

**WEST VIRGINIA LEGISLATURE**

**2016 FIRST EXTRAORDINARY SESSION**

**Introduced**

**Senate Bill 1004**

BY SENATOR KESSLER

(BY REQUEST OF THE EXECUTIVE)

[Introduced May 16, 2016]

1 A BILL to amend and reenact §11-15-3 of the Code of West Virginia, 1931, as amended; and to  
2 amend and reenact §11-15A-2 of said code, all relating to increasing the rate of the  
3 consumers sales and service tax; increasing the rate of the use tax; providing effective  
4 dates for those rate changes; and changing the words "six percent" to the current  
5 consumers sales and service tax rate or use tax rate where those terms are used under  
6 certain sections of chapter eleven of the code.

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

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

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

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

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

6 (b) *Amount of tax.* -- The general consumer sales and service tax imposed by this article  
7 shall be at the rate of 6¢ on the dollar of sales or services, excluding gasoline and special fuel  
8 sales, which remain taxable at the rate of 5¢ on the dollar of sale: Provided, That on and after  
9 July 1, 2016, the tax imposed by this article shall be 7¢ on the dollar of sales or services, excluding  
10 gasoline and special fuel sales, which remain taxable at the rate of 5¢ on the dollar of sale.

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

14 (1) On each sale, where the monetary consideration is from 6¢ to 16¢, both inclusive, 1¢.

- 15 (2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.
- 16 (3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.
- 17 (4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.
- 18 (5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.
- 19 (6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.
- 20 (7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any
- 21 fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the
- 22 dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢;
- 23 3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional part
- 24 of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in excess
- 25 of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For example,
- 26 the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33, both
- 27 inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67, both
- 28 inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to \$2,
- 29 both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall be
- 30 calculated as provided in subsection (d) of this subsection and this subsection (c) does not apply
- 31 to sales made after December 31, 2003.

32 (d) *Calculation of tax on fractional parts of a dollar after December 31, 2003.* -- Beginning

33 January 1, 2004, the tax computation under subsection (b) of this section shall be carried to the

34 third decimal place, and the tax rounded up to the next whole cent whenever the third decimal

35 place is greater than four and rounded down to the lower whole cent whenever the third decimal

36 place is four or less. The vendor may elect to compute the tax due on a transaction on a per item

37 basis or on an invoice basis provided the method used is consistently used during the reporting

38 period.

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

44 (f) *Rate of tax on certain mobile homes.* -- Notwithstanding any provision of this article to  
45 the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the  
46 owner thereof as his or her principal year-round residence and dwelling shall be an amount equal  
47 to six percent of fifty percent of the sales price: Provided, That on and after July 1, 2016,  
48 notwithstanding any provision of this article to the contrary, the tax levied on sales of mobile  
49 homes to be used by the owner thereof as his or her principal year-round residence and dwelling  
50 shall be an amount equal to seven percent of fifty percent of the sales price.

51 (g) *Construction; custom software.* -- After December 31, 2003, whenever the words  
52 "tangible personal property" or "property" appear in this article, the same shall also include the  
53 words "custom software".

54 (h) *Computation of tax on sales of gasoline and special fuel.* -- The method of computation  
55 of tax provided in this section does not apply to sales of gasoline and special fuel.

56 (i) Notwithstanding any provision of this code to the contrary, on and after July 1, 2016,  
57 when the words "six percent" appear in the following subsections, sections or articles of this code,  
58 those words shall mean "a percentage equal to the consumers sales and service tax rate:" section  
59 eight-b, article fifteen, chapter eleven; subdivision (6), subsection (b), section nine, article fifteen,  
60 chapter eleven; and subsection (b), section eleven, article ten, chapter eleven: *Provided, That,*  
61 notwithstanding any provisions of this code to the contrary, on and after July 1, 2016, when the  
62 words "six percent" appear in subsection (c), section ten, article fifteen-a, chapter eleven, those

63 words shall mean “a percentage equal to the use tax rate.”

**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.**

1 (a) ~~An exercise~~ A tax is hereby levied and imposed on the use in this state of tangible  
2 personal property, custom software or taxable services, to be collected and paid as provided in  
3 this article or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the  
4 property or taxable services, except as otherwise provided in this article: Provided, That on and  
5 after July 1, 2016, the tax imposed by this article shall be collected and paid, as provided in this  
6 article or article fifteen-b of this chapter, at the rate of seven percent of the purchase price of the  
7 property or taxable services, except as otherwise provided in this article.

8 (b) *Calculation of tax on fractional parts of a dollar.* -- The tax computation under  
9 subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to  
10 the next whole cent whenever the third decimal place is greater than four and rounded down to  
11 the lower whole cent whenever the third decimal place is four or less. The vendor may elect to  
12 compute the tax due on a transaction on a per item basis or on an invoice basis provided the  
13 method used is consistently used during the reporting period.

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

18 (d) Use tax is hereby imposed upon every person using tangible personal property, custom  
19 software or taxable service within this state. That person's liability is not extinguished until the tax  
20 has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in

21 business in this state, or by a foreign retailer who is authorized by the Tax Commissioner to collect  
22 the tax imposed by this article, relieves the purchaser from further liability for the tax to which the  
23 receipt refers.

24 (e) Purchases of tangible personal property or taxable services made for the government  
25 of the United States or any of its agencies by ultimate consumers is subject to the tax imposed  
26 by this section. Industrial materials and equipment owned by the federal government within the  
27 State of West Virginia of a character not ordinarily readily obtainable within the state, is not subject  
28 to use tax when sold, if the industrial materials and equipment would not be subject to use taxes  
29 if sold outside of the state for use in West Virginia.

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

NOTE: The purpose of this bill is to increase the rate of the consumer sales and service tax and the rate of the state use tax. These increased rates will take effect on July 1, 2016.

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