

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Engrossed

Committee Substitute

for

Committee Substitute

for

Senate Bill 409

BY SENATOR KARNES

[Originating in the Committee on Finance; reported on

March 27, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by repealing §11-8-6e; to amend
2 said code by amending and reenacting §11-8-6f; to amend said code by repealing §11-8-
3 6g; to amend said code by adding thereto a new section, designated §11-13A-26; to
4 amend said code by amending and reenacting §11-15-3, §11-15-3a, §11-15-8, §11-15-9,
5 §11-15A-2; to amend said code by adding thereto a new section, designated §11-21-4g;
6 all relating generally to the 2017 Tax Reform Act; to the repeal of certain procedures
7 relating to increased tax assessments; to the prospective balancing of the rate of the
8 severance tax on the production of coal; to the increase of the rate of the consumers sales
9 and service tax; to the elimination of certain exemptions from the consumers sales and
10 service tax; to the increase of the rate of the use tax; to the reduction of the rate of the
11 personal income tax and establishing effective dates with respect thereto.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended: that §11-8-6e be
2 repealed; that §11-8-6f be amended and reenacted; that §11-8-6g be repealed; that a new section
3 be added thereto designated §11-13A-26; that new sections be added thereto designated §11-
4 13EE-1, §11-13EE-2, §11-13EE-3 and §11-13EE-4; that said code be amended by amending
5 and reenacting §11-15-3, §11-15-3a, §11-15-8, §11-15-9 and §11-15A-2, that said code be
6 amended by adding thereto a new section, designated §11-21-4g, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 8. LEVIES.

~~§11-8-6e. Effect on regular levy rate when appraisal results in tax increase; public
hearings.~~

1 ~~(a) Notwithstanding any other provision of law, where any annual appraisal, triennial~~
2 ~~appraisal or general valuation of property would produce an assessment that would cause an~~
3 ~~increase of one percent or more in the total projected property tax revenues that would be realized~~

4 ~~were the then current regular levy rates by the county commission and the municipalities to be~~
5 ~~imposed, the rate of levy shall be reduced proportionately as between the county commission and~~
6 ~~the municipalities and for all classes of property for the forthcoming tax year so as to cause such~~
7 ~~rate of levy to produce no more than one hundred one percent of the previous year's projected~~
8 ~~property tax revenues from extending the county commission and municipality levy rates, unless~~
9 ~~there has been compliance with subsection (c) of this section.~~

10 ~~An additional appraisal or valuation due to new construction or improvements to existing~~
11 ~~real property, including beginning recovery of natural resources, and newly acquired personal~~
12 ~~property shall not be an annual appraisal or general valuation within the meaning of this section,~~
13 ~~nor shall the assessed value of such improvements be included in calculating the new tax levy for~~
14 ~~purposes of this section. Special levies shall not be included in the reduced levy calculation set~~
15 ~~forth in subsection (b) of this section.~~

16 ~~(b) The reduced rates of levy shall be calculated in the following manner:~~

17 ~~(1) The total assessed value of each class of property as it is defined by section five, article~~
18 ~~eight of this chapter for the assessment period just concluded shall be reduced by deducting the~~
19 ~~total assessed value of newly created properties not assessed in the previous year's tax book for~~
20 ~~each class of property;~~

21 ~~(2) The resulting net assessed value of Class I property shall be multiplied by .01; the~~
22 ~~value of Class II by .02; and the values of Class III and IV, each by .04;~~

23 ~~(3) Total the current year's property tax revenue resulting from regular levies for each~~
24 ~~county commission and municipality and multiply the resulting sum by one hundred one percent:~~
25 ~~*Provided*, That the one hundred one percent figure shall be increased by the amount the county's~~
26 ~~or municipality's increased levy provided for in subsection (b), section eight, article one c of this~~
27 ~~chapter;~~

28 ~~(4) Divide the total regular levy tax revenues, thus increased in subdivision (3) of this~~
29 ~~subsection, by the total weighted net assessed value as calculated in subdivision (2) of this~~

30 subsection and multiply the resulting product by one hundred; the resulting number is the Class I
31 regular levy rate, stated as cents per one hundred dollars of assessed value;

32 (5) The Class II rate is two times the Class I rate; Classes III and IV, four times the Class
33 I rate as calculated in the preceding subdivision.

34 (c) The governing body of a county or municipality may, after conducting a public hearing,
35 which may be held at the same time and place as the annual budget hearing, increase the rate
36 above the reduced rate required in this section if any such increase is deemed to be necessary
37 by such governing body: *Provided*, That in no event shall the governing body of a county or
38 municipality increase the rate above the reduced rate required by subsection (b) of this section
39 for any single year in a manner which would cause total property tax revenues accruing to the
40 governing body of the county or municipality, excepting additional revenue attributable to
41 assessed valuations of newly created properties not assessed in the previous year's tax book for
42 each class of property, to exceed by more than ten percent those property tax revenues received
43 by the governing body of the county or municipality for the next preceding year: *Provided*,
44 *however*, That this provision shall not restrict the ability of a county or municipality to enact excess
45 levies as authorized under existing statutory or constitutional provisions: *Provided further*, That
46 this provision does not restrict the ability of a county or municipality to issue bonds and enact
47 sufficient levies to pay for such bonds pursuant to article one, chapter thirteen of this code when
48 such issuance has been approved by an election administered pursuant to that article.

49 Notice of the public hearing and the meeting in which the levy rate shall be on the agenda
50 shall be given at least seven days before the date for each public hearing by the publication of a
51 notice in at least one newspaper of general circulation in such county or municipality: *Provided*,
52 That a Class IV town or village as defined in section two, article one, chapter eight of this code,
53 in lieu of the publication notice required by this subsection, may post no less than four notices of
54 each public hearing, which posted notices shall contain the information required by the publication
55 notice and which shall be in available, visible locations including the town hall. The notice shall

56 ~~be at least the size of one eighth page of a standard size newspaper or one fourth page of a~~
57 ~~tabloid size newspaper and the headline in the advertisement shall be in a type no smaller than~~
58 ~~twenty four point. The publication notice shall be placed outside that portion, if any, of the~~
59 ~~newspaper reserved for legal notices and classified advertisements and shall also be published~~
60 ~~as a Class II O legal advertisement in accordance with the provisions of article three, chapter fifty~~
61 ~~nine of this code. The publication area is the county. The notice shall be in the following form and~~
62 ~~contain the following information, in addition to such other information as the local governing body~~
63 ~~may elect to include:~~

