

**Senate Bill No. 555**

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(By Senators Laird, Williams, Browning, Palumbo, Snyder, Miller,  
K. Facemyer, Wills, Green, Stollings, Plymale, Jenkins, Unger and  
Foster)

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[Introduced February 9, 2012; referred to the Committee on  
Finance.]  
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11 A BILL to amend and reenact §11-15-8d of the Code of West Virginia,  
12 1931, as amended, relating to adding an exception to the  
13 limitation on the right of a contractor to assert sales and  
14 use tax exemptions of a purchaser when the purchaser is a  
15 nonprofit youth organization.

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

17 That §11-15-8d of the Code of West Virginia, 1931, as amended,  
18 be amended and reenacted to read as follows:

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

20 **§11-15-8d. Limitations on right to assert exemptions.**

21 (a) Persons who perform "contracting" as defined in section  
22 two of this article or persons acting in an agency capacity may not  
23 assert any exemption to which the purchaser of such contracting  
24 services or the principal is entitled. Any statutory exemption to

1 which a taxpayer may be entitled is invalid unless the tangible  
2 personal property or taxable service is actually purchased by such  
3 taxpayer and is directly invoiced to and paid by such taxpayer.  
4 This section does not apply to purchases by an employee for his or  
5 her employer, purchases by a partner for his or her partnership or  
6 purchases by a duly authorized officer of a corporation, or  
7 unincorporated organization, for his or her corporation or  
8 unincorporated organization so long as the purchase is invoiced to  
9 and paid by the employer, partnership, corporation or  
10 unincorporated organization.

11 (b) *Transition rule.* -- This section does not apply to  
12 purchases of tangible personal property or taxable services in  
13 fulfillment of a purchasing agent or procurement agent contract  
14 executed and legally binding on the parties thereto prior to  
15 September 15, 1999. This transition rule does not apply to any  
16 purchases of tangible personal property or taxable services made  
17 under such a contract after August 31, 1991 and this transition  
18 rule does not apply if the primary purpose of the purchasing agent  
19 or procurement agent contract was to avoid payment of consumers  
20 sales and use taxes. Effective July 1, 2007, this section does not  
21 apply to purchases of services, machinery, supplies or materials,  
22 except gasoline and special fuel, to be directly used or consumed  
23 in the construction, alteration, repair or improvement of a new or  
24 existing building or structure by a person performing

1 "contracting", as defined in section two of this article, if the  
2 purchaser of the "contracting" services would be entitled to claim  
3 the refundable exemption under subdivision (2), subsection (b),  
4 section nine of this article had it purchased the services,  
5 machinery, supplies or materials. Effective July 1, 2009, this  
6 section does not apply to purchases of services, computers,  
7 servers, building materials and tangible personal property, except  
8 purchases of gasoline and special fuel, to be installed into a  
9 building or facility or directly used or consumed in the  
10 construction, alteration, repair or improvement of a new or  
11 existing building or structure by a person performing  
12 "contracting", as defined in section two of this article, if the  
13 purchaser of the "contracting" services would be entitled to claim  
14 the exemption under subdivision (7), subsection (a), section nine-h  
15 of this article. This section shall not apply to qualified  
16 purchases of computers and computer software, primary material  
17 handling equipment, racking and racking systems, and their  
18 components, or to qualified purchases of building materials and  
19 certain tangible personal property, as those terms are defined in  
20 section nine-n of this article, by a person performing  
21 "contracting," as defined in section two of this article, if the  
22 purchaser of the "contracting" services would be entitled to claim  
23 the refundable exemption under section nine-n of this article.  
24 Purchases of gasoline and special fuel shall not be treated as

1 exempt pursuant to this section.

2 (c) Effective July 1, 2011, notwithstanding any other  
3 provision of this code to the contrary, this section shall apply as  
4 to purchases of services, machinery, supplies or materials, except  
5 gasoline and special fuel, to be directly used or consumed in the  
6 construction, alteration, repair or improvement of a new or  
7 existing natural gas compressor station or gas transmission line  
8 having a diameter of twenty inches or more by a person performing  
9 "contracting", as defined in section two of this article, even  
10 though the purchaser of the "contracting" services would be  
11 entitled to claim the refundable exemption under subdivision (2),  
12 subsection (b), section nine of this article had it purchased the  
13 services, machinery, supplies or materials, unless the person or  
14 entity performing "contracting" under this subsection, as the term  
15 "contracting" is defined in section two of this article, complies  
16 with subsection (e), section four, article thirteen-s of this  
17 chapter.

18 (d) (1) Effective July 1, 2012, this section does not apply  
19 to purchases of services, building materials and tangible personal  
20 property, except purchases of gasoline and special fuel, to be  
21 installed into a building or facility or directly used or consumed  
22 in the construction, alteration, repair or improvement of a new or  
23 existing building or structure by a person performing contracting,  
24 as defined in section two of this article, if the purchaser of the

1 contracting services is a nonprofit youth organization that would  
2 be entitled to claim the exemption under paragraph (E), subdivision  
3 (6), subsection (a), section nine of this article had it purchased  
4 the services, machinery, supplies or materials.

5 (2) For purposes of this subsection, the term nonprofit youth  
6 organization means any nonprofit organization, including  
7 subsidiary, affiliate or other related entity within its corporate  
8 or other business structure that has been chartered by the United  
9 States Congress to train young people to do things for themselves  
10 and others and that has established an area of at least six  
11 thousand contiguous acres within West Virginia in which to provide  
12 adventure, educational activities or recreational activities for  
13 such young people and others.

NOTE: The purpose of this bill is to add an exception to the limitation on the right of a contractor to assert sales and use tax exemptions of a purchaser, specifically, when the purchaser is a nonprofit youth organization.

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