

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2933

FISCAL
NOTE

BY MOORE, AMBLER, G. FOSTER, C. MILLER, ARVON,

MAYNARD AND SHOTT

[INTRODUCED MARCH 10, 2017; REFERRED

TO THE COMMITTEE ON FINANCE.]

1 A BILL to repeal §11-15-9k of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §11-15-2, §11-15-3, §11-15-3c, §11-15-8, §11-15-8a, §11-15-9 and §11-15-9i of
3 said code; to amend said code by adding thereto a new section, designated §11-15-3d;
4 and to amend and reenact §11-15A-2 and §11-15A-3 of said code, all relating to the
5 consumers sales and service taxes and use taxes generally; reducing the general rate of
6 taxation; providing for further reductions to the general rate of taxation in certain
7 circumstances; eliminating exemption for the rental of passenger vehicles by daily rental
8 vehicle business; imposing tax on sales of telecommunications services and ancillary
9 services; eliminating exemption for sales of personal services; eliminating exemption for
10 sales of professional services; eliminating exemption for sales of contracting services;
11 clarifying that sales of hookup, connection and installation services incidental to the sale
12 of tangible property are not exempt from tax; removing outdated language from the code
13 regarding an obsolete exemption related to contracting services; eliminating reduced rate
14 of taxation for sales of mobile homes and imposing tax on such sales at the general rate;
15 providing an exemption for sales of tangible property or services directly used or
16 consumed by contractor providing contracting services; eliminating exemption for sales of
17 services by day care centers; eliminating exemption for sales of electronic data processing
18 services and related software when purchased by an ultimate consumer; eliminating
19 exemption for tuition to attend educational summer camps; eliminating exemption for sales
20 of services for opening or closing a burial lot; eliminating exemption for sales of
21 membership or services provided by health and fitness organizations and related
22 programs; eliminating exemption for sales of primary opinion research when purchased
23 by an ultimate consumer; eliminating exemption for sales of instructional services by a
24 music teacher and certain artistic services; eliminating exemption for sales of services
25 providing evaluations for compliance with certain environmental laws when purchased by

26 an ultimate consumer; and deleting outdated language in the code relating to an obsolete
 27 annual sales tax holiday for energy efficient products.

Be it enacted by the Legislature of West Virginia:

1 That §11-15-9k of the Code of West Virginia, 1931, as amended, be repealed; that §11-
 2 15-2, §11-15-3, §11-15-3c, §11-15-8, §11-15-8a, §11-15-9 and §11-15-9i of said code be
 3 amended and reenacted; that said code be amended by adding thereto a new section, designated
 4 §11-15-3d; and that §11-15A-2 and §11-15A-3 of said code be amended and reenacted, all to
 5 read as follows:

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
 16 materials and work, for another (by a sole contractor, general contractor, prime contractor,

17 subcontractor or construction manager) in fulfillment of a contract for the construction, alteration,
18 repair, decoration or improvement of a new or existing building or structure, or any part thereof,
19 or for 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: *Provided, however, That nothing in this section exempts the sale of hookup, connection,*
53 *installation or other services incidental to the retail sale of tangible personal property from the tax*
54 *imposed by this article.* Examples of transactions that are excluded from the definition of
55 contracting pursuant to this subdivision include, but are not limited to, the sale of wall-to-wall
56 carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile
57 homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other
58 household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free-
59 standing industrial or commercial equipment and other similar items of tangible personal property.
60 Repairs made to the foregoing are within the definition of contracting if the repairs involve
61 permanently affixing to or improving real property or something attached thereto which extends
62 the life of the real property or something affixed thereto or allows or intends to allow the real
63 property or thing permanently attached thereto to remain in service for a year or longer; and

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

69 structure or to real property.

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

140 (ii) Tangible personal property, custom software or services, including equipment,
141 machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are
142 used immediately in the transmission or distribution of gas, water and electricity to the public, and
143 equipment, machinery, tools, repair parts and supplies used to keep in operation exempt
144 transmission or distribution devices, and these vehicles and their equipment as are specifically
145 designed and equipped for those purposes are exempt from the tax when used to keep a
146 transmission or distribution system in operation or repair. For purposes of this subsection,

147 transmission or distribution activities shall commence from the close of production at a production
148 plant or wellhead when a product is ready for transmission or distribution to the public and shall
149 conclude at the point where the product is received by the public;

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

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

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

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

165 (i) Heating and illumination of office buildings;

166 (ii) Janitorial or general cleaning activities;

167 (iii) Personal comfort of personnel;

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

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

171 (vi) An activity or function incidental or convenient to the activities of gas storage,
172 generation or production or sale of electric power, the provision of public utility service or the

173 operation of a utility business.

174 (6) "Gas storage" means the injection of gas into a storage reservoir or the storage of gas
175 for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir
176 engaged in by businesses subject to the business and occupation tax imposed by sections two
177 and two-e, article thirteen of this chapter.

178 (7) "General rate" refers to the current rate of the consumer sales and service tax as
179 provided in subsection (b), section three of this article.

180 ~~(7)~~ (8) "Generating or producing or selling of electric power" means the generation,
181 production or sale of electric power engaged in by businesses subject to the business and
182 occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

183 ~~(8)~~ (9) "Gross proceeds" means the amount received in money, credits, property or other
184 consideration from sales and services within this state, without deduction on account of the cost
185 of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses
186 may not be deducted, but any credit or refund made for goods returned may be deducted.