64 ~~NOTICE OF PROPOSED TAX INCREASE.~~

65 ~~The (name of the county or municipality) proposes to increase property tax levies.~~

66 ~~1. Appraisal/Assessment Increase: Total assessed value of property, excluding additional~~
67 ~~assessments due to new or improved property, exceeds last year's total assessed value of~~
68 ~~property by percent.~~

69 ~~2. Lowered Rate Necessary to Offset Increased Assessment: The tax rate which would~~
70 ~~levy the same amount of property tax as last year, when multiplied by the new total assessed~~
71 ~~value of property with the exclusions mentioned above, would be \$..... per \$100 of assessed value~~
72 ~~for Class I property, \$..... per \$100 of assessed value for Class II property, \$..... per \$100 of~~
73 ~~assessed value for Class III and \$..... per \$100 of assessed value for Class IV property. These~~
74 ~~rates will be known as the "lowered tax rates".~~

75 ~~3. Effective Rate Increase: The (name of the county or municipality) proposes to adopt a~~
76 ~~tax rate of \$..... per \$100 of assessed value for Class I property, \$..... per \$100 of assessed value~~
77 ~~for Class II property, \$..... per \$100 of assessed value for Class III property and \$..... per \$100 of~~
78 ~~assessed value for Class IV property. The difference between the lowered tax rates and the~~
79 ~~proposed rates would be \$..... per \$100, or percent for Class I; \$..... per \$100, or percent~~
80 ~~for Class II; \$..... per \$100, or percent for Class III and \$..... per \$100, or percent for Class~~
81 ~~IV. These differences will be known as the "effective tax rate increases".~~

82 Individual property taxes may, however, increase at a percentage greater than or less than the
83 above percentage.

84 4. Revenue produced last year: \$.....

85 5. Revenue projected under the effective rate increases: \$.....

86 6. Revenue projected from new property or improvements: \$.....

87 7. General areas in which new revenue is to be allocated: A public hearing on the
88 increases will be held on (date and time) at (meeting place). A decision regarding the rate increase
89 will be made on (date and time) at (meeting place).

90 (d) All hearings are open to the public. The governing body shall permit persons desiring
91 to be heard an opportunity to present oral testimony within such reasonable time limits as are
92 determined by the governing body.

93 (e) This section shall be effective as to any regular levy rate imposed by the county
94 commission or a municipality for taxes due and payable on or after July 1, 1991. If any provision
95 of this section is held invalid, the invalidity does not affect other provisions or applications of this
96 section which can be given effect without the invalid provision or its application and to this end
97 the provisions of this section are declared to be severable.

§11-8-6f. Regular school board levy rate; eCreation of Growth County School Facilities Act; creation of Growth County School Facilities Act Fund.

1 (a) Notwithstanding any other provision of law, where any annual appraisal, triennial
2 appraisal or general valuation of property would produce a statewide aggregate assessment that
3 would cause an increase of two percent or more in the total property tax revenues that would be
4 realized were the then current regular levy rates of the county boards of education to be imposed,
5 the rate of levy for county boards of education shall be reduced uniformly statewide and
6 proportionately for all classes of property for the forthcoming tax year so as to cause the rate of
7 levy to produce no more than one hundred two percent of the previous year's projected statewide
8 aggregate property tax revenues from extending the county board of education levy rate, unless

9 subsection (b) of this section is complied with. ~~The reduced rates of levy shall be calculated in the~~
10 ~~following manner: (1) The total assessed value of each class of property as it is defined by section~~
11 ~~five of this article for the assessment period just concluded shall be reduced by deducting the~~
12 ~~total assessed value of newly created properties not assessed in the previous year's tax book for~~
13 ~~each class of property; (2) the resulting net assessed value of Class I property shall be multiplied~~
14 ~~by .01; the value of Class II by .02; and the values of Classes III and IV, each by .04; (3) total the~~
15 ~~current year's property tax revenue resulting from regular levies for the boards of education~~
16 ~~throughout this state and multiply the resulting sum by one hundred two percent: *Provided*, That~~
17 ~~the one hundred two percent figure shall be increased by the amount the boards of education's~~
18 ~~increased levy provided for in subsection (b), section eight, article one c of this chapter; (4) divide~~
19 ~~the total regular levy tax revenues, thus increased in subdivision (3) of this subsection, by the~~
20 ~~total weighted net assessed value as calculated in subdivision (2) of this subsection and multiply~~
21 ~~the resulting product by one hundred; the resulting number is the Class I regular levy rate, stated~~
22 ~~as cents per one hundred dollars of assessed value; and (5) the Class II rate is two times the~~
23 ~~Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding~~
24 ~~subdivision.~~

25 ~~An additional appraisal or valuation due to new construction or improvements, including~~
26 ~~beginning recovery of natural resources, to existing real property or newly acquired personal~~
27 ~~property shall not be an annual appraisal or general valuation within the meaning of this section,~~
28 ~~nor shall the assessed value of the improvements be included in calculating the new tax levy for~~
29 ~~purposes of this section. Special levies shall not be included in any calculations under this section.~~

30 ~~(b) After conducting a public hearing, the Legislature may, by act, increase the rate above~~
31 ~~the reduced rate required in subsection (a) of this section if an increase is determined to be~~
32 ~~necessary.~~

33 ~~(c) The State Tax Commissioner shall report to the Joint Committee on Government and~~
34 ~~Finance and the Legislative Oversight Commission on Education Accountability by the first day~~

35 of March of each year on the progress of assessors in each county in assessing properties at the
36 constitutionally required sixty percent of market value and the effects of increasing the limit on the
37 increase in total property tax revenues set forth in this section to two percent.

38 ~~(d)~~ *Growth County School Facilities Act. — Legislative findings. —*

39 The Legislature finds and declares that there has been, overall, a statewide decline in
40 enrollment in the public schools of this state; due to this decline, most public schools have ample
41 space for students, teachers and administrators; however, some counties of this state have
42 experienced significant increases in enrollment due to significant growth in those counties; that
43 those counties experiencing significant increases do not have adequate facilities to accommodate
44 students, teachers and administrators. Therefore, the Legislature finds that county boards of
45 education in those high-growth counties should have the authority to designate revenues
46 generated from the application of the regular school board levy due to new construction or
47 improvements placed in a Growth County School Facilities Act Fund be used for school facilities
48 in those counties to promote the best interests of this state's students.

