

WEST VIRGINIA LEGISLATURE
2017 FIRST EXTRAORDINARY SESSION

Engrossed

Senate Bill 1017

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced June 15, 2017]

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 three new sections,
4 designated §11-15-3d, §11-15-3e and §11-15-35; to amend and reenact §11-15A-2 and
5 §11-15A-10 of said code; to amend said code by adding thereto two new sections,
6 designated §11-21-4g and §11-21-4h; to amend and reenact §11-21-8a, §11-21-8e, §11-
7 21-12 and §11-21-16 of said code; and to amend and reenact §11-24-23a and §11-24-
8 23e of said code, all relating generally to the Tax Reform Act of 2017; imposing graduated
9 rate severance tax on privilege of producing coal as of specified date and defining certain
10 terms; increasing rate of consumers sales and service tax as of specified date and
11 providing for rate reduction when certain criteria are met; imposing tax on
12 telecommunication services and ancillary telecommunication services as of specified
13 date; imposing tax on digital code, digital products and digital services as of specified date,
14 and with respect thereto defining certain terms; eliminating or narrowing certain
15 exemptions from consumers sales and service tax as of specified date; providing
16 consumer sales and service tax exemption for services of professional employer
17 organizations; allowing emergency legislative rules if promulgated by specified date;
18 increasing rate of use tax as of specified date and providing corresponding rate reduction
19 when rate of general consumers sales and service tax reduces; imposing new personal
20 income tax rates for taxable years beginning on and after specified date; providing for
21 further rate reductions when conditions are satisfied; exempting military retirement income
22 from personal income tax after specified date; allowing a decreasing deduction for taxable
23 Social Security under specified circumstances; increasing personal income tax exemption
24 under certain circumstances; authorizing rebates of 2016 personal income tax paid by
25 certain persons; increasing amount of credit allowed against personal and corporation net
26 income taxes for qualified building rehabilitation expenditures made after specified date;

27 establishing limitations on carryback and carryforward of credit for qualified building
28 rehabilitation expenditures; and making technical corrections in various sections.

Be it enacted by the Legislature of West Virginia:

1 That §11-13A-3f of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §11-15-2, §11-15-3, §11-15-9, §11-15-9b and §11-15-9h of said code be
3 amended and reenacted; that said code be amended by adding thereto three new sections,
4 designated §11-15-3d, §11-15-3e and §11-15-35; that §11-15A-2 and §11-15A-10 of said code
5 be amended and reenacted; that §11-21-8a, §11-21-8e, §11-21-12 and §11-21-16 of said code
6 be amended and reenacted; that said code be amended by adding thereto two new sections,
7 designated §11-21-4g and §11-21-4h; and that §11-24-23a and §11-24-23e of said code be
8 amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

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
5 on 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 Not more than \$75 per ton..... 4.5%

11 \$75.01 to \$150 per ton..... 5.0%

12 More than \$150 per ton..... 5.0% plus a
13 2% surtax on gross income in excess of \$150 per ton.

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 Less than \$42 per ton3.0%
25 \$42 or more per ton but less than \$49 per ton3.7%
26 \$49 or more per ton but less than \$56 per ton4.2%
27 \$56 per ton but less than \$61 per ton5.0%
28 \$61 per ton but less than \$70 per ton5.5%
29 \$70 per ton but less than \$74 per ton6.5%
30 \$74 or more per ton8.0%

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 Not more than \$75 per ton 0.5%
42 \$75.01 to \$150 per ton 1.0%
43 More than \$150 per ton 1.0% plus a
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 Not more than \$75 per ton..... 1.5%
56 \$75.01 to \$150 per ton 2.0%
57 More than \$150 per ton 2.0% plus a
58 2% surtax on gross income in excess of \$150 per ton.

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 grade coal and steam grade coal. – For purposes of this
72 section:

73 (1) Metallurgical grade coal is bituminous coal that is not steam grade coal.

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

76 (3) The determination of whether coal is metallurgical grade coal or steam grade coal is
77 made when 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 ~~(10)~~ (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 ~~(11)~~ (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 ~~(12)~~ (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 ~~(13)~~ (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.

272 ~~(24)~~ (26) "Transportation" means the act or process of conveying, as a commercial
273 enterprise, passengers or goods from one place or geographical location to another place or
274 geographical location.

275 ~~(25)~~ (27) "Ultimate consumer" or "consumer" means a person who uses or consumes
276 services, digital code, digital products, or personal property.

277 ~~(26)~~ (28) "Vendor" means any person engaged in this state in furnishing services taxed by
278 this article or making sales of tangible personal property, digital code, digital products, or custom
279 software. "Vendor" and "seller" are used interchangeably in this article.

280 (c) *Additional definitions.* Other terms used in this article are defined in article fifteen-b of
281 this chapter, which definitions are incorporated by reference into article fifteen of this chapter.
282 Additionally, other terms used in this section may be defined in other sections of this article. ~~may~~
283 ~~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 or custom
2 software and for the privilege of furnishing certain selected services defined in sections two and
3 eight of this article, the vendor shall collect from the purchaser the tax as provided under this
4 article and article fifteen-b of this chapter, and shall pay the amount of tax to the Tax
5 Commissioner in accordance with the provisions of this article or article fifteen-b of this chapter.

6 (b) *Amount of tax.* -- The general consumer sales and service tax imposed by this article
7 shall be at the rate of ~~6¢ on the dollar~~ six percent of the sales price of sales or services tangible
8 personal property, digital products, digital code, custom software or taxable service purchased,
9 excluding gasoline and special fuel sales, which remain taxable at the rate of ~~5¢ on the dollar of~~
10 ~~sales~~ five percent: *Provided, That beginning July 1, 2017, the general consumers sales and*
11 service tax rate shall be six and fifty hundredths percent of the sales price, excluding sales of

12 gasoline and special fuel, which remain taxable at the rate of five percent as provided in section
13 eighteen-b of this article, and sales of motor vehicles, which are taxable as provided in section
14 three-c of this article.

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

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

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

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

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

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

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

24 ~~(7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any~~
25 ~~fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the~~

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

27 ~~3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional~~

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

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

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

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

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

33 ~~\$2, both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall~~

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

35 ~~apply to sales made after December 31, 2003.~~

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

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

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

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

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

53 ~~(g)~~ (f) *Construction; custom software, digital goods and digital code.* - ~~After December 31,~~
54 ~~2003, whenever~~ Whenever the words "tangible personal property" or "property" appear in this
55 article, the same shall also include the words "custom software," "digital products" and "digital
56 code."

