

**WEST VIRGINIA LEGISLATURE**

**2017 FIRST EXTRAORDINARY SESSION**

**Introduced**

**House Bill 110**

BY DELEGATES PUSHKIN AND ROWE

[Introduced May 19, 2017; Referred  
to the Committee on Finance.]

1 A BILL to amend and reenact §11-15-2, §11-15-3, §11-15-9, §11-15-9b and §11-15-9h of the  
 2 Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new  
 3 sections, designated §11-15-3d and 11-15-3e; to amend and reenact §11-15A-2 and §11-  
 4 15A-10 of said code; to amend and reenact §11-21-8, §11-21-8a, §11-21-8e and §11-21-  
 5 12 of said code; to amend said code by adding thereto two new sections, designated §11-  
 6 21-4g and §11-21-22d; and to amend and reenact §11-24-4 of said code, all relating to  
 7 taxation; defining certain terms; increasing rate of consumers sales and service tax as of  
 8 specified date; imposing tax on digital code and digital products as of specified date;  
 9 eliminating certain exemptions from consumers sales and service tax as of specified date;  
 10 increasing rate of use tax as of specified date; authorizing consumer sales and service tax  
 11 on certain personal services after a certain date; applying consumer sales and service tax  
 12 to certain contractor services after a certain date; creating a fair share income surcharge  
 13 on certain high income earners; providing a tax credit for full-time classroom teachers;  
 14 creating a West Virginia earned income tax credit for residents who receive the United  
 15 States earned income tax credit; granting rule-making authority to State Tax Department;  
 16 exempting monetary benefits derived from military retirement from personal income tax;  
 17 and increasing rate of corporate net income tax as of specified date.

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

1 That §11-15-2, §11-15-3, §11-15-9, §11-15-9b and §11-15-9h of the Code of West  
 2 Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding  
 3 thereto two new sections, designated §11-15-3d and 11-15-3e; that §11-15A-2 and §11-15A-10  
 4 of said code be amended and reenacted; that §11-21-8, §11-21-8a, §11-21-8e and §11-21-12 of  
 5 said code be amended and reenacted; that said code be amended by adding thereto two new  
 6 sections, designated §11-21-4g and §11-21-22d; and that §11-24-4 of said code be amended and  
 7 reenacted, all to read as follows:

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

**§11-15-2. Definitions.**

1           (a) *General.* -- When used in this article and article fifteen-a of this chapter, words defined  
2 in subsection (b) of this section have the meanings ascribed to them in this section, except in  
3 those instances where a different meaning is provided in this article or the context in which the  
4 word is used clearly indicates that a different meaning is intended by the Legislature.

5           (b) *Definitions.* --

6           (1) "Business" includes all activities engaged in or caused to be engaged in with the object  
7 of gain or economic benefit, direct or indirect, and all activities of the state and its political  
8 subdivisions which involve sales of tangible personal property or the rendering of services when  
9 those service activities compete with or may compete with the activities of other persons.

10           (2) "Communication" means all telephone, radio, light, light wave, radio telephone,  
11 telegraph and other communication or means of communication, whether used for voice  
12 communication, computer data transmission or other encoded symbolic information transfers and  
13 includes commercial broadcast radio, commercial broadcast television and cable television.

14           (3) "Contracting":

15           (A) *In general.* -- "Contracting" means and includes the furnishing of work, or both  
16 materials and work, for another (by a sole contractor, general contractor, prime contractor,  
17 subcontractor or construction manager) in fulfillment of a contract for the construction, alteration,  
18 repair, decoration or improvement of a new or existing building or structure, or any part thereof,  
19 or for removal or demolition of a building or structure, or any part thereof, or for the alteration,  
20 improvement or development of real property. Contracting also includes services provided by a  
21 construction manager so long as the project for which the construction manager provides the  
22 services results in a capital improvement to a building or structure or to real property.

23           (B) *Form of contract not controlling.* -- An activity that falls within the scope of the definition  
24 of contracting constitutes contracting regardless of whether the contract governing the activity is  
25 written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-

26 plus contract, a time and materials contract, whether or not open-ended, or any other kind of  
27 construction contract.

