

WEST VIRGINIA LEGISLATURE
2017 FIRST EXTRAORDINARY SESSION

Introduced
House Bill 107

BY DELEGATE MILEY

[Introduced May 16, 2017; Referred to the Committee
on Finance.]

[By Request of the Executive]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-13A-3f; to amend and reenact §11-15-2, §11-15-3, §11-15-9, §11-15-9b,
3 and §11-15-9h of said code; to amend said code by adding thereto two new sections,
4 designated §11-15-3d and §11-15-3e; to amend and reenact §11-15A-2 and §11-15A-10
5 of said code; to amend and reenact §11-21-8a and §11-21-8e of said code, to amend said
6 code by adding thereto three new sections, designated §11-21-4g, §11-21-4h and §11-
7 21-12j; and to amend and reenact §11-24-23a of said code, all relating generally to the
8 Tax Reform Act of 2017; imposing graduated rate severance tax on privilege of producing
9 coal as of specified date and defining certain terms; increasing rate of consumers sales
10 and service tax as of specified date; imposing tax on telecommunication services and
11 ancillary telecommunication services as of specified date; imposing tax on digital code
12 and digital products as of specified date; eliminating certain exemptions from consumers
13 sales and service tax as of specified date; providing consumer sales and service tax
14 exemption for services of professional employer organizations; increasing rate of use tax
15 as of specified date; reducing number of classifications and rates of personal income tax
16 as of January 1, 2018; providing for phase-out of personal income tax and specifying
17 triggering event; exempting military retirement income from personal income tax after
18 specified date; increasing amount of credit allowed against personal and corporation net
19 income taxes for qualified building rehabilitation expenditures made after specified date;
20 establishing limitations on carryback and carryforward of credit for qualified building
21 rehabilitation expenditures; and making technical corrections in various sections.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §11-13A-3f; that §11-15-2, §11-15-3, §11-15-9, §11-15-9b, and §11-15-9h of
3 said code be amended and reenacted; that said code be amended by adding thereto two new
4 sections, designated §11-15-3d and 11-15-3e; that §11-15A-2 and §11-15A-10 of said code be

5 amended and reenacted; that §11-21-8a and §11-21-8e of said code be amended and reenacted;
6 that said code be amended by adding thereto three new sections, designated §11-21-4g, §11-21-
7 4h and §11-21-12j; and that §11-24-23a said code be amended and reenacted, all to read as
8 follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3f. Severance tax on privilege of producing coal after June 30, 2017.

1 (a) Notwithstanding the provisions of section three of this article, the rate of tax on the
2 privilege of engaging or continuing within this state in the business of severing, extracting,
3 reducing to possession, and producing coal for sale, profit or commercial use shall, for all tons of
4 coal produced after June 30, 2017, is as follows: the basis of the tax is per ton revenue based on
5 FOB mine realizations:

6 (1) For all tons of metallurgical grade coal produced after June 30, 2017, except for tons
7 of thin seam coal:

If gross income from sale of coal

During the reporting period is:..... The rate of tax is:

10	<u>Not more than \$75 per ton.....</u>	<u>4.5%</u>
11	<u>\$75.01 to \$150 per ton.....</u>	<u>5.0%</u>
12	<u>More than \$150 per ton.....</u>	<u>5.0% plus a</u>
13	<u>2% surtax on gross income in excess of \$150 per ton.</u>	

14 These rates include the thirty-five one hundredths of one cent additional severance tax
15 imposed by the state for the benefit of counties and municipalities as provided in section six of
16 this article. The rate of tax for each reporting period shall be determined by dividing the gross
17 income of the taxpayer from sales of all metallurgical grade coal, except thin seam coal, during
18 the reporting period, by tons of all metallurgical grade coal, except thin seam coal, sold by the
19 taxpayer during the reporting period;

20 (2) For all tons of steam grade coal produced after June 30, 2017, except for tons of thin
21 seam coal:

22 **If gross income from sale of coal**
 23 **during the reporting period is: The rate of tax is:**

24 <u>Less than \$42 per ton</u>	<u>2.5%</u>
25 <u>\$42 or more per ton but less than \$49 per ton</u>	<u>3.25%</u>
26 <u>\$49 or more per ton but less than \$56 per ton</u>	<u>4.0%</u>
27 <u>\$56 per ton but less than \$61 per ton</u>	<u>5.0%</u>
28 <u>\$61 per ton but less than \$70 per ton</u>	<u>5.5%</u>
29 <u>\$70 per ton but less than \$74 per ton</u>	<u>6.5%</u>
30 <u>\$74 or more per ton</u>	<u>8.0%</u>

31 These rates include the thirty-five one hundredths of one percent additional severance tax
 32 imposed by the state for the benefit of counties and municipalities as provided in section six of
 33 this article. The rate of tax for each reporting period shall be determined by dividing the gross
 34 income of the taxpayer from sales of all steam grade coal during the reporting period, exclusive
 35 of sales of thin seam coal, by tons of all steam grade coal sold by the taxpayer during the reporting
 36 period but not including tons of thin seam coal.

37 (3) For tons of coal produced from seams of coal less than thirty-seven inches thick after
 38 June 30, 2017:

39 **If gross income from sale of coal**
 40 **during the reporting period is: The rate of tax is:**

41 <u>Not more than \$75 per ton</u>	<u>0.5%</u>
42 <u>\$75.01 to \$150 per ton</u>	<u>1.0%</u>
43 <u>More than \$150 per ton</u>	<u>1.0% plus a</u>

44 2% surtax on gross income in excess of \$150 per ton.

