West Virginia Legislature

2019 Regular Session

Introduced

Senate Bill 83

By Senators Baldwin and Plymale

[Introduced January 9, 2019; Referred to the Committee on Government Organization; and then to the Committee on Finance]
A BILL to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-3E-7 and §29-3E-14 of said code, all relating to funding for veterans’ programs and volunteer fire departments; ending the sales tax exemption on charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs; setting an effective date for the elimination of the exemption; requiring revenue from the elimination of the exemption be deposited in the Veterans Facility Support Fund; directing the Division of Veterans’ Affairs to use the revenue to fund bonds for certain purposes; ending the deposit of a portion of the fireworks safety fee in the Veterans Facility Support Fund and instead depositing it into the Fire Protection Fund for volunteer fire departments; and eliminating the annual report from the Secretary of Veterans’ Affairs to the Legislature regarding the amount of revenue collected from the fireworks safety fee.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


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

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

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

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

(4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are subject to the tax imposed by §17A-3-4-a of this code or like tax;

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

(6) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under §11-12-1 et seq. of this code, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which is:

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

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

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

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

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

(F) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

(7) An isolated transaction in which any taxable service or any tangible personal property
is sold, transferred, offered for sale, or delivered by the owner of the property or by his or her
representative for the owner’s account, the sale, transfer, offer for sale, or delivery not being made
in the ordinary course of repeated and successive transactions of like character by the owner or
on his or her account by the representative: Provided, That nothing contained in this subdivision
may be construed to prevent an owner who sells, transfers, or offers for sale tangible personal
property in an isolated transaction through an auctioneer from availing himself or herself of the
exemption provided in this subdivision, regardless of where the isolated sale takes place. The
Tax Commissioner may propose a legislative rule for promulgation pursuant to §29A-3-1 et seq.
of this code which he or she considers necessary for the efficient administration of this exemption;
(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel are not exempt: Provided, however, That nails and fencing may not be considered as improvements to real property;

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

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

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

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

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

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of
repetitive and successive transactions of like character” means sales of tangible personal property
or services at fundraisers sponsored by a corporation or organization which is exempt, under
subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases
when the fundraisers are of limited duration and are held no more than six times during any 12-
month period and “limited duration” means no more than 84 consecutive hours: Provided, That
sales for volunteer fire departments and volunteer school support groups, with duration of events
being no more than 84 consecutive hours at a time, which are held no more than 18 times in a
12-month period for the purposes of this subdivision are considered “casual and occasional sales
not conducted in a repeated manner or in the ordinary course of repetitive and successive
transactions of a like character”;

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

(16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery
retailers authorized by the State Lottery Commission, under the provisions of §29A-22-1 et seq.
of this code;

(17) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 et seq. of this
code to lessees for a period of 30 or more consecutive days;

(18) Notwithstanding the provisions of §11-15-18 of this code or §11-15-18b of this code
or any other provision of this article to the contrary, sales of propane to consumers for poultry
house heating purposes, with any seller to the consumer who may have prior paid the tax in his
or her price, to not pass on the same to the consumer, but to make application and receive refund
of the tax from the Tax Commissioner pursuant to rules which are promulgated after being
proposed for legislative approval in accordance with §29A-1-1 et seq. of this code by the Tax
Commissioner;

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

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

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

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

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

(22) Tuition charged for attending educational summer camps;

(23) Dispensing of services performed by one corporation, partnership, or limited liability company for another corporation, partnership, or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, equity interests, or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote, or ownership, directly or indirectly, of stock, equity interests, or membership interests possessing 50 percent or more of the value of the corporation, partnership, or limited liability company;

(24) Food for the following are exempt:
(A) Food purchased or sold by a public or private school, school-sponsored student organizations or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

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

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

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

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

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying out those functions and activities: Provided, That purchases made by the organizations are not exempt as a purchase for resale; or
(G) Food sold by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(25) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters, or other school or athletic booster organizations supporting activities for grades kindergarten through 12 and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: Provided, That the purchases made by the organizations are not exempt as a purchase for resale;

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

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

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

(29) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or §11-15A-1 et seq. of this code pursuant to the provision of any other chapter of this code;

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

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

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

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

(34) Charges for memberships or services provided by health and fitness organizations
relating to personalized fitness programs: Provided, That this exemption is not allowable on and
after July 1, 2019, and all revenue generated from the elimination of this exemption shall be
deposited in the special account in the State Treasury, designated the Veterans’ Facility Support
Fund established by the provisions of §9A-1-11 of this code for expenditure on veterans’
programs: Provided, however, That the Division of Veterans’ Affairs is directed to use the revenue
deposited pursuant to this subdivision to fund bonds for the purpose of building a veteran’s nursing
home south of Kanawha County.
(35) Sales of services by individuals who babysit for a profit: Provided, That the gross receipts of the individual from the performance of baby-sitting services do not exceed $5,000 in a taxable year;

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

(37) Commissions received by a manufacturer’s representative;

(38) Sales of primary opinion research services when:

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

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

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

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

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

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

(A) Lumber into furniture, toys, collectibles, and home furnishings;
(B) Fruits into wine;
(C) Honey into wine;
(D) Wool into fabric;
(E) Raw hides into semi-finished or finished leather products;
(F) Milk into cheese;
(G) Fruits or vegetables into a dried, canned, or frozen product;
(H) Feeder cattle into commonly accepted slaughter weights;
(I) Aquatic animals into a dried, canned, cooked, or frozen product; and
(J) Poultry into a dried, canned, cooked, or frozen product;

(40) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports, or other entertainment facility or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed $3,000: Provided, That nothing contained herein may be construed to deprive private social gatherings, weddings, or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination, and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses, and similar presentations and does not include the showing of any film or moving picture, gallery
presentations of sculptural or pictorial art, nude or strip show presentations, video games, video
arcades, carnival rides, radio or television shows or any video or audio taped presentations or the
sale or leasing of video or audio tapes, air shows or any other public meeting, display, or show
other than those specified herein: Provided, however, That nothing contained herein may be
construed to exempt the sales of tickets from the tax imposed in this article. The State Tax
Commissioner shall propose a legislative rule pursuant to §29A-3-1 et seq. of this code
establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent
with the provisions set forth herein: Provided further, That nude dancers or strippers may not be
considered as entertainers for the purposes of this exemption;

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

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

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

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

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

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

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

(48) Lodging franchise fees, including royalties, marketing fees, reservation system fees, or other fees assessed after December 1, 1997, that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and
(49) Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

(b) Refundable exemptions. -- Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or as provided in §11-15-9d of this code, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

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

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

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

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

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

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3E. FIREWORKS SAFETY.

§29-3E-7. Fireworks safety fee; administration; tax crimes; collections; remittances; deposits; distributions; rules.

(a) In addition to the sales tax, a fireworks safety fee of 12 percent of all sales is levied on retail sales of consumer fireworks in this state. The fee shall be distributed pursuant to the provisions of this subsection. The fee computation under this subsection shall be carried to the third decimal place, and the fee rounded up to the next whole cent whenever the third decimal place is greater than four, and rounded down to the lower whole cent whenever the third decimal
place is four or less.

The State Tax Commissioner shall disburse all proceeds of the fireworks safety fee into the State Treasury each month in the following manner:

1. Seventy-five percent shall be deposited into a special account in the State Treasury, designated the Veterans' Facility Support Fund established by the provisions of section eleven, article one, chapter nine-a for expenditure on veterans' programs.

2. Twenty-five percent shall be deposited into a special account in the State Treasury, designated the Fire Protection Fund established in §33-3-33 of this code and distributed in accordance with that section to each volunteer fire company or department on an equal share basis by the State Treasurer.

(b) A person who purchases consumer fireworks in a retail transaction shall pay to the retailer the amount of the fee levied by this section, which fee is added to and constitutes a part of the sale price, and is collectible by the retailer who shall account to the state for all fees paid by a purchaser. If the retailer fails to collect the fee, or fails to account to the state for the fees paid by a purchaser, then the retailer is liable for the payment of the fee to the state.

(c) A retailer shall remit to the State Tax Commissioner no later than 30 days after the end of each preceding month all moneys collected for such preceding month, pursuant to the requirements of this section, and shall report such collections on forms and in the manner prescribed by the State Tax Commissioner.

(d) All moneys so remitted, net of refunds and adjustments, shall be paid by the State Tax Commissioner into the funds specified in this section.

(e) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in §11-9-1 et seq. of this code applies to the fees imposed pursuant to this article, with like effect as if that act were applicable only to the fees imposed by this article and were set forth in extenso in this article.
(f) The State Tax Commissioner shall propose legislative rules and may promulgate such emergency rules as are necessary to implement the provisions of this article.

§29-3E-14. Reporting requirements; duration of reporting requirements.

Annual, on or before January 15, 2017, 2018, and 2019:

(1) The State Treasurer shall submit to the President of the Senate and the Speaker of the House of Delegates a report detailing the amount of revenue received and deposited from the Fireworks Safety Fee into the Fire Safety Fund authorized by §29-3E-7 of this code and the distribution of said funds;

(2) The Secretary of Veterans’ Assistance shall supply the President of the Senate and Speaker of the House of Delegates with a report detailing the revenue received from the Fireworks Safety Fee and deposited in the Veterans’ Facility Support Fund and the purposes for which the money was expended;

(3) The State Tax Commissioner shall provide to the President of the Senate and Speaker of the House of Delegates a report detailing the revenue received from the sales tax received from the sale of fireworks authorized by the provisions of the article and revenue received from the Fireworks Safety Fee authorized by §29-3E-7 of this code; and

(4) The State Fire Marshal shall submit to the President of the Senate and Speaker of the House of Delegates a report detailing the amounts of revenue received from the registration fees imposed pursuant to the provisions of §29-3E-5 of this code, the purposes for which the fees were expended and the adequacy of the fees received in relation to the duties required of the office.

NOTE: The purpose of this bill is to find sufficient funding for the Veterans’ Facility Support Fund to fund a veteran’s nursing home and improve funding to volunteer fire departments by eliminating a current tax exemption and redirecting certain revenue.

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