49 ~~(1)~~ (a) For the purposes of this ~~subsection~~ section, "growth county" means any county that
50 has experienced an increase in second month net enrollment of fifty or more during any three of
51 the last five years, as determined by the State Department of Education.

52 ~~(2)~~ (b) The provisions of this ~~subsection~~ section shall only apply to any growth county, as
53 defined in ~~subdivision~~ subsection ~~(1)~~ (a) of this ~~subsection~~ section, that, by resolution of its county
54 board of education, chooses to use the provisions of this ~~subsection~~ section.

55 ~~(3)~~ (c) For any growth county, as defined in ~~subdivision~~ (1) subsection (a) of this
56 ~~subsection~~ section, that adopts a resolution choosing to use the provisions of this ~~subsection~~
57 section, pursuant to ~~subdivision~~ (2) subsection (b) of this ~~subsection~~ section, assessed values
58 resulting from additional appraisal or valuation due to new construction or improvements to
59 existing real property shall be designated as new property values and identified by the county
60 assessor. The statewide regular school board levy rate as established by the Legislature shall be

61 applied to the assessed value designated as new property values and the resulting property tax
62 revenues collected from application of the regular school board levy rate shall be placed in a
63 separate account designated as the Growth County School Facilities Act Fund. Revenues
64 deposited in the Growth County School Facilities Act Fund shall be appropriated by the county
65 board of education for construction, maintenance or repair of school facilities. Revenues in the
66 fund may be carried over for an indefinite length of time and may be used as matching funds for
67 the purpose of obtaining funds from the School Building Authority or for the payment of bonded
68 indebtedness incurred for school facilities. For any growth county choosing to use the provisions
69 of this subsection, estimated school board revenues generated from application of the regular
70 school board levy rate to new property values are not to be considered as local funds for purposes
71 of the computation of local share under the provisions of section eleven, article nine-a, chapter
72 eighteen of this code.

73 ~~(e) This section, as amended during the legislative session in the year two thousand four,~~
74 ~~shall be effective as to any regular levy rate imposed for the county boards of education for taxes~~
75 ~~due and payable on or after the first day of July, two thousand four. If any provision of this section~~
76 ~~is held invalid, the invalidity shall not affect other provisions or applications of this section which~~
77 ~~can be given effect without the invalid provision or its application and to this end the provisions of~~
78 ~~this section are declared to be severable.~~

~~**§11-8-6g. Effect on special levy rates when appraisal results in tax revenue
increase; public hearings.**~~

1 ~~(a) Until the first day of July, one thousand nine hundred ninety five, as to any special levy~~
2 ~~in effect prior to that date, and notwithstanding any other provision of law to the contrary, where~~
3 ~~any annual appraisal, triennial appraisal or general valuation of property would produce an~~
4 ~~assessment that would cause an increase of four percent or more in the total projected property~~
5 ~~tax revenues that would be realized were the special levy rates then in effect by the county~~

6 ~~commission, the municipalities or the county board of education to be imposed, the local levying~~
7 ~~body shall comply with subsection (b) of this section and may reduce the rate of special levy in~~
8 ~~accordance with the provisions of subsection (d) of this section until the first day of July, one~~
9 ~~thousand nine hundred ninety-five. After the first day of July, one thousand nine hundred ninety-~~
10 ~~five, each levying body shall adopt only the levy rate which is specified and approved in the levy~~
11 ~~ballot: *Provided*, That if the special levy ballot provision authorizes the levying body to reduce the~~
12 ~~rate of special levy, such rate may be reduced in accordance with the special levy ballot provision.~~
13 ~~An additional appraisal or valuation due to new construction or improvements to existing real~~
14 ~~property, including beginning recovery of natural resources, and newly acquired personal property~~
15 ~~shall not be an annual appraisal or general valuation within the meaning of this section, nor shall~~
16 ~~the assessed value of such improvements be included in calculating the new tax levy for purposes~~
17 ~~of this section.~~

18 ~~(b) Any local levying body projected to realize such increase greater than four percent~~
19 ~~shall conduct a public hearing no later than the twentieth day of March in the years one thousand~~
20 ~~nine hundred ninety four and one thousand nine hundred ninety five, which hearing may be held~~
21 ~~at the same time and place as the annual budget hearing. Notice of the public hearing and the~~
22 ~~meeting in which the levy rate shall be on the agenda shall be given at least seven days before~~
23 ~~the date for each public hearing by the publication of a notice in at least one newspaper of general~~
24 ~~circulation in such county or municipality: *Provided*, That a Class IV town or village as defined in~~
25 ~~section two, article one, chapter eight of this code, in lieu of the publication notice required by this~~
26 ~~subsection, may post no less than four notices of each public hearing, which posted notices shall~~
27 ~~contain the information required by the publication notice and which shall be in available, visible~~
28 ~~locations including the town hall. The notice shall be at least the size of one eighth page of a~~
29 ~~standard size newspaper or one fourth page of a tabloid size newspaper, and the headline in the~~
30 ~~advertisement shall be in a type no smaller than twenty four point. The publication notice shall be~~
31 ~~placed outside that portion, if any, of the newspaper reserved for legal notices and classified~~

32 ~~advertisements and shall also be published as a Class II-O legal advertisement in accordance~~
33 ~~with the provisions of article three, chapter fifty nine of this code. The publication area is the~~
34 ~~county. The notice shall be in the following form and contain the following information, in addition~~
35 ~~to such other information as the local governing body may elect to include:~~

36 ~~HEARING REGARDING SPECIAL LEVY RATES~~

37 ~~The (name of the local levying body) hereby gives notice that the special levy rate imposed by~~
38 ~~the (local levying body) causes an increase in property tax revenues due to increased~~
39 ~~valuations.~~

40 ~~1. Appraisal/Assessment Increase: Total assessed value of property, excluding additional~~
41 ~~assessments due to new or improved property, exceeds last year's total assessed value of~~
42 ~~property by percent.~~

43 ~~2. Current Year's Revenue Produced Under Special Levy:~~

44 ~~3. Projected Revenue Under Special Levy for Next Tax Year:~~

45 ~~4. Revenue Projected from New Property or Improvements: \$.....~~

46 ~~5. General areas in which new revenue is to be allocated:~~

47 ~~A public hearing on the issue of special levy rates will be held on (date and time) at~~
48 ~~(meeting place). A decision regarding the special levy rate will be made on (date and time) at~~
49 ~~(meeting place).~~