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

59 (h) Reduction of general consumers sales and service tax rate. -- In the event that the
60 calculations and measurements made by the Tax Commissioner under the provisions of
61 paragraph (B), subdivision (1), subsection (e), section four-g, article twenty-one of this chapter
62 effect the reduction of the tax rates sections as provided in subsection (d) of that section, then the
63 Tax Commissioner shall make an additional determination as follows:

64 (1) The Tax Commissioner shall first measure the rolling average of cumulative collections
65 of taxes imposed by this article and articles fifteen-a and twenty-one of this chapter that were
66 deposited into the General Revenue Fund of the state through the end of that fiscal year and each
67 of the four fiscal years immediately preceding that fiscal year. The Commissioner shall also make
68 a similar measurement of those collections for the five-year period immediately preceding that
69 fiscal year. If the application of the first measurement against the second measurement
70 demonstrates an increase in those collections, then the Tax Commissioner shall determine the
71 amount of that increase in dollars. The Tax Commissioner shall then determine the anticipated
72 cumulative fiscal cost to the state in dollars of (A) the further reduction in the tax rates imposed
73 by section three of this article as provided in subsection (d), section four-g, article twenty-one of
74 this chapter during the next ensuing calendar year; and (B) a reduction in the general consumers
75 sales and service and use tax rates from 6.5% to 6.25%.

76 (2) If the cumulative fiscal cost to the state determined in subdivision (2) of this subsection
77 does not exceed the increase in collections, all as measured and calculated by the Tax
78 Commissioner under subdivision (1) of this subsection, then the general consumers sales and
79 service and use tax rates are reduced from 6.5% to 6.25%, effective on and after January 1 of
80 the year in which the final reduction in the tax rates specified in section four-g, article twenty-one
81 of this chapter takes effect.

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

1 (a) Notwithstanding the provisions of section eight of this article or any other provision of
2 this code, on and after July 1, 2017, “telecommunications service,” and “ancillary services” as
3 defined in article fifteen-b of this chapter, shall be subject to the consumers sales and service tax
4 imposed by this article, and the use tax imposed by article fifteen-a of this chapter: Provided, That
5 payment of the tax imposed under this article or under article fifteen-a of this chapter on prepaid
6 wireless services is sufficient to fulfill the mandate of this section, and prepaid wireless services

7 shall not be subjected to double taxation under this article: Provided, however, That this section
8 shall not be interpreted to prevent imposition of any other lawfully imposed municipal tax or fee
9 or any other tax or fee lawfully imposed under any state or federal law, or the laws of any
10 subdivision thereof on such prepaid wireless services.

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

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

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

§11-15-3e. Imposition of consumers sales tax on sales of digital products, digital code and digital services.

1 (a) Notwithstanding any other provision of this code to the contrary, on and after July 1,
2 2017, sales of digital code, digital products and digital services electronically transferred to the
3 purchaser shall be subject to the consumers sales and service tax imposed by this article, except
4 as otherwise provided in this article, and the use of digital code, digital products and digital
5 services electronically transferred to the purchaser shall be subject to the use tax imposed by
6 article fifteen-a of this chapter, except as otherwise provided in article fifteen-a of this chapter.
7 The tax imposed by this article shall apply to sales of digital code, digital products and digital
8 services electronically transferred to the purchaser regardless of whether the digital code, digital

9 product or digital service is provided for permanent use or less than permanent use and
10 regardless of whether continued payment is required.

11 (b) Definitions —

12 (1) "Designated digital products" means digital audio works, digital audio-visual works,
13 digital books, video game digital products and digital automated services that are electronically
14 transferred to a purchaser.

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

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

29 (4) "Digital automated services" defined.

30 (A) "Digital automated service," except as provided in paragraph (B) of this subdivision
31 (4), means any service transferred electronically that uses one or more software applications that
32 would be taxable if the results of the service were transferred on a tangible medium.

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

34 (i) Any service that primarily involves the application of human effort by the seller, and the

35 human effort originated after the customer requested the service;

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

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

41 (iv) Payment processing services;

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

44 (vii) The Internet and Internet access.

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

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

59 (7) "Digital goods" defined.

60 (A) "Digital goods," except as provided in this subdivision, means sounds, images, data,

61 facts, or information, or any combination thereof, transferred electronically, including, but not
62 limited to, designated digital products and other products transferred electronically not included
63 within the definition of designated digital products.

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

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

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

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

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

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

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

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

82 (A) Periodicals;

83 (B) Magazines;

84 (C) Video or electronic games; and

85 (E) Newspapers or other news or information products.

86 (12) "Ringtone" means digitized sound files that are downloaded onto a device and that

87 may be used to alert the customer with respect to a communication

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

90 (d) For purposes of this section, the sale, license, lease, or rental of or the storage, use,
91 or other consumption of a digital code is treated the same as the sale, license, lease, or rental of
92 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 ~~(31)~~ (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 (34) or by libraries at academic institutions or by
250 libraries at institutions of higher learning;

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

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

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

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

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

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

264 ~~(39)~~ (37) Sales of property or services to persons within the state when those sales are
265 for the purposes of the production of value-added products: *Provided*, That the exemption granted
266 in this subdivision applies only to services, equipment, supplies and materials directly used or
267 consumed by those persons engaged solely in the production of value-added products: *Provided*,
268 *however*, That this exemption may not be claimed by any one purchaser for more than five
269 consecutive years, except as otherwise permitted in this section.

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

- 274 (A) Lumber into furniture, toys, collectibles and home furnishings;
- 275 (B) Fruits into wine;
- 276 (C) Honey into wine;
- 277 (D) Wool into fabric;
- 278 (E) Raw hides into semifinished or finished leather products;
- 279 (F) Milk into cheese;

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

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

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

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

284 ~~(40)~~ (38) Sales of music instructional services by a music teacher and artistic services or

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

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

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

288 public may assemble to hear or see musical works or other artistic works be performed for the

289 enjoyment of the members of the public there assembled when the amount paid by the owner or

290 operator for the artistic service or artistic performance does not exceed \$3,000: *Provided*, That

291 nothing contained herein may be construed to deprive private social gatherings, weddings or other

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

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

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

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

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

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

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

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

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

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

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

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

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

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

306 entertainers for the purposes of this exemption;