45 These rates include the thirty-five one hundredths of one percent additional severance tax

46 imposed by the state for the benefit of counties and municipalities as provided in section six of
 47 this article. The rate of the tax for each reporting period shall be determined by dividing the gross
 48 income of the taxpayer from sales of all coal purchased from seams less than thirty-seven inches
 49 thick during the reporting period, by tons of all coal produced from seams less than thirty-seven
 50 inches thick during the reporting period; and

51 (4) For tons of coal produced from seams of coal at least thirty-seven inches thick, but not
 52 more than forty-five inches thick after June 30, 2017:

53 **If gross income from sale of coal**
 54 **during the reporting period is: The rate of tax is:**

55 <u>Not more than \$75 per ton</u>	<u>1.5%</u>
56 <u>\$75.01 to \$150 per ton</u>	<u>2.0%</u>
57 <u>More than \$150 per ton</u>	<u>2.0% plus a</u>
58 <u>2% surtax on gross income in excess of \$150 per ton.</u>	

59 These rates include the thirty-five one hundredths of one percent additional severance tax
 60 imposed by the state for the benefit of counties and municipalities as provided in section six of
 61 this article. The rate of tax for each reporting period shall be determined by dividing the gross
 62 income of the taxpayer from sales of all coal produced from seams of coal at least thirty-seven
 63 inches thick but not more than forty-five inches thick during the reporting period, by tons of all coal
 64 produced from seams at least thirty-seven inches thick but not more than forty-five inches thick
 65 during the reporting period.

66 (b) In the event that subsection (a) of this section is found by a court of competent
 67 jurisdiction to violate either the Constitution of this state or of the United States, and that decision
 68 becomes final, this section shall become null and void by operation of law and the tax due shall
 69 be determined under section three of this article for the tax year or years involved in the litigation
 70 and all subsequent years.

71 (c) Definition of metallurgical coal and steam coal. – For purposes of this section:

72 (1) Metallurgical coal is bituminous coal that is not steam coal.

73 (2) Steam coal is coal sold to an end-user or other intermediary that is intended for
74 combustion by coal-fired electric generating units.

75 (3) The determination of whether coal is metallurgical coal or steam coal is made when
76 the coal is first sold.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-2. Definitions.

1 (a) *General.* When used in this article and article fifteen-a of this chapter, words defined
2 in subsection (b) of this section have the meanings ascribed to them in this section, except in
3 those instances where a different meaning is provided in this article or the context in which the
4 word is used clearly indicates that a different meaning is intended by the Legislature.

5 (b) *Definitions.*

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

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

14 (3) "Contracting":

15 (A) *In general.* "Contracting" means and includes the furnishing of work, or both materials
16 and work, for another (by a sole contractor, general contractor, prime contractor, subcontractor
17 or construction manager) in fulfillment of a contract for the construction, alteration, repair,
18 decoration or improvement of a new or existing building or structure, or any part thereof, or for
19 removal or demolition of a building or structure, or any part thereof, or for the alteration,

20 improvement or development of real property. Contracting also includes services provided by a
21 construction manager so long as the project for which the construction manager provides the
22 services results in a capital improvement to a building or structure or to real property.

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

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

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

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

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

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

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

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

46 service" means regularly scheduled service intervals of less than one year;

47 (vii) Contracting does not include the furnishing of work, or both materials and work, in the
48 nature of hookup, connection, installation or other services if the service is incidental to the retail
49 sale of tangible personal property from the service provider's inventory: *Provided*, That the
50 hookup, connection or installation of the foregoing is incidental to the sale of the same and
51 performed by the seller thereof or performed in accordance with arrangements made by the seller
52 thereof. Examples of transactions that are excluded from the definition of contracting pursuant to
53 this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation
54 of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air
55 conditioning units, dishwashers, clothing washing machines or dryers, other household
56 appliances, drapery rods, window shades, venetian blinds, canvas awnings, free-standing
57 industrial or commercial equipment and other similar items of tangible personal property. Repairs
58 made to the foregoing are within the definition of contracting if the repairs involve permanently
59 affixing to or improving real property or something attached thereto which extends the life of the
60 real property or something affixed thereto or allows or intends to allow the real property or thing
61 permanently attached thereto to remain in service for a year or longer; and

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

68 (4) "Digital code" is defined in section three-e of this article;

69 (5) "Digital products" is defined in section three-e of this article;

70 ~~(4)~~ (6) "Directly used or consumed" in the activities of manufacturing, transportation,
71 transmission, communication or the production of natural resources means used or consumed in

72 those activities or operations which constitute an integral and essential part of the activities, as
73 contrasted with and distinguished from those activities or operations which are simply incidental,
74 convenient or remote to the activities.

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

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

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

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

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

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

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

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

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

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

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

101 (xi) Maintaining or repairing of property, including maintenance equipment, directly used
102 in transportation, communication, transmission, manufacturing production or production of natural
103 resources;

104 (xii) Storing, removal or transportation of economic waste resulting from the activities of
105 manufacturing, transportation, communication, transmission or the production of natural
106 resources;

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

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

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

117 (i) Heating and illumination of office buildings;

118 (ii) Janitorial or general cleaning activities;

119 (iii) Personal comfort of personnel;

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

121 (v) Marketing, general management, supervision, finance, training, accounting and
122 administration; or

123 (vi) An activity or function incidental or convenient to transportation, communication,

124 transmission, manufacturing production or production of natural resources, rather than an integral
125 and essential part of these activities.

