

1 **Senate Bill No. 334**

2 (By Senators Kessler (Mr. President) and M. Hall,

3 By Request of the Executive)

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5 [Introduced January 10, 2014; referred to the Committee on
6 Transportation and Infrastructure; and then to the Committee on
7 Finance.]

**FISCAL
NOTE**

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11 A BILL to amend and reenact §11-15-9 of the Code of West Virginia,
12 1931, as amended, relating to suspending payments of the
13 refundable exemption to the West Virginia consumers sales and
14 service tax to the State Road Fund for fiscal years 2015 and
15 2016; and resuming these payments for fiscal year 2017.

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

17 That §11-15-9 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 **§11-15-9. Exemptions.**

21 (a) *Exemptions for which exemption certificate may be issued.*

22 -- A person having a right or claim to any exemption set forth in

1 this subsection may, in lieu of paying the tax imposed by this
2 article and filing a claim for refund, execute a certificate of
3 exemption, in the form required by the Tax Commissioner, and
4 deliver it to the vendor of the property or service in the manner
5 required by the Tax Commissioner. However, the Tax Commissioner
6 may, by rule, specify those exemptions authorized in this
7 subsection for which exemption certificates are not required. The
8 following sales of tangible personal property and services are
9 exempt as provided in this subsection:

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

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

18 (3) Sales of property or services to this state, its
19 institutions or subdivisions, governmental units, institutions or
20 subdivisions of other states: *Provided*, That the law of the other
21 state provides the same exemption to governmental units or
22 subdivisions of this state and to the United States, including

1 agencies of federal, state or local governments for distribution in
2 public welfare or relief work;

3 (4) Sales of vehicles which are titled by the Division of
4 Motor Vehicles and which are subject to the tax imposed by section
5 four, article three, chapter seventeen-a of this code or like tax;

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

12 (6) Sales of tangible personal property or services to a
13 corporation or organization which has a current registration
14 certificate issued under article twelve of this chapter, which is
15 exempt from federal income taxes under Section 501(c)(3) or (c)(4)
16 of the Internal Revenue Code of 1986, as amended, and which is:

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

20 (B) An elementary or secondary school which maintains a
21 regular faculty and curriculum and has a regularly enrolled body of
22 pupils or students in attendance at the place in this state where

1 its educational activities are regularly carried on;

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

5 (D) An organization which has no paid employees and its gross
6 income from fund raisers, less reasonable and necessary expenses
7 incurred to raise the gross income (or the tangible personal
8 property or services purchased with the net income), is donated to
9 an organization which is exempt from income taxes under Section
10 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
11 amended;

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

18 (F) For purposes of this subsection:

19 (I) The term "support" includes, but is not limited to:

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

21 (II) Gross receipts from fund raisers which include receipts
22 from admissions, sales of merchandise, performance of services or

1 furnishing of facilities in any activity which is not an unrelated
2 trade or business within the meaning of Section 513 of the Internal
3 Revenue Code of 1986, as amended;

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

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

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

12 (VI) The value of services or facilities (exclusive of
13 services or facilities generally furnished to the public without
14 charge) furnished by a governmental unit referred to in Section
15 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an
16 organization without charge. This term does not include any gain
17 from the sale or other disposition of property which would be
18 considered as gain from the sale or exchange of a capital asset or
19 the value of an exemption from any federal, state or local tax or
20 any similar benefit;

21 (ii) The term "charitable contribution" means a contribution
22 or gift to or for the use of a corporation or organization,

1 described in Section 170(c)(2) of the Internal Revenue Code of
2 1986, as amended; and

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

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

16 (7) An isolated transaction in which any taxable service or
17 any tangible personal property is sold, transferred, offered for
18 sale or delivered by the owner of the property or by his or her
19 representative for the owner's account, the sale, transfer, offer
20 for sale or delivery not being made in the ordinary course of
21 repeated and successive transactions of like character by the owner
22 or on his or her account by the representative: *Provided, That*