187 ~~(9)~~ (10) "Includes" and "including", when used in a definition contained in this article, does
188 not exclude other things otherwise within the meaning of the term being defined.

189 ~~(10)~~ (11) "Manufacturing" means a systematic operation or integrated series of systematic
190 operations engaged in as a business or segment of a business which transforms or converts
191 tangible personal property by physical, chemical or other means into a different form, composition
192 or character from that in which it originally existed.

193 ~~(11)~~ (12) "Person" means any individual, partnership, association, corporation, limited
194 liability company, limited liability partnership or any other legal entity, including this state or its
195 political subdivisions or an agency of either, or the guardian, trustee, committee, executor or
196 administrator of any person.

197 ~~(12)~~ (13) "Personal service" includes those: (A) Compensated by the payment of wages
198 in the ordinary course of employment; and (B) rendered to the person of an individual without, at

199 the same time, selling tangible personal property, such as nursing, barbering, shoe shining,
200 manicuring and similar services.

201 ~~(13)~~ (14) “Prepaid wireless calling service” means a telecommunications service that
202 provides the right to utilize mobile wireless service as well as other nontelecommunications
203 services, including the download of digital products delivered electronically, content and ancillary
204 services, which must be paid for in advance that is sold in predetermined units or dollars of which
205 the number decline with use in a known amount.

206 ~~(14)~~ (15) Production of natural resources.

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

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

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

225 concept.

226 (D) "Production of natural resources" does not include the performance or furnishing of
227 work, or materials or work, in fulfillment of a contract for the construction, alteration, repair,
228 decoration or improvement of a new or existing building or structure, or any part thereof, or for
229 the alteration, improvement or development of real property, by persons other than those
230 otherwise directly engaged in the activities specifically set forth in this subdivision as "production
231 of natural resources".

232 ~~(15)~~ (16) "Providing a public service or the operating of a utility business" means the
233 providing of a public service or the operating of a utility by businesses subject to the business and
234 occupation tax imposed by sections two and two-d, article thirteen of this chapter.

235 ~~(16)~~ (17) "Purchaser" means a person who purchases tangible personal property, custom
236 software or a service taxed by this article.

237 ~~(17)~~ (18) "Sale", "sales" or "selling" includes any transfer of the possession or ownership
238 of tangible personal property or custom software for a consideration, including a lease or rental,
239 when the transfer or delivery is made in the ordinary course of the transferor's business and is
240 made to the transferee or his or her agent for consumption or use or any other purpose. "Sale"
241 also includes the furnishing of a service for consideration. Notwithstanding anything to the
242 contrary in this code, effective after June 30, 2008, "sale" also includes the furnishing of prepaid
243 wireless calling service for consideration.

244 ~~(18)~~ (19) "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 or custom software, but does not include contracting,
247 personal services or the services rendered by an employee to his or her employer or any service
248 rendered for resale: *Provided*, That the term "service" or "selected service" does not include
249 payments received by a vendor of tangible personal property as an incentive to sell a greater
250 volume of such tangible personal property under a manufacturer's, distributor's or other third

251 party's marketing support program, sales incentive program, cooperative advertising agreement
252 or similar type of program or agreement, and these payments are not considered to be payments
253 for a "service" or "selected service" rendered, even though the vendor may engage in attendant
254 or ancillary activities associated with the sales of tangible personal property as required under the
255 programs or agreements.

256 ~~(19)~~ (20) "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)~~ (21) "Tax" includes all taxes, additions to tax, interest and penalties levied under this
261 article or article ten of this chapter.

262 ~~(21)~~ (22) "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)~~ (23) "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)~~ (24) "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)~~ (25) "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)~~ (26) "Ultimate consumer" or "consumer" means a person who uses or consumes
276 services or personal property.

277 ~~(26)~~ (27) “Vendor” means any person engaged in this state in furnishing services taxed by
278 this article or making sales of tangible personal property or custom software. “Vendor” and “seller”
279 are used interchangeably in this article.

280 (c) *Additional definitions.* -- Other terms used in this article are defined in article fifteen-b
281 of this chapter, which definitions are incorporated by reference into article fifteen of this chapter.
282 Additionally, other sections of this article may define terms primarily used in the section in which
283 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) (1) Amount of tax. -- The general consumer sales and service tax imposed by this
7 article shall be at the rate of 6¢ on the dollar of sales or services, excluding gasoline and special
8 fuel sales, which remain taxable at the rate of 5¢ on the dollar of sales. Beginning on January 1,
9 2018, the general consumer sales and service tax imposed by this article shall be at the rate of
10 5.5¢ on the dollar of sales or services, excluding gasoline and special fuel sales, which remain
11 taxable at the rate of 5¢ on the dollar of sales.

12 (2) On August 1, 2019 and each August 1 thereafter through August 1, 2028, the Tax
13 Commissioner shall determine the following:

14 (A) The “general consumer sales tax base” by dividing the total general consumer sales
15 taxes collected in the prior fiscal year by the rate of tax in effect on July 1 of that fiscal year;

16 (B) The “prospective tax rate” by subtracting 0.25¢ from the current tax rate;

17 (C) The “prospective tax revenue” by multiplying the general consumer sales tax base by
18 the prospective tax rate;

19 (D) The “fiscal year 2017 benchmark tax revenue” by increasing the general consumer
20 sales tax revenue collected during the fiscal year ending June 30, 2017, by the percentage
21 increase in the Consumer Price Index for All Urban Consumers as published by the United States
22 Department of Labor between June 30, 2017, and June 30 of the current year; and

23 (E) The “difference” by subtracting the Fiscal Year 2017 benchmark tax revenue from the
24 prospective tax revenue.