307 ~~(44)~~ (39) Charges to a member by a membership association or organization which is
308 exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal
309 Revenue Code of 1986, as amended, for membership in the association or organization, including
310 charges to members for newsletters prepared by the association or organization for distribution
311 primarily to its members, charges to members for continuing education seminars, workshops,
312 conventions, lectures or courses put on or sponsored by the association or organization, including
313 charges for related course materials prepared by the association or organization or by the speaker
314 or speakers for use during the continuing education seminar, workshop, convention, lecture or
315 course, but not including any separate charge or separately stated charge for meals, lodging,
316 entertainment or transportation taxable under this article: *Provided*, That the association or
317 organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment
318 or transportation taxable under this article for which a separate or separately stated charge is not
319 made. A membership association or organization which is exempt from paying federal income
320 taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may
321 elect to pay the tax imposed under this article on the purchases for which a separate charge or
322 separately stated charge could apply and not charge its members the tax imposed by this article
323 or the association or organization may avail itself of the exemption set forth in subdivision (9) of
324 this subsection relating to purchases of tangible personal property for resale and then collect the
325 tax imposed by this article on those items from its member;

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

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

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

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

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

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

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

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

351 (48) 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: *Provided*, That beginning on July 1, 2017, all sales of services, machinery,
368 supplies and materials directly used or consumed in the business activity of communication or
369 transportation shall be subject to the tax imposed by this article: *Provided*, however that the
370 preceding proviso shall not apply to the transportation of coal;

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 this section in 2017 shall take effect beginning
397 July 1, 2017, and apply to sales made on and after that date: *Provided*, That the repeal of
398 subdivision (6) of subsection (b) shall be construed to prohibit all transfers after July 31, 2017 to
399 the State Road Fund established in the State Treasury pursuant to section fifty-two, article six of
400 the Constitution, under this section of taxes imposed by this article and article fifteen-a of this
401 chapter

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

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

7 (b) For purposes of this article:

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

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

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

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

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

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

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

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

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

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

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

32 (x) Maintenance or repair of property, including maintenance equipment, that is directly

33 used in research and development;

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

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

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

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

42 (i) Heating and illumination of office buildings;

43 (ii) Janitorial or general cleaning activities;

44 (iii) Personal comfort of personnel;

45 (iv) Planning or scheduling of work or inventory control;

46 (v) Marketing, general management, supervision, finance, training, accounting and
47 administration; or

48 (vi) An activity or function incidental or convenient to research and development, rather
49 than an integral and essential part of these activities.

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

- 59 (A) Research and development does not include:
- 60 (i) Market research;
- 61 (ii) Sales research;
- 62 (iii) Efficiency surveys;
- 63 (iv) Consumer surveys;
- 64 (v) Product market testing;
- 65 (vi) Product testing by product consumers or through consumer surveys for evaluation of
- 66 consumer product performance or consumer product usability;
- 67 (vii) The ordinary testing or inspection of materials or products for quality control (quality
- 68 control testing);
- 69 (viii) Management studies;
- 70 (ix) Advertising;
- 71 (x) Promotions;
- 72 (xi) The acquisition of another's patent, model, production or process or investigation or
- 73 evaluation of the value or investment potential related thereto;
- 74 (xii) Research in connection with literary, historical or similar projects;
- 75 (xiii) Research in the social sciences, economics, humanities or psychology and other
- 76 nontechnical activities; and
- 77 (xiv) The providing of sales services or any other service, whether technical service or
- 78 nontechnical service.
- 79 (c) No provision of this section may be interpreted to alter, abrogate or impede application
- 80 of the exemption for sales of primary opinion research services set forth in section nine of this
- 81 article: Provided, That on and after July 1, 2017, the exemption for primary opinion research shall
- 82 not be an allowable exemption.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing

service; sales of computer hardware and software directly used in communication; sales of educational software; sales of Internet advertising; sales of high-technology business services directly used in fulfillment of a government contract; sales of tangible personal property for direct use in a high-technology business or Internet advertising business; definitions.

1 (a) In order to modernize the exemptions from tax contained in this article as a result of
2 technological advances in computers and the expanded role of computers, the Internet and global
3 instant communications in business and to encourage computer software developers, computer
4 hardware designers, systems engineering firms, ~~electronic data processing companies~~ and other
5 high-technology companies to locate and expand their businesses in West Virginia, the following
6 sales of tangible personal property and software are exempt:

7 (1) Sales of computer hardware or software (including custom designed software) to be
8 directly incorporated by a manufacturer into a manufactured product. For purposes of this
9 subsection, the payment of licensing fees for the right to incorporate hardware or software
10 developed by persons other than the manufacturer into a manufactured product is exempt from
11 the tax imposed by this article;

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

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

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

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

20 ~~(6)~~ (5) Sales of high-technology business services to high-technology businesses which
21 enter into contracts with this state, its institutions and subdivisions, governmental units, institutions

22 or subdivisions of other states, or with the United States, including agencies of federal, state or
23 local governments for direct use in fulfilling the government contract; and

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

27 (b) *Definitions.* -- As used in this article, the following terms have the following meanings:

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

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

45 (3) "High-technology business services" means and is limited to computer hardware
46 design and development; computer software design, development, customization and upgrade;
47 computer systems design and development; website design and development; network design

48 and development; electronic data processing; computer systems management; computer
49 systems maintenance; computer systems engineering; computer systems administration and
50 computer systems security services.

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

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

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

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

§11-15-35. Administrative rules.

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

ARTICLE 15A. USE TAX.

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

1 (a) An excise tax is hereby levied and imposed on the use in this state of tangible personal

2 property, custom software or taxable services, to be collected and paid as provided in this article
3 or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the property,
4 digital code, digital product or taxable services, except as otherwise provided in this article:
5 Provided, That beginning July 1, 2017, the rate of tax imposed by this section shall be six and fifty
6 hundredths percent.

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

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

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

24 (e) Purchases of tangible personal property, digital code, digital products, digital services,
25 telecommunication services, ancillary telecommunication services or other taxable services made
26 for the government of the United States or any of its agencies by ultimate consumers is subject
27 to the tax imposed by this section. Industrial materials and equipment owned by the federal

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

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

§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, digital code, digital products or custom software is sold under a conditional
20 sales contract, or under any other form of sale wherein the payment of the principal sum, or a part
21 of the sum is extended over a period longer than sixty days from the date of the sale, the retailer

22 may collect and remit each monthly period that portion of the tax equal to six percent of that
23 portion of the purchase price actually received during the monthly period: Provided, That
24 beginning July 1, 2017, the tax to be remitted shall be determined by multiplying the portion of the
25 purchase price actually received during the monthly period by the general consumers sales and
26 service tax rate specified in section three, article fifteen of this chapter.