1 nothing contained in this subdivision may be construed to prevent
2 an owner who sells, transfers or offers for sale tangible personal
3 property in an isolated transaction through an auctioneer from
4 availing himself or herself of the exemption provided in this
5 subdivision, regardless of where the isolated sale takes place.
6 The Tax Commissioner may propose a legislative rule for
7 promulgation pursuant to article three, chapter twenty-nine-a of
8 this code which he or she considers necessary for the efficient
9 administration of this exemption;

10 (8) Sales of tangible personal property or of any taxable
11 services rendered for use or consumption in connection with the
12 commercial production of an agricultural product the ultimate sale
13 of which is subject to the tax imposed by this article or which
14 would have been subject to tax under this article: *Provided*, That
15 sales of tangible personal property and services to be used or
16 consumed in the construction of or permanent improvement to real
17 property and sales of gasoline and special fuel are not exempt:
18 *Provided, however*, That nails and fencing may not be considered as
19 improvements to real property;

20 (9) Sales of tangible personal property to a person for the
21 purpose of resale in the form of tangible personal property:
22 *Provided*, That sales of gasoline and special fuel by distributors

1 and importers is taxable except when the sale is to another
2 distributor for resale: *Provided, however,* That sales of building
3 materials or building supplies or other property to any person
4 engaging in the activity of contracting, as defined in this
5 article, which is to be installed in, affixed to or incorporated by
6 that person or his or her agent into any real property, building or
7 structure is not exempt under this subdivision;

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

10 (11) Sales of drugs, durable medical goods, mobility-enhancing
11 equipment and prosthetic devices dispensed upon prescription and
12 sales of insulin to consumers for medical purposes. The amendment
13 to this subdivision shall apply to sales made after December 31,
14 2003;

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

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

19 (14) Casual and occasional sales of property or services not
20 conducted in a repeated manner or in the ordinary course of
21 repetitive and successive transactions of like character by a
22 corporation or organization which is exempt from tax under

1 subdivision (6) of this subsection on its purchases of tangible
2 personal property or services. For purposes of this subdivision,
3 the term "casual and occasional sales not conducted in a repeated
4 manner or in the ordinary course of repetitive and successive
5 transactions of like character" means sales of tangible personal
6 property or services at fund raisers sponsored by a corporation or
7 organization which is exempt, under subdivision (6) of this
8 subsection, from payment of the tax imposed by this article on its
9 purchases when the fundraisers are of limited duration and are held
10 no more than six times during any twelve-month period and "limited
11 duration" means no more than eighty-four consecutive hours:
12 *Provided*, That sales for volunteer fire departments and volunteer
13 school support groups, with duration of events being no more than
14 eighty-four consecutive hours at a time, which are held no more
15 than eighteen times in a twelve-month period for the purposes of
16 this subdivision are considered "casual and occasional sales not
17 conducted in a repeated manner or in the ordinary course of
18 repetitive and successive transactions of a like character";

19 (15) Sales of property or services to a school which has
20 approval from the Board of Trustees of the University System of
21 West Virginia or the Board of Directors of the State College System
22 to award degrees, which has its principal campus in this state and

1 which is exempt from federal and state income taxes under Section
2 501(c)(3) of the Internal Revenue Code of 1986, as amended:

3 *Provided*, That sales of gasoline and special fuel are taxable;

4 (16) Sales of lottery tickets and materials by licensed
5 lottery sales agents and lottery retailers authorized by the state
6 Lottery Commission, under the provisions of article twenty-two,
7 chapter twenty-nine of this code;

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

11 (18) Notwithstanding the provisions of section eighteen or
12 eighteen-b of this article or any other provision of this article
13 to the contrary, sales of propane to consumers for poultry house
14 heating purposes, with any seller to the consumer who may have
15 prior paid the tax in his or her price, to not pass on the same to
16 the consumer, but to make application and receive refund of the tax
17 from the Tax Commissioner pursuant to rules which are promulgated
18 after being proposed for legislative approval in accordance with
19 chapter twenty-nine-a of this code by the Tax Commissioner;

20 (19) Any sales of tangible personal property or services
21 purchased and lawfully paid for with food stamps pursuant to the
22 federal food stamp program codified in 7 U. S. C. §2011, *et seq.*,