50 ~~Notwithstanding any other provision of this subsection to the contrary, for the year one~~
51 ~~thousand nine hundred ninety three only, any local levying body required to conduct a public~~
52 ~~hearing due to a four percent increase as set forth in this subsection projected for the next fiscal~~
53 ~~year shall hold the public hearing prior to the sixth day of May, shall only be required to publish a~~
54 ~~Class I legal advertisement in accordance with the provisions of article three, chapter fifty nine of~~
55 ~~this code, and need not provide such notice at least seven days before the date of the hearing as~~
56 ~~required in this subsection: *Provided*, That a Class IV town or village may provide notice as~~
57 ~~otherwise set forth in this subsection: *Provided, however*, That any public hearings held pursuant~~

58 ~~to the provisions of this section in the year one thousand nine hundred ninety three prior to the~~
59 ~~effective date of this section are hereby ratified and confirmed as having full force and effect:~~
60 ~~*Provided further,* That no county commission or municipality shall be required to hold a public~~
61 ~~hearing as required by this section during the year one thousand nine hundred ninety three for~~
62 ~~the fiscal year one thousand nine hundred ninety four.~~

63 ~~(c) All hearings are open to the public, and the local levying body shall permit persons~~
64 ~~desiring to be heard an opportunity to present oral testimony within such reasonable time limits~~
65 ~~as are determined by the governing body. A decision regarding the special levy rate shall be made~~
66 ~~within ten days of the hearing.~~

67 ~~(d) For the fiscal years beginning on the first day of July, one thousand nine hundred~~
68 ~~ninety three, ninety four and ninety five, as to any special levy in effect prior to the first day of~~
69 ~~July, one thousand nine hundred ninety five, a local levying body may reduce the rate of the~~
70 ~~special levy for all classes of property for the forthcoming tax year so as to cause such rate of~~
71 ~~special levy to produce no more than one hundred four percent of the previous year's projected~~
72 ~~property tax revenues from extending such special levy rates or such lesser reduction the local~~
73 ~~levying body considers adequate: *Provided,* That no levying body shall reduce any special levy if~~
74 ~~such levy rate has been covenanted or otherwise dedicated and is necessary to the payment of~~
75 ~~bonds or other obligations existing as of the effective date of this section: *Provided, however,* That~~
76 ~~nothing contained in this subsection shall be construed to limit the reduction of the levy rate when~~
77 ~~the terms of the special levy permit a lower reduction: *Provided further,* That this provision shall~~
78 ~~not restrict the ability of a local levying body to enact excess levies as authorized under existing~~
79 ~~statutory or constitutional provisions.~~

80 ~~(e) If any provision of this section is held invalid, such invalidity shall not affect other~~
81 ~~provisions or applications of this section which can be given effect without the invalid provision~~
82 ~~or its application and to this end the provisions of this section are declared to be severable.~~

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX.

§11-13A-26. Prospective balancing of tax rate on coal production.

1 (a) Notwithstanding anything contained in this article to the contrary, the tax on the
2 production of coal under section three of this article shall, from the effective date of this section,
3 be imposed at the following rates: all coal production taxed at 5% percent under section three of
4 this article shall be reduced by five equal parts annually beginning on July 1, 2017 until the coal
5 production is taxed at 2.5% percent under section three of this article.

6 (b) In the case of all coal production, the applicable rate of tax includes the thirty-five one
7 hundredths of one percent additional severance tax on coal imposed by the state for the benefit
8 of counties and municipalities as provided in section six of this article.

9 (c) Effective date. – Notwithstanding any other sections of this article, this section shall
10 apply to gross proceeds derived from the production of coal beginning on July 1, 2017. The
11 language of section three of this article, as in effect on the passage of the bill enacting this section
12 in the year 2017, shall apply to gross proceeds derived from the production of coal prior to July 1,
13 2017, and, with respect to such gross proceeds, shall be fully and completely preserved.

ARTICLE 13DD. FIXED INCOME CREDIT FOR LOW INCOME SENIOR CITIZENS.

§11-13DD-1 Fixed income credit for low income senior citizens.

1 For the tax years beginning on and after January 1, 2017, any resident of this state who
2 is a low income senior citizen shall be allowed a credit equal to the adjusted credit amount
3 determined in this article.

§11-13DD-2. Procedure for claiming credit; Limitation of amount paid.

1 (a) The credit available under this article may be claimed each year, and payment of the
2 same requested by a low-income senior citizen, by filing, within ninety days following the filing of
3 his or her federal income tax return for the year, a claim for credit on forms furnished by the state
4 Tax Commissioner who shall process a requisition for remittance by the State Treasurer of the
5 correct amounts of credit shown on properly completed and filed claims within the same time and

6 according to the same procedures, including the payment of applicable interest, as provided in
7 §11-10-14c of this code for refunds of personal income tax.

8 (b) No person may receive a credit pursuant to this section in excess of \$200: *Provided,*
9 That any person entitled to the credits against personal income tax authorized in sections twenty-
10 one, twenty-two or twenty-three of article twenty-one of this chapter, may also receive the credits
11 authorized by this article. The maximum amount of the credit authorized by this article shall be
12 reviewed annually by the Legislature to determine if an adjustment is necessary.

13 (c) Due to the administrative cost of processing, the credit authorized by this section may
14 not be paid if the amount of the credit is determined to be less than \$10.

§11-13DD-3. Definitions.

1 (a) For the purposes of this article, the term “adjusted credit amount” shall mean the
2 amount which is equal to one percent of the person’s adjusted gross income for the year, reduced
3 by four percent of that amount for every one percentage point by which such person’s adjusted
4 gross income exceeds one hundred twenty-five percent of the federal poverty guideline applicable
5 to such person as provided in this section.

6 (b) For the purposes of this article, the term “adjusted gross income” shall have the
7 meaning of that term used in the Internal Revenue Code.

8 (c) For the purposes of this article, the term “low income” means adjusted gross income
9 for the tax year that is one hundred fifty percent or less of the federal poverty guideline, based
10 upon the number of individuals in the family unit of which the low income senior citizen is a
11 member, all as determined annually by the United States Secretary of Health and Human
12 Services.

