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WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2011

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 1001

(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,
BY REQUEST OF THE EXECUTIVE)

[PASSED AUGUST 5, 2011; IN EFFECT FROM PASSAGE.]

SB 1001

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SECRETARY OF STATE

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CLERK OF SENATE
WEST VIRGINIA
SENATE CHAMBER

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Senate Bill No. 1001

(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,
BY REQUEST OF THE EXECUTIVE)

[Passed August 5, 2011; in effect from passage.]

AN ACT to amend and reenact §11-15-3a of the Code of West Virginia, 1931, as amended; and to amend and reenact §11B-2-20 of said code, all relating generally to the consumers sales and service tax and the Revenue Shortfall Reserve Fund; specifying reduction in consumers sales and service tax on sales, purchases and uses of food and food ingredients intended for human consumption; specifying contingent elimination of the consumers sales and service tax on sales, purchases and uses of food and food ingredients intended for human consumption bases on specified levels of funding in the Revenue Shortfall Reserve Fund; and specifying maximum aggregate funding amount for the Revenue Shortfall Reserve Fund.

Be it enacted by the Legislature of West Virginia:

That §11-15-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11B-2-20 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

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

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

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

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

32 on July 1 of any calendar year beginning after December 31,
33 2013, in which the balance of funds as of December 31 of the
34 preceding fiscal year in said Revenue Shortfall Reserve Fund
35 equals or exceeds twelve and one-half percent of the General
36 Revenue Fund budgeted for the immediately succeeding
37 fiscal year.

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

47 (c) *Federal Food Stamp and Women, Infants and Children*
48 *programs, other exemptions.* — Nothing in this section
49 affects application of the exemption from tax provided in
50 section nine of this article for food purchased by an eligible
51 person using food stamps, electronic benefits transfer cards
52 or vouchers issued by or pursuant to authorization of the
53 United States Department of Agriculture to individuals
54 participating in the Federal Food Stamp Program, by
55 whatever name called, or the Women, Infants and Children
56 (WIC) program, or application of any other exemption from
57 tax set forth in this article or article fifteen-a of this chapter.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.

1 (a) Notwithstanding any provision of this section, the
2 Governor may reduce appropriations according to any of the
3 methods set forth in sections twenty-one and twenty-two of
4 this article. The Governor may, in lieu of imposing a reduc-
5 tion in appropriations, request an appropriation by the

6 Legislature from the Revenue Shortfall Reserve Fund
7 established in this section.

8 (b) A Revenue Shortfall Reserve Fund is hereby continued
9 within the State Treasury. The Revenue Shortfall Reserve
10 Fund shall be funded continuously and on a revolving basis
11 in accordance with this subsection up to an aggregate
12 amount not to exceed thirteen percent of the total appropria-
13 tions from the State Fund, General Revenue, for the fiscal
14 year just ended. The Revenue Shortfall Reserve Fund shall be
15 funded as set forth in this subsection from surplus revenues,
16 if any, in the State Fund, General Revenue, as the surplus
17 revenues may accrue from time to time. Within sixty days of
18 the end of each fiscal year, the secretary shall cause to be
19 deposited into the Revenue Shortfall Reserve Fund such
20 amount of the first fifty percent of all surplus revenues, if
21 any, determined to have accrued during the fiscal year just
22 ended, as may be necessary to bring the balance of the
23 Revenue Shortfall Reserve Fund to thirteen percent of the
24 total appropriations from the State Fund, General Revenue,
25 for the fiscal year just ended. If at the end of any fiscal year
26 the Revenue Shortfall Reserve Fund is funded at an amount
27 equal to or exceeding thirteen percent of the State's General
28 Revenue Fund budget for the fiscal year just ended, then
29 there shall be no further deposit by the secretary under the
30 provisions of this section of any surplus revenues as set forth
31 in this subsection until that time the Revenue Shortfall
32 Reserve Fund balance is less than thirteen percent of the
33 total appropriations from the State Fund, General Revenue.

34 (c) Not earlier than November 1 of each calendar year, if
35 the state's fiscal circumstances are such as to otherwise
36 trigger the authority of the Governor to reduce appropria-
37 tions under this section or section twenty-one or twenty-two
38 of this article, then in that event the Governor may notify the
39 presiding officers of both houses of the Legislature in writing
40 of his or her intention to convene the Legislature pursuant to
41 section nineteen, article VI of the Constitution of West
42 Virginia for the purpose of requesting the introduction of a
43 supplementary appropriation bill or to request a supplemen-

44 tary appropriation bill at the next preceding regular session
45 of the Legislature to draw money from the surplus Revenue
46 Shortfall Reserve Fund to meet any anticipated revenue
47 shortfall. If the Legislature fails to enact a supplementary
48 appropriation from the Revenue Shortfall Reserve Fund
49 during any special legislative session called for the purposes
50 set forth in this section or during the next preceding regular
51 session of the Legislature, then the Governor may proceed
52 with a reduction of appropriations pursuant to sections
53 twenty-one and twenty-two of this article. Should any
54 amount drawn from the Revenue Shortfall Reserve Fund
55 pursuant to an appropriation made by the Legislature prove
56 insufficient to address any anticipated shortfall, then the
57 Governor may also proceed with a reduction of appropria-
58 tions pursuant to sections twenty-one and twenty-two of this
59 article.

60 (d) Upon the creation of the fund, the Legislature is
61 authorized and may make an appropriation from the Reve-
62 nue Shortfall Reserve Fund for revenue shortfalls, for
63 emergency revenue needs caused by acts of God or natural
64 disasters or for other fiscal needs as determined solely by the
65 Legislature.