1 as amended, or with drafts issued through the West Virginia special
2 supplement food program for women, infants and children codified in
3 42 U. S. C. §1786;

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

6 (21) Sales of electronic data processing services and related
7 software: *Provided, That, for the purposes of this subdivision,*
8 "electronic data processing services" means:

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

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

18 (22) Tuition charged for attending educational summer camps;

19 (23) Dispensing of services performed by one corporation,
20 partnership or limited liability company for another corporation,
21 partnership or limited liability company when the entities are
22 members of the same controlled group or are related taxpayers as

1 defined in Section 267 of the Internal Revenue Code. "Control"
2 means ownership, directly or indirectly, of stock, equity interests
3 or membership interests possessing fifty percent or more of the
4 total combined voting power of all classes of the stock of a
5 corporation, equity interests of a partnership or membership
6 interests of a limited liability company entitled to vote or
7 ownership, directly or indirectly, of stock, equity interests or
8 membership interests possessing fifty percent or more of the value
9 of the corporation, partnership or limited liability company;

10 (24) Food for the following are exempt:

11 (A) Food purchased or sold by a public or private school,
12 school-sponsored student organizations or school-sponsored
13 parent-teacher associations to students enrolled in the school or
14 to employees of the school during normal school hours; but not
15 those sales of food made to the general public;

16 (B) Food purchased or sold by a public or private college or
17 university or by a student organization officially recognized by
18 the college or university to students enrolled at the college or
19 university when the sales are made on a contract basis so that a
20 fixed price is paid for consumption of food products for a specific
21 period of time without respect to the amount of food product
22 actually consumed by the particular individual contracting for the

1 sale and no money is paid at the time the food product is served or
2 consumed;

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

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

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

18 (F) Food sold by any religious organization at a social or
19 other gathering conducted by it or under its auspices, if the
20 purpose in selling the food is to obtain revenue for the functions
21 and activities of the organization and the revenue obtained from
22 selling the food is actually used in carrying out those functions

1 and activities: *Provided*, That purchases made by the organizations
2 are not exempt as a purchase for resale; or

3 (G) Food sold by volunteer fire departments and rescue squads
4 that are exempt from federal income taxes under Section 501(c)(3)
5 or (c)(4) of the Internal Revenue Code of 1986, as amended, when
6 the purpose of the sale is to obtain revenue for the functions and
7 activities of the organization and the revenue obtained is exempt
8 from federal income tax and actually expended for that purpose;

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

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

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

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

6 (29) Sales of tangible personal property or services to any
7 person who claims exemption from the tax imposed by this article or
8 article fifteen-a of this chapter pursuant to the provision of any
9 other chapter of this code;

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

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

21 (32) Sales of motion picture films to motion picture
22 exhibitors for exhibition if the sale of tickets or the charge for

1 admission to the exhibition of the film is subject to the tax
2 imposed by this article and sales of coin-operated video arcade
3 machines or video arcade games to a person engaged in the business
4 of providing the machines to the public for a charge upon which the
5 tax imposed by this article is remitted to the Tax Commissioner:
6 *Provided*, That the exemption provided in this subdivision may be
7 claimed by presenting to the seller a properly executed exemption
8 certificate;

9 (33) Sales of aircraft repair, remodeling and maintenance
10 services when the services are to an aircraft operated by a
11 certified or licensed carrier of persons or property, or by a
12 governmental entity, or to an engine or other component part of an
13 aircraft operated by a certificated or licensed carrier of persons
14 or property, or by a governmental entity and sales of tangible
15 personal property that is permanently affixed or permanently
16 attached as a component part of an aircraft owned or operated by a
17 certificated or licensed carrier of persons or property, or by a
18 governmental entity, as part of the repair, remodeling or
19 maintenance service and sales of machinery, tools or equipment
20 directly used or consumed exclusively in the repair, remodeling or
21 maintenance of aircraft, aircraft engines or aircraft component
22 parts for a certificated or licensed carrier of persons or property

1 or for a governmental entity;