13 (d) For the purposes of this article, the term “low income senior citizen” means a resident
14 of this state whose federal adjusted gross income for the tax year meets the definition of “low
15 income” as defined in this section, and who has attained the age of sixty-five years: *Provided,*
16 That for all purposes of this article, the term “low income senior citizen” shall also mean and

17 include, as one person, those individuals who file joint federal income tax returns with their
18 spouses, whether one or both such spouses is a low income senior citizen, and whether either or
19 both spouses have attained the age of sixty-five years.

§11-13DD-4. Effective date.

1 This article shall take effect on January 1, 2017.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3. AMOUNT OF TAX; ALLOCATION OF TAX AND TRANSFERS.

1 (a) *Vendor to collect.* — For the privilege of selling tangible personal property or custom
2 software and for the privilege of furnishing certain selected services defined in sections two and
3 eight of this article, the vendor shall collect from the purchaser the tax as provided under this
4 article and article fifteen-b of this chapter, and shall pay the amount of tax to the tax commissioner
5 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 six cents on the dollar of sales or services, excluding gasoline and special
8 fuel sales, which remain taxable at the rate of five cents on the dollar of sales: Provided, That for
9 periods beginning on and after October 1, 2017, the rate of the tax shall be seven cents on the
10 dollar of sale or services, excluding gasoline and special fuel sales.

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

14 (1) On each sale, where the monetary consideration is from six cents to sixteen cents,
15 both inclusive, one cent.

16 (2) On each sale, where the monetary consideration is from seventeen cents to thirty-three
17 cents, both inclusive, two cents.

18 (3) On each sale, where the monetary consideration is from thirty-four cents to fifty cents,
19 both inclusive, three cents.

20 (4) On each sale, where the monetary consideration is from fifty-one cents to sixty-seven
21 cents, both inclusive, four cents.

22 (5) On each sale, where the monetary consideration is from sixty-eight cents to eighty-
23 four cents, both inclusive, five cents.

24 (6) On each sale, where the monetary consideration is from eighty-five cents to one dollar,
25 both inclusive, six cents.

26 (7) If the sale price is in excess of one dollar, six cents on each whole dollar of sale price,
27 and upon any fractional part of a dollar in excess of whole dollars as follows: One cent on the
28 fractional part of the dollar if less than seventeen cents; two cents on the fractional part of the
29 dollar if in excess of sixteen cents but less than thirty-four cents; three cents on the fractional part
30 of the dollar if in excess of thirty-three cents but less than fifty-one cents; four cents on the
31 fractional part of the dollar if in excess of fifty cents but less than sixty-eight cents; five cents on
32 the fractional part of the dollar if in excess of sixty-seven cents but less than eighty-five cents; and
33 six cents on the fractional part of the dollar if in excess of eighty-four cents. For example, the tax
34 on sales from one dollar and one cent to one dollar and sixteen cents, both inclusive, seven cents;
35 on sales from one dollar and seventeen cents to one dollar and thirty-three cents, both inclusive,
36 eight cents; on sales from one dollar and thirty-four cents to one dollar and fifty cents, both
37 inclusive, nine cents; on sales from one dollar and fifty-one cents to one dollar and sixty-seven
38 cents, both inclusive, ten cents; on sales from one dollar and sixty-eight cents to one dollar and
39 eighty-four cents, both inclusive, eleven cents and on sales from one dollar and eighty-five cents
40 to two dollars, both inclusive, twelve cents: *Provided*, That beginning the first day of January, two
41 thousand four, tax due under this article shall be calculated as provided in subsection (d) of this
42 subsection and this subsection (c) does not apply to sales made after the thirty-first day of
43 December, two thousand three.

44 (d) *Calculation of tax on fractional parts of a dollar after December 31, 2003.* — Beginning
45 the first day of January, two thousand four, the tax computation under subsection (b) of this
46 section shall be carried to the third decimal place, and the tax rounded up to the next whole cent
47 whenever the third decimal place is greater than four and rounded down to the lower whole cent
48 whenever the third decimal place is four or less. The vendor may elect to compute the tax due on
49 a transaction on a per item basis or on an invoice basis provided the method used is consistently
50 used during the reporting period.

51 (e) *No aggregation of separate sales transactions, exception for coin-operated devices.*
52 — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of
53 computation of the tax even though the sales are aggregated in the billing or payment therefor.
54 Notwithstanding any other provision of this article, coin-operated amusement and vending
55 machine sales shall be aggregated for the purpose of computation of this tax.

56 (f) *Rate of tax on certain mobile homes.* — Notwithstanding any provision of this article to
57 the contrary, after the thirty-first day of December, two thousand three, the tax levied on sales of
58 mobile homes to be used by the owner thereof as his or her principal year-round residence and
59 dwelling shall be an amount equal to six percent of fifty percent of the sales price: Provided, That
60 on and after October 1, 2017, the tax levied on sales of mobile homes, regardless of the use
61 thereof by the purchaser, shall be imposed at the rate of seven cents on each dollar of the sales
62 price.

63 (g) *Construction; custom software.* — After the thirty-first day of December, two thousand
64 three, whenever the words “tangible personal property” or “property” appear in this article, the
65 same shall also include the words “custom software”.

66 (h) *Computation of tax on sales of gasoline and special fuel.* — The method of computation
67 of tax provided in this section does not apply to sales of gasoline and special fuel.

§11-15-3a. Rate of tax on food and food ingredients intended for human consumption; reductions and cessations of tax.

1 (a) *Rate of tax on food and food ingredients.* — Notwithstanding any provision of this article
2 or article fifteen-a of this chapter to the contrary:

3 (1) *Rate reduction.* — The rate of tax on sales, purchases and uses of food and food
4 ingredients intended for human consumption after June 30, 2008, shall be three percent of its
5 sales price, as defined in section two, article fifteen-b of this chapter.

6 (2) *Additional rate reduction.* — The rate of tax on sales, purchases and uses of food and
7 food ingredients as defined in that section that is intended for human consumption after December
8 31, 2011, shall be two percent of its sales price, as defined in that section. After June 30, 2012,
9 the rate of tax on sales, purchases and uses of food and food ingredients as defined in that section
10 that is intended for human consumption shall be one percent of its sales price, as defined in that
11 section.

