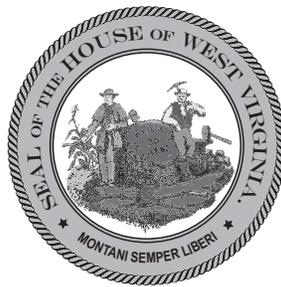


West Virginia Legislature

JOURNAL  
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Eighty-Third Legislature  
First Extraordinary Session

Held at Charleston  
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May 24, 2017  
TENTH DAY



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Wednesday, May 24, 2017

**TENTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 10:00 a.m., and was called to order by the Honorable Tim Armstead, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance. Delegate Cowles arose to suggest the absence of a quorum, the Clerk opened the machine for the roll to be taken (**Roll No. 629**), and 75 members being present, the Speaker declared the presence of a quorum. The absent being as follows:

Absent: Baldwin, Canestraro, Diserio, Ellington, Espinosa, Fast, Ferro, Fleischauer, N. Foster, Hanshaw, Hicks, Hill, Hornbuckle, Kessinger, Miley, Moore, Rohrbach, Rowe, Sponaugle, Summers, Thompson, Westfall, White, Williams and Wilson.

The Clerk proceeded to read the Journal of Tuesday, May 23, 2017, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Bills Introduced**

Bills were introduced, pursuant to House Rule 92, and severally referred as follows:

**By Delegate Miley**

**[By Request of the Executive]:**

**H. B. 117** - "A Bill to amend and reenact §16-2D-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §16-5F-1, §16-5F-2, §16-5F-3, §16-5F-4 and §16-5F-5; to amend and reenact §16-29B-8 of said code, all relating to West Virginia Health Care Authority; defining terms; authorizing secretary to promulgate rules under provisions of new article; authorizing secretary to investigate and report to Legislature any other providers that need to be subject to the provisions of the new article; authorizing the Secretary of the Department of Health and Human Resources, through the Health Care Authority, to request health care facilities file with the Health Care Authority health care financial disclosures; authorizing the secretary to coordinate and oversee the collection of health data of state agencies; authorizing the secretary to assess a penalty for the failure to file required financial disclosures; removing restrictive language associated with an exemption to the certificate of need process; and authorize the Health Care Authority to assess and collect a fee into 'Health Care Costs Review Fund"; to the Committee on Health and Human Resources then the Judiciary.

**By Delegates Folk, McGeehan, Paynter, Martin, Gearheart, Criss, Butler and Lewis:**

**H. B. 118** - "A Bill making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution"; to the Committee on Finance.

At 10:39 a.m., on motion of Delegate Cowles, the House of Delegates recessed until 4:30 p.m.

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**Evening Session**

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The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

**Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 107**, Relating generally to the Tax Reform Act of 2017.

Delegate Cowles moved that the House of Delegates refuse to concur in the following amendment of the bill by the Senate and request the Senate recede therefrom:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

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

**ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

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

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

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

**If gross income from sale of coal**

**during the reporting period is:..... The rate of tax is:**

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

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

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



the reporting period, by tons of all coal produced from seams less than thirty-seven inches thick during the reporting period; and

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

**If gross income from sale of coal**

**during the reporting period is: ..... The rate of tax is:**

Not more than \$75 per ton..... 1.5%

\$75.01 to \$150 per ton ..... 2.0%

More than \$150 per ton ..... 2.0% plus a 2% surtax on gross income in excess of \$150 per ton.

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

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

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

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

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

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

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

**§11-15-2. Definitions.**

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

(b) *Definitions.* —

(1) ‘Business’ includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which

involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

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

(3) 'Contracting':

(A) *In general.* — 'Contracting' means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor, subcontractor or construction manager) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. Contracting also includes services provided by a construction manager so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

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

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

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

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

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

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

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

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

(vii) Contracting does not include the furnishing of work, or both materials and work, in the nature of hookup, connection, installation or other services if the service is incidental to the retail sale of

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

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

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

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

~~(4)~~ (6) 'Directly used or consumed' in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

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

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

(vi) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of these activities.

~~(5)~~ (7) 'Directly used or consumed' in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business means used or consumed in those activities or operations which constitute an integral and essential

part of those activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to those activities.

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

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

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

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

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

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

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

- (i) Heating and illumination of office buildings;
- (ii) Janitorial or general cleaning activities;
- (iii) Personal comfort of personnel;
- (iv) Production planning, scheduling of work or inventory control;

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

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

~~(6)~~ (8) 'Gas storage' means the injection of gas into a storage reservoir or the storage of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir engaged in by businesses subject to the business and occupation tax imposed by sections two and two-e, article thirteen of this chapter.