25 (3)(A) If the difference as determined in subdivision (2) of this subsection is greater than
26 zero, then the rate of the general consumer sales and service tax imposed by this article on the
27 dollar of sales or services then in effect shall be reduced by twenty-five hundredths of a cent,
28 effective on and after January 1 of the next calendar year.

29 (B) In the event a rate reduction is required by operation of this subsection, the Tax
30 Commissioner shall give notification of the reduced rate of this tax imposed by this article at least
31 one hundred twenty days in advance of the January 1 upon which the reduced rate will become
32 effective by filing notice of the same in the State Register and by other means as the Tax
33 Commissioner considers reasonable.

34 (C) In no event may the operation of this subsection reduce the general rate below 5¢ on
35 the dollar of sales or services.

36 (D) In no event may the rate be reduced by operation of this subsection after January 1,
37 2029: *Provided*, That a reduced rate in effect prior to January 1, 2029, pursuant to this subdivision,
38 shall remain in effect after that date.

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

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

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

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

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

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

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

48 (7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any
49 fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the
50 dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢;
51 3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional
52 part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in
53 excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For
54 example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33,
55 both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67,
56 both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to
57 \$2, both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall
58 be calculated as provided in subsection (d) of this subsection and this subsection (c) does not
59 apply to sales made after December 31, 2003.

60 (d) *Calculation of tax on fractional parts of a dollar after December 31, 2003.* -- Beginning
61 January 1, 2004, the tax computation under subsection (b) of this section shall be carried to the
62 third decimal place, and the tax rounded up to the next whole cent whenever the third decimal
63 place is greater than four and rounded down to the lower whole cent whenever the third decimal
64 place is four or less. The vendor may elect to compute the tax due on a transaction on a per item
65 basis or on an invoice basis provided the method used is consistently used during the reporting
66 period.

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

71 machine sales shall be aggregated for the purpose of computation of this tax.

72 (f) *Rate of tax on certain mobile homes.* -- Notwithstanding any provision of this article to
73 the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the
74 owner thereof as his or her principal year-round residence and dwelling shall be an amount equal
75 to six percent of fifty percent of the sales price. Beginning on January 1, 2018, sales of mobile
76 homes to be used by the owner thereof as his or her principal year-round residence and dwelling
77 shall be at taxed at the general rate.

78 (g) *Construction; custom software.* -- After December 31, 2003, whenever the words
79 “tangible personal property” or “property” appear in this article, the same shall also include the
80 words “custom software”.

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

**§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of
motor vehicle purchased out of state; definition of sale; definition of motor vehicle;
exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to
highways; legislative and emergency rules.**

1 (a) Notwithstanding any provision of this article or article fifteen-a of this chapter to the
2 contrary, beginning on July 1, 2008, all motor vehicle sales to West Virginia residents shall be
3 subject to the consumers sales tax imposed by this article.

4 (b) *Rate of tax on motor vehicles.* -- Notwithstanding any provision of this article or article
5 fifteen-a of this chapter to the contrary, the rate of tax on the sale and use of a motor vehicle shall
6 be five percent of its sale price, as defined in section two, article fifteen-b of this chapter: *Provided,*
7 That so much of the sale price or consideration as is represented by the exchange of other
8 vehicles on which the tax imposed by this section or section four, article three, chapter seventeen-
9 a of this code has been paid by the purchaser shall be deducted from the total actual sale price
10 paid for the motor vehicle, whether the motor vehicle be new or used.

11 (c) *Motor vehicles purchased out of state.* -- Notwithstanding this article or article fifteen-
12 a to the contrary, the tax imposed by this section shall apply to all motor vehicles, used as defined
13 by section one, article fifteen-a of this chapter, within this state, regardless of whether the vehicle
14 was purchased in a state other than West Virginia.

15 (d) *Definition of sale.* -- Notwithstanding any provision of this article or article fifteen-a of
16 this chapter to the contrary, for purposes of this section, “sale”, “sales” or “selling” means any
17 transfer or lease of the possession or ownership of a motor vehicle for consideration, including
18 isolated transactions between individuals not being made in the ordinary course of repeated and
19 successive business and also including casual and occasional sales between individuals not
20 conducted in a repeated manner or in the ordinary course of repetitive and successive
21 transactions.

22 (e) *Definition of motor vehicle.* -- For purposes of this section, “motor vehicle” means every
23 propellable device in or upon which any person or property is or may be transported or drawn
24 upon a highway including, but not limited to: Automobiles; buses; motor homes; motorcycles;
25 motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck tractors and road
26 tractors having a weight of less than fifty-five thousand pounds; trailers, semitrailers, full trailers,
27 pole trailers and converter gear having a gross weight of less than two thousand pounds; and
28 motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor homes;
29 except that the term “motor vehicle” does not include: Modular homes, manufactured homes,
30 mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the
31 highways but primarily designed for habitation and occupancy; devices operated regularly for the
32 transportation of persons for compensation under a certificate of convenience and necessity or
33 contract carrier permit issued by the Public Service Commission; mobile equipment as defined in
34 section one, article one, chapter seventeen-a of this code; special mobile equipment as defined
35 in section one, article one, chapter seventeen-a of this code; trucks, truck tractors and road
36 tractors having a gross weight of fifty-five thousand pounds or more; trailers, semitrailers, full

37 trailers, pole trailers and converter gear having weight of two thousand pounds or greater:
38 *Provided*, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of
39 this code, the exemption from tax under this section for mobile equipment as defined in section
40 one, article one, chapter seventeen-a of this code; special mobile equipment defined in section
41 one, article one, chapter seventeen-a of this code; Class B trucks, truck tractors and road tractors
42 registered at a gross weight of fifty-five thousand pounds or more; and Class C trailers,
43 semitrailers, full trailers, pole trailers and converter gear having weight of two thousand pounds
44 or greater does not subject the sale or purchase of the vehicle to the consumer sales and service
45 tax imposed by section three of this article.