12 (3) *Contingent termination of tax on food.* — The tax on sales, purchases and uses of food
13 and food ingredients as defined in section two, article fifteen-b of this chapter that is intended for
14 human consumption shall cease after June 30, 2013, and no such tax shall be imposed on sales,
15 purchases and uses of food and food ingredients so defined: *Provided*, That the cessation of tax
16 after June 30, 2013, authorized by this subsection shall be suspended if the balance of funds as
17 of December 31, 2012, in the Revenue Shortfall Reserve Fund established in section twenty,
18 article two, chapter eleven-b of this code does not equal or exceed twelve and one-half percent
19 of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2012. Such
20 suspension shall terminate, and the cessation of tax shall proceed, beginning on July 1 of any
21 calendar year beginning after December 31, 2013, in which the balance of funds as of December
22 31 of the preceding fiscal year in said Revenue Shortfall Reserve Fund equals or exceeds twelve
23 and one-half percent of the General Revenue Fund budgeted for the immediately succeeding

24 fiscal year: Provided, however, that on and after October 1, 2017, the tax imposed under this
25 article and under article fifteen-a of this chapter, shall apply to sales, purchases and uses of food
26 and food ingredients intended for human consumption at the rate of three and one-half percent.

27 (b) *Calculation of tax on fractional parts of a dollar.* — The tax computation under this
28 section shall be carried to the third decimal place and the tax rounded up to the next whole cent
29 whenever the third decimal place is greater than four and rounded down to the lower whole cent
30 whenever the third decimal place is four or less. The seller may elect to compute the tax due on
31 a transaction on a per item basis or on an invoice basis provided the method used is consistently
32 used during the reporting period.

33 (c) *Federal Food Stamp and Women, Infants and Children programs, other exemptions.*
34 — Nothing in this section affects application of the exemption from tax provided in section nine of
35 this article for food purchased by an eligible person using food stamps, electronic benefits transfer
36 cards or vouchers issued by or pursuant to authorization of the United States Department of
37 Agriculture to individuals participating in the Federal Food Stamp Program, by whatever name
38 called, or the Women, Infants and Children (WIC) program, or application of any other exemption
39 from tax set forth in this article or article fifteen-a of this chapter.

§11-15-8. Furnishing of services included; exceptions.

1 The provisions of this article apply not only to selling tangible personal property and
2 custom software, but also to the furnishing of all services, except professional and personal
3 services, and except those services furnished by businesses subject to the control of the public
4 service commission when the service or the manner in which it is delivered is subject to regulation
5 by the public service commission: Provided, That notwithstanding anything in this code to the
6 contrary, on and after October 1, 2017, the regulated service of solid waste disposal, the licensed
7 services of barbering, manicuring, cosmetology, embalming and funeral directing, non-medical
8 personal care services and the providing of telecommunications services as defined in article
9 fifteen-b of this chapter, shall be subject to the tax imposed under this article. *Provided, however,*

10 That for the purpose of this section “non-medical personal care services” shall not mean any
11 services funded or reimbursed by Medicaid or Medicare.

§11-15-9. Exemptions.

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

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

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

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

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

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

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

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

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

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

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

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

48 (F) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

72 (G) The exemption allowed by this subdivision does not apply to sales of gasoline or
73 special fuel or to sales of tangible personal property or services to be used or consumed in the
74 generation of unrelated business income as defined in Section 513 of the Internal Revenue Code

75 of 1986, as amended. The exemption granted in this subdivision applies only to services,
76 equipment, supplies and materials used or consumed in the activities for which the organizations
77 qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to
78 purchases of gasoline or special fuel;

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

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

97 (9) Sales of tangible personal property to a person for the purpose of resale in the form of
98 tangible personal property: *Provided*, That sales of gasoline and special fuel by distributors and
99 importers is taxable except when the sale is to another distributor for resale: *Provided, however*,
100 That sales of building materials or building supplies or other property to any person engaging in

101 the activity of contracting, as defined in this article, which is to be installed in, affixed to or
102 incorporated by that person or his or her agent into any real property, building or structure is not
103 exempt under this subdivision;

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

105 ~~(11)~~ (10) Sales of drugs, durable medical goods, mobility-enhancing equipment and
106 prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical
107 purposes. The amendment to this subdivision shall apply to sales made after the thirty-first day
108 of December, two thousand three;

109 ~~(12)~~ (11) Sales of radio and television broadcasting time, preprinted advertising circulars
110 and newspaper and outdoor advertising space for the advertisement of goods or services;

111 ~~(13)~~ (12) Sales and services performed by day care centers;

112 ~~(14)~~ (13) Casual and occasional sales of property or services not conducted in a repeated
113 manner or in the ordinary course of repetitive and successive transactions of like character by a
114 corporation or organization which is exempt from tax under subdivision (6) of this subsection on
115 its purchases of tangible personal property or services. For purposes of this subdivision, the term
116 “casual and occasional sales not conducted in a repeated manner or in the ordinary course of
117 repetitive and successive transactions of like character” means sales of tangible personal property
118 or services at fundraisers sponsored by a corporation or organization which is exempt, under
119 subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases
120 when the fundraisers are of limited duration and are held no more than six times during any
121 twelve-month period and “limited duration” means no more than eighty-four consecutive hours:
122 *Provided*, That sales for volunteer fire departments and volunteer school support groups, with
123 duration of events being no more than eighty-four consecutive hours at a time, which are held no
124 more than eighteen times in a twelve-month period for the purposes of this subdivision are
125 considered “casual and occasional sales not conducted in a repeated manner or in the ordinary
126 course of repetitive and successive transactions of a like character”;

127 ~~(15)~~ (14) Sales of property or services to a school which has approval from the Board of
128 Trustees of the University System of West Virginia or the Board of Directors of the State College
129 System to award degrees, which has its principal campus in this state and which is exempt from
130 federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as
131 amended: *Provided*, That sales of gasoline and special fuel are taxable;

132 ~~(16)~~ (15) Sales of lottery tickets and materials by licensed lottery sales agents and lottery
133 retailers authorized by the state Lottery Commission, under the provisions of article twenty-two,
134 chapter twenty-nine of this code;

135 ~~(17)~~ (16) Leases of motor vehicles titled pursuant to the provisions of article three, chapter
136 seventeen-a of this code to lessees for a period of thirty or more consecutive days;