126 ~~(5)~~ (7) "Directly used or consumed" in the activities of gas storage, the generation or
127 production or sale of electric power, the provision of a public utility service or the operation of a
128 utility business means used or consumed in those activities or operations which constitute an
129 integral and essential part of those activities or operation, as contrasted with and distinguished
130 from activities or operations which are simply incidental, convenient or remote to those activities.

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

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

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

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

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

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

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

166 (i) Heating and illumination of office buildings;

167 (ii) Janitorial or general cleaning activities;

168 (iii) Personal comfort of personnel;

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

170 (v) Marketing, general management, supervision, finance, training, accounting and
171 administration; or

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

175 ~~(6)~~ (8) "Gas storage" means the injection of gas into a storage reservoir or the storage of

176 gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir
177 engaged in by businesses subject to the business and occupation tax imposed by sections two
178 and two-e, article thirteen of this chapter.

179 ~~(7)~~ (9) "Generating or producing or selling of electric power" means the generation,
180 production or sale of electric power engaged in by businesses subject to the business and
181 occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

182 ~~(8)~~ (10) "Gross proceeds" means the amount received in money, credits, property or other
183 consideration from sales and services within this state, without deduction on account of the cost
184 of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses
185 may not be deducted, but any credit or refund made for goods returned may be deducted.

186 ~~(9)~~ (11) "Includes" and "including", when used in a definition contained in this article, does
187 not exclude other things otherwise within the meaning of the term being defined.

188 ~~(40)~~ (12) "Manufacturing" means a systematic operation or integrated series of systematic
189 operations engaged in as a business or segment of a business which transforms or converts
190 tangible personal property by physical, chemical or other means into a different form, composition
191 or character from that in which it originally existed.

192 ~~(44)~~ (13) "Person" means any individual, partnership, association, corporation, limited
193 liability company, limited liability partnership or any other legal entity, including this state or its
194 political subdivisions or an agency of either, or the guardian, trustee, committee, executor or
195 administrator of any person.

196 ~~(42)~~ (14) "Personal service" includes those: (A) Compensated by the payment of wages
197 in the ordinary course of employment; and (B) rendered to the person of an individual without, at
198 the same time, selling tangible personal property, such as nursing, barbering, shoe shining,
199 manicuring and similar services.

200 ~~(43)~~ (15) "Prepaid wireless calling service" means a telecommunications service that
201 provides the right to utilize mobile wireless service as well as other nontelecommunications

202 services, including the download of digital products delivered electronically, content and ancillary
203 services, which must be paid for in advance that is sold in predetermined units or dollars of which
204 the number decline with use in a known amount.

205 ~~(14)~~ (16) Production of natural resources.

206 (A) "Production of natural resources" means, except for oil and gas, the performance, by
207 either the owner of the natural resources or another, of the act or process of exploring, developing,
208 severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit
209 or commercial use of any natural resource products and any reclamation, waste disposal or
210 environmental activities associated therewith and the construction, installation or fabrication of
211 ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated
212 facilities and apparatus, by the producer or others, including contractors and subcontractors, at a
213 coal mine or coal production facility.

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

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

225 (D) "Production of natural resources" does not include the performance or furnishing of
226 work, or materials or work, in fulfillment of a contract for the construction, alteration, repair,
227 decoration or improvement of a new or existing building or structure, or any part thereof, or for

228 the alteration, improvement or development of real property, by persons other than those
229 otherwise directly engaged in the activities specifically set forth in this subdivision as "production
230 of natural resources".

231 ~~(15)~~ (17) "Providing a public service or the operating of a utility business" means the
232 providing of a public service or the operating of a utility by businesses subject to the business and
233 occupation tax imposed by sections two and two-d, article thirteen of this chapter.

234 ~~(16)~~ (18) "Purchaser" means a person who purchases tangible personal property, custom
235 software or a service taxed by this article.

236 ~~(17)~~ (19) "Sale", "sales" or "selling" includes any transfer of the possession or ownership
237 of tangible personal property, digital code, digital products, or custom software for a consideration,
238 including a lease or rental, when the transfer or delivery is made in the ordinary course of the
239 transferor's business and is made to the transferee or his or her agent for consumption or use or
240 any other purpose. "Sale" also includes the furnishing of a service for consideration.
241 Notwithstanding anything to the contrary in this code, effective after the thirtieth day of June, two
242 thousand eight, "sale" also includes the furnishing of prepaid wireless calling service for
243 consideration.

244 ~~(18)~~ (20) "Service" or "selected service" includes all nonprofessional activities engaged in
245 for other persons for a consideration, which involve the rendering of a service as distinguished
246 from the sale of tangible personal property, digital code, digital products, or custom software, but
247 does not include contracting, personal services or the services rendered by an employee to his
248 or her employer or any service rendered for resale: *Provided*, That the term "service" or "selected
249 service" does not include payments received by a vendor of tangible personal property as an
250 incentive to sell a greater volume of such tangible personal property under a manufacturer's,
251 distributor's or other third party's marketing support program, sales incentive program,
252 cooperative advertising agreement or similar type of program or agreement, and these payments
253 are not considered to be payments for a "service" or "selected service" rendered, even though

254 the vendor may engage in attendant or ancillary activities associated with the sales of tangible
255 personal property as required under the programs or agreements

256 ~~(19)~~ (21) "Streamlined Sales and Use Tax Agreement" or "agreement", when used in this
257 article, has the same meaning as when used in article fifteen-b of this chapter, except when the
258 context in which the word "agreement" is used clearly indicates that a different meaning is
259 intended by the Legislature.