66 (e) Prior to the thirty-first day of October in any fiscal year
67 in which revenues are inadequate to make timely payments
68 of the state's obligations, the Governor may by executive
69 order, after first notifying the presiding officers of both
70 houses of the Legislature in writing, borrow funds from the
71 Revenue Shortfall Reserve Fund. The amount of funds
72 borrowed under this subsection shall not exceed one and
73 one-half percent of the general revenue estimate for the
74 fiscal year in which the funds are to be borrowed, or the
75 amount the Governor determines is necessary to make timely
76 payment of the state's obligations, whichever is less. Any
77 funds borrowed pursuant to this subsection shall be repaid,
78 without interest, and redeposited to the credit of the Revenue
79 Shortfall Reserve Fund within ninety days of their with-
80 drawal.

81 (f) There is hereby created in the State Treasury the
82 Revenue Shortfall Reserve Fund – Part B. The Revenue
83 Shortfall Reserve Fund – Part B shall consist of moneys
84 transferred from the West Virginia Tobacco Settlement
85 Medical Trust Fund pursuant to the provisions of section
86 two, article eleven-a, chapter four of this code, repayments
87 made of the loan from the West Virginia Tobacco Settlement
88 Medical Trust Fund to the Physician’s Mutual Insurance
89 Company pursuant to the provisions of article twenty-f,
90 chapter thirty-three of this code, and all interest and other
91 return earned on the moneys in the Revenue Shortfall
92 Reserve Fund – Part B. Moneys in the Revenue Shortfall
93 Reserve Fund – Part B may be expended solely for the
94 purposes set forth in subsection (d) of this section, subject to
95 the following conditions:

96 (1) No moneys in the Revenue Shortfall Reserve Fund –
97 Part B nor any interest or other return earned thereon may
98 be expended for any purpose unless all moneys in the
99 Revenue Shortfall Reserve Fund described in subsection (b)
100 of this section have first been expended, except that the
101 interest or other return earned on moneys in the Revenue
102 Shortfall Reserve Fund – Part B may be expended as pro-
103 vided in subdivision (2) of this subsection; and

104 (2) Notwithstanding any other provision of this section to
105 the contrary, the Legislature may appropriate any interest
106 and other return earned thereon that may accrue on the
107 moneys in the Revenue Shortfall Reserve Fund – Part B after
108 June 30, 2025, for expenditure for the purposes set forth in
109 section three, article eleven-a, chapter four of this code; and

110 (3) Any appropriation made from Revenue Shortfall
111 Reserve Fund – Part B shall be made only in instances of
112 revenue shortfalls or fiscal emergencies of an extraordinary
113 nature.

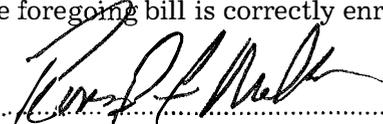
114 (g) Subject to the conditions upon expenditures from the
115 Revenue Shortfall Reserve Fund – Part B prescribed in
116 subsection (f) of this section, in appropriating moneys
117 pursuant to the provisions of this section, the Legislature

118 may in any fiscal year appropriate from the Revenue Short-
119 fall Reserve Fund and the Revenue Shortfall Reserve Fund –
120 Part B a total amount up to, but not exceeding, ten percent
121 of the total appropriations from the State Fund, General
122 Revenue, for the fiscal year just ended.

123 (h)(1) Of the moneys in the Revenue Shortfall Reserve
124 Fund, \$100 million, or such greater amount as may be
125 certified as necessary by the director of the budget for the
126 purposes of subsection (e) of this section, shall be made
127 available to the West Virginia Board of Treasury Investments
128 for management and investment of the moneys in accordance
129 with the provisions of article six-c, chapter twelve of this
130 code. All other moneys in the Revenue Shortfall Reserve
131 Fund shall be made available to the West Virginia Invest-
132 ment Management Board for management and investment of
133 the moneys in accordance with the provisions of article six,
134 chapter twelve of this code. Any balance of the Revenue
135 Shortfall Reserve Fund including accrued interest and other
136 return earned thereon at the end of any fiscal year shall not
137 revert to the General Fund but shall remain in the Revenue
138 Shortfall Reserve Fund for the purposes set forth in this
139 section.

140 (2) All of the moneys in the Revenue Shortfall Reserve
141 Fund – Part B shall be made available to the West Virginia
142 Investment Management Board for management and invest-
143 ment of the moneys in accordance with the provisions of
144 article six, chapter twelve of this code. Any balance of the
145 Revenue Shortfall Reserve Fund – Part B, including accrued
146 interest and other return earned thereon at the end of any
147 fiscal year, shall not revert to the General Fund but shall
148 remain in the Revenue Shortfall Reserve Fund – Part B for
149 the purposes set forth in this section.

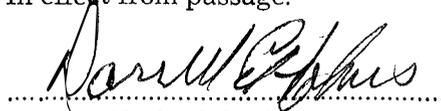
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


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Chairman Senate Committee

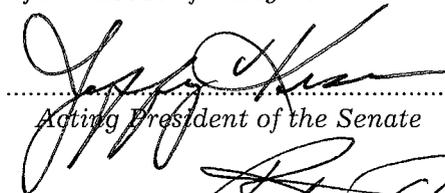

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Chairman House Committee

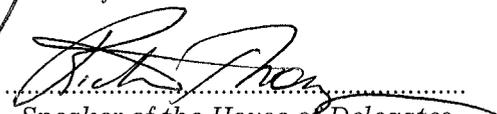
Originated in the Senate.

In effect from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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Acting President of the Senate


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Speaker of the House of Delegates

The within is approved this the 23rd
Day of August, 2011.


.....
Governor

2011 AUG 23 PM 4:12

STATE OF MISSISSIPPI

PRESENTED TO THE GOVERNOR

AUG 17 2011

Time 9:30am