46 (f) *Exemptions.* -- Notwithstanding any other provision of this code to the contrary, the tax
47 imposed by this section shall not be subject to any exemption in this code other than the following:

48 (1) The tax imposed by this section does not apply to any passenger vehicle offered for
49 rent in the normal course of business by a daily passenger rental car business as licensed under
50 the provisions of article six-d, chapter seventeen-a of this code. Beginning on January 1, 2018,
51 the tax imposed by this article shall apply to any passenger vehicle offered for rent in the normal
52 course of business by a daily passenger rental car business as licensed under the provisions of
53 article six-d, chapter seventeen-a of this code. For purposes of this section, a daily passenger car
54 means a motor vehicle having a gross weight of eight thousand pounds or less and is registered
55 in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed
56 a tax of not less than \$1 nor more than \$1.50 for each day or part of the rental period. The
57 Commissioner of Motor Vehicles shall propose an emergency rule in accordance with the
58 provisions of article three, chapter twenty-nine-a of this code to establish this tax.

59 (2) The tax imposed by this section does not apply where the motor vehicle has been
60 acquired by a corporation, partnership or limited liability company from another corporation,
61 partnership or limited liability company that is a member of the same controlled group and the
62 entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by

63 this section. For the purposes of this section, control means ownership, directly or indirectly, of
64 stock or equity interests possessing fifty percent or more of the total combined voting power of all
65 classes of the stock of a corporation or equity interests of a partnership or limited liability company
66 entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty
67 percent or more of the value of the corporation, partnership or limited liability company.

68 (3) The tax imposed by this section does not apply where motor vehicle has been acquired
69 by a senior citizen service organization which is exempt from the payment of income taxes under
70 the United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3) and which is recognized to
71 be a bona fide senior citizen service organization by the Bureau of Senior Services existing under
72 the provisions of article five, chapter sixteen of this code.

73 (4) The tax imposed by this section does not apply to any active duty military personnel
74 stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from
75 the date the person returns to this state.

76 (5) The tax imposed by this section does not apply to motor vehicles acquired by registered
77 dealers of this state for resale only.

78 (6) The tax imposed by this section does not apply to motor vehicles acquired by this state
79 or any political subdivision thereof or by any volunteer fire department or duly chartered rescue
80 or ambulance squad organized and incorporated under the laws of this state as a nonprofit
81 corporation for protection of life or property.

82 (7) The tax imposed by this section does not apply to motor vehicles acquired by an urban
83 mass transit authority, as defined in article twenty-seven, chapter eight of this code, or a nonprofit
84 entity exempt from federal and state income tax under the Internal Revenue Code for the purpose
85 of providing mass transportation to the public at large or designed for the transportation of persons
86 and being operated for the transportation of persons in the public interest.

87 (8) The tax imposed by this section does not apply to the registration of a vehicle owned
88 and titled in the name of a resident of this state if the applicant:

89 (A) Was not a resident of this state at the time the applicant purchased or otherwise
90 acquired ownership of the vehicle;

91 (B) Presents evidence as the Commissioner of Motor Vehicles may require of having titled
92 the vehicle in the applicant's previous state of residence;

93 (C) Has relocated to this state and can present such evidence as the Commissioner of
94 Motor Vehicles may require to show bona fide residency in this state; and

95 (D) Makes application to the Division of Motor Vehicles for a title and registration and pays
96 all other fees required by chapter seventeen-a of this code within thirty days of establishing
97 residency in this state as prescribed in subsection (a), section one-a of this article.

98 (9) On and after January 1, 2009, the tax imposed by this section does not apply to Class
99 B trucks, truck tractors and road tractors registered at a gross weight of fifty-five thousand pounds
100 or more or to Class C trailers, semitrailers, full trailers, pole trailers and converter gear having a
101 weight of two thousand pounds or greater. If an owner of a vehicle has previously titled the vehicle
102 at a declared gross weight of fifty-five thousand pounds or more and the title was issued without
103 the payment of the tax imposed by this section, then before the owner may obtain registration for
104 the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to
105 the commissioner the exempted registration, the exempted certificate of title and pay the tax
106 imposed by this section based upon the current market value of the vehicle.

107 (10) The tax imposed by this section does not apply to vehicles leased by residents of
108 West Virginia. On or after January 1, 2009, a tax is imposed upon the monthly payments for the
109 lease of any motor vehicle leased under a written contract of lease by a resident of West Virginia
110 for a contractually specified continuous period of more than thirty days, which tax is equal to five
111 percent of the amount of the monthly payment, applied to each payment, and continuing for the
112 entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles
113 on a monthly basis by the lessor of the vehicle. Leases of thirty days or less are taxable under
114 the provisions of this article and article fifteen-a of this chapter without reference to this section.