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

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

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

~~(10)~~ (12) 'Manufacturing' means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

~~(11)~~ (13) 'Person' means any individual, partnership, association, corporation, limited liability company, limited liability partnership or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

~~(12)~~ (14) 'Personal service' includes those: (A) Compensated by the payment of wages in the ordinary course of employment; and (B) rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

~~(13)~~ (15) 'Prepaid wireless calling service' means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number decline with use in a known amount.

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

(A) 'Production of natural resources' means, except for oil and gas, the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith and the construction, installation or fabrication of ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated

facilities and apparatus, by the producer or others, including contractors and subcontractors, at a coal mine or coal production facility.

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

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

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

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

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

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

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

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

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

~~(21)~~ (23) 'Tax Commissioner' means the State Tax Commissioner or his or her delegate. The term 'delegate' in the phrase 'or his or her delegate', when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

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

~~(23)~~ (25) 'Transmission' means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

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

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

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

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

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

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

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

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

- ~~(1) On each sale, where the monetary consideration is from 6¢ to 16¢, both inclusive, 1¢.~~
- ~~(2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.~~
- ~~(3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.~~
- ~~(4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.~~
- ~~(5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.~~
- ~~(6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.~~

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

~~(d) (c) Calculation of tax on fractional parts of a dollar after December 31, 2003. – Beginning January 1, 2004, the The tax computation under subsection (b) of this section shall be carried to the third decimal place, and the tax 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 vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.~~

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

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

~~(g) (f) Construction; custom software. – After December 31, 2003, whenever Whenever the words ‘tangible personal property’ or ‘property’ appear in this article, the same shall also include the words ‘custom software’.~~

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

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

(a) Notwithstanding the provisions of section eight of this article or any other provision of this code to the contrary, on and after July 1, 2017, 'telecommunications service' and 'ancillary services', as defined in section twenty, article fifteen-b of this chapter, shall be subject to the consumers sales and service tax imposed by this article and the use tax imposed by article fifteen-a of this chapter: *Provided*, That payment of the tax imposed under this article or under article fifteen-a of this chapter on prepaid wireless services is sufficient to fulfill the mandate of this section, and prepaid wireless services shall not be subjected to double taxation under this article: *Provided, however*, That this section shall not be interpreted to prevent imposition of any other lawfully imposed municipal tax or fee or any other tax or fee lawfully imposed under any state or federal law, or the laws of any subdivision thereof on such prepaid wireless services.

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

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

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

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

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

(b) *Definitions.* —

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

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

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

(4) 'Digital automated services' defined. —

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

(B) 'Digital automated service' does not include:

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

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

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

(iv) Payment processing services;

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

(vi) The internet and internet access.

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

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

(7) 'Digital goods' defined. —

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

(B) The term 'digital goods' does not include:

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

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

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

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

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

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

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

(A) Greeting cards.

(B) Periodicals.

(C) Magazines.

(D) Video or electronic games.

(E) Newspapers or other news or information products.

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

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

(d) For purposes of this section, the sale, license, lease, or rental of or the storage, use, or other consumption of a digital code is treated the same as the sale, license, lease, or rental of or the storage, use or other consumption of any digital product to which the digital code relates.

#### **§11-15-9. Exemptions.**

(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~~ Higher Education Policy Commission or the Council for Community and Technical College Education for universities and 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 section four, article three, chapter seventeen-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 article twelve of this chapter, 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 which are taxable as provided in section eighteen-b of this article and article fourteen-c of this chapter;

(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 article three, chapter twenty-nine-a 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 twelve-month period and 'limited duration' means no more than eighty-four consecutive hours: *Provided*, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than eighty-four consecutive hours at a time, which are held no more than eighteen times in a twelve-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~~ Higher Education Policy Commission or the Council for Community and Technical College Education 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 as provided in section eighteen-b of this article and article fourteen-c of this chapter;

(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 article twenty-two, chapter twenty-nine of this code;

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

(18) Notwithstanding the provisions of section eighteen or eighteen-b of this article 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 chapter twenty-nine-a 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. C. §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)~~ (21) Tuition charged for attending educational summer camps;

~~(23)~~ (22) 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 fifty percent or more of the value of the corporation, partnership or limited liability company;