28 (C) *Special rules.* -- For purposes of this definition:

29 (i) The term "structure" includes, but is not limited to, everything built up or composed of  
30 parts joined together in some definite manner and attached or affixed to real property or which  
31 adds utility to real property or any part thereof or which adds utility to a particular parcel of property  
32 and is intended to remain there for an indefinite period of time;

33 (ii) The term "alteration" means, and is limited to, alterations which are capital  
34 improvements to a building or structure or to real property;

35 (iii) The term "repair" means, and is limited to, repairs which are capital improvements to  
36 a building or structure or to real property;

37 (iv) The term "decoration" means, and is limited to, decorations which are capital  
38 improvements to a building or structure or to real property;

39 (v) The term "improvement" means, and is limited to, improvements which are capital  
40 improvements to a building or structure or to real property;

41 (vi) The term "capital improvement" means improvements that are affixed to or attached  
42 to and become a part of a building or structure or the real property or which add utility to real  
43 property, or any part thereof, and that last or are intended to be relatively permanent. As used  
44 herein, "relatively permanent" means lasting at least a year in duration without the necessity for  
45 regularly scheduled recurring service to maintain the capital improvement. "Regular recurring  
46 service" means regularly scheduled service intervals of less than one year;

47 (vii) Contracting does not include the furnishing of work, or both materials and work, in the  
48 nature of hookup, connection, installation or other services if the service is incidental to the retail  
49 sale of tangible personal property from the service provider's inventory: *Provided*, That the  
50 hookup, connection or installation of the foregoing is incidental to the sale of the same and  
51 performed by the seller thereof or performed in accordance with arrangements made by the seller

52 thereof. Examples of transactions that are excluded from the definition of contracting pursuant to  
53 this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation  
54 of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air  
55 conditioning units, dishwashers, clothing washing machines or dryers, other household  
56 appliances, drapery rods, window shades, venetian blinds, canvas awnings, free-standing  
57 industrial or commercial equipment and other similar items of tangible personal property. Repairs  
58 made to the foregoing are within the definition of contracting if the repairs involve permanently  
59 affixing to or improving real property or something attached thereto which extends the life of the  
60 real property or something affixed thereto or allows or intends to allow the real property or thing  
61 permanently attached thereto to remain in service for a year or longer; and

62 (viii) The term "construction manager" means a person who enters into an agreement to  
63 employ, direct, coordinate or manage design professionals and contractors who are hired and  
64 paid directly by the owner or the construction manager. The business activities of a "construction  
65 manager" as defined in this subdivision constitute contracting, so long as the project for which the  
66 construction manager provides the services results in a capital improvement to a building or  
67 structure or to real property.

68 (4) "Digital code" is defined in section three-e of this article;

69 (5) "Digital products" is defined in section three-e of this article;

70 ~~(4)~~ (6) "Directly used or consumed" in the activities of manufacturing, transportation,  
71 transmission, communication or the production of natural resources means used or consumed in  
72 those activities or operations which constitute an integral and essential part of the activities, as  
73 contrasted with and distinguished from those activities or operations which are simply incidental,  
74 convenient or remote to the activities.

75 (A) Uses of property or consumption of services which constitute direct use or  
76 consumption in the activities of manufacturing, transportation, transmission, communication or  
77 the production of natural resources include only:

78 (i) In the case of tangible personal property, physical incorporation of property into a  
79 finished product resulting from manufacturing production or the production of natural resources;

80 (ii) Causing a direct physical, chemical or other change upon property undergoing  
81 manufacturing production or production of natural resources;

82 (iii) Transporting or storing property undergoing transportation, communication,  
83 transmission, manufacturing production or production of natural resources;

84 (iv) Measuring or verifying a change in property directly used in transportation,  
85 communication, transmission, manufacturing production or production of natural resources;

86 (v) Physically controlling or directing the physical movement or operation of property  
87 directly used in transportation, communication, transmission, manufacturing production or  
88 production of natural resources;

89 (vi) Directly and physically recording the flow of property undergoing transportation,  
90 communication, transmission, manufacturing production or production of natural resources;

91 (vii) Producing energy for property directly used in transportation, communication,  
92 transmission, manufacturing production or production of natural resources;

93 (viii) Facilitating the transmission of gas, water, steam or electricity from the point of their  
94 diversion to property directly used in transportation, communication, transmission, manufacturing  
95 production or production of natural resources;