137 ~~(18)~~ (17) Notwithstanding the provisions of section eighteen or eighteen-b of this article or
138 any other provision of this article to the contrary, sales of propane to consumers for poultry house
139 heating purposes, with any seller to the consumer who may have prior paid the tax in his or her
140 price, to not pass on the same to the consumer, but to make application and receive refund of the
141 tax from the Tax Commissioner pursuant to rules which are promulgated after being proposed for
142 legislative approval in accordance with chapter twenty-nine-a of this code by the Tax
143 Commissioner;

144 ~~(19)~~ (18) Any sales of tangible personal property or services purchased and lawfully paid
145 for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, *et*
146 *seq.*, as amended, or with drafts issued through the West Virginia special supplement food
147 program for women, infants and children codified in 42 U. S. C. §1786;

148 ~~(20)~~ (19) Sales of tickets for activities sponsored by elementary and secondary schools
149 located within this state;

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

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

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

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

159 ~~(23)~~ (20) Dispensing of services performed by one corporation, partnership or limited
160 liability company for another corporation, partnership or limited liability company when the entities
161 are members of the same controlled group or are related taxpayers as defined in Section 267 of
162 the Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity
163 interests or membership interests possessing fifty percent or more of the total combined voting
164 power of all classes of the stock of a corporation, equity interests of a partnership or membership
165 interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock,
166 equity interests or membership interests possessing fifty percent or more of the value of the
167 corporation, partnership or limited liability company;

168 ~~(24)~~ (21) Food for the following are exempt:

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

173 (B) Food purchased or sold by a public or private college or university or by a student
174 organization officially recognized by the college or university to students enrolled at the college
175 or university when the sales are made on a contract basis so that a fixed price is paid for
176 consumption of food products for a specific period of time without respect to the amount of food

177 product actually consumed by the particular individual contracting for the sale and no money is
178 paid at the time the food product is served or consumed;

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

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

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

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

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

200 ~~(25)~~ (22) Sales of food by little leagues, midget football leagues, youth football or soccer
201 leagues, band boosters or other school or athletic booster organizations supporting activities for
202 grades kindergarten through twelve and similar types of organizations, including scouting groups

203 and church youth groups, if the purpose in selling the food is to obtain revenue for the functions
204 and activities of the organization and the revenues obtained from selling the food is actually used
205 in supporting or carrying on functions and activities of the groups: *Provided*, That the purchases
206 made by the organizations are not exempt as a purchase for resale;

207 ~~(26)~~ (23) Charges for room and meals by fraternities and sororities to their members:
208 *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for
209 resale;

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

211 ~~(28)~~ (24) Sales of tangible personal property or services to any person which this state is
212 prohibited from taxing under the laws of the United States or under the constitution of this state;

213 ~~(29)~~ (25) Sales of tangible personal property or services to any person who claims
214 exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the
215 provision of any other chapter of this code;

216 ~~(30)~~ (26) Charges for the services of opening and closing a burial lot;

217 ~~(34)~~ (27) Sales of livestock, poultry or other farm products in their original state by the
218 producer of the livestock, poultry or other farm products or a member of the producer's immediate
219 family who is not otherwise engaged in making retail sales of tangible personal property; and
220 sales of livestock sold at public sales sponsored by breeders or registry associations or livestock
221 auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed
222 without presenting or obtaining exemption certificates provided the farmer maintains adequate
223 records;

224 ~~(32)~~ (28) Sales of motion picture films to motion picture exhibitors for exhibition if the sale
225 of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by
226 this article and sales of coin-operated video arcade machines or video arcade games to a person
227 engaged in the business of providing the machines to the public for a charge upon which the tax
228 imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption

229 provided in this subdivision may be claimed by presenting to the seller a properly executed
230 exemption certificate;

231 ~~(33)~~ (29) Sales of aircraft repair, remodeling and maintenance services when the services
232 are to an aircraft operated by a certified or licensed carrier of persons or property, or by a
233 governmental entity, or to an engine or other component part of an aircraft operated by a
234 certificated or licensed carrier of persons or property, or by a governmental entity and sales of
235 tangible personal property that is permanently affixed or permanently attached as a component
236 part of an aircraft owned or operated by a certificated or licensed carrier of persons or property,
237 or by a governmental entity, as part of the repair, remodeling or maintenance service and sales
238 of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling
239 or maintenance of aircraft, aircraft engines or aircraft component parts for a certificated or licensed
240 carrier of persons or property or for a governmental entity;

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

243 ~~(35)~~ (30) Sales of services by individuals who babysit for a profit: *Provided*, That the gross
244 receipts of the individual from the performance of baby-sitting services do not exceed five
245 thousand dollars in a taxable year;

246 ~~(36)~~ (31) Sales of services by public libraries or by libraries at academic institutions or by
247 libraries at institutions of higher learning;

248 ~~(37)~~ (32) Commissions received by a manufacturer's representative;

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

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

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

254 and

255 ~~(C) The transfer of the results of the service activities is an indispensable part of the overall~~
256 ~~service.~~

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

261 ~~(39) (33)~~ Sales of property or services to persons within the state when those sales are
262 for the purposes of the production of value-added products: *Provided*, That the exemption granted
263 in this subdivision applies only to services, equipment, supplies and materials directly used or
264 consumed by those persons engaged solely in the production of value-added products: *Provided*,
265 *however*, That this exemption may not be claimed by any one purchaser for more than five
266 consecutive years, except as otherwise permitted in this section.

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

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

272 (B) Fruits into wine;

273 (C) Honey into wine;

274 (D) Wool into fabric;

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

276 (F) Milk into cheese;

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

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

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

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

281 ~~(40) Sales of music instructional services by a music teacher and artistic services or artistic~~
282 ~~performances of an entertainer or performing artist pursuant to a contract with the owner or~~
283 ~~operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility~~
284 ~~or any other business location in this state in which the public or a limited portion of the public~~
285 ~~may assemble to hear or see musical works or other artistic works be performed for the enjoyment~~
286 ~~of the members of the public there assembled when the amount paid by the owner or operator for~~
287 ~~the artistic service or artistic performance does not exceed three thousand dollars: *Provided*, That~~
288 ~~nothing contained herein may be construed to deprive private social gatherings, weddings or other~~
289 ~~private parties from asserting the exemption set forth in this subdivision. For the purposes of this~~
290 ~~exemption, artistic performance or artistic service means and is limited to the conscious use of~~
291 ~~creative power, imagination and skill in the creation of aesthetic experience for an audience~~
292 ~~present and in attendance and includes, and is limited to, stage plays, musical performances,~~
293 ~~poetry recitations and other readings, dance presentation, circuses and similar presentations and~~
294 ~~does not include the showing of any film or moving picture, gallery presentations of sculptural or~~
295 ~~pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio~~
296 ~~or television shows or any video or audio taped presentations or the sale or leasing of video or~~
297 ~~audio tapes, air shows or any other public meeting, display or show other than those specified~~
298 ~~herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales~~
299 ~~of tickets from the tax imposed in this article. The state Tax Commissioner shall propose a~~
300 ~~legislative rule pursuant to article three, chapter twenty-nine a of this code establishing definitions~~
301 ~~and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set~~
302 ~~forth herein: *Provided further*, That nude dancers or strippers may not be considered as~~
303 ~~entertainers for the purposes of this exemption;~~