260 ~~(20)~~ (22) "Tax" includes all taxes, additions to tax, interest and penalties levied under this
261 article or article ten of this chapter.

262 ~~(24)~~ (23) "Tax Commissioner" means the State Tax Commissioner or his or her delegate.
263 The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax
264 Commissioner, means any officer or employee of the State Tax Division duly authorized by the
265 Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the
266 functions mentioned or described in this article or rules promulgated for this article.

267 ~~(22)~~ (24) "Taxpayer" means any person liable for the tax imposed by this article or
268 additions to tax, penalties and interest imposed by article ten of this chapter.

269 ~~(23)~~ (25) "Transmission" means the act or process of causing liquid, natural gas or
270 electricity to pass or be conveyed from one place or geographical location to another place or
271 geographical location through a pipeline or other medium for commercial purposes: Provided:
272 That on and after July 1, 2017, transmission shall not include the conveyance by pipeline of
273 natural gas, natural gas liquids, oil or other mineral.

274 ~~(24)~~ (26) "Transportation" means the act or process of conveying, as a commercial
275 enterprise, passengers or goods from one place or geographical location to another place or
276 geographical location.

277 ~~(25)~~ (27) "Ultimate consumer" or "consumer" means a person who uses or consumes
278 services, digital code, digital products, or personal property.

279 ~~(26)~~ (28) "Vendor" means any person engaged in this state in furnishing services taxed by

280 this article or making sales of tangible personal property, digital code, digital products, or custom
281 software. "Vendor" and "seller" are used interchangeably in this article.

282 (c) *Additional definitions.* Other terms used in this article are defined in article fifteen-b of
283 this chapter, which definitions are incorporated by reference into article fifteen of this chapter.
284 Additionally, other terms used in this section may be defined in other sections of this article. ~~may~~
285 ~~define terms primarily used in the section in which the term is defined.~~

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

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

7 (b) *Amount of tax.* The general consumer sales and service tax imposed by this article
8 shall be at the rate of ~~6¢ on the dollar~~ six percent of the sales price of sales or services tangible
9 personal property, digital code, digital product, custom software or taxable service purchased,
10 excluding gasoline and special fuel sales, which remain taxable at the rate of 5¢ on the dollar of
11 sales five percent: *Provided, That on and after July 1, 2017, the tax imposed by this article shall*
12 *be six and eighty-five hundredths percent of the purchase price, excluding sales of motor vehicles,*
13 *which shall remain taxable as provided in section three-c of this article, and sales of motor fuels,*
14 *which remain taxable at the rate of five percent of the average wholesale selling price of motor*
15 *fuel.*

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

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

20 ~~(2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.~~
21 ~~(3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.~~
22 ~~(4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.~~
23 ~~(5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.~~
24 ~~(6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.~~
25 ~~(7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any~~
26 ~~fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the~~
27 ~~dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢;~~
28 ~~3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional~~
29 ~~part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in~~
30 ~~excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For~~
31 ~~example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33,~~
32 ~~both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67,~~
33 ~~both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to~~
34 ~~\$2, both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall~~
35 ~~be calculated as provided in subsection (d) of this subsection and this subsection (c) does not~~
36 ~~apply to sales made after December 31, 2003.~~

37 ~~(d) (c) Calculation of tax on fractional parts of a dollar after December 31, 2003. –~~
38 ~~Beginning January 1, 2004, the The tax computation under subsection (b) of this section shall be~~
39 ~~carried to the third decimal place, and the tax rounded up to the next whole cent whenever the~~
40 ~~third decimal place is greater than four and rounded down to the lower whole cent whenever the~~
41 ~~third decimal place is four or less. The vendor may elect to compute the tax due on a transaction~~
42 ~~on a per item basis or on an invoice basis provided the method used is consistently used during~~
43 ~~the reporting period.~~

44 ~~(e) (d) No aggregation of separate sales transactions, exception for coin-operated devices.~~
45 -- Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of

46 computation of the tax even though the sales are aggregated in the billing or payment therefor.
47 Notwithstanding any other provision of this article, coin-operated amusement and vending
48 machine sales shall be aggregated for the purpose of computation of this tax.

49 ~~(f)~~ (e) *Rate of tax on certain mobile homes.* – Notwithstanding any provision of this article
50 to the contrary, ~~after December 31, 2003~~, the tax levied on sales of mobile homes to be used by
51 the owner thereof as his or her principal year-round residence and dwelling shall be an amount
52 equal to six percent of fifty percent of the sales price: Provided, That on and after July 1, 2017,
53 notwithstanding any provision of this article to the contrary, the tax levied on sales of mobile
54 homes to be used by the owner thereof as his or her principal year-round residence and dwelling
55 shall be an amount equal to six and eighty-five hundredths percent of fifty percent (50%) of the
56 sales price.

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

60 ~~(h)~~ (g) *Computation of tax on sales of gasoline and special fuel.* – The method of
61 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 to the contrary, on and after July 1, 2017, “telecommunications service,” and “ancillary
3 services” as defined in section twenty, article fifteen-b of this chapter, shall be subject to the
4 consumers sales and service tax imposed by this article, and the use tax imposed by article
5 fifteen-a of this chapter: Provided, That payment of the tax imposed under this article or under
6 article fifteen-a of this chapter on prepaid wireless services is sufficient to fulfill the mandate of
7 this section, and prepaid wireless services shall not be subjected to double taxation under this
8 article: Provided, however, That this section shall not be interpreted to prevent imposition of any

9 other lawfully imposed municipal tax or fee or any other tax or fee lawfully imposed under any
10 state or federal law, or the laws of any 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 the sourcing rules set forth in sections nineteen and twenty,
16 article 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.

