or
- 48 (vi) An activity or function incidental or convenient to research and development, rather
- 49 than an integral and essential part of these activities.

50 (2) "Research and development" means systematic scientific, engineering or technological
51 study and investigation in a field of knowledge in the physical, computer or software sciences,
52 often involving the formulation of hypotheses and experimentation, for the purpose of revealing
53 new facts, theories or principles, or increasing scientific knowledge, which may reveal the basis
54 for new or enhanced products, equipment or manufacturing processes. Research and
55 development includes, but is not limited to, design, refinement and testing of prototypes of new
56 or improved products, or design, refinement and testing of manufacturing processes before
57 commercial sales relating thereto have begun. For purposes of this section commercial sales
58 include, but are not limited to, sales of prototypes or sales for market testing.

59 (A) Research and development does not include:

- 60 (i) Market research;
- 61 (ii) Sales research;
- 62 (iii) Efficiency surveys;
- 63 (iv) Consumer surveys;
- 64 (v) Product market testing;
- 65 (vi) Product testing by product consumers or through consumer surveys for evaluation of
- 66 consumer product performance or consumer product usability;

67 (vii) The ordinary testing or inspection of materials or products for quality control (quality
68 control testing);

69 (viii) Management studies;

70 (ix) Advertising;

71 (x) Promotions;

72 (xi) The acquisition of another's patent, model, production or process or investigation or
73 evaluation of the value or investment potential related thereto;

74 (xii) Research in connection with literary, historical or similar projects;

75 (xiii) Research in the social sciences, economics, humanities or psychology and other
76 nontechnical activities; and

77 (xiv) The providing of sales services or any other service, whether technical service or
78 nontechnical service.

79 (c) No provision of this section may be interpreted to alter, abrogate or impede application
80 of the exemption for sales of primary opinion research services set forth in section nine of this
81 article: Provided, That on and after July 1, 2017, the exemption for primary opinion research shall
82 not be an allowable exemption.

§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;

12 (2) Sales of computer hardware or software (including custom designed software) directly
13 used in communication as defined in this article;

14 ~~(3) Sales of electronic data processing services;~~

15 ~~(4)~~ (3) Sales of educational software required to be used in any of the public schools of
16 this state or in any institution in this state which qualifies as a nonprofit or educational institution
17 subject to administration, regulation, certification or approval of the Department of Education, the
18 Department of Education and the Arts or the Higher Education Policy Commission;

19 ~~(5)~~ (4) Sales of Internet advertising of goods and services;

20 ~~(6)~~ (5) Sales of high-technology business services to high-technology businesses which
21 enter into contracts with this state, its institutions and subdivisions, governmental units, institutions
22 or subdivisions of other states, or with the United States, including agencies of federal, state or
23 local governments for direct use in fulfilling the government contract; and

24 ~~(7)~~ (6) Sales of prewritten computer software, computers, computer hardware, servers and
25 building materials and tangible personal property to be installed into a building or facility for direct
26 use in a high-technology business or an Internet advertising business.

27 (b) *Definitions.* —

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

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

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

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

52 (4) “Internet advertising business” means a for-profit business that is engaged, for
53 monetary remuneration, in the primary business activity of announcing, or calling public attention
54 to, goods or services in order to induce the public to purchase those goods or services, and which

55 uses the Internet as its sole advertising communications medium. For purposes of this definition,
56 Internet advertising must be the primary business activity of the business and not a secondary or
57 incidental activity and not an activity in support of or incidental to other business activity.

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

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

60 (c) The amendments to this section made in the first extraordinary session of the
61 Legislature in 2009 shall apply to purchases made on and after July 1, 2009. The amendments
62 to this section made in 2017 shall apply on and after July 1, 2017.

§11-15-35. Administrative rules.

1 Legislative rules; emergency rules. — The tax commissioner shall propose for
2 promulgation legislative rules explaining and implementing the amendments to this article enacted
3 in the year 2017 in accordance with the provisions of article three, chapter twenty-nine-a of this
4 code. The authority to promulgate rules includes authority to amend or repeal those rules. If
5 proposed legislative rules for this section are filed in the state register before October 1, 2017,
6 those rules may be promulgated as emergency legislative rules as provided in article three,
7 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) 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 of the purchase price of the property
4 or taxable services, except as otherwise provided in this article.