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

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

32 (f) *Accelerated payment.* --

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

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

44 (3) For a business which has not been in existence for a full calendar year, the total tax
45 due from the business during the prior calendar year shall be divided by the number of months,
46 including fractions of a month, that it was in business during the prior calendar year; and if that
47 amount exceeds \$100,000, the tax attributable to the first fifteen days of June each year shall be

48 remitted on or before June 20 of said month as provided in subdivision (2) of this subsection.

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

ARTICLE 21. PERSONAL INCOME TAX.

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

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

4 (2) 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:

<u>If the West Virginia</u>	
<u>taxable income is: The tax is:</u>	
<u>Less than \$20,000</u>	<u>2.75% of taxable income</u>
<u>\$20,000 or more but less than \$35,000</u>	<u>\$550.00 plus 4.75% of taxable</u> <u>income in excess of \$20,000</u>
<u>\$35,000 or more but less than \$125,000</u>	<u>\$1,262.50 plus 5.75% of taxable</u> <u>income in excess of \$35,000</u>

19	<u>\$125,000 or more but less than \$150,000</u>	<u>\$6,437.50 plus 6.00% of taxable</u>
20		<u>income in excess of \$125,000</u>
21	<u>\$150,000 or more\$</u>	<u>8,625.00 plus 6.5% of taxable</u>
22		<u>income in excess of \$150,000.00</u>

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

27 **If the West Virginia**

28 **taxable income is:The tax is:**

29	<u>Less than \$10,000</u>	<u>2.75% of taxable income</u>
30	<u>\$10,000 or more but less than \$17,500</u>	<u>\$275.00 plus 4.75% of taxable</u>
31		<u>income in excess of \$10,000</u>
32	<u>Over \$17,500 but less than \$62,500</u>	<u>\$631.25 plus 5.75% of taxable</u>
33		<u>income in excess of \$17,500</u>
34	<u>\$62,500 or more but less than \$75,000</u>	<u>\$3,218.75 plus 6.00% of taxable</u>
35		<u>income in excess of \$62,500</u>
36	<u>\$75,000 or more</u>	<u>\$4,312.50 plus 6.5% of taxable</u>
37		<u>income in excess of \$75,000</u>

38 (b) Legislative findings – The Legislative finds that the operation of subsection (a) of this
39 section effects a reduction of the tax rates specified in section four-e of this article prior to January
40 1, 2018, and that further reductions of the tax rates specified in subsection (a) of this section shall
41 occur by operation of subsections (c), (d) and (e) of this section at such times as specified herein,
42 and upon such conditions as provided in subsection (f) of this section.

43 (c)(1) General. – For taxable years beginning on and after January 1, 2019, and
44 thereafter, except as otherwise provided in this section, if the conditions described in subsection

45 (f) of this section transpire, the tax imposed by section three of this article shall be determined
46 under subdivisions (2) or (3) of this subsection, or under subsection (d) or subsection (e) of this
47 section if made effective by operation of this section, as appropriate.

48 (2) Rate of tax on individuals except married individuals filing separate returns, individuals
49 filing joint returns, heads of households, estates and trusts. – The tax imposed by section three
50 of this article on the West Virginia taxable income of every individual, except married individuals
51 filing separate returns; every individual who is a head of a household in the determination of his
52 or her federal income tax for the taxable year; married individuals who file a joint return under this
53 article; every individual who is entitled to file his or her federal income tax return for the taxable
54 year as a surviving spouse; and every estate and trust shall be determined in accordance with
55 the following table:

56 **If the West Virginia**

57 **taxable income is: The tax is:**

58 Less than \$20,000 2.40% of taxable income

59 \$20,000 or more but less than \$35,000 \$480.00 plus 4.40% of taxable

60 Income in excess of \$20,000

61 \$35,000 or more but less than \$125,000 \$1,140.00 plus 5.45% of taxable

62 income in excess of \$35,000

63 \$125,000 or but less than \$150,000 \$6,045.00 plus 5.75% of taxable

64 income in excess of \$125,000

65 \$150,000 or more \$8,625.00 plus 6.50% of taxable

66 income in excess of \$150,000

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

71 **If the West Virginia**
72 **taxable income is:The tax is:**
73 Less than \$10,000..... .2.40% of taxable income
74 \$10,000 or more but less than \$17,500\$240.00 plus 4.40% of taxable
75 income in excess of \$10,000
76 \$17,500 or more but less than \$62,500\$570.00 plus 5.45% of taxable
77 income in excess of \$17,500
78 \$62,500 or more but less than \$75,000.....\$3,022.50 plus 5.75% of taxable
79 income in excess of \$62,500
80 \$75,000 or more \$4,312.50 plus 6.50% of taxable
81 income in excess of \$75,000

82 (d)(1) General. – For taxable years beginning on and after January 1 of the year following
83 the year for which the provisions of subsection (c) of this section become effective, if at all, and
84 thereafter, and if the conditions described in subsection (f) of this section transpire, the tax
85 imposed by section three of this article shall be determined under subdivisions (2) or (3) of this
86 subsection, as appropriate.

87 (2) Rate of tax on individuals except married individuals filing separate returns, individuals
88 filing joint returns, heads of households, estates and trusts. – The tax imposed by section three
89 of this article on the West Virginia taxable income of every individual, except married individuals
90 filing separate returns; every individual who is a head of a household in the determination of his
91 or her federal income tax for the taxable year; married individuals who file a joint return under this
92 article; every individual who is entitled to file his or her federal income tax return for the taxable
93 year as a surviving spouse; and every estate and trust shall be determined in accordance with
94 the following table:

95 **If the West Virginia**
96 **taxable income is: The tax is:**

97	<u>Less than \$20,000</u>	<u>2.05% of taxable income</u>
98	<u>\$20,000 or more but less than \$35,000</u>	<u>\$410.00 plus 4.05% of taxable</u>
99	<u>Income in excess of \$20,000</u>	
100	<u>\$35,000 or more but less than \$125,000</u>	<u>\$1,017.50 plus 5.10% of taxable</u>
101	<u>income in excess of \$35,000</u>	
102	<u>\$125,000 or more but less than \$150,000.....</u>	<u>\$5,607.50 plus 5.50% of taxable</u>
103	<u>income in excess of \$125,000</u>	
104	<u>\$150,000 or more</u>	<u>\$8,625.00 plus 6.5% of taxable</u>
105	<u>income in excess of \$150,000</u>	

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

110	<u>If the West Virginia</u>	
111	<u>taxable income is:</u>	<u>The tax is:</u>
112	<u>Less than \$10,000.....</u>	<u>2.05% of taxable income</u>
113	<u>\$10,000 or more but less than \$17,500</u>	<u>\$205.00 plus 4.05% of taxable</u>
114	<u>income in excess of \$10,000</u>	
115	<u>\$17,500 or more but less than \$62,500</u>	<u>\$508.75 plus 5.10% of taxable</u>
116	<u>income in excess of \$17,500</u>	
117	<u>\$62,500 or more but less than \$75,000</u>	<u>\$2,803.75 plus 5.50% of taxable</u>
118	<u>income in excess of \$62,500.</u>	
119	<u>\$75,000 or more</u>	<u>\$4,312.50 plus 6.5% of taxable</u>
120	<u>income in excess of \$75,000</u>	

121 (e)(1) General. – For taxable years beginning on and after January 1 of the year following
 122 the year for which the provisions of subsection (d) of this section become effective, if at all, and

123 thereafter, and if the conditions described in subsection (f) of this section transpire, the tax
124 imposed by section three of this article shall be determined under subdivisions (2) or (3) of this
125 subsection, as appropriate.