§11-15-3e. Imposition of consumers sales tax on digital products.

1 (a) Notwithstanding any other provision of this code to the contrary, on and after July 1,
2 2017, sales of digital code and sales of digital products electronically transferred to the purchaser
3 shall be subject to the consumers sales and service tax imposed by this article, and the use of
4 digital code and the use of digital products electronically transferred to the purchaser shall be
5 subject to the use tax imposed by article fifteen-a of this chapter. The tax imposed by this article
6 shall apply to sales of digital code and to sales of digital products electronically transferred to the
7 purchaser regardless of whether the digital product is provided for permanent use or less than
8 permanent use and regardless of whether continued payment is required.

9 (b) Definitions —

10 (1) "Designated digital products" means digital audio works, digital audio-visual works,
11 digital books, video game digital products and digital automated services that are electronically

12 transferred to a purchaser.

13 (2) "Digital audio-visual works" means a series of related images which, when shown in
14 succession, impart an impression of motion, together with accompanying sound, if any. Digital
15 audio-visual works include such items as motion pictures, movies, music videos, news and
16 entertainment and live events. Digital audio-visual works do not include audio greeting cards sent
17 by electronic mail. Digital audio-visual works includes the digital code, or a subscription to or
18 access to a digital code, for receiving, accessing, or otherwise obtaining digital audio-visual-
19 works.

20 (3) "Digital audio works" means works that result from the fixation of a series of musical,
21 spoken, or other sounds including ringtones. Digital audio works includes such items as the
22 following which may either be prerecorded or live: songs, music, readings of books or other written
23 materials, speeches, ringtones, or other sound recordings. Digital audio works does not include
24 audio greeting cards sent by electronic mail. Unless the context provides otherwise, in this chapter
25 digital audio works includes the digital code, or a subscription to or access to a digital code, for
26 receiving, accessing, or otherwise obtaining digital audio works.

27 (4) "Digital automated services" defined.

28 (A) "Digital automated service," except as provided in paragraph (B) of this subdivision
29 (3), means any service transferred electronically that uses one or more software applications.

30 (B) "Digital automated service" does not include:

31 (i) Any service that primarily involves the application of human effort by the seller, and the
32 human effort originated after the customer requested the service;

33 (ii) The loaning or transferring of money or the purchase, sale, or transfer of financial
34 instruments. For purposes of this section, "financial instruments" include cash, accounts
35 receivable and payable, loans and notes receivable and payable, debt securities, equity
36 securities, as well as derivative contracts such as forward contracts, swap contracts, and options;

37 (iii) Dispensing cash or other physical items from a machine;

38 (iv) Payment processing services;

39 (vi) Telecommunications services and ancillary services as those terms are defined in
40 article fifteen-b of this chapter; or

41 (vii) The internet and internet access.

42 (5) "Digital books" means works that are generally recognized in the ordinary and usual
43 sense as "books." It includes works of fiction and nonfiction and short stories. It does not include
44 periodicals, magazines, newspapers, or other news or information productions, chat rooms, or
45 weblogs. Unless the context provides otherwise, in this chapter digital books includes the digital
46 code, or a subscription to access to a digital code, for receiving, accessing, or otherwise obtaining
47 digital books.

48 (6) "Digital code" means a code which provides a purchaser with a right to obtain one or
49 more digital products. "Digital code" does not include a code that represents a stored monetary
50 value that is deducted from the total as it is used by the purchaser. "Digital code" also does not
51 include a code that represents a redeemable card, gift card, or gift certificate that entitles the
52 holder to select digital products of an indicated cash value, which digital products are subject to
53 tax when the digital product is selected. A digital code may be obtained by any means, including
54 e-mail or by tangible means regardless of its designation as song code, video code, book code,
55 or some other term.

56 (7) "Digital goods" defined.

57 (A) "Digital goods," except as provided in this subdivision, means sounds, images, data,
58 facts, or information, or any combination thereof, transferred electronically, including, but not
59 limited to, designated digital products and other products transferred electronically not included
60 within the definition of designated digital products.

61 (B) The term "digital goods" does not include:

62 (i) Telecommunications services and ancillary services as those terms are defined in
63 article fifteen-b of this chapter;

64 (ii) Computer software as defined in article fifteen-b of this chapter;

65 (iii) The internet and internet access service as those terms are defined in the Internet Tax
66 Freedom Act, Title 47, U.S.C. § 151 note, as existing on July 1, 2009.

67 (8) "Digital products" means digital audio-visual works, digital audio works, digital
68 automated services, digital books, other digital products and designated digital products.

69 (9) "Electronically transferred" or "transferred electronically" means obtained by the
70 purchaser by means other than tangible storage media. It is not necessary that a copy of the
71 product be physically transferred to the purchaser. So long as the purchaser may access the
72 product, it will be considered to have been electronically transferred to the purchaser.

73 (10) "Internet access service" means a service that enables users to access content,
74 information, electronic mail, or other services offered over the Internet and may also include
75 access to proprietary content, information, and other services as part of a package of services
76 offered to consumers. The term does not include telecommunications services.

77 (11) "Other digital products" means and includes, but is not limited to, the following when
78 electronically transferred:

79 (A) Greeting cards.

