

FILED

2004 APR -1 P 4: 43

CLIFFE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4501**

(By Delegates Campbell, Boggs, Staton,  
Cann and Canterbury)



Passed March 13, 2004

In Effect July 1, 2004

FILED

2004 APR -1 P 4: 43

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# ENROLLED

COMMITTEE SUBSTITUTE

FOR

## H. B. 4501

(BY DELEGATES CAMPBELL, BOGGS, STATON,  
CANN AND CANTERBURY)

---

[Passed March 13, 2004; in effect July 1, 2004.]

---

AN ACT to amend and reenact §11-15-9g of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-15-9h, all relating to the sales tax holiday on back-to-school purchases; providing an exemption from consumers sales tax for sales of computer hardware and software directly incorporated into manufactured products; creating exemptions for payment of certain licensing fees, for sales of computer hardware and software directly used in communication, for sales of electronic data processing services, for sales of certain educational software to be used in certain educational or nonprofit institutions, for sales of internet advertising of goods and services and for certain sales of high technology business services; and providing definitions.

*Be it enacted by the Legislature of West Virginia:*

That §11-15-9g of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-15-9h, all to read as follows:

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

**§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year two thousand four.**

1 (a) The sale of an article of clothing or footwear designed  
2 to be worn on or about the human body and the sale of school  
3 supplies, such as pens, pencils, binders, notebooks, reference  
4 books, book bags, lunch boxes, computers, computer accesso-  
5 ries and calculators, is exempted from the taxes imposed by this  
6 article if:

7 (1) The sales price of the article or school supply, except  
8 for a computer or computer accessory, is less than one hundred  
9 dollars;

10 (2) The sales price of a computer is less than seven hundred  
11 fifty dollars after credit for any manufacturer's rebate or  
12 computer accessory is less than one hundred dollars after credit  
13 for any manufacturer's rebate; and

14 (3) The sale takes place during a period beginning at 12:01  
15 a.m. eastern daylight time on the first Friday in August, two  
16 thousand four, and ending at 12 midnight eastern daylight time  
17 on the following Sunday in August, two thousand four.

18 (b) This section does not apply to:

19 (1) Any special clothing or footwear that is primarily  
20 designed for athletic activity or protective use and that is not  
21 normally worn except when used for the athletic activity or  
22 protective use for which it is designed;

23 (2) Accessories, including jewelry, handbags, luggage,  
24 umbrellas, wallets, watches and similar items carried on or  
25 about the human body, without regard to whether worn on the  
26 body in a manner characteristic of clothing;

27 (3) The rental of clothing, footwear or school supplies;

28 (4) Furniture; and

29 (5) Tangible personal property for use in a trade or busi-  
30 ness.

**§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; definitions.**

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

10 (1) Sales of computer hardware or software (including  
11 custom designed software) to be directly incorporated by a  
12 manufacturer into a manufactured product. For purposes of this  
13 subsection, the payment of licensing fees for the right to  
14 incorporate hardware or software developed by persons other

15 than the manufacturer into a manufactured product is exempt  
16 from the tax imposed by this article;

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

20 (3) Sales of electronic data processing services;

21 (4) Sales of educational software required to be used in any  
22 of the public schools of this state or in any institution in this  
23 state which qualifies as a nonprofit or educational institution  
24 subject to administration, regulation, certification or approval  
25 of the department of education, the department of education and  
26 the arts or the higher education policy commission;

27 (5) Sales of internet advertising of goods and services; and

28 (6) Sales of high technology business services to high  
29 technology businesses which enter into contracts with this state,  
30 its institutions and subdivisions, governmental units, institu-  
31 tions or subdivisions of other states, or with the United States,  
32 including agencies of federal, state or local governments for  
33 direct use in fulfilling the government contract.

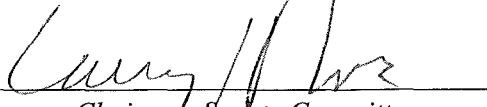
34 (b) *Definitions.* — As used in this article, the following  
35 terms have the following meanings:

36 (1) “Computer hardware” means a computer, as defined in  
37 article fifteen-b of this chapter, and the directly and immedi-  
38 ately connected physical equipment involved in the perfor-  
39 mance of data processing or communications functions,  
40 including data input, data output, data processing, data storage,  
41 and data communication apparatus that is directly and immedi-  
42 ately connected to the computer. The term “computer hard-  
43 ware” does not include computer software.

44 (2) "High technology business" means and is limited to  
45 businesses primarily engaged in the following activities:  
46 Computer hardware design and development; computer  
47 software design, development, customization and upgrade;  
48 computer systems design and development; website design and  
49 development; network design and development; design and  
50 development of new manufactured products which incorporate  
51 computer hardware and software; electronic data processing;  
52 network management, maintenance, engineering, administration  
53 and security services; website management, maintenance,  
54 engineering, administration and security services and computer  
55 systems management, maintenance, engineering, administration  
56 and security services: *Provided*, That high technology business  
57 as defined herein is intended to include businesses which  
58 engage in the activities enumerated in this definition as their  
59 primary business activity, and not as a secondary or incidental  
60 activity and not as an activity in support of or incidental to  
61 business activity not specifically enumerated in this definition.

62 (3) "High technology business services" means and is  
63 limited to computer hardware design and development;  
64 computer software design, development, customization and  
65 upgrade; computer systems design and development; website  
66 design and development; network design and development;  
67 electronic data processing; computer systems management;  
68 computersystems maintenance; computersystems engineering;  
69 computer systems administration; and computer systems  
70 security services.

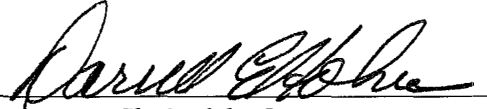
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

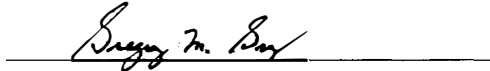
  
Chairman Senate Committee


  
Chairman House Committee

Originating in the House.

In effect July 1, 2004.

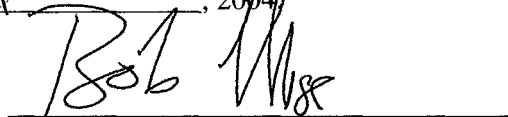
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 1<sup>st</sup>  
day of April, 2004

  
Governor

PRESENTED TO THE

GOVERNOR

DATE 3/31/04

TIME 10:30a