126 (2) Rate of tax on individuals except married individuals filing separate returns, individuals
127 filing joint returns, heads of households, estates and trusts. – The tax imposed by section three
128 of this article on the West Virginia taxable income of every individual, except married individuals
129 filing separate returns; every individual who is a head of a household in the determination of his
130 or her federal income tax for the taxable year; married individuals who file a joint return under this
131 article; every individual who is entitled to file his or her federal income tax return for the taxable
132 year as a surviving spouse; and every estate and trust shall be determined in accordance with
133 the following table:

<u>If the West Virginia</u>	<u>taxable income is:</u>	<u>The tax is:</u>
	<u>Less than \$20,000</u>	<u>1.75% of taxable income</u>
	<u>\$20,000 or more but less than \$35,000</u>	<u>\$350.00 plus 3.80% of taxable</u>
		<u>Income in excess of \$20,000</u>
	<u>\$35,000 or more but less than \$125,000</u>	<u>\$920.00 plus 4.65% of taxable</u>
		<u>income in excess of \$35,000</u>
	<u>\$125,000 or more but less than \$150,000.....</u>	<u>\$5,105.00 plus 5.00% of taxable</u>
		<u>income in excess of \$125,000</u>
	<u>\$150,000 or more</u>	<u>\$8,625.00 plus 6.50% of taxable</u>
		<u>income in excess of \$150,000</u>

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

<u>If the West Virginia</u>	<u>taxable income is:</u>	<u>The tax is:</u>
149		
150		
151	<u>Less than \$10,000</u>	<u>1.75% of taxable income</u>
152	<u>\$10,000 or more but less than \$17,500</u>	<u>\$175.00 plus 3.80% of taxable</u>
153		<u>income in excess of \$10,000</u>
154	<u>\$17,500 or more but less than \$62,500</u>	<u>\$460.00 plus 4.65% of taxable</u>
155		<u>income in excess of \$17,500</u>
156	<u>\$62,500 or more but less than \$75,000</u>	<u>\$2,552.50 plus 5.00% of taxable</u>
157		<u>income in excess of \$62,500.</u>
158	<u>\$75,000 or more</u>	<u>\$4,312.50 plus 6.50% of taxable</u>
159		<u>income in excess of \$75,000</u>

160 (f)(1) Conditions precedent to further reductions -- The reductions of the tax rates specified
161 in subsection (a) of this section as provided in subsections (c), (d) and (e) of this section are
162 conditioned upon the occurrence of the following:

163 (A) Following the end of fiscal year 2018, and each fiscal year thereafter as may be
164 indicated by the prospective operation of subsection (c) of this section, the Tax Commissioner
165 shall first measure the rolling average of cumulative collections of the taxes imposed by this
166 article, article fifteen and article fifteen-a of this chapter that were deposited into the General
167 Revenue Fund of the state through the end of that fiscal year and during each of the four fiscal
168 years immediately preceding that fiscal year. The Commissioner shall also make a similar
169 measurement of those collections for the five-year period immediately preceding that fiscal year.
170 If the application of the first measurement against the second measurement demonstrates an
171 increase in those collections, then the Tax Commissioner shall determine the amount of that
172 increase in dollars. The Tax Commissioner shall then determine the anticipated fiscal cost to the
173 state in dollars of the further reduction in the tax rates specified in subsection (a) of this section
174 as provided in subsection (c) of this section, as applicable during the next ensuing calendar year.

175 If the fiscal cost to the state of the further reduction in the tax rates specified in subsection (a) of
176 this section as provided in subsection (c) of this section does not exceed the increase in
177 collections, all as measured and calculated by the Tax Commissioner, then reduction in the tax
178 rates imposed by section three of this article as provided in subsections (c), (d) or (e) of this
179 section, as applicable, shall become effective on January 1 of the next calendar year.

180 (B) Following the end of fiscal year in which the tax rates are reduced as provided in
181 paragraph (A) of this subdivision, and each fiscal year thereafter as may be indicated by the
182 prospective operation of subsection (e) of this section, the Tax Commissioner shall first measure
183 the rolling average of cumulative collections of the taxes imposed by this article, article fifteen and
184 article fifteen-a of this chapter that were deposited into the General Revenue Fund of the state
185 through the end of that fiscal year and during each of the four fiscal years immediately preceding
186 that fiscal year. The Commissioner shall also make a similar measurement of those collections
187 for the five-year period immediately preceding that fiscal year. If the application of the first
188 measurement against the second measurement demonstrates an increase in those collections,
189 then the Tax Commissioner shall determine the amount of that increase in dollars. The Tax
190 Commissioner shall then determine the anticipated fiscal cost to the state in dollars of the further
191 reduction in the tax rates specified in subsection (d) or (e) of this section, whichever is applicable
192 as if the rates in subsection (c) or (d), whichever is applicable, were applicable during the next
193 ensuing calendar year. If the fiscal cost to the state of the further reduction in the tax rates
194 specified in subsection (c) of this section as provided in subsection (d) or subsection (e) of this
195 section, whichever is applicable, does not exceed the increase in collections, all as measured and
196 calculated by the Tax Commissioner, then reduction in the tax rates specified in subsection (d) or
197 (e) of this section, whichever is applicable, shall become effective on January 1 of the next
198 calendar year.

199 (2) Upon the operative date of the last reduction in the tax rates as provided in subsection
200 (f) of this section, if the same shall occur, the provisions of this subsection shall thereafter become

201 inoperative and no further rate reductions may be implemented by operation of this subsection.

§11-21-4h. Rebate of personal income taxes paid for tax year 2016 by certain taxpayers.