96 (ix) Controlling or otherwise regulating atmospheric conditions required for transportation,  
97 communication, transmission, manufacturing production or production of natural resources;

98 (x) Serving as an operating supply for property undergoing transmission, manufacturing  
99 production or production of natural resources, or for property directly used in transportation,  
100 communication, transmission, manufacturing production or production of natural resources;

101 (xi) Maintaining or repairing of property, including maintenance equipment, directly used  
102 in transportation, communication, transmission, manufacturing production or production of natural  
103 resources;

104 (xii) Storing, removal or transportation of economic waste resulting from the activities of  
105 manufacturing, transportation, communication, transmission or the production of natural  
106 resources;

107 (xiii) Engaging in pollution control or environmental quality or protection activity directly  
108 relating to the activities of manufacturing, transportation, communication, transmission or the  
109 production of natural resources and personnel, plant, product or community safety or security  
110 activity directly relating to the activities of manufacturing, transportation, communication,  
111 transmission or the production of natural resources; or

112 (xiv) Otherwise using as an integral and essential part of transportation, communication,  
113 transmission, manufacturing production or production of natural resources.

114 (B) Uses of property or services which do not constitute direct use or consumption in the  
115 activities of manufacturing, transportation, transmission, communication or the production of  
116 natural resources include, but are not limited to:

117 (i) Heating and illumination of office buildings;

118 (ii) Janitorial or general cleaning activities;

119 (iii) Personal comfort of personnel;

120 (iv) Production planning, scheduling of work or inventory control;

121 (v) Marketing, general management, supervision, finance, training, accounting and  
122 administration; or

123 (vi) An activity or function incidental or convenient to transportation, communication,  
124 transmission, manufacturing production or production of natural resources, rather than an integral  
125 and essential part of these activities.

126 ~~(5)~~ (7) "Directly used or consumed" in the activities of gas storage, the generation or  
127 production or sale of electric power, the provision of a public utility service or the operation of a  
128 utility business means used or consumed in those activities or operations which constitute an  
129 integral and essential part of those activities or operation, as contrasted with and distinguished

130 from activities or operations which are simply incidental, convenient or remote to those activities.

131 (A) Uses of property or consumption of services which constitute direct use or  
132 consumption in the activities of gas storage, the generation or production or sale of electric power,  
133 the provision of a public utility service or the operation of a utility business include only:

134 (i) Tangible personal property, custom software, digital code, digital products or services,  
135 including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are  
136 used immediately in production or generation activities and equipment, machinery, supplies, tools  
137 and repair parts used to keep in operation exempt production or generation devices. For purposes  
138 of this subsection, production or generation activities shall commence from the intake, receipt or  
139 storage of raw materials at the production plant site;

140 (ii) Tangible personal property, custom software, digital code, digital products or services,  
141 including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires  
142 and mains, which are used immediately in the transmission or distribution of gas, water and  
143 electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep  
144 in operation exempt transmission or distribution devices, and these vehicles and their equipment  
145 as are specifically designed and equipped for those purposes are exempt from the tax when used  
146 to keep a transmission or distribution system in operation or repair. For purposes of this  
147 subsection, transmission or distribution activities shall commence from the close of production at  
148 a production plant or wellhead when a product is ready for transmission or distribution to the public  
149 and shall conclude at the point where the product is received by the public;

150 (iii) Tangible personal property, custom software, digital code, digital products or services,  
151 including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires  
152 and mains, which are used immediately in the storage of gas or water, and equipment, machinery,  
153 tools, supplies and repair parts used to keep in operation exempt storage devices;

154 (iv) Tangible personal property, custom software, digital code, digital products or services  
155 used immediately in the storage, removal or transportation of economic waste resulting from the



156 activities of gas storage, the generation or production or sale of electric power, the provision of a  
157 public utility service or the operation of a utility business;

158 (v) Tangible personal property, custom software, digital code, digital products or services  
159 used immediately in pollution control or environmental quality or protection activity or community  
160 safety or security directly relating to the activities of gas storage, generation or production or sale  
161 of electric power, the provision of a public utility service or the operation of a utility business.