~~(24)~~ (23) 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)~~ (24) 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 twelve 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)~~ (25) 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)~~ (26) Sales of or charges for the transportation of passengers in interstate commerce;

~~(28)~~ (27) 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)~~ (28) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provision of any other chapter of this code;

~~(30)~~ (29) Charges for the services of opening and closing a burial lot;

~~(31)~~ (30) 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)~~ (31) 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)~~ (32) 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;~~

~~(35)~~ (33) 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)~~ (34) Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

~~(37)~~ (35) 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)~~ (36) 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 semifinished 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)~~ (37) 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 article three, chapter twenty-nine-a 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)~~ (38) 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)~~ (39) 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)~~ (40) 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)~~ (41) Sales of soap to be used at car wash facilities;

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

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

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

(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 section nine-d of this article, 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; and

(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.~~

(c) *Effective date.* — The amendments to subsection (a) of this section made during the First Extraordinary Session of the Legislature in 2017 shall take effect beginning July 1, 2017, and apply

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

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

(a) Sales of tangible personal property and services after June 30, 2002, directly used or consumed in the activity of research and development are exempt from tax imposed by this article. Any person having a right or claim to the exemption set forth in this section 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 give to the vendor the person's West Virginia direct pay permit number in accordance with the provisions of section nine-d of this article.

(b) For purposes of this article:

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

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

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

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

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

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

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

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

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

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

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

(x) Maintenance or repair of property, including maintenance equipment, that is directly used in research and development;

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

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

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

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

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

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

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

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

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

(A) Research and development does not include:

(i) Market research;

(ii) Sales research;

(iii) Efficiency surveys;

(iv) Consumer surveys;

(v) Product market testing;

(vi) Product testing by product consumers or through consumer surveys for evaluation of consumer product performance or consumer product usability;

(vii) The ordinary testing or inspection of materials or products for quality control (quality control testing);

(viii) Management studies;

(ix) Advertising;

(x) Promotions;

(xi) The acquisition of another's patent, model, production or process or investigation or evaluation of the value or investment potential related thereto;

(xii) Research in connection with literary, historical or similar projects;

(xiii) Research in the social sciences, economics, humanities or psychology and other nontechnical activities; and

(xiv) The providing of sales services or any other service, whether technical service or nontechnical service.

~~(c) No provision of this section may be interpreted to alter, abrogate or impede application of the exemption for sales of primary opinion research services set forth in section nine of this article.~~

**§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of Internet advertising; sales of high-technology business services directly used in fulfillment of a government contract; sales of tangible personal property for direct use in a high-technology business or Internet advertising business; definitions.**

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

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

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

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

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

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

~~(6)~~ (5) Sales of high-technology business services to high-technology businesses which enter into contracts with this state, its institutions and subdivisions, governmental units, institutions or subdivisions of other states, or with the United States, including agencies of federal, state or local governments for direct use in fulfilling the government contract; and

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

(b) *Definitions.* –

As used in this article, the following terms have the following meanings:

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

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

(3) ‘High-technology business services’ means and is limited to computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; electronic data processing; computer systems management; computer systems maintenance; computer systems engineering; computer systems administration and computer systems security services.

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

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

(6) ‘Server’ means a computer or device on a network that manages network resources.

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

### **§11-15-35. Administrative rules.**

Legislative rules; emergency rules. — The Tax Commissioner may propose for promulgation legislative rules explaining and implementing the amendments to this article enacted in the year 2017 in accordance with the provisions of article three, chapter twenty-nine-a of this code. The authority to promulgate rules includes authority to amend or repeal those rules. If proposed legislative rules for this section are filed in the State Register before October 1, 2017, those rules may be promulgated as emergency legislative rules as provided in article three, chapter twenty-nine-a of this code: *Provided*, That the rule shall provide that all contractors with outstanding firm bid contracts upon the effective date of this section in 2017 shall be exempt from paying the tax imposed by this article on purchases of tangible personal property and taxable services directly used or consumed in the completion of those firm bid contracts: *Provided, however*, That this exemption shall not apply to any extension of the contracts on and after the effective date of this section.

## **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.**

(a) An excise tax is hereby levied and imposed on the use in this state of tangible personal property, digital code, digital products, custom software or taxable services, to be collected and paid as provided in this article or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the property or taxable services, except as otherwise provided in this article: *Provided*, That on and after July 1, 2017, the tax imposed by this article shall be collected and paid, as provided in this article or article fifteen-b of this chapter, at the rate of seven and twenty-five one-hundredths percent of the purchase price of the tangible personal property, digital code, digital products, custom software or taxable services, except as otherwise provided in this article.