1 (a) In the case of personal income taxes due under this article for the taxable year
2 beginning January 1, 2016 and ending December 31, 2016, taxpayers having West Virginia
3 taxable income of \$10,000 or less shall be allowed a rebate of \$150.00, and taxpayers having
4 West Virginia taxable income of more than \$10,000 but not over \$25,000 shall be allowed a rebate
5 of \$100.00, provided the taxpayer meeting these criteria, whichever is applicable, had a positive
6 West Virginia personal income tax liability for the 2016 taxable year, determined after allowance
7 of all allowable tax credits but before allowing credit for employer withholding taxes and estimated
8 tax payments.

9 (b) The Tax Commissioner shall during February of 2018, cause checks or state warrants to be
10 issued in the name of taxpayers entitled to a rebate for the amount of the rebate allowed under
11 subsection (a) of this section and mailed to the last known address of the taxpayer.

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

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

2 *Certified historic structures.* - For certified historic structures, the credit is equal to ten
3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
4 States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after
5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified
6 rehabilitation expenditure: *Provided, however*, That the credit authorized by this section for
7 qualified rehabilitation expenditures made after June 30, 2017, may not be used to offset tax
8 liabilities prior to the tax year beginning January 1, 2019: *Provided further*, That the taxpayer may
9 not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by
10 the Tax Division or the taxpayer is delinquent in the payment of property taxes on the property
11 containing the certified historic tax structure when the applicant begins to claim the credit and
12 throughout the time period within which the credit is claimed. The Tax Commissioner shall

13 promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code
14 that provide what information must accompany any claim for the tax credit for the determination
15 that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor
16 is the taxpayer delinquent in the payment of property taxes on the property containing the certified
17 historic tax structure. The Tax Commissioner may also propose rules for legislative approval in
18 accordance with the provisions of article three, chapter twenty-nine-a of this code for the
19 administration of this tax credit and to provide any necessary mechanism to recover credits
20 claimed by taxpayers that become delinquent in the payment of property taxes on the property
21 containing the historic structure or become in arrears in the payment of any tax administered by
22 the Tax Division. This credit is available for both residential and nonresidential buildings located
23 in this state, that are reviewed by the West Virginia Division of Culture and History and designated
24 by the national park service, United States department of the interior as "certified historic
25 structures," and further defined as a "qualified rehabilitated building," as defined under §47(c)(1),
26 Title 26 of the United States Code, as amended.

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

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

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

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) *General.* -- The West Virginia adjusted gross income of a resident individual means his
2 or her federal adjusted gross income as defined in the laws of the United States for the taxable
3 year with the modifications specified in this section.

4 (b) *Modifications increasing federal adjusted gross income.* -- There shall be added to
5 federal adjusted gross income unless already included therein the following items:

6 (1) Interest income on obligations of any state other than this state or of a political
7 subdivision of any other state unless created by compact or agreement to which this state is a
8 party;

9 (2) Interest or dividend income on obligations or securities of any authority, commission or
10 instrumentality of the United States, which the laws of the United States exempt from federal
11 income tax but not from state income taxes;

12 (3) Any deduction allowed when determining federal adjusted gross income for federal
13 income tax purposes for the taxable year that is not allowed as a deduction under this article for
14 the taxable year;

15 (4) Interest on indebtedness incurred or continued to purchase or carry obligations or
16 securities the income from which is exempt from tax under this article, to the extent deductible in
17 determining federal adjusted gross income;

18 (5) Interest on a depository institution tax-exempt savings certificate which is allowed as
19 an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the
20 federal taxable year;

21 (6) The amount of a lump sum distribution for which the taxpayer has elected under
22 Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for
23 federal income tax purposes; and

24 (7) Amounts withdrawn from a medical savings account established by or for an individual
25 under section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article
26 sixteen of said chapter that are used for a purpose other than payment of medical expenses, as
27 defined in those sections.

28 (c) *Modifications reducing federal adjusted gross income. -- There shall be subtracted from*
29 *federal adjusted gross income to the extent included therein:*

30 (1) Interest income on obligations of the United States and its possessions to the extent
31 includable in gross income for federal income tax purposes;

32 (2) Interest or dividend income on obligations or securities of any authority, commission
33 or instrumentality of the United States or of the State of West Virginia to the extent includable in
34 gross income for federal income tax purposes but exempt from state income taxes under the laws
35 of the United States or of the State of West Virginia, including federal interest or dividends paid
36 to shareholders of a regulated investment company, under Section 852 of the Internal Revenue
37 Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-
38 seven;

39 (3) Any amount included in federal adjusted gross income for federal income tax purposes for the
40 taxable year that is not included in federal adjusted gross income under this article for the taxable
41 year;

42 (4) The amount of any refund or credit for overpayment of income taxes imposed by this
43 state, or any other taxing jurisdiction, to the extent properly included in gross income for federal
44 income tax purposes;

45 (5) Annuities, retirement allowances, returns of contributions and any other benefit
46 received under the West Virginia Public Employees Retirement System, the West Virginia State
47 Teachers Retirement System and all forms of military retirement, including regular Armed Forces,
48 reserves and National Guard, including any survivorship annuities derived therefrom, to the extent
49 includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any
50 provisions in this code to the contrary this modification shall be limited to the first two thousand
51 dollars of benefits received under the West Virginia Public Employees Retirement System, the
52 West Virginia State Teachers Retirement System and, including any survivorship annuities
53 derived therefrom, to the extent includable in gross income for federal income tax purposes for
54 taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-
55 six; and the first two thousand dollars of benefits received under any federal retirement system to
56 which Title 4 U.S.C. §111 applies: *Provided*, however, That the total modification under this
57 paragraph shall not exceed two thousand dollars per person receiving retirement benefits and
58 this limitation shall apply to all returns or amended returns filed after the last day of December,
59 one thousand nine hundred eighty-eight;

60 (6) Retirement income received in the form of pensions and annuities after the thirty-first
61 day of December, one thousand nine hundred seventy-nine, under any West Virginia police, West
62 Virginia Firemen's Retirement System or the West Virginia State Police Death, Disability and
63 Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy
64 Sheriff Retirement System, including any survivorship annuities derived from any of these
65 programs, to the extent includable in gross income for federal income tax purposes;

66 (7) (A) For taxable years beginning after the thirty-first day of December, two thousand, and
67 ending prior to the first day of January, two thousand three, an amount equal to two percent

68 multiplied by the number of years of active duty in the Armed Forces of the United States of
69 America with the product thereof multiplied by the first thirty thousand dollars of military retirement
70 income, including retirement income from the regular Armed Forces, reserves and National Guard
71 paid by the United States or by this state after the thirty-first day of December, two thousand,
72 including any survivorship annuities, to the extent included in gross income for federal income tax
73 purposes for the taxable year.