162 (B) Uses of property, digital code, digital products or services which would not constitute  
163 direct use or consumption in the activities of gas storage, generation or production or sale of  
164 electric power, the provision of a public utility service or the operation of a utility business include,  
165 but are not limited to:

166 (i) Heating and illumination of office buildings;

167 (ii) Janitorial or general cleaning activities;

168 (iii) Personal comfort of personnel;

169 (iv) Production planning, scheduling of work or inventory control;

170 (v) Marketing, general management, supervision, finance, training, accounting and  
171 administration; or

172 (vi) An activity or function incidental or convenient to the activities of gas storage,  
173 generation or production or sale of electric power, the provision of public utility service or the  
174 operation of a utility business.

175 ~~(6)~~ (8) "Gas storage" means the injection of gas into a storage reservoir or the storage of  
176 gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir  
177 engaged in by businesses subject to the business and occupation tax imposed by sections two  
178 and two-e, article thirteen of this chapter.

179 ~~(7)~~ (9) "Generating or producing or selling of electric power" means the generation,  
180 production or sale of electric power engaged in by businesses subject to the business and  
181 occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

182           ~~(8)~~ (10) "Gross proceeds" means the amount received in money, credits, property or other  
183 consideration from sales and services within this state, without deduction on account of the cost  
184 of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses  
185 may not be deducted, but any credit or refund made for goods returned may be deducted.

186           ~~(9)~~ (11) "Includes" and "including", when used in a definition contained in this article, does  
187 not exclude other things otherwise within the meaning of the term being defined.

188           ~~(40)~~ (12) "Manufacturing" means a systematic operation or integrated series of systematic  
189 operations engaged in as a business or segment of a business which transforms or converts  
190 tangible personal property by physical, chemical or other means into a different form, composition  
191 or character from that in which it originally existed.

192           ~~(44)~~ (13) "Person" means any individual, partnership, association, corporation, limited  
193 liability company, limited liability partnership or any other legal entity, including this state or its  
194 political subdivisions or an agency of either, or the guardian, trustee, committee, executor or  
195 administrator of any person.

196           ~~(42)~~ (14) "Personal service" includes those: (A) Compensated by the payment of wages  
197 in the ordinary course of employment; and (B) rendered to the person of an individual without, at  
198 the same time, selling tangible personal property, such as nursing, barbering, shoe shining,  
199 manicuring and similar services.

200           ~~(43)~~ (15) "Prepaid wireless calling service" means a telecommunications service that  
201 provides the right to utilize mobile wireless service as well as other nontelecommunications  
202 services, including the download of digital products delivered electronically, content and ancillary  
203 services, which must be paid for in advance that is sold in predetermined units or dollars of which  
204 the number decline with use in a known amount.

205           ~~(44)~~ (16) Production of natural resources.

206           (A) "Production of natural resources" means, except for oil and gas, the performance, by  
207 either the owner of the natural resources or another, of the act or process of exploring, developing,

208 severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit  
209 or commercial use of any natural resource products and any reclamation, waste disposal or  
210 environmental activities associated therewith and the construction, installation or fabrication of  
211 ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated  
212 facilities and apparatus, by the producer or others, including contractors and subcontractors, at a  
213 coal mine or coal production facility.

214 (B) For the natural resources oil and gas, "production of natural resources" means the  
215 performance, by either the owner of the natural resources, a contractor or a subcontractor, of the  
216 act or process of exploring, developing, drilling, well-stimulation activities such as logging,  
217 perforating or fracturing, well-completion activities such as the installation of the casing, tubing  
218 and other machinery and equipment and any reclamation, waste disposal or environmental  
219 activities associated therewith, including the installation of the gathering system or other pipeline  
220 to transport the oil and gas produced or environmental activities associated therewith and any  
221 service work performed on the well or well site after production of the well has initially commenced.

222 (C) All work performed to install or maintain facilities up to the point of sale for severance  
223 tax purposes is included in the "production of natural resources" and subject to the direct use  
224 concept.

225 (D) "Production of natural resources" does not include the performance or furnishing of  
226 work, or materials or work, in fulfillment of a contract for the construction, alteration, repair,  
227 decoration or improvement of a new or existing building or structure, or any part thereof, or for  
228 the alteration, improvement or development of real property, by persons other than those  
229 otherwise directly engaged in the activities specifically set forth in this subdivision as "production  
230 of natural resources".