(b) *Calculation of tax on fractional parts of a dollar.* — The tax computation under subsection (a) of this section shall be carried to the third decimal place and the tax 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 vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

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

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

(e) Purchases of tangible personal property or taxable services made for the government of the United States or any of its agencies by ultimate consumers is subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the State of West

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

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

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

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

(b) Each certified service provider for a Model I seller shall pay to the Tax Commissioner the tax levied by this article on or before the twentieth day of the month next succeeding the calendar month in which the tax accrued, except as otherwise provided in this article or article fifteen-b of this chapter.

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

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

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

(f) *Accelerated payment.* —

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

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

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

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

## ARTICLE 21. PERSONAL INCOME TAX.

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

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

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

#### If the West Virginia

<u>taxable income is:</u>	<u>The tax is:</u>
<u>Less than \$20,000</u>	<u>2.25% of taxable income</u>
<u>\$20,000 or more but less than \$35,000</u>	<u>\$450.00 plus 3.95% of taxable income in excess of \$20,000</u>
<u>Over \$35,000 or more but less than \$200,000</u>	<u>\$1,042.50 plus 5.65% of taxable income in excess of \$35,000</u>
<u>\$200,000 or more</u>	<u>\$10,365.00 plus 6.00% of taxable income in excess of \$200,000</u>

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

**If the West Virginia**

<b><u>taxable income is:</u></b>	<b><u>The tax is:</u></b>
<u>Less than \$10,000</u>	<u>2.25% of taxable income</u>
<u>\$10,000 or more but less than \$17,500</u>	<u>\$225.00 plus 3.95% of taxable income in excess of \$10,000</u>
<u>Over \$17,500 but less than \$100,000</u>	<u>\$521.25 plus 5.65% of taxable income in excess of \$17,500</u>
<u>\$100,000 or more</u>	<u>\$5,182.50 plus 6.00% of taxable income in excess of \$100,000</u>

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

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

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

**If the West Virginia**

<b><u>taxable income is:</u></b>	<b><u>The tax is:</u></b>
<u>Less than \$20,000</u>	<u>1.85% of taxable income</u>
<u>\$20,000 or more but less than \$35,000</u>	<u>\$370.00 plus 3.65% of taxable income in excess of \$20,000</u>
<u>Over \$35,000 or more but less than \$200,000</u>	<u>\$917.50 plus 5.45% of taxable income in excess of \$35,000</u>
<u>\$200,000 or more</u>	<u>\$9,910.00 plus 6.00% of taxable income in excess of \$200,000</u>

(c) Rate of tax on married individuals filing separate returns. – In the case of married individuals filing separate returns under this article for the taxable year, the tax imposed by section three of this

article on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

**If the West Virginia**

<b><u>taxable income is:</u></b>	<b><u>The tax is:</u></b>
<u>Less than \$10,000</u>	<u>1.85% of taxable income</u>
<u>\$10,000 or more but less than \$17,500</u>	<u>\$185.00 plus 3.65% of taxable income in excess of \$10,000</u>
<u>Over \$17,500 but less than \$100,000</u>	<u>\$458.75 plus 5.45% of taxable income in excess of \$17,500</u>
<u>\$100,000 or more</u>	<u>\$4,955.00 plus 6.00% of taxable income in excess of \$100,000</u>

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

(1) Beginning in 2019, and for each fiscal year thereafter in which the net amount of the increase in the amount deposited in the General Revenue Fund since the previous rate reduction exceeds \$110 million, adjusted upward by one half of the applicable annual growth factor, the rates of tax specified in subsections (b) and (c) of this section shall reduce by one tenth of one percentage point until the rates become zero: *Provided*, That each rate reduction required by this subdivision shall take effect for the tax year that begins immediately after each successive fiscal year ends: *Provided, however*, That the amount required to be deposited in the General Revenue Fund for the first triggered rate reduction shall be \$110 million amount adjusted upward by one half of the applicable annual growth factor above the 2019 fiscal year General Revenue Fund collections.

(2) In any fiscal year when subdivision (1) of this subsection does not apply, but the net amount of increase deposited in the General Revenue Fund is sixty-five percent or more of the annually adjusted \$110 million amount, adjusted upward by one half of the applicable annual growth factor, there shall not be a rate reduction for the tax year that begins immediately after that fiscal year ends.