115 (g) *Division of Motor Vehicles to collect.* -- Notwithstanding any provision of this article,
116 article fifteen-a and article ten of this chapter to the contrary, the Division of Motor Vehicles shall
117 collect the tax imposed by this section: *Provided,* That such tax is imposed upon the monthly
118 payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is
119 equal to five percent of the amount of the monthly payment, applied to each payment, and
120 continuing for the entire term of the initial lease period. The tax shall be remitted to the Division
121 of Motor Vehicles on a monthly basis by the lessor of the vehicle.

122 (h) *Dedication of tax to highways.* -- Notwithstanding any provision of this article or article
123 fifteen-a of this chapter to the contrary, all taxes collected pursuant to this section, after deducting
124 the amount of any refunds lawfully paid, shall be deposited in the state Road Fund in the state
125 Treasury and expended by the Commissioner of Highways for design, maintenance and
126 construction of roads in the state highway system.

127 (i) *Legislative rules; emergency rules.* -- Notwithstanding any provision of this article,
128 article fifteen-a and article ten of this chapter to the contrary, the Commissioner of Motor Vehicles
129 shall promulgate legislative rules explaining and implementing this section, which rules shall be
130 promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code
131 and should include a minimum taxable value and set forth instances when a vehicle is to be taxed
132 at fair market value rather than its purchase price. The authority to promulgate rules includes
133 authority to amend or repeal those rules. If proposed legislative rules for this section are filed in
134 the state Register before June 15, 2008, those rules may be promulgated as emergency
135 legislative rules as provided in article three, chapter twenty-nine-a of this code.

136 (j) Notwithstanding any other provision of this code, effective January 1, 2009, no
137 municipal sales or use tax or local sales or use tax or special downtown redevelopment district
138 excise tax or special district excise tax shall be imposed under article twenty-two, chapter seven
139 of this code or article thirteen, chapter eight of this code or article thirteen-b of said chapter or
140 article thirty-eight of said chapter or any other provision of this code, except this section, on sales

141 of motor vehicles as defined in this article or on any tangible personal property excepted or
142 exempted from tax under this section. Nothing in this subsection shall be construed to prevent
143 the application of the municipal business and occupation tax on motor vehicle retailers and leasing
144 companies.

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

1 (a) Notwithstanding any other provision of this code, on and after January 1, 2018,
2 telecommunications service and ancillary services, as defined in article fifteen-b of this chapter,
3 shall be subject to the tax imposed by this article: *Provided*, That payment of the tax imposed
4 under this article on prepaid wireless services is sufficient to fulfill the mandate of this section,
5 and prepaid wireless services shall not be subjected to double taxation under this article:
6 *Provided, however*, That this section shall not be interpreted to prevent imposition of any other
7 lawfully imposed municipal tax or fee or any other tax or fee lawfully imposed under any state or
8 federal law, or the laws of any subdivision thereof on such prepaid wireless services.

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

12 (c) The sale of telecommunications service and ancillary services on which tax is imposed
13 by this section shall be subject to sourcing rules of the Streamlined Sales Tax Agreement as
14 defined in article fifteen-b of this chapter.

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

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

1 (a) 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.

6 **(b) Beginning on January 1, 2018, personal services are subject to the tax imposed under**
7 **this article.**

8 **(c) Beginning on January 1, 2018, professional services purchased by an ultimate**
9 **consumer are subject to the tax imposed by this article.**

§11-15-8a. Contractors.

1 (a) The provisions of this article shall not apply to contracting services. However,
2 purchases by a contractor of tangible personal property or taxable services for use or
3 consumption in the providing of a contracting service shall be taxable beginning March 1, 1989,
4 except as otherwise provided in this article.

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

9 ~~(1) Tangible personal property or taxable services purchased by a contractor on or after~~
10 ~~said first day of March in fulfillment of a written contract for contracting, as defined in section two~~
11 ~~of this article, that was executed and legally binding on the parties thereto on or before February~~
12 ~~15, 1989; or in fulfillment of a written contract entered into after February 15 pursuant to a written~~
13 ~~bid for contracting that was made on or before February 15 that was binding on the contractor,~~
14 ~~but only to the extent that the bid is subsequently incorporated into a written contract; or~~

15 ~~(2) Tangible personal property or taxable services purchased by a contractor on or after~~

16 ~~March 1 pursuant to a written contract executed on or before February 15, 1989, to purchase in~~
17 ~~specified quantities identified tangible personal property or specified taxable services; or~~

18 ~~(3) Tangible personal property or taxable services purchased by a contractor for~~
19 ~~consumption or use in fulfillment of a written contract entered into before September 1, 1989,~~
20 ~~when such contract is for the construction of a new improvement to real property the construction~~
21 ~~or operation of which was approved by a federal or state regulatory body prior to February 1,~~
22 ~~1989, or pursuant to a federal grant awarded prior to such first day of February.~~

23 (b) Beginning on January 1, 2018, the sale of contracting services shall be subject to the
24 tax imposed by this article.

25 (c) Beginning on January 1, 2018, the sale of tangible personal property or services to a
26 contractor that are directly used or consumed in the provision of contracting services are exempt
27 from the tax imposed by this article.

28 ~~(e)~~ (d) Renewals and extensions. -- A renewal of any contract shall constitute a new
29 contract for purposes of this section, and the date of entry into a contract renewal by the parties,
30 the date or dates of tender of consideration and the time of performance of any contractual
31 obligations under a renewed contract shall be treated as the dates for determining application of
32 this section to the renewed contract. Extensions of time granted or agreed upon by the parties to
33 a contract for performance of the contract or for tender of consideration under the contract shall
34 not be treated as contract renewals. Contracts to which such extensions apply shall be treated
35 under these transition rules as if the original contractual provisions for performance and tender of
36 consideration remain in effect.