231 ~~(15)~~ (17) "Providing a public service or the operating of a utility business" means the  
232 providing of a public service or the operating of a utility by businesses subject to the business and  
233 occupation tax imposed by sections two and two-d, article thirteen of this chapter.

234           ~~(16)~~ (18) "Purchaser" means a person who purchases tangible personal property, custom  
235 software or a service taxed by this article.

236           ~~(17)~~ (19) "Sale", "sales" or "selling" includes any transfer of the possession or ownership  
237 of tangible personal property, digital code, digital products or custom software for a consideration,  
238 including a lease or rental, when the transfer or delivery is made in the ordinary course of the  
239 transferor's business and is made to the transferee or his or her agent for consumption or use or  
240 any other purpose. "Sale" also includes the furnishing of a service for consideration.  
241 Notwithstanding anything to the contrary in this code, effective after June 30, 2008, "sale" also  
242 includes the furnishing of prepaid wireless calling service for consideration.

243           ~~(18)~~ (20) "Service" or "selected service" includes all nonprofessional activities engaged in  
244 for other persons for a consideration, which involve the rendering of a service as distinguished  
245 from the sale of tangible personal property, digital code, digital products or custom software, but  
246 does not include contracting, personal services or the services rendered by an employee to his  
247 or her employer or any service rendered for resale: *Provided*, That the term "service" or "selected  
248 service" does not include payments received by a vendor of tangible personal property as an  
249 incentive to sell a greater volume of such tangible personal property under a manufacturer's,  
250 distributor's or other third party's marketing support program, sales incentive program,  
251 cooperative advertising agreement or similar type of program or agreement, and these payments  
252 are not considered to be payments for a "service" or "selected service" rendered, even though  
253 the vendor may engage in attendant or ancillary activities associated with the sales of tangible  
254 personal property as required under the programs or agreements.

255           ~~(19)~~ (21) "Streamlined Sales and Use Tax Agreement" or "agreement", when used in this  
256 article, has the same meaning as when used in article fifteen-b of this chapter, except when the  
257 context in which the word "agreement" is used clearly indicates that a different meaning is  
258 intended by the Legislature.

259           ~~(20)~~ (22) "Tax" includes all taxes, additions to tax, interest and penalties levied under this

260 article or article ten of this chapter.

261 ~~(24)~~ (23) "Tax Commissioner" means the State Tax Commissioner or his or her delegate.

262 The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax  
263 Commissioner, means any officer or employee of the state Tax Division duly authorized by the  
264 Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the  
265 functions mentioned or described in this article or rules promulgated for this article.

266 ~~(22)~~ (24) "Taxpayer" means any person liable for the tax imposed by this article or  
267 additions to tax, penalties and interest imposed by article ten of this chapter.

268 ~~(23)~~ (25) "Transmission" means the act or process of causing liquid, natural gas or  
269 electricity to pass or be conveyed from one place or geographical location to another place or  
270 geographical location through a pipeline or other medium for commercial purposes.

271 ~~(24)~~ (26) "Transportation" means the act or process of conveying, as a commercial  
272 enterprise, passengers or goods from one place or geographical location to another place or  
273 geographical location.

274 ~~(25)~~ (27) "Ultimate consumer" or "consumer" means a person who uses or consumes  
275 services, digital code, digital products or personal property.

276 ~~(26)~~ (28) "Vendor" means any person engaged in this state in furnishing services taxed by  
277 this article or making sales of tangible personal property, digital code, digital products or custom  
278 software. "Vendor" and "seller" are used interchangeably in this article.

279 (c) *Additional definitions.* -- Other terms used in this article are defined in article fifteen-b  
280 of this chapter, which definitions are incorporated by reference into article fifteen of this chapter.  
281 Additionally, other terms used in this section may be defined in other sections of this article. ~~may~~  
282 ~~define terms primarily used in the section in which the term is defined~~

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

1 (a) *Vendor to collect.* -- For the privilege of selling tangible personal property, digital code,  
2 digital product or custom software and for the privilege of furnishing certain selected services

3 defined in sections two and eight of this article, the vendor shall collect from the purchaser the tax  
4 as provided under this article and article fifteen-b of this chapter, and shall pay the amount of tax  
5 to the Tax Commissioner in accordance with the provisions of this article or article fifteen-b of this  
6 chapter.