(3) In any fiscal year when subdivisions (1) and (2) of this subsection do not apply, but the net amount of increase deposited in the General Revenue Fund is less than sixty-five percent of the annually adjusted \$110 million amount adjusted upward by one half of the applicable annual growth factor, there shall not be a rate reduction for the tax year that begins immediately after that fiscal year ends; and the annually adjusted \$110 million amount, adjusted upward by one half of the applicable annual growth factor shall be increased by one hundred fifty percent for the next ensuing fiscal year.

(4) When subdivision (3) of this subsection applies with respect to any fiscal year, in future fiscal years, the implementation of the rate reduction provided in subsection (1) of this subsection shall be based on any combination of prior fiscal years' revenue collections not applied toward a previous rate reduction due to the application of subdivisions (1) and (2) of this subsection. Under these circumstances, the reduction of the rates of tax specified in subsections (b) and (c) shall resume for the taxable year that begins immediately after that fiscal year.

(5) Beginning on October 1, 2018, and on October 1 of each subsequent calendar year, the State Budget Director shall publish the following information on the State Budget Office's web site as well as other relevant publications and documents:

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

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

(C) The difference between general revenue collections for the most recently concluded fiscal year or combination of fiscal years since a rate reduction trigger occurred and the general revenue collection for the last fiscal year when a rate reduction occurred;

(D) The amount of reduction, if any, in the personal income tax rates that will result by application of this subsection; and

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

(e) Rules. —

(1) 'Applicable annual growth factor' means the rate of growth in the consumer price index for the fiscal year when compared to the consumer price index for the fiscal year immediately preceding that fiscal year.

(2) 'Consumer price index' means the most recent consumer price index for all urban consumers published by the United States Department of Labor.

(3) 'Consumer price index for the fiscal year' shall for purposes of this section mean the average of the monthly consumer price indices as of the close of the twelve-month period ending on June 30 for the fiscal year to which reference is being made.

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

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

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

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

the property containing the certified historic tax structure. This credit is available for both residential and nonresidential buildings located in this state, that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as 'certified historic structures,' and further defined as a 'qualified rehabilitated building' as defined under §47(c)(1), Title 26 of the United States Code, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the State of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;

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

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

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and all forms of military retirement, including regular armed forces, reserves and National Guard, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first \$2,000 of benefits received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after December 31, 1986; and the first two thousand dollars of benefits received under any federal retirement system to which Title 4 U. S. C. §111 applies: *Provided, however*, That the total modification under this paragraph shall not exceed \$2,000 per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after December 31, 1988;

(6) Retirement income received in the form of pensions and annuities after December 31, 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy Sheriff Retirement System, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7) (A) For taxable years beginning after December 31, 2000, and ending prior to January 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the armed forces of the United States of America with the product thereof multiplied by the first \$30,000 of military retirement income, including retirement income from the regular armed forces, reserves and National Guard paid by the United States or by this state after December 31, 2000, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after December 31, 2002, the first \$20,000 of military retirement income, including retirement income from the regular armed forces, reserves and National Guard paid by the United States or by this state after December 31, 2002, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

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

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

(8) Federal adjusted gross income in the amount of \$8,000 received from any source after December 31, 1986, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: *Provided, however*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is \$8,000 per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than \$8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between \$8,000 and the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

(9) Federal adjusted gross income in the amount of \$8,000 received from any source after December 31, 1986, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is \$8,000 or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is less than \$8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between \$8,000 and the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

(10) Contributions from any source to a medical savings account established by or for the individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed \$2,000 plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual;

(11) For the 2006 taxable year only, severance wages received by a taxpayer from an employer as the result of the taxpayer's permanent termination from employment through a reduction in force and through no fault of the employee, not to exceed \$30,000. For purposes of this subdivision:

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

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

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

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

(12) Decreasing modification for Social Security income. —

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

(B) For taxable years beginning on or after January 1, 2019, one hundred percent of the Social Security benefits received pursuant to Title 42 U.S.C., Chapter 7, including but not limited to Social Security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U. S. C. 401 et seq. or as Supplemental Security Income for

the Aged, Blind and Disabled as provided in §42 U. S. C. 1381 et seq., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in paragraph (C) of this subdivision.

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

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

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

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

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

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

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

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

## **ARTICLE 24. CORPORATE NET INCOME TAX.**

### **§11-24-4c. Rate of tax – Taxable years beginning on and after January 1, 2018, but before January 1, 2021.**

(a) In lieu of the rate of tax specified in section four of this article, for taxable year beginning on and after January 1, 2018, but before January 1, 2021, the tax imposed by section four of this article shall be levied at the rate of seven percent of West Virginia taxable income.