37 ~~(d)~~ (e) Definitions. -- For purposes of this section:

38 (1) The term "contract" or "contracts" means written agreements reciting or setting forth a
39 fixed price consideration or a consideration based upon cost plus a stated percentage or a stated
40 monetary increment. This term shall not mean or include ongoing sales contracts, contracts
41 whereby any element of the consideration or the property or services sold or to be rendered in

42 performance of the contract are undefined, or determined, as to either nature or quantity,
43 subsequent to the making of the contract, or any open-ended contract.

44 (2) The term "contract renewal" or "renewal" means a covenant or agreement entered into
45 or assumed by parties which have a current contractual relation or which have had a past
46 contractual relation, whereby the parties agree to incur obligations beyond those which they were,
47 or would have been, required, at the minimum, to carry out under their current or past contractual
48 relation.

§11-15-9. Exemptions.

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

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

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

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

19 work;

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

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

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

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

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

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

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

44 (E) A youth organization, such as the Girl Scouts of the United States of America, the Boy

45 Scouts of America or the YMCA Indian Guide/Princess Program and the local affiliates thereof,
46 which is organized and operated exclusively for charitable purposes and has as its primary
47 purpose the nonsectarian character development and citizenship training of its members;

48 (F) For purposes of this subsection:

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

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

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

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

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

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

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

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

70 (iii) The term "membership fee" does not include any amounts paid for tangible personal

71 property or specific services rendered to members by the corporation or organization;

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

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

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

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

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

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

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

110 (13) Sales and services performed by day care centers: *Provided, That beginning on*
111 *January 1, 2018, sales and services performed by day care centers shall be subject to the tax*
112 *imposed by this article;*

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 to award degrees, which has its principal campus in this state and which is exempt from
131 federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as
132 amended: *Provided*, That sales of gasoline and special fuel are taxable;

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

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

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

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

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

151 (21) Sales of electronic data processing services and related software: Provided, That
152 beginning on January 1, 2018, sales of electronic data processing services and related software
153 to an ultimate consumer are subject to the tax imposed by this article: Provided, however, That,
154 for 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) Tuition charged for attending educational summer camps: Provided, That beginning
162 on January 1, 2018, tuition for attending educational summer camps shall be subject to the tax
163 imposed by this article;

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

173 (24) Food for the following are exempt:

174 (A) Food purchased or sold by a public or private school, school-sponsored student

175 organizations or school-sponsored parent-teacher associations to students enrolled in the school
176 or to employees of the school during normal school hours; but not those sales of food made to
177 the general public;

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

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

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

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

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

200 (G) Food sold by volunteer fire departments and rescue squads that are exempt from

201 federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
202 amended, when the purpose of the sale is to obtain revenue for the functions and activities of the
203 organization and the revenue obtained is exempt from federal income tax and actually expended
204 for that purpose;

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

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

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

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

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

220 (30) Charges for the services of opening and closing a burial lot: *Provided*, That beginning
221 on January 1, 2018, charges for the services of opening and closing a burial lot shall be subject
222 to the tax imposed by this article;

223 (31) Sales of livestock, poultry or other farm products in their original state by the producer
224 of the livestock, poultry or other farm products or a member of the producer's immediate family
225 who is not otherwise engaged in making retail sales of tangible personal property; and sales of
226 livestock sold at public sales sponsored by breeders or registry associations or livestock auction

227 markets: *Provided*, That the exemptions allowed by this subdivision may be claimed without
228 presenting or obtaining exemption certificates provided the farmer maintains adequate records;

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

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

246 (34) Charges for memberships or services provided by health and fitness organizations
247 relating to personalized fitness programs: *Provided*, That beginning on January 1, 2018, charges
248 for memberships or services provided by health and fitness organizations relating to personalized
249 fitness programs shall be subject to the tax imposed by this article;

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

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

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

256 (38)(A) Sales of primary opinion research services when:

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

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

262 ~~(C)~~ (iii) The transfer of the results of the service activities is an indispensable part of the
263 overall service.

264 (B) Beginning on January 1, 2018, all sales of primary opinion research services to an
265 ultimate consumer shall be subject to the tax imposed by this article.

266 (C) For the purpose of this subdivision, the term "primary opinion research" means original
267 research in the form of telephone surveys, mall intercept surveys, focus group research, direct
268 mail surveys, personal interviews and other data collection methods commonly used for
269 quantitative and qualitative opinion research studies;

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

276 For the purpose of this subdivision, the term "value-added product" means the following
277 products derived from processing a raw agricultural product, whether for human consumption or
278 for other use. For purposes of this subdivision, the following enterprises qualify as processing raw

279 agricultural products into value-added products: Those engaged in the conversion of:

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

281 (B) Fruits into wine;

282 (C) Honey into wine;

283 (D) Wool into fabric;

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

285 (F) Milk into cheese;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

305 or television shows or any video or audio taped presentations or the sale or leasing of video or
306 audio tapes, air shows or any other public meeting, display or show other than those specified
307 herein: *Provided, however,* That nothing contained herein may be construed to exempt the sales
308 of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a
309 legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions
310 and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set
311 forth herein: *Provided further,* That nude dancers or strippers may not be considered as
312 entertainers for the purposes of this exemption.