2 (34) Charges for memberships or services provided by health
3 and fitness organizations relating to personalized fitness
4 programs;

5 (35) Sales of services by individuals who babysit for a
6 profit: *Provided*, That the gross receipts of the individual from
7 the performance of baby-sitting services do not exceed \$5,000 in a
8 taxable year;

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

12 (37) Commissions received by a manufacturer's representative;

13 (38) Sales of primary opinion research services when:

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

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

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

22 For the purpose of this subdivision, the term "primary opinion

1 research" means original research in the form of telephone surveys,
2 mall intercept surveys, focus group research, direct mail surveys,
3 personal interviews and other data collection methods commonly used
4 for quantitative and qualitative opinion research studies;

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

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

20 (A) Lumber into furniture, toys, collectibles and home
21 furnishings;

22 (B) Fruits into wine;

- 1 (C) Honey into wine;
- 2 (D) Wool into fabric;
- 3 (E) Raw hides into semifinished or finished leather products;
- 4 (F) Milk into cheese;
- 5 (G) Fruits or vegetables into a dried, canned or frozen
- 6 product;
- 7 (H) Feeder cattle into commonly accepted slaughter weights;
- 8 (I) Aquatic animals into a dried, canned, cooked or frozen
- 9 product; and
- 10 (J) Poultry into a dried, canned, cooked or frozen product;
- 11 (40) Sales of music instructional services by a music teacher
- 12 and artistic services or artistic performances of an entertainer or
- 13 performing artist pursuant to a contract with the owner or operator
- 14 of a retail establishment, restaurant, inn, bar, tavern, sports or
- 15 other entertainment facility or any other business location in this
- 16 state in which the public or a limited portion of the public may
- 17 assemble to hear or see musical works or other artistic works be
- 18 performed for the enjoyment of the members of the public there
- 19 assembled when the amount paid by the owner or operator for the
- 20 artistic service or artistic performance does not exceed \$3,000:
- 21 *Provided*, That nothing contained herein may be construed to deprive
- 22 private social gatherings, weddings or other private parties from

1 asserting the exemption set forth in this subdivision. For the
2 purposes of this exemption, artistic performance or artistic
3 service means and is limited to the conscious use of creative
4 power, imagination and skill in the creation of aesthetic
5 experience for an audience present and in attendance and includes,
6 and is limited to, stage plays, musical performances, poetry
7 recitations and other readings, dance presentation, circuses and
8 similar presentations and does not include the showing of any film
9 or moving picture, gallery presentations of sculptural or pictorial
10 art, nude or strip show presentations, video games, video arcades,
11 carnival rides, radio or television shows or any video or audio
12 taped presentations or the sale or leasing of video or audio tapes,
13 air shows or any other public meeting, display or show other than
14 those specified herein: *Provided, however,* That nothing contained
15 herein may be construed to exempt the sales of tickets from the tax
16 imposed in this article. The state Tax Commissioner shall propose
17 a legislative rule pursuant to article three, chapter twenty-nine-a
18 of this code establishing definitions and eligibility criteria for
19 asserting this exemption which is not inconsistent with the
20 provisions set forth herein: *Provided further,* That nude dancers
21 or strippers may not be considered as entertainers for the purposes
22 of this exemption;

1 (41) Charges to a member by a membership association or
2 organization which is exempt from paying federal income taxes under
3 Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986,
4 as amended, for membership in the association or organization,
5 including charges to members for newsletters prepared by the
6 association or organization for distribution primarily to its
7 members, charges to members for continuing education seminars,
8 workshops, conventions, lectures or courses put on or sponsored by
9 the association or organization, including charges for related
10 course materials prepared by the association or organization or by
11 the speaker or speakers for use during the continuing education
12 seminar, workshop, convention, lecture or course, but not including
13 any separate charge or separately stated charge for meals, lodging,
14 entertainment or transportation taxable under this article:
15 *Provided*, That the association or organization pays the tax imposed
16 by this article on its purchases of meals, lodging, entertainment
17 or transportation taxable under this article for which a separate
18 or separately stated charge is not made. A membership association
19 or organization which is exempt from paying federal income taxes
20 under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of
21 1986, as amended, may elect to pay the tax imposed under this
22 article on the purchases for which a separate charge or separately