(b) For taxable years beginning on and after January 1, 2021, the rate of tax shall be that specified in section four of this article.

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

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

*Certified historic structures.* – For certified historic structures, the credit is equal to ten percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: Provided, That for qualified rehabilitation expenditures made after June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified rehabilitation expenditure: Provided, however, That the credit authorized by this section for qualified rehabilitation expenditures made after June 30, 2017, may not be used to offset tax liabilities prior to the tax year beginning January 1, 2019: Provided, further, That the taxpayer may not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by the Tax Division or if the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure. This credit is available for both residential and nonresidential buildings located in this state that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as ‘certified historic building’ and further defined as a ‘qualified rehabilitated building’ as defined under §47(c)(1), Title 26, of the United States Code, as amended.”

And,

By amending the title of the bill to read as follows:

**Com. Sub. for H. B. 107** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13A-3f; to amend and reenact §11-15-2, §11-15-3, §11-15-9, §11-15-9b and §11-15-9h of said code; to amend said code by adding thereto three new sections, designated §11-15-3d, §11-15-3e and §11-15-35; to amend and reenact §11-15A-2 and §11-15A-10 of said code; to amend and reenact §11-21-8a, §11-21-8e and §11-21-12 of said code; to amend said code by adding thereto two new sections, designated §11-21-4g and §11-21-4h; to amend and reenact §11-24-23a of said code; and to amend said code by adding thereto a new section, designated §11-24-4c, all relating generally to the Tax Reform Act of 2017; imposing graduated rate severance tax on privilege of producing coal as of specified date and defining certain terms; increasing rate of consumers sales and service tax as of specified date; imposing tax on telecommunication services and ancillary telecommunication services as of specified date; imposing tax on digital code and digital products as of specified date; providing the Tax Commissioner with rule-making authority and emergency rule-making authority; eliminating certain exemptions from consumers sales and service tax as of specified date; providing consumers sales and service tax exemption for services of professional employer organizations; ending the State Road Fund transfer; increasing rate of use tax as of specified date; reducing number of classifications and rates of personal income tax as of January 1, 2018; providing for phase-out of personal income tax and specifying triggering event; exempting prospectively from the personal income tax all retirement income for military service; exempting prospectively from the personal income tax all Social Security retirement, survivors’ and disability income over a two-year period for individuals and married couples filing a joint return with less than \$75,000 of annual income and less than \$35,000 of annual income for married individuals filing separate returns; increasing amount of credit allowed against personal and corporation net income taxes for qualified building rehabilitation expenditures made after specified date; establishing limitations on carryback and carryforward of credit for qualified building rehabilitation expenditures; increasing rate of corporation net income tax as of specified date; and making technical corrections in various sections.”

On this motion, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 630**), and there were—yeas 85, nays none, absent and not voting 15, with the absent and not voting being as follows:

Absent and Not Voting: Byrd, Canestraro, Deem, Ellington, Espinosa, Ferro, Fleischauer, N. Foster, Hornbuckle, Miley, Sponaugle, Summers, Walters, Williams and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 1003** - “A Bill to repeal §17-16A-18a, §17-16A-23 and §17-16A-30 of the Code of West Virginia, 1931, as amended; to amend and reenact §17-16A-1, §17-16A-5, §17-16A-6, §17-16A-10, § 17-16A-11, §17-16A-13, §17-16A-13a, §17-16A-18, §17-16A-21, §17-16A-22 and §17-16A-29 of said code; to amend said code by adding thereto a new section, designated §17-16A-11a; to amend and reenact §17-16D-3 of said code; to amend said code by adding thereto a new section, designated §17A-2-25; to amend and reenact §17A-3-7 of said code; and to amend said code by adding thereto a new section, designated §17A-10-17, all relating generally to the West Virginia Parkways Authority; defining terms; adding the power of the authority to study, investigate and evaluate, and, if feasible, develop and implement a single fee program, including promulgate rules; adding the power of the authority to impose in connection with any single fee program a flat fee in connection with any or all certificates of passenger motor vehicle registration and renewal thereof by the Division of Motor Vehicles; adding the power of the authority to enter into reciprocal toll enforcement agreements; creating and designating a special revenue account within the State Road Fund known as the State Road Construction Account; authorizing the deposit of proceeds of parkway revenue bonds to the State Road Construction Account; requiring that priority consideration be given to construction, maintenance and repair of public highways and bridges in certain counties within the state when determining expenditures from the State Road Construction Account; creating and designating a special revenue account within the State Treasury known as the West Virginia Parkways Authority Single Fee Program Fund; clarifying notice and public meeting requirements and procedures; clarifying the power of the Parkways Authority to fix rates or tolls for Corridor L toll collection facility; expanding the authority of the Parkways Authority to issue revenue bonds or refunding revenue bonds for parkways’ projects and for the West Virginia Turnpike; eliminating approval by county commissions and establishment by Governor of local committees prior to approval of any parkway project; authorizing electronic toll collection and enforcement of tolls on roads, highways and bridges; adding the power of the Division of Motor Vehicles to act as collection agent for the authority under any single fee program; expanding the grounds for refusing to register a motor vehicle; ability to charge a fee for the single fee program; and creating a misdemeanor offense”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 1006** - “A Bill to amend and reenact §11-14C-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-3c and §11-15-18b of said code; to amend and reenact §17A-2-13 of said code; to amend and reenact §17A-3-4 of said code; to amend and reenact §17A-