313 (B) Beginning on January 1, 2018, all sales of music instructional services by a music
314 teacher and artistic services or artistic performances of an entertainer or performing artist
315 pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar,
316 tavern, sports or other entertainment facility or any other business location in this state in which
317 the public or a limited portion of the public may assemble to hear or see musical works or other
318 artistic works be performed for the enjoyment of the members of the public there assembled shall
319 be subject to the tax imposed by this article.

320 (41) Charges to a member by a membership association or organization which is exempt
321 from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
322 of 1986, as amended, for membership in the association or organization, including charges to
323 members for newsletters prepared by the association or organization for distribution primarily to
324 its members, charges to members for continuing education seminars, workshops, conventions,
325 lectures or courses put on or sponsored by the association or organization, including charges for
326 related course materials prepared by the association or organization or by the speaker or
327 speakers for use during the continuing education seminar, workshop, convention, lecture or
328 course, but not including any separate charge or separately stated charge for meals, lodging,
329 entertainment or transportation taxable under this article: *Provided,* That the association or
330 organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment

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

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

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

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

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

346 (46)(A) The service of providing technical evaluations for compliance with federal and
347 state environmental standards provided by environmental and industrial consultants who have
348 formal certification through the West Virginia Department of Environmental Protection or the West
349 Virginia Bureau for Public Health or both.

350 (B) Beginning on January 1, 2018, the service of providing technical evaluations for
351 compliance with federal and state environmental standards provided by environmental and
352 industrial consultants who have formal certification through the West Virginia Department of
353 Environmental Protection or the West Virginia Bureau for Public Health shall be subject to the tax
354 imposed by this article when the service is purchased by an ultimate consumer.

355 (C) For purposes of this exemption, the service of providing technical evaluations for
356 compliance with federal and state environmental standards includes those costs of tangible

357 personal property directly used in providing such services that are separately billed to the
358 purchaser of such services and on which the tax imposed by this article has previously been paid
359 by the service provider;

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

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

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

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

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

379 (2) Sales of services, machinery, supplies and materials directly used or consumed in the
380 activities of manufacturing, transportation, transmission, communication, production of natural
381 resources, gas storage, generation or production or selling electric power, provision of a public
382 utility service or the operation of a utility service or the operation of a utility business, in the

383 businesses or organizations named in this subdivision and does not apply to purchases of
384 gasoline or special fuel;

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

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

391 (5) Sales of building materials or building supplies or other property to an organization
392 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended,
393 which are to be installed in, affixed to or incorporated by the organization or its agent into real
394 property or into a building or structure which is or will be used as permanent low-income housing,
395 transitional housing, an emergency homeless shelter, a domestic violence shelter or an
396 emergency children and youth shelter if the shelter is owned, managed, developed or operated
397 by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
398 1986, as amended; and

399 (6) Sales of construction and maintenance materials acquired by a second party for use
400 in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or
401 credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to
402 the Division of Highways for deposit into the state Road Fund of the state reimbursement for the
403 tax in the amount estimated under the provisions of this subdivision: *Provided, however*, That by
404 June 15 of each fiscal year, the division shall provide to the Tax Department an itemized listing of
405 highways projects with the amount of funds expended for highway construction and maintenance.
406 The Commissioner of Highways shall request reimbursement of the tax based on an estimate that
407 forty percent of the total gross funds expended by the agency during the fiscal period were for the
408 acquisition of materials used for highway construction and maintenance. The amount of the

409 reimbursement shall be calculated at six percent of the forty percent.

§11-15-9i. Exempt drugs, durable medical equipment, mobility enhancing equipment and prosthetic devices.

1 (a) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this
2 chapter, the purchase by a health care provider of drugs, durable medical equipment, mobility
3 enhancing equipment and prosthetic devices, all as defined in section two, article fifteen-b of this
4 chapter, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation,
5 treatment or prevention of injury or disease are exempt from the tax imposed by this article:
6 *Provided*, That the exemption provided for the purchase by a health care provider of durable
7 medical equipment is suspended for the period beginning on and after July 1, 2016, and
8 continuing until June 30, 2018. On and after July 1, 2018, the exemption is reestablished

9 (b) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this
10 chapter, the purchase of durable medical equipment, as defined in section two, article fifteen-b of
11 this chapter, to be dispensed upon prescription by a health care provider and intended for use in
12 the diagnosis, cure, mitigation, treatment or prevention of injury or disease is exempt from the tax
13 imposed by this article: *Provided*, That the durable medical equipment is purchased by an
14 individual for exclusive use by the purchaser or another individual and used predominantly by the
15 recipient individual in his or her home environment.

16 (1) *Effective Dates*. — The provisions of this subsection shall apply to purchases made on
17 and after July 1, 2016.

18 (2) *Per se exemption*. — The exemption set forth by this subsection shall be given without
19 the necessity of an exemption certificate, direct pay permit or refund or credit request.

20 (c) *Definitions*. — The following definitions shall apply:

21 (1) For purposes of this section, “used predominantly by the recipient individual in his or
22 her home environment”, with reference to durable medical equipment, means that the equipment
23 is sold to an individual for use by the individual purchaser or by another individual at home,

24 regardless of where the individual resides. For purposes of this definition, the term “home” means
25 and includes facilities such as nursing homes, assisted care centers and school dormitories, of
26 which a user or purchaser is a resident. A purchase of such equipment shall not be disqualified
27 from the exemption because the equipment is incidentally used on the streets, in commercial
28 establishments, in public places and in locations other than the home, so long as use in the home
29 is the predominant use. For purposes of this definition, the term “individual” means and is limited
30 to a single, separate human being and specifically excludes any health care provider, or provider
31 of nursing services, personal care services, behavioral care services, residential care or assisted
32 living care, or any entity or organization other than a human being.