80 (B) Periodicals.

81 (C) Magazines.

82 (C) Video or electronic games.

83 (D) Newspapers or other news or information products.

84 (12) "Ringtone" means digitized sound files that are downloaded onto a device and that
85 may be used to alert the customer with respect to a communication.

86 (c) The sales digital code and digital products on which tax is imposed by this section shall
87 be subject to the transaction sourcing rules in article fifteen-b of this chapter.

88 (d) For purposes of this section, the sale, license, lease, or rental of or the storage, use,
89 or other consumption of a digital code is treated the same as the sale, license, lease, or rental of

90 or the storage, use, or other consumption of any digital product to which the digital code relates.

§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 for
150 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 data~~
156 ~~such as keypunching, keystroke verification, rearranging or sorting of previously documented data~~
157 ~~for the purpose of data entry or automatic processing and changing the medium on which data is~~
158 ~~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) 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.~~

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)~~ (36) 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)~~ (37) 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)~~ (38) 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)~~ (39) 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)~~ (40) 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)~~ (41) Sales of soap to be used at car wash facilities;

332 ~~(45)~~ (42) Commissions received by a travel agency from an out-of-state vendor;

333 ~~(46)~~ (43) 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)~~ (44) 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)~~ (45) 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)~~ (46) Sales of the regulation size United States flag and the regulation size West
350 Virginia flag for display; and

351 (47) The services of "professional employer organizations" as defined in subsection (g),
352 section two, article forty-six-a, chapter thirty-three of this code.

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

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

362 (2) Sales of services, machinery, supplies and materials directly used or consumed in the

363 activities of manufacturing, transportation, transmission, communication, production of natural
364 resources, gas storage, generation or production or selling electric power, provision of a public
365 utility service or the operation of a utility service or the operation of a utility business, in the
366 businesses or organizations named in this subdivision and does not apply to purchases of
367 gasoline or special fuel. However, on and after July 1, 2017, this exemption shall not be available
368 for purchases made on and after that date of services, machinery, supplies and materials directly
369 used in the activity of communication, or in the activity of transmission of natural gas, natural gas
370 liquids, oil or other mineral;

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, firefighting 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 subsection (a) of this section made during the
 397 First Extraordinary Session of the Legislature in 2017 shall take effect beginning July 1, 2017,
 398 and apply to sales made on and after that date. The amendments to subsection (b) of this section
 399 made during the First Extraordinary Session of the Legislature in 2017 shall take effect June 1,
 400 2017, and shall be construed to prohibit all future transfers to the State Road Fund established in
 401 the State Treasury pursuant to section fifty-two, article six of the Constitution of West Virginia,
 402 under this section of taxes imposed by this article and article fifteen-a of this 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.~~

§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~~ 2017 shall apply to purchases made on and after July 1, ~~2009~~ 2017.

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, digital code, digital products, custom software or taxable services, to be collected and
3 paid as provided in this article or article fifteen-b of this chapter, at the rate of six percent of the
4 purchase price of the property or taxable services, except as otherwise provided in this article:
5 Provided, That on and after July 1, 2017, the tax imposed by this article shall be collected and
6 paid, as provided in this article or article fifteen-b of this chapter, at the rate of six and eighty-five
7 hundredths percent of the purchase price of the tangible personal property, digital code, digital
8 products, custom software or taxable services, except as otherwise provided in this article.

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

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

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

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

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

§11-15A-10. Payment to Tax Commissioner.

1 (a) Each retailer required or authorized, pursuant to section six, six-a or seven, or pursuant
2 to article fifteen-b of this chapter, to collect the tax imposed in section two of this article, is required
3 to pay to the Tax Commissioner the amount of the tax on or before the twentieth day of the month
4 next succeeding each calendar month, except as otherwise provided in this article or article
5 fifteen-b of this chapter.

6 (b) Each certified service provider for a Model I seller shall pay to the Tax Commissioner
7 the tax levied by this article on or before the twentieth day of the month next succeeding the

8 calendar month in which the tax accrued, except as otherwise provided in this article or article
9 fifteen-b of this chapter.

10 (c) At that time, each retailer, seller or certified service provider shall file with the Tax
11 Commissioner a return for the preceding monthly period, except as otherwise provided in this
12 article or article fifteen-b of this chapter, in the form prescribed by the Tax Commissioner showing
13 the sales price of any or all tangible personal property, custom software and taxable services sold
14 by the retailer or seller during the preceding quarterly period, the use of which is subject to the
15 tax imposed by this article, and any other information the Tax Commissioner may consider
16 necessary for the proper administration of this article. The return shall be accompanied by a
17 remittance of the amount of the tax, for the period covered by the return, except as otherwise
18 provided in this article or article fifteen-b of this chapter: *Provided*, That where the tangible
19 personal property or custom software is sold under a conditional sales contract, or under any
20 other form of sale wherein the payment of the principal sum, or a part of the sum is extended over
21 a period longer than sixty days from the date of the sale, the retailer may collect and remit each
22 monthly period that portion of the tax equal to ~~six~~ six and eighty-five hundredths percent of that
23 portion of the purchase price actually received during the monthly period.

24 (d) The Tax Commissioner may, upon request and a proper showing of the necessity to
25 do so, grant an extension of time not to exceed thirty days for making any return and payment.

26 (e) Returns shall be signed by the retailer or seller or his or her duly authorized agent, and
27 must be certified by him or her to be correct, except as otherwise provided in this article or article
28 fifteen-b of this chapter.