1 stated charge could apply and not charge its members the tax
2 imposed by this article or the association or organization may
3 avail itself of the exemption set forth in subdivision (9) of this
4 subsection relating to purchases of tangible personal property for
5 resale and then collect the tax imposed by this article on those
6 items from its member;

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

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

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

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

18 (46) The service of providing technical evaluations for
19 compliance with federal and state environmental standards provided
20 by environmental and industrial consultants who have formal
21 certification through the West Virginia Department of Environmental
22 Protection or the West Virginia Bureau for Public Health or both.

1 For purposes of this exemption, the service of providing technical
2 evaluations for compliance with federal and state environmental
3 standards includes those costs of tangible personal property
4 directly used in providing such services that are separately billed
5 to the purchaser of such services and on which the tax imposed by
6 this article has previously been paid by the service provider;

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

14 (48) Lodging franchise fees, including royalties, marketing
15 fees, reservation system fees or other fees assessed after December
16 1, 1997, that have been or may be imposed by a lodging franchiser
17 as a condition of the franchise agreement; and

18 (49) Sales of the regulation size United States flag and the
19 regulation size West Virginia flag for display.

20 (b) *Refundable exemptions.* -- Any person having a right or
21 claim to any exemption set forth in this subsection shall first pay
22 to the vendor the tax imposed by this article and then apply to the

1 Tax Commissioner for a refund or credit, or as provided in section
2 nine-d of this article, give to the vendor his or her West Virginia
3 direct pay permit number. The following sales of tangible personal
4 property and services are exempt from tax as provided in this
5 subsection:

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

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

21 (3) Sales of property or services to nationally chartered
22 fraternal or social organizations for the sole purpose of free

1 distribution in public welfare or relief work: *Provided*, That
2 sales of gasoline and special fuel are taxable;

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

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

19 (6) (A) Sales of construction and maintenance materials
20 acquired by a second party for use in the construction or
21 maintenance of a highway project: *Provided*, That in lieu of any
22 refund or credit to the person that paid the tax imposed by this

1 article, the Tax Commissioner shall pay to the Division of Highways
2 for deposit into the State Road Fund of the state reimbursement for
3 the tax in the amount estimated under the provisions of this
4 subdivision: *Provided, however,* That by June 15 of each fiscal
5 year, the ~~division~~ Division of Highways shall provide to the Tax
6 Department an itemized listing of highways projects with the amount
7 of funds expended for highway construction and maintenance. The
8 Commissioner of Highways shall request reimbursement of the tax
9 based on an estimate that forty percent of the total gross funds
10 expended by the agency during the fiscal period were for the
11 acquisition of materials used for highway construction and
12 maintenance. The amount of the reimbursement shall be calculated
13 at six percent of the forty percent.

14 (B) For fiscal years 2015 and 2016, the exemption and the
15 reimbursement of moneys to the Division of Highways for deposit
16 into the State Road Fund set forth in paragraph (A) of this
17 subdivision is suspended. For the fiscal years 2015 and 2016, the
18 Tax Commissioner shall pay the amount specified in paragraph (A) of
19 this subdivision into the General Fund, and shall not pay such
20 amount to the Division of Highways for deposit into the State Road
21 Fund.

22 (C) For fiscal years 2017 and beyond, the exemption and the

1 reimbursement of moneys to the Division of Highways for deposit
2 into the State Road Fund set forth in paragraph (A) of this
3 subdivision shall resume. For fiscal years 2017 and beyond, the
4 Tax Commissioner shall pay to the Division of Highways for deposit
5 into the State Road Fund the amount specified in paragraph (A) of
6 this subdivision in accordance with the procedures set forth
7 therein.

NOTE: The purpose of this bill is to suspend payments of the refundable exemption to the West Virginia consumers sales and service tax to the State Road Fund for fiscal years 2015 and 2016 and to resume these payments for fiscal year 2017.

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