33 (2) When the equipment is sold to a facility such as a hospital, nursing home, medical
34 clinic, dental office, chiropractor or optician office, then this shall not constitute a use of the
35 equipment by the recipient individual in his or her home environment. The fact that a nursing
36 home may use the equipment only for its residents does not make the equipment exempt for
37 home use: *Provided*, That nothing in this section shall be interpreted to void or abrogate lawful
38 assertion and application of the purchases for resale exemption as it may apply to any purchaser
39 of durable medical equipment.

40 (3) For purposes of this section, “health care provider” means any person licensed to
41 prescribe drugs, durable medical equipment, mobility enhancing equipment and prosthetic
42 devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or
43 disease. For purposes of this section, the term “health care provider” includes any hospital,
44 medical clinic, nursing home or provider of inpatient hospital services and any provider of
45 outpatient hospital services, physician services, nursing services, ambulance services, surgical
46 services or veterinary services: *Provided*, That the amendment to this subsection enacted during
47 the 2009 regular legislative session shall be effective on or after July 1, 2009.

48 (4) The term “durable medical goods”, as used in this article, means “durable medical
49 equipment” as defined in section two, article fifteen-b of this chapter.

50 (5) For purposes of this section, the term “nursing home or facility” means any institution,
51 residence or place, or any part or unit thereof, however named, in this state which is advertised,
52 offered, maintained or operated by the ownership or management, whether for a consideration or
53 not, for the express or implied purpose of providing accommodations and care, for a period of
54 more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and
55 in need of extensive, ongoing nursing care due to physical or mental impairment or which provides
56 services for the rehabilitation of persons who are convalescing from illness or incapacitation:
57 *Provided*, That the care or treatment in a household, whether for compensation or not, of any
58 person related by blood or marriage, within the degree of consanguinity of second cousin to the
59 head of the household, or his or her spouse, may not be deemed to constitute a nursing home
60 within the meaning of this article.

61 (6) For purposes of this section, the term “assisted care center” means any living facility,
62 residence or place of accommodation, however named, available for four or more residents, in
63 this state which is advertised, offered, maintained or operated by the ownership or management,
64 whether for a consideration or not, for the express or implied purpose of having personal
65 assistance or supervision, or both, provided to any residents therein who are dependent upon the
66 services of others by reason of physical or mental impairment and who may also require nursing
67 care at a level that is not greater than limited and intermittent nursing care: *Provided*, That the
68 care or treatment in a household, whether for compensation or not, of any person related by blood
69 or marriage, within the degree of consanguinity of second cousin to the head of the household,
70 or his or her spouse, may not be deemed to constitute an assisted living residence within the
71 meaning of this article.

72 (7) For purposes of this section, the term “school dormitory” means housing or a unit of
73 housing provided primarily for students as a temporary or permanent dwelling place or abode and
74 owned, operated or controlled by an institution of higher education, and shall be synonymous with
75 the term “residence hall”.

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) (1) An excise tax is hereby levied and imposed on the use in this state of tangible
2 personal property, custom software or taxable services, to be collected and paid as provided in
3 this article or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the
4 property or taxable services, except as otherwise provided in this article. Beginning on January
5 1, 2018, the tax imposed by this section shall be at the rate of the consumers sales and service
6 tax, as provided in section three, article fifteen of this chapter: *Provided*, That any reductions to
7 the consumers sales and service tax pursuant to section three, article fifteen shall also apply to
8 the tax imposed by this section.

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

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

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

24 receipt refers.

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

1 (a) The use in this state of the following tangible personal property, custom software and
2 services is hereby specifically exempted from the tax imposed by this article to the extent
3 specified:

4 (1) All articles of tangible personal property and custom software brought into the State of
5 West Virginia by a nonresident individual thereof for his or her use or enjoyment while temporarily
6 within this state or while passing through this state, except gasoline and special fuel: *Provided,*
7 That fuel contained in the supply tank of a motor vehicle that is not a motor carrier may not be
8 taxable.

9 (2) Tangible personal property, custom software or services, the gross receipts from the
10 sale of which are exempt from the sales tax by the terms of article fifteen, chapter eleven of the
11 Code of West Virginia, 1931, as amended, and the property or services are being used for the
12 purpose for which it was exempted.

13 (3) Tangible personal property, custom software or services, the gross receipts or the
14 gross proceeds from the sale of which are required to be included in the measure of the tax
15 imposed by article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, and
16 upon which the tax imposed by said article fifteen has been paid.

17 (4) Tangible personal property, custom software or services, the sale of which in this state

18 is not subject to the West Virginia consumers sales tax.

19 (5) Fifty percent of the measure of tax on mobile homes utilized by the owners thereof as
20 their principal year-round residence and dwelling: Provided, That beginning on January 1, 2018,
21 the exemption created by this subdivision is discontinued.

22 (b) The provisions of this section, as amended in the year 2003, shall apply on and after
23 January 1, 2004.

NOTE: The purpose of this bill is to reduce the rate of the consumer sales and service tax and use tax; to provide for further reductions to the rate of tax under certain circumstances and to eliminate certain exemptions and special rates.

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