74 (B) For taxable years beginning after the thirty-first day of December, two thousand two,
75 the first twenty thousand dollars of military retirement income, including retirement income from
76 the regular Armed Forces, reserves and National Guard paid by the United States or by this state
77 after the thirty-first day of December, two thousand two, including any survivorship annuities, to
78 the extent included in gross income for federal income tax purposes for the taxable year.

79 (C) For taxable years beginning on and after January 1, 2018, the amount of military
80 retirement income, including retirement income from the regular Armed Forces, Reserves, and
81 National Guard, paid by the United States or this state on and after January 1, 2018, that is
82 included in federal adjusted gross income for the taxable year, shall be allowed as a decreasing
83 modification from federal adjusted gross income when determining West Virginia taxable income
84 subject to the tax imposed by this article.

85 ~~(C)~~ (D) In the event that any of the provisions of this subdivision are found by a court of
86 competent jurisdiction to violate either the Constitution of this state or of the United States, or is
87 held to be extended to persons other than specified in this subdivision, this subdivision shall
88 become null and void by operation of law.

89 (8) Federal adjusted gross income in the amount of eight thousand dollars received from
90 any source after the thirty-first day of December, one thousand nine hundred eighty-six, by any
91 person who has attained the age of sixty-five on or before the last day of the taxable year, or by
92 any person certified by proper authority as permanently and totally disabled, regardless of age,
93 on or before the last day of the taxable year, to the extent includable in federal adjusted gross

94 income for federal tax purposes: Provided, That if a person has a medical certification from a prior
95 year and he or she is still permanently and totally disabled, a copy of the original certificate is
96 acceptable as proof of disability. A copy of the form filed for the federal disability income tax
97 exclusion is acceptable: *Provided, however, That:*

98 (i) Where the total modification under subdivisions (1), (2), (5), (6), ~~and (7)~~ and (12) of this
99 subsection is eight thousand dollars per person or more, no deduction shall be allowed under this
100 subdivision; and

101 (ii) Where the total modification under subdivisions (1), (2), (5), (6), ~~and (7)~~ and (12) of this
102 subsection is less than eight thousand dollars per person, the total modification allowed under
103 this subdivision for all gross income received by that person shall be limited to the difference
104 between eight thousand dollars and the sum of modifications under subdivisions (1), (2), (5), (6),
105 ~~and (7)~~ and (12) of this subsection;

106 (9) Federal adjusted gross income in the amount of eight thousand dollars received from
107 any source after the thirty-first day of December, one thousand nine hundred eighty-six, by the
108 surviving spouse of any person who had attained the age of sixty-five or who had been certified
109 as permanently and totally disabled, to the extent includable in federal adjusted gross income for
110 federal tax purposes: Provided, That:

111 (i) Where the total modification under subdivisions (1), (2), (5), (6), (7), ~~and (8)~~ and (12) of
112 this subsection is eight thousand dollars or more, no deduction shall be allowed under this
113 subdivision; and

114 (ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), ~~and (8)~~ and (12) of this
115 subsection is less than eight thousand dollars per person, the total modification allowed under
116 this subdivision for all gross income received by that person shall be limited to the difference
117 between eight thousand dollars and the sum of subdivisions (1), (2), (5), (6), (7), ~~and (8)~~ and (12)
118 of this subsection;

119 (10) Contributions from any source to a medical savings account established by or for the
120 individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or section
121 fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent includable
122 in federal adjusted gross income for federal tax purposes: *Provided*, That the amount subtracted
123 pursuant to this subdivision for any one taxable year may not exceed two thousand dollars plus
124 interest earned on the account. For married individuals filing a joint return, the maximum
125 deduction is computed separately for each individual;

126 (11) For the two thousand six taxable year only, severance wages received by a taxpayer
127 from an employer as the result of the taxpayer's permanent termination from employment through
128 a reduction in force and through no fault of the employee, not to exceed thirty thousand dollars.
129 For purposes of this subdivision:

130 (i) The term "severance wages" means any monetary compensation paid by the employer
131 in the taxable year as a result of permanent termination from employment in excess of regular
132 annual wages or regular annual salary;

133 (ii) The term "reduction in force" means a net reduction in the number of employees
134 employed by the employer in West Virginia, determined based on total West Virginia employment
135 of the employer's controlled group;

136 (iii) The term "controlled group" means one or more chains of corporations connected through
137 stock ownership with a common parent corporation if stock possessing at least fifty percent of the
138 voting power of all classes of stock of each of the corporations is owned directly or indirectly by
139 one or more of the corporations and the common parent owns directly stock possessing at least
140 fifty percent of the voting power of all classes of stock of at least one of the other corporations;

141 (iv) The term "corporation" means any corporation, joint-stock company or association and
142 any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a
143 certificate of interest or ownership or similar written instrument;

144 (12) Decreasing modification for social security income.

145 (A) For taxable years beginning on and after January 1, 2018, fifty percent of the amount
146 of social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including but not limited
147 to social security benefits paid by the Social Security Administration as Old Age, Survivors and
148 Disability Insurance Benefits as provided in §42 U.S.C. 401 et. seq. or as Supplemental Security
149 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 et. seq., included in
150 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification
151 from federal adjusted gross income when determining West Virginia taxable income subject to
152 the tax imposed by this article, subject to the limitation in paragraph (D) of this subdivision (12).

153 (B) For taxable years beginning on or after January 1, 2019, one-hundred percent of the
154 social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including but not limited
155 to social security benefits paid by the Social Security Administration as Old Age, Survivors and
156 Disability Insurance Benefits as provided in §42 U.S.C. 401 et. seq. or as Supplemental Security
157 Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 et. seq., included in
158 federal adjusted gross income for the taxable year shall be allowed as a decreasing modification
159 from federal adjusted gross income when determining West Virginia taxable income subject to
160 the tax imposed by this article, subject to the limitation in paragraph (D) of this subdivision (12).

161 (C) Limitation on taking the deduction allowed by paragraphs (A) and (B) of subdivision
162 (12). – The deduction allowed by paragraphs (A) and (B) of this subdivision (12): shall be
163 allowable only when the federal adjusted gross income of a married couple filing a joint return, or
164 a single individual, does not exceed \$75,000, or \$37,500 in the case of a married individual filing
165 a separate return.

166 (D) In the event that any provision of this subdivision (12) is found by a court of competent
167 jurisdiction to violate either the Constitution of the United States or this state, or is held to be
168 extended to persons other than those specified in this section, this section shall become null and
169 void by operation of law; and

170 ~~(12)~~ (13) Any other income which this state is prohibited from taxing under the laws of the
171 United States.