29 (f) *Accelerated payment.* --

30 (1) ~~For calendar years beginning after December 31, 2002, taxpayers~~ Taxpayers whose
31 average monthly payment of the taxes levied by this article and article fifteen of this chapter during
32 the previous calendar year exceeds \$100,000, shall remit the tax attributable to the first fifteen
33 days of June each year on or before June 20 of said month.

34 (2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall
35 remit an amount equal to the amount of tax imposed by this article and article fifteen of this chapter
36 on actual taxable sales of tangible personal property and custom software and sales of taxable
37 services during the first fifteen days of June or, at the taxpayer's election, taxpayer may remit an
38 amount equal to fifty percent of taxpayer's liability for tax under this article on taxable sales of
39 tangible personal property and custom software and sales of taxable services made during the
40 preceding month of May.

41 (3) For a business which has not been in existence for a full calendar year, the total tax
42 due from the business during the prior calendar year shall be divided by the number of months,
43 including fractions of a month, that it was in business during the prior calendar year; and if that
44 amount exceeds \$100,000, the tax attributable to the first fifteen days of June each year shall be
45 remitted on or before June 20 of said month as provided in subdivision (2) of this subsection.

46 (4) When a taxpayer required to make an advanced payment of tax under subdivision (1)
47 of this subsection makes out its return for the month of June, which is due on July 20, the taxpayer
48 may claim as a credit against its liability under this article for tax on taxable transactions during
49 the month of June, the amount of the advanced payment of tax made under subdivision (1) of this
50 subsection.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4g. Rate of tax – Taxable years beginning on or after January 1, 2018.

1 (a) General. – For taxable years beginning on and after January 1, 2018 but before
2 January 1, 2019, the tax imposed by section three of this article shall be determined under either
3 subsections (b) or (c) of this section, as appropriate.

4 (b) Rate of tax on individuals except married individuals filing separate returns, individuals
5 filing joint returns, heads of households, estates and trusts. – The tax imposed by section three
6 of this article on the West Virginia taxable income of every individual, except married individuals
7 filing separate returns; every individual who is a head of a household in the determination of his

8 or her federal income tax for the taxable year; married individuals who file a joint return under this
 9 article; every individual who is entitled to file his or her federal income tax return for the taxable
 10 year as a surviving spouse; and every estate and trust shall be determined in accordance with
 11 the following table:

12 **If the West Virginia**

13 **taxable income is: The tax is:**

14 Less than \$20,000 2.25% of taxable income

15 \$20,000 or more but less than \$35,000 \$450.00 plus 3.95% of taxable

16 Income in excess of \$20,000

17 \$35,000 or more but less than \$250,000 \$1,042.50 plus 5.65% of taxable

18 income in excess of \$35,000

19 \$250,000 or more \$13,190.00 plus 6.0% of taxable

20 income in excess of \$250,000

21 (c) *Rate of tax on married individuals filing separate returns.* – In the case of married

22 individuals filing separate returns under this article for the taxable year, the tax imposed by section

23 three of this article on the West Virginia taxable income of each spouse shall be determined in

24 accordance with the following table:

25 **If the West Virginia**

26 **taxable income is: The tax is:**

27 Less than \$10,000 2.25% of taxable income

28 \$10,000 or more but less than \$17,500 \$225 plus 3.95% of taxable

29 income in excess of \$10,000

30 \$17,500 or more but less than \$125,000 \$521.25 plus 5.65% of taxable

31 income in excess of \$17,500

32 \$125,000 or more \$6,595.00 plus 6% of taxable

33 income in excess of \$125,000

§11-21-4h. Rate of tax – Taxable years beginning on or after January 1, 2019.

1 (a) General. – For taxable years beginning on and after January 1, 2019, the tax imposed
 2 by section three of this article shall be determined under subsections (b), (c) or (d) of this section,
 3 as appropriate.

4 (b) Rate of tax on individuals except married individuals filing separate returns, individuals
 5 filing joint returns, heads of households, estates and trusts. – The tax imposed by section three
 6 of this article on the West Virginia taxable income of every individual, except married individuals
 7 filing separate returns; every individual who is a head of a household in the determination of his
 8 or her federal income tax for the taxable year; married individuals who file a joint return under this
 9 article; every individual who is entitled to file his or her federal income tax return for the taxable
 10 year as a surviving spouse; and every estate and trust shall be determined in accordance with
 11 the following table:

12 **If the West Virginia**

13 **taxable income is: The tax is:**

14 Less than \$20,000 1.85% of taxable income

15 \$20,000 or more but less than \$35,000 \$370.00 plus 3.65% of taxable

16 Income in excess of \$20,000

17 \$35,000 or more but less than \$250,000 \$917.50 plus 5.45% of taxable

18 income in excess of \$35,000

19 \$250,000 or more \$12,635.00 plus 6.0% of taxable

20 income in excess of \$250,000

21 (c) Rate of tax on married individuals filing separate returns. – In the case of married
 22 individuals filing separate returns under this article for the taxable year, the tax imposed by section
 23 three of this article on the West Virginia taxable income of each spouse shall be determined in
 24 accordance with the following table:

25 **If the West Virginia**

<u>taxable income is:</u>	<u>The tax is:</u>
Less than \$10,000	1.85% of taxable income
\$10,000 or more but less than \$17,500	\$185 plus 3.65% of taxable
income in excess of \$10,000	
\$17,500 or more but less than \$125,000	\$458.75 plus 5.45% of taxable
income in excess of \$17,500	
Over \$125,000	\$6,317.50 plus 6% of taxable
income in excess of \$125,000	

(d) Personal income tax rate reduction in years subsequent to 2019.