304 ~~(41)~~ (34) Charges to a member by a membership association or organization which is
305 exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal
306 Revenue Code of 1986, as amended, for membership in the association or organization, including

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

323 ~~(42)~~ (35) Sales of governmental services or governmental materials by county assessors,
324 county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

325 ~~(43)~~ (36) Direct or subscription sales by the Division of Natural Resources of the magazine
326 currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the
327 magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

328 ~~(44)~~ (37) Sales of soap to be used at car wash facilities;

329 ~~(45)~~ (38) Commissions received by a travel agency from an out-of-state vendor;

330 ~~(46)~~ (38) The service of providing technical evaluations for compliance with federal and
331 state environmental standards provided by environmental and industrial consultants who have
332 formal certification through the West Virginia Department of Environmental Protection or the West

333 Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing
334 technical evaluations for compliance with federal and state environmental standards includes
335 those costs of tangible personal property directly used in providing such services that are
336 separately billed to the purchaser of such services and on which the tax imposed by this article
337 has previously been paid by the service provider;

338 ~~(47)~~ (39) Sales of tangible personal property and services by volunteer fire departments
339 and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4)
340 of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain
341 revenue for the functions and activities of the organization and the revenue obtained is exempt
342 from federal income tax and actually expended for that purpose;

343 ~~(48)~~ (40) Lodging franchise fees, including royalties, marketing fees, reservation system
344 fees or other fees assessed after the first day of December, one thousand nine hundred ninety-
345 seven, that have been or may be imposed by a lodging franchiser as a condition of the franchise
346 agreement; and

347 ~~(49)~~ (41) Sales of the regulation size United States flag and the regulation size West
348 Virginia flag for display.

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

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

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

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

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

370 (5) Sales of building materials or building supplies or other property to an organization
371 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended,
372 which are to be installed in, affixed to or incorporated by the organization or its agent into real
373 property or into a building or structure which is or will be used as permanent low-income housing,
374 transitional housing, an emergency homeless shelter, a domestic violence shelter or an
375 emergency children and youth shelter if the shelter is owned, managed, developed or operated
376 by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
377 1986, as amended; and

378 (6) Sales of construction and maintenance materials acquired by a second party for use
379 in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or
380 credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to
381 the Division of Highways for deposit into the State Road Fund of the state reimbursement for the
382 tax in the amount estimated under the provisions of this subdivision: *Provided, however*, That by
383 the fifteenth day of June of each fiscal year, the division shall provide to the Tax Department an

384 itemized listing of highways projects with the amount of funds expended for highway construction
385 and maintenance. The Commissioner of Highways shall request reimbursement of the tax based
386 on an estimate that forty percent of the total gross funds expended by the agency during the fiscal
387 period were for the acquisition of materials used for highway construction and maintenance. The
388 amount of the reimbursement shall be calculated at six percent of the forty percent.

ARTICLE 15. USE TAX.

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

1 (a) An excise tax is hereby levied and imposed on the use in this state of tangible personal
2 property, custom software or taxable services, to be collected and paid as provided in this article
3 or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the property
4 or taxable services, except as otherwise provided in this article: Provided, That for sales occurring
5 and services provided on and after October 1, 2017, the rate of tax imposed by this article shall
6 be seven percent of the purchase price of the property or taxable services, except as otherwise
7 provided in this article.

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

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

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

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

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

ARTICLE 21. PERSONAL INCOME TAX.

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

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

9 <u>If the West Virginia taxable income is:</u>	<u>The tax is:</u>
10 <u>Not over \$20,000</u>	<u>1.85% of the taxable income</u>
11 <u>Over \$20,000 but not over \$35,000</u>	<u>\$370.00 plus 3.65% of excess</u>

12 Over \$35,000 \$917.50 plus 5.45% of excess.

13 (b) Rate of tax on married individuals filing separate returns. — In the case of husband
14 and wife filing separate returns under this article for the taxable year, the tax imposed by section
15 three of this article on the West Virginia taxable income of each spouse shall be determined in
16 accordance with the following table:

17 <u>If the West Virginia taxable income is:</u>	<u>The tax is:</u>
18 <u>Not over \$10,000</u>	<u>1.85% of the taxable income</u>
19 <u>Over \$10,000 but not over \$17,500</u>	<u>\$185.00 plus 3.65% of excess</u>
20 <u>Over \$17,500</u>	<u>\$ 458,75 plus 5.45% of excess.</u>

21 (c) For the tax years beginning on and after January 1, 2019, the rates of tax imposed by
22 this article, in each of the income brackets shown in subsections (a) and (b) of this section, shall
23 be reduced by one-tenth of one percentage point for each \$50 million by which the actual
24 combined collections of the consumers sales and service tax imposed under article fifteen of this
25 chapter and of the use tax, imposed under article fifteen-a of this chapter, exceed \$1.8 billion for
26 the fiscal year ending six months prior to January 1 of each tax year, until the rates of the tax
27 imposed by this article are each zero percent: *Provided*, That once the rate of the tax imposed by
28 this article has been reduced pursuant to this subsection, that rate shall not again be raised:
29 *Provided*, further, That each and every provision of this article is repealed for all tax periods
30 beginning on and after January 1 of the first year in which the rate of the tax in each of the income
31 brackets shown in subsections (a) and (b) of this section is zero percent: *Provided, however*,
32 That tax liabilities, if any, arising for taxable periods prior to the date the tax is thus repealed, shall
33 be determined, administered, assessed and collected as if the tax imposed by this article had not
34 been repealed, and the rights and duties of taxpayers and the state shall be fully and completely
35 preserved.