5 (b) *Calculation of tax on fractional parts of a dollar.* — The tax computation under
6 subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to
7 the next whole cent whenever the third decimal place is greater than four and rounded down to

8 the lower whole cent whenever the third decimal place is four or less. The vendor may elect to
9 compute the tax due on a transaction on a per item basis or on an invoice basis provided the
10 method used is consistently used during the reporting period.

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

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

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

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of this article shall be allowed as follows:

2 *Certified historic structures.* – For certified historic structures, the credit is equal to ten
3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
4 States Code, as amended: Provided, That for qualified rehabilitation expenditures made after

5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified
6 rehabilitation expenditure: *Provided, however,* That the credit authorized by this section for
7 qualified rehabilitation expenditures made after June 30, 2017, may not be used to offset tax
8 liabilities prior to the tax year beginning January 1, 2019: *Provided further,* That the taxpayer may
9 not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by
10 the Tax Division or the taxpayer is delinquent in the payment of property taxes on the property
11 containing the certified historic tax structure when the applicant begins to claim the credit and
12 throughout the time period within which the credit is claimed. The Tax Commissioner shall
13 promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code
14 that provide what information must accompany any claim for the tax credit for the determination
15 that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor
16 is the taxpayer delinquent in the payment of property taxes on the property containing the certified
17 historic tax structure. The Tax Commissioner may also propose rules for legislative approval in
18 accordance with the provisions of article three, chapter twenty-nine-a of this code for the
19 administration of this tax credit and to provide any necessary mechanism to recover credits
20 claimed by taxpayers that become delinquent in the payment of property taxes on the property
21 containing the historic structure or become in arrears in the payment of any tax administered by
22 the Tax Division. This credit is available for both residential and nonresidential buildings located
23 in this state, that are reviewed by the West Virginia Division of Culture and History and designated
24 by the national park service, United States department of the interior as “certified historic
25 structures,” and further defined as a “qualified rehabilitated building,” as defined under §47(c)(1),
26 Title 26 of the United States Code, as amended.

27 The credit authorized pursuant to this section may not exceed the greater of \$3.75 million
28 for the portion of a certified rehabilitation as defined in 26 U.S.C. §47(c)(2)(C) placed in service in
29 the state in the taxable year, or \$3.75 million for each building that is a component of a certified
30 historic structure for which a credit is claimed under this section. No more than \$20 million of the

31 tax credits authorized by this section and section twenty-three-a, article twenty-four of this
32 chapter, cumulatively, may be allocated by the Division of Culture and History in any given West
33 Virginia state fiscal year. The Division of Culture and History shall allocate the tax credits in the
34 order the applications therefor are received.

§11-21-8e. ~~Carryback~~ Credit carryback, carryforward.

1 (a) Any unused portion of the credit for qualified rehabilitated buildings investment
2 authorized by section eight-a of this article which may not be taken in the taxable year to which
3 the credit applies qualifies for carryback and carryforward treatment subject to the identical
4 general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That
5 the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for
6 the taxable year: *Provided, however*, That for tax years beginning on and after January 1, 2019,
7 any unused portion of the credit authorized by section eight-a of this article may not be carried
8 back to any prior taxable year: *Provided further*, That for tax years beginning on and after January
9 1, 2019, any unused portion of the credit authorized by section eight-a of this article may be
10 carried over to each of the next five tax years following the unused credit year until used or
11 forfeited due to lapse of time.

12 (b) Effective for taxable years beginning on and after January 1, 2001, credits granted to
13 an electing small business corporation (S corporation), limited partnership, general partnership,
14 limited liability company or multiple owners of property shall be passed through to the
15 shareholders, partners, members or owners, either pro rata or pursuant to an agreement among
16 the shareholders, partners, members or owners documenting an alternative distribution method.
17 The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter
18 twenty-nine-a of this code that provide the method of reporting the alternative method of
19 distribution authorized by this section.