4-1 and §17A-4-10 of said code; to amend and reenact §17A-4A-10 of said code; to amend and reenact §17A-7-2 of said code; to amend and reenact §17A-10-3, §17A-10-10 and §17A-10-11 of said code; to amend said code by adding thereto a new section, designated §17A-10-3c; to amend and reenact §17B-2-1, §17B-2-3a, §17B-2-5, §17B-2-6, §17B-2-8 and §17B-2-11 of said code; to amend and reenact §17C-5A-2a of said code; and to amend and reenact §17D-2-2 of said code, all relating generally to increasing the funding for the State Road Fund; increasing rate of motor fuel excise tax as of specified date; increasing the minimum average wholesale price of motor fuels for purposes of the five percent variable fuel tax as of specified date; increasing the rate of consumers sales and service tax on sales of motor vehicles as of a specified date; deleting superfluous language relating to floorstocks; increasing Division of Motor Vehicles administrative fees, including increasing fees for various documents, records, registrations, certificates, titles, liens, releases, transfers, cards, stickers, decals, licenses and plates; requiring payment of certain fee for each attempt at the written and road skills test; increasing said administrative Division of Motor Vehicles fees every five years on September 1 based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index; imposing annual registration fee for certain alternative fuel vehicles; and specifying effective dates"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 1010** - "A Bill to amend and reenact §33-3-33a of the Code of West Virginia, 1931, as amended, relating to the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; providing for the deposit of moneys into the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund until June 30, 2020; providing for the expiration and closure of the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund on June 30, 2020; and providing for the transfer of any remaining moneys in the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund upon closure of such fund."

Pursuant to House Rule 107, at the respective requests of Delegate Cowles, and by unanimous consent, the bill (S. B. 1010) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 631**), and there were—yeas 85, nays none, absent and not voting 15, with the absent and not voting being as follows:

Absent and Not Voting: Byrd, Canestraro, Deem, Ellington, Espinosa, Ferro, Fleischauer, N. Foster, Hornbuckle, Miley, Sponaugle, Summers, Walters, Williams and Wilson.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a second time and ordered to third reading.

The bill was then read a third time and put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 632**), and there were—yeas 84, nays 1, absent and not voting 15, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Byrd, Canestraro, Deem, Ellington, Espinosa, Ferro, Fleischauer, N. Foster, Hornbuckle, Miley, Sponaugle, Summers, Walters, Williams and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 1010) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 633**), and there were—yeas 84, nays 1, absent and not voting 15, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Byrd, Canestraro, Deem, Ellington, Espinosa, Ferro, Fleischauer, N. Foster, Hornbuckle, Miley, Sponaugle, Summers, Walters, Williams and Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 1010) takes effect from its passage.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 1011** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-26, relating to the selling of a certain state-owned health care facility and appurtenances by the Secretary of the Department of Health and Human Resources; ensuring the transfer of existing patients and the construction of a replacement facility; exempting certain laws; creating a fund; implementing a benefits package for employees; and providing statutory construction"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 1014** - "A Bill to repeal §30-3E-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5-19 of said code; to amend and reenact §30-3-5 of said code; to amend and reenact §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-6, §30-3E-7, §30-3E-9, §30-3E-10, §30-3E-11, §30-3E-12, §30-3E-15, §30-3E-16 and §30-3E-17 of said code; to amend said code by adding thereto a new section, designated §30-3E-12a; and to amend and reenact §33-15-14 of said code, all relating to physician assistants; modifying board membership; substituting 'collaborating physician' for 'supervising physician'; defining terms; modifying the prescriptive authority of physician assistants; eliminating certain recertification requirements; eliminating the continuous national certification requirement; prohibiting an insurance plan from limiting the practice of physician assistants; adding requirements for practice agreements; granting physician assistants signatory authority on certain forms; and making conforming amendments"; which was referred to the Committee on Health and Human Resources.