(1) Beginning in 2018, and each fiscal year thereafter in which the net amount of the increase in the general revenue fund from the previous fiscal year exceeds \$110 million, adjusted upward by one-half of the annual growth in the consumer price index for the current fiscal year, as compared to the consumer price index for the immediately preceding fiscal year, the rates of tax specified in subsections (b) and (c) of this section shall reduce by one-tenth of one percentage point until the rates become zero: *Provided*, That each rate reduction required by this subdivision shall take effect for the tax year that begins eighteen months after the current fiscal year ends.

(2) In any fiscal year when subdivision (1) of this subsection does not apply, but the net amount of increase deposited in the general revenue fund is 65% or more of the annually adjusted \$110 million amount, adjusted upward by one-half of the annual growth in the consumer price index for the current fiscal year as compared to the consumer price index for the immediately preceding fiscal year, there shall be no rate reduction for the tax year that begins eighteen months after the current fiscal year ends.

(3) In any fiscal year when subdivisions (1) and (2) of this subsection do not apply, but the net amount of increase deposited in the general revenue fund is less than 65% of the annually adjusted \$110 million amount, adjusted upward by one-half of the annual growth in the consumer price index for the current fiscal year as compared to the consumer price index for the immediately

52 preceding fiscal year, there shall be no rate reduction for the tax year that begins eighteen months
53 after the current fiscal year ends; and the annually adjusted \$110 million amount, adjusted upward
54 by one-half of the annual growth in the consumer price index for the current fiscal year as
55 compared to the consumer price index for the immediately preceding fiscal year, shall be
56 increased by 150 percent for the next ensuing fiscal year.

57 (4) When subdivision (3) of this subsection applies, and in the next ensuing fiscal year the
58 increase in net revenue deposited in the general revenue fund exceeds 150 percent of the
59 annually adjusted \$110 million amount specified in subdivision (3), then the reduction of the rates
60 of tax specified in subsection (b) and (c) shall resume for the taxable year that begins eighteen
61 months after the current fiscal year.

62 (e) Rules.

63 (1) "Consumer price index" means the most recent consumer price index for all urban
64 consumers published by the United States Department of Labor.

65 (2) "Consumer price index for any fiscal year" shall for purposes of this section mean the
66 average of the federal consumer price index as of the close of the twelve-month period ending on
67 the thirtieth day of June for the fiscal year.

68 (f) All tax liabilities, if any arising for tax years that begin prior to the tax year in which the
69 rates of tax in subsections (b) and (c) become zero, shall be determined, administered, assessed,
70 and collected using the tax rate or rates in effect for the taxable year in issue.

71 (g) Beginning on October 1, 2018, and on October 1 of each subsequent calendar year,
72 the Tax Commissioner shall publish the following information on the Tax Department's web site
73 along with other relevant publications and documents:

74 (A) The personal income tax rates for the current calendar year;

75 (B) The general revenue collections for the fiscal year ending June 30 of that calendar
76 year;

77 (C) The difference between general revenue collections for the most recently concluded

78 fiscal year and those for the 2017 fiscal year;

79 (D) The amount of reduction in the personal income tax rates that will result by application
80 of subdivision (1) of this subsection; and

81 (E) The personal income tax rates to be imposed for the calendar year beginning January
82 1 of the next calendar year.

§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. This credit is available for both residential and nonresidential buildings
18 located in this state, that are reviewed by the West Virginia Division of Culture and History and
19 designated by the national park service, United States department of the interior as "certified
20 historic structures," and further defined as a "qualified rehabilitated building," as defined under

21 §47(c)(1), Title 26 of the United States Code, as amended.

22 The credit authorized pursuant to this section may not exceed the greater of \$3.75 million
23 for the portion of a certified rehabilitation as defined in 26 U.S.C. §47(c)(2)(C) placed in service in
24 the state in the taxable year, or \$3.75 million for each building that is a component of a certified
25 historic structure for which a credit is claimed under this section.

§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 ten tax years following the unused credit year until used or forfeited
11 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.

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. This credit is available for both residential and nonresidential buildings
18 located in this state that are reviewed by the West Virginia Division of Culture and History and
19 designated by the national park service, United States department of the interior as "certified
20 historic building", and further defined as a "qualified rehabilitated building", as defined under
21 §47(c)(1), Title 26, of the United States Code, as amended.

NOTE: The purpose of this bill is to provide increased funding for the General Revenue Fund by imposing severance tax on the privilege of producing coal at graduated rates after specified date; increasing the rate of the consumers sales and service tax and use tax to 6.85% as of specified date; imposing sales and use taxes on telecommunication services and ancillary telecommunication services as of specified date, imposing sales and use taxes on sales of digital code and digital products as of specified date; eliminating exemptions from sales tax as specified date for services provided by health and fitness clubs and providers of primary opinion research, for direct use in communication activity; narrowing exemption for direct use in transmission activity, and making technical corrections; clarifying that services of professional employer organizations are exempt from tax; exempting military retirement from personal income tax after specified date; decreasing rates of personal income tax for taxable years beginning after specified date; and providing for phase-out of personal income tax over period of years when certain conditions exist; increasing the credits against personal and corporation net income taxes for qualified rehabilitation expenditures made after specified date; and providing rules for claiming credit and for disallowance of credit.

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