**§11-21-12j. Decreasing modification reducing federal adjusted gross income for military
retirement income after December 31, 2017.**

1 (a) In lieu of the provisions for military retirement income in section twelve of this article,
2 for taxable years beginning on and after January 1, 2018, the entire amount of military retirement
3 income, including retirement income from the regular Armed Forces, Reserves, and National
4 Guard, paid by the United States or this state after December 31, 2017, that is included in federal
5 adjusted gross income for the taxable year shall be allowed as a decreasing modification of
6 federal adjusted gross income when determining West Virginia taxable income subject to the tax
7 imposed by this article.

8 (b) In the event that any provision of this section is found by a court of competent
9 jurisdiction to violate either the Constitution of the United States or this state, or is held to be
10 extended to persons other than those specified in this section, this section shall become null and
11 void by operation of law.

§11-21-12k. Decreasing modification reducing federal adjusted gross income for Social Security benefits income after December 31, 2017.

1 (a)(1) For taxable years beginning on and after January 1, 2018, for a resident individual
2 with a federal adjusted gross income of less than \$100,000 for the taxable year, twenty-five
3 percent of federal Social Security benefits income that is included in federal adjusted gross
4 income for the taxable year shall be allowed as a decreasing modification of federal adjusted
5 gross income when determining West Virginia taxable income subject to the tax imposed by this
6 article.

7 (2) For taxable years beginning on and after January 1, 2019, for a resident individual with
8 a federal adjusted gross income of less than \$100,000 for the taxable year, fifty percent of federal
9 Social Security benefits income that is included in federal adjusted gross income for the taxable
10 year shall be allowed as a decreasing modification of federal adjusted gross income when
11 determining West Virginia taxable income subject to the tax imposed by this article.

12 (3) For taxable years beginning on and after January 1, 2020, for a resident individual with
13 a federal adjusted gross income of less than \$100,000 for the taxable year, one hundred percent

14 of federal Social Security benefits income that is included in federal adjusted gross income for the
15 taxable year shall be allowed as a decreasing modification of federal adjusted gross income when
16 determining West Virginia taxable income subject to the tax imposed by this article.

17 (b) In the event that any provision of this section is found by a court of competent
18 jurisdiction to violate either the Constitution of the United States or this state, or is held to be
19 extended to persons other than those specified in this section, this section shall become null and
20 void by operation of law.

§11-21-16. West Virginia personal exemptions of resident individual.

1 (a) *General.* — For any tax imposed under the provisions of this article with respect to any
2 taxable year prior to January 1, 1983, a resident individual shall be allowed a West Virginia
3 exemption of \$600 for each exemption for which he or she is entitled to a deduction for the taxable
4 year for federal income tax purposes. With respect to any taxable year beginning on or after
5 January 1, 1983, and prior to January 1, 1984, said exemption shall be \$700; with respect to any
6 taxable year beginning on or after January 1, 1984, said exemption shall be \$800; ~~and~~ with
7 respect to any taxable year beginning on or after January 1, 1987, said exemption shall be \$2,000.
8 For taxable years beginning on and after January 1, 2018, a resident individual with a federal
9 adjusted gross income of less than \$100,000 for the taxable year shall be allowed a West Virginia
10 exemption of \$2,500 for each exemption for which he or she is entitled to a deduction for the
11 taxable year for federal income tax purposes.

12 (b) ~~Husband and wife~~ Married Individuals. — If the West Virginia income taxes of a
13 ~~husband and wife~~ married individuals are separately determined but their federal income tax is
14 determined on a joint return, each of them shall be separately entitled, with respect to any taxable
15 year prior to January 1, 1983, to a West Virginia exemption of \$600 for each federal exemption to
16 which he or she would be separately entitled for the taxable year if their federal income taxes had
17 been determined on separate returns. With respect to any taxable year beginning on or after
18 January 1, 1983, and prior to January 1, 1984, said exemption shall be \$700; with respect to any

19 taxable year beginning on or after January 1, 1984, said exemption shall be \$800; and with
20 respect to any taxable year beginning on or after January 1, 1987, said exemption shall be \$2,000.
21 For taxable years beginning on and after January 1, 2018, each of them that has a federal
22 adjusted gross income of less than \$100,000 for the taxable year shall be allowed a West Virginia
23 exemption of \$2,500 for each federal exemption to which he or she would be separately entitled
24 for the taxable year if their federal income taxes had been determined on separate returns.