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### Committee Reports

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 111**, Relating generally to tax procedures and administration,

And reports the same back, with the recommendation that it do pass.

At the respective requests of Delegate Cowles, and by unanimous consent, the bill (H. B. 111) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Cowles moved that the constitutional rule requiring the bill to be fully and distinctly read on three different days be dispensed with.

On this question, the yeas and nays were taken (**Roll No. 634**), and there were—yeas 85, nays none, absent and not voting 15, with the absent and not voting being as follows:

Absent and Not Voting: Byrd, Canestraro, Deem, Ellington, Espinosa, Ferro, Fleischauer, N. Foster, Hornbuckle, Miley, Sponaugle, Summers, Walters, Williams and Wilson.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a second time and ordered to engrossment and third reading.

Having been engrossed, the bill was read a third time and put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 635**), and there were—yeas 85, nays none, absent and not voting 15, with the absent and not voting being as follows:

Absent and Not Voting: Byrd, Canestraro, Deem, Ellington, Espinosa, Ferro, Fleischauer, N. Foster, Hornbuckle, Miley, Sponaugle, Summers, Walters, Williams and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 111) passed.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 112**, Relating to the Volunteer Fire Department Workers' Compensation,

And reports the same back, with a title amendment, with the recommendation that it do pass, as amended.

### **Leaves of Absence**

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Canestraro, Ellington, Espinosa, Ferro, Fleischauer, N. Foster, Hornbuckle, Miley, Sponaugle, Summers, Williams and Wilson.

At 6:19 p.m., on motion of Delegate Cowles, the House of Delegates recessed for thirty minutes.

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### **Evening Session**

\* \* \* \* \*

-continued-

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title, as follows:

**S. C. R. 102** – “Providing for an adjournment of the Legislature until June 5, 2017.”

*Resolved by the Legislature of West Virginia:*

That when adjournment is taken by the two houses of the Legislature at the close of their respective sessions on May 24, 2017, such adjournment shall be until 11 a.m. on June 5, 2017, pursuant to Section 23, Article VI of the Constitution of the State of West Virginia, unless called prior to that time by the President of the Senate and the Speaker of the House of Delegates.

At the request of Delegate Cowles, and by unanimous consent, reference of the resolution (S. C. R. 102) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

*Ordered*, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

### **Miscellaneous Business**

Delegates Hill and Kessinger filed forms with the Clerk's Office per House Rule 94b to be added as cosponsors of H. B. 118.

Delegate Maynard filed a form with the Clerk's Office per House Rule 94b to be added as a cosponsor of H. C. R. 1.

Delegate Byrd noted to the Clerk that he was absent on today when the votes were taken on Roll Nos. 630, 632 and 635, and that had he been present, he would have voted “Yea” thereon.

Delegate Caputo asked and obtained unanimous consent that the remarks of Delegate Byrd regarding S. C. R. 102 be printed in the Appendix to the Journal.

Pursuant to S. C. R. 102, at 7:13 p.m., the House of Delegates adjourned until 11:00 a.m., Monday, June 5, 2017.

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**HOUSE OF DELEGATES**  
**STEPHEN J. HARRISON, Clerk**  
**Building 1, Room M-212**  
**1900 Kanawha Blvd., East**  
**Charleston, WV 25305-0470**



**SPECIAL CALENDAR**

**Monday, June 5, 2017**

**11<sup>th</sup> Day**

**11:00 A. M.**

**FIRST READING**

H. B. 112 -

Relating to the Volunteer Fire Department Workers' Compensation  
(FINANCE TITLE AMENDMENT PENDING) (NELSON)

**WEST VIRGINIA  
HOUSE OF DELEGATES**

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**MONDAY, JUNE 5, 2017**

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**HOUSE CONVENES AT 11:00 A.M.**

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HOUSE OF DELEGATES  
STEPHEN J. HARRISON, Clerk  
Building 1, Room M-212  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0470