172 (d) *Modification for West Virginia fiduciary adjustment.* -- There shall be added to or
173 subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as
174 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under
175 section nineteen of this article.

176 (e) *Partners and S corporation shareholders.* -- The amounts of modifications required to
177 be made under this section by a partner or an S corporation shareholder, which relate to items of
178 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under
179 section seventeen of this article.

180 (f) *Husband and wife.* -- If husband and wife determine their federal income tax on a joint
181 return but determine their West Virginia income taxes separately, they shall determine their West
182 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been
183 determined separately.

184 (g) *Effective date.* -- (1) Changes in the language of this section enacted in the year two thousand
185 shall apply to taxable years beginning after the thirty-first day of December, two thousand.

186 (2) Changes in the language of this section enacted in the year two thousand two shall
187 apply to taxable years beginning after the thirty-first day of December, two thousand two.

188 (3) Changes in the language of this section enacted in the year 2017 shall apply to taxable
189 years beginning after December 31, 2017.

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

1 (a) *General.* -- For any tax imposed under the provisions of this article with respect to any
2 taxable year prior to January 1, 1983, a resident individual shall be allowed a West Virginia
3 exemption of \$600 for each exemption for which he or she is entitled to a deduction for the taxable
4 year for federal income tax purposes. With respect to any taxable year beginning on or after
5 January 1, 1983, and prior to January 1, 1984, said exemption shall be \$700; with respect to any

6 taxable year beginning on or after January 1, 1984, said exemption shall be \$800; ~~and~~ with
7 respect to any taxable year beginning on or after January 1, 1987, said exemption shall be \$2,000.
8 For taxable years beginning on and after January 1, 2018, an individual or married persons filing
9 a joint return under this article that have federal adjusted gross income of \$50,000 or less for the
10 taxable year shall be allowed a West Virginia exemption of \$2,500 for each exemption for which
11 he or she is entitled to a deduction for the taxable year for federal income tax purposes.

12 (b) ~~Husband and wife~~ Married Individuals. -- If the West Virginia income taxes of a ~~husband~~
13 ~~and wife~~ married individuals are separately determined but their federal income tax is determined
14 on a joint return, each of them shall be separately entitled, with respect to any taxable year prior
15 to January 1, 1983, to a West Virginia exemption of \$600 for each federal exemption to which he
16 or she would be separately entitled for the taxable year if their federal income taxes had been
17 determined on separate returns. With respect to any taxable year beginning on or after January
18 1, 1983, and prior to January 1, 1984, said exemption shall be \$700; with respect to any taxable
19 year beginning on or after January 1, 1984, said exemption shall be \$800; and with respect to any
20 taxable year beginning on or after January 1, 1987, said exemption shall be \$2,000. For taxable
21 years beginning on and after January 1, 2018, married individuals filing separate returns under
22 this article that have federal adjusted gross income of \$25,000 or less for the taxable year shall
23 be allowed a West Virginia exemption of \$2,500 for each federal exemption to which he or she
24 would be separately entitled for the taxable year if their federal income taxes had been determined
25 on separate returns.

26 (c) Surviving spouse. -- For taxable years beginning after December 31, 1986, a surviving
27 spouse shall be allowed one additional exemption of \$2,000 for the two taxable years beginning
28 after the year of death of the deceased spouse; and in lieu thereof, for taxable years beginning
29 after December 31, 2017, a surviving spouse that has a federal adjusted gross income of \$50,000
30 or less for the taxable year shall be allowed one additional exemption of \$2,500 for the two taxable
31 years beginning after the year of death of the deceased spouse.

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

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

ARTICLE 24. CORPORATE NET INCOME TAX.

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

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

2 *Certified historic structures.* - For certified historic structures, the credit is equal to ten
3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
4 States Code, as amended: Provided, That for qualified rehabilitation expenditures made after
5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified
6 rehabilitation expenditure: Provided, however, That the credit authorized by this section for
7 qualified rehabilitation expenditures made after June 30, 2017, may not be used to offset tax
8 liabilities prior to the tax year beginning January 1, 2019: Provided further, That the taxpayer may
9 not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by
10 the Tax Division or if the taxpayer is delinquent in the payment of property taxes on the property
11 containing the certified historic tax structure when the applicant begins to claim the credit and
12 throughout the time period within which the credit is claimed. The Tax Commissioner shall
13 promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code
14 that provide what information must accompany any claim for the tax credit for the determination
15 that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor
16 is the taxpayer delinquent in the payment of property taxes on the property containing the certified

17 historic tax structure. The Tax Commissioner may also propose rules for legislative approval in
18 accordance with the provisions of article three, chapter twenty-nine-a of this code for the
19 administration of this tax credit and to provide any necessary mechanism to recover credits
20 claimed by taxpayers that become delinquent in the payment of property taxes on the property
21 containing the historic structure or become in arrears in the payment of any tax administered by
22 the Tax Division. This credit is available for both residential and nonresidential buildings located
23 in this state that are reviewed by the West Virginia Division of Culture and History and designated
24 by the national park service, United States department of the interior as "certified historic building",
25 and further defined as a "qualified rehabilitated building", as defined under §47(c)(1), Title 26, of
26 the United States Code, as amended.

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

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

NOTE The purpose of this bill is to enact the Tax Reform Act of 2017. Changes include imposing graduated rate severance tax on privilege of producing coal as of specified date and defining certain terms; increasing rate of consumers sales and service tax as of specified date and providing for rate reduction when certain criteria are met; imposing tax on telecommunication services and ancillary telecommunication services as of specified

date; imposing tax on digital code, digital products and digital services as of specified date, and with respect thereto defining certain terms; eliminating or narrowing certain exemptions from consumers sales and service tax as of specified date; providing consumer sales and service tax exemption for services of professional employer organizations; allowing emergency legislative rules if promulgated by specified date; increasing rate of use tax as of specified date and providing corresponding rate reduction when rate of general consumers sales and service tax reduces; imposing new personal income tax rates for taxable years beginning on and after specified date; providing for further rate reductions when conditions are satisfied; exempting military retirement income from personal income tax after specified date; allowing a decreasing deduction for taxable social security under specified circumstances, increasing personal income tax exemption under certain circumstances; authorizing rebates of 2016 personal income tax paid by certain persons; increasing amount of credit allowed against personal and corporation net income taxes for qualified building rehabilitation expenditures made after specified date; establishing limitations on carryback and carryforward of credit for qualified building rehabilitation expenditures; and making technical corrections in various sections.

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