25 (c) *Surviving spouse.* — For taxable years beginning after December 31, 1986, a surviving
26 spouse shall be allowed one additional exemption of \$2,000 for the two taxable years beginning
27 after the year of death of the deceased spouse; and in lieu thereof, for taxable years beginning
28 after December 31, 2017, a surviving spouse that has a federal adjusted gross income of less
29 than \$100,000 for the taxable year shall be allowed one additional exemption of \$2,500 for the
30 two taxable years beginning after the year of death of the deceased spouse.

31 For purposes of this section and section twelve of this article, a surviving spouse means
32 a taxpayer whose spouse died during the taxable year prior to the taxable year for which the
33 annual return is being filed and who has not remarried at any time before the end of the taxable
34 year for which the annual return is being filed.

35 (d) *Certain dependents.* — Notwithstanding any provisions in this section, for taxable
36 years beginning after December 31, 1986, a resident individual whose exemption amount for
37 federal tax purposes is zero by virtue of section 151(d)(2) of the Internal Revenue Code of 1986,
38 shall be allowed a single West Virginia exemption in the amount of \$500.

ARTICLE 24. CORPORATE NET INCOME TAX.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of this article shall be allowed as follows:

2 *Certified historic structures.* – For certified historic structures, the credit is equal to ten
3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
4 States Code, as amended: Provided, That for qualified rehabilitation expenditures made after

5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified
6 rehabilitation expenditure: *Provided, however,* That the credit authorized by this section for
7 qualified rehabilitation expenditures made after June 30, 2017, may not be used to offset tax
8 liabilities prior to the tax year beginning January 1, 2019: *Provided further,* That the taxpayer may
9 not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by
10 the Tax Division or if the taxpayer is delinquent in the payment of property taxes on the property
11 containing the certified historic tax structure when the applicant begins to claim the credit and
12 throughout the time period within which the credit is claimed. The Tax Commissioner shall
13 promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code
14 that provide what information must accompany any claim for the tax credit for the determination
15 that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor
16 is the taxpayer delinquent in the payment of property taxes on the property containing the certified
17 historic tax structure. The Tax Commissioner may also propose rules for legislative approval in
18 accordance with the provisions of article three, chapter twenty-nine-a of this code for the
19 administration of this tax credit and to provide any necessary mechanism to recover credits
20 claimed by taxpayers that become delinquent in the payment of property taxes on the property
21 containing the historic structure or become in arrears in the payment of any tax administered by
22 the Tax Division. This credit is available for both residential and nonresidential buildings located
23 in this state that are reviewed by the West Virginia Division of Culture and History and designated
24 by the national park service, United States department of the interior as “certified historic building”,
25 and further defined as a “qualified rehabilitated building”, as defined under §47(c)(1), Title 26, of
26 the United States Code, as amended.

27 The credit authorized pursuant to this section may not exceed the greater of \$3.75 million
28 for the portion of a certified rehabilitation as defined in 26 U.S.C. §47(c)(2)(C) placed in service in
29 the state in the taxable year, or \$3.75 million for each building that is a component of a certified
30 historic structure for which a credit is claimed under this section. No more than \$20 million of the

31 tax credits authorized by this section and section eight-a, article twenty-one of this chapter,
32 cumulatively, may be allocated by the Division of Culture and History in any given West Virginia
33 state fiscal year. The Division of Culture and History shall allocate the tax credits in the order the
34 applications therefor are received.

§11-24-23e. ~~Carryback~~ Credit carryback, carryforward.

1 Any unused portion of the credit for qualified rehabilitated buildings investment authorized
2 by section twenty-three-a of this article which may not be taken in the taxable year to which the
3 credit applies shall qualify for carryback and carryforward treatment subject to the identical
4 general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That
5 the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for
6 the taxable year: *Provided, however*, That for tax years beginning on and after January 1, 2019,
7 any unused portion of the credit authorized by section twenty-three-a of this article may not be
8 carried back to any prior taxable year: *Provided further*, That for tax years beginning on and after
9 January 1, 2019, any unused portion of the credit authorized by section twenty-three-a of this
10 article may be carried over to each of the next five tax years following the unused credit year until
11 used or forfeited due to lapse of time.