7 (b) (1) *Amount of tax.* –The general consumer sales and service tax imposed by this article  
8 shall be at the rate of ~~6¢ on the dollar of sales or services~~ six percent of the sales price of tangible  
9 personal property, digital code, digital product, custom software or taxable service purchased,  
10 excluding gasoline and special fuel sales, which remain taxable at the rate of 5¢ on the dollar of  
11 sales five percent: *Provided*, That on and after July 1, 2017, the tax imposed by this article shall  
12 be six and three quarters percent of the purchase price, excluding sales of motor vehicles, which  
13 shall remain taxable as provided in section three-c of this article, and sales of motor fuels, which  
14 remain taxable at the rate of five percent of the average wholesale selling price of motor fuel.

15 (2) *Tax rate reduction in years subsequent to 2019.* –

16 (A) For purposes of this subsection (b)

17 (i) “Number of jobs” means the average annual private sector employment statewide in  
18 West Virginia as reported by Workforce West Virginia, Quarterly Census of Employment and  
19 Wages.

20 (ii) “Jobs benchmark” means the average annual number of private sector jobs for the year  
21 2008, plus 15,000 jobs.

22 (B) Beginning on January 1, 2019, and on each January 1 thereafter, the Tax  
23 Commissioner shall determine the following:

24 (i) The “number of jobs” for the previous year.

25 (ii) The “jobs benchmark”.

26 (C) For the first tax year ending after December 31, 2019, in which the number of jobs for  
27 the previous year are equal to or greater than the Jobs Benchmark, then the rate of the general  
28 consumer sales and service tax imposed by this article on the dollar of sales or services specified

29 in subsections (b) and (c) of this section shall be reduced by twenty-five hundredths of a cent the  
30 next calendar tax year. In subsequent tax years after the first twenty-five hundredths of a cent  
31 reduction, for each additional 15,000 jobs above the jobs benchmark, the general consumer sales  
32 and service tax specified in subsections (b) and (c) of this section shall be reduced by twenty-five  
33 hundredths of a cent for the next calendar tax year until the consumer sales and service tax  
34 reaches four percent.

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

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

39 ~~(2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.~~

40 ~~(3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.~~

41 ~~(4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.~~

42 ~~(5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.~~

43 ~~(6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.~~

44 ~~(7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any~~

45 ~~fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the~~

46 ~~dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢;~~

47 ~~3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional~~

48 ~~part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in~~

49 ~~excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For~~

50 ~~example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33,~~

51 ~~both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67,~~

52 ~~both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to~~

53 ~~\$2, both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall~~

54 ~~be calculated as provided in subsection (d) of this subsection and this subsection (c) does not~~

55 ~~apply to sales made after December 31, 2003.~~

56 ~~(d) (c) Calculation of tax on fractional parts of a dollar after December 31, 2003. --~~  
 57 ~~Beginning January 1, 2004, the~~ The tax computation under subsection (b) of this section shall be  
 58 carried to the third decimal place, and the tax rounded up to the next whole cent whenever the  
 59 third decimal place is greater than four and rounded down to the lower whole cent whenever the  
 60 third decimal place is four or less. The vendor may elect to compute the tax due on a transaction  
 61 on a per item basis or on an invoice basis provided the method used is consistently used during  
 62 the reporting period.

63 ~~(e) (d) No aggregation of separate sales transactions, exception for coin-operated devices.~~  
 64 -- Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of  
 65 computation of the tax even though the sales are aggregated in the billing or payment therefor.  
 66 Notwithstanding any other provision of this article, coin-operated amusement and vending  
 67 machine sales shall be aggregated for the purpose of computation of this tax.

68 ~~(f) (e) Rate of tax on certain mobile homes.~~ -- Notwithstanding any provision of this article  
 69 to the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by  
 70 the owner thereof as his or her principal year-round residence and dwelling shall be an amount  
 71 equal to six percent of fifty percent of the sales price.

72 ~~(g) (f) Construction; custom software.~~ -- ~~After December 31, 2003, whenever~~ Whenever,  
 73 the words "tangible personal property" or "property" appear in this article, the same shall also  
 74 include the words "custom software".

75 ~~(h) (g) Computation of tax on sales of gasoline and special fuel.~~ -- The method of  
 76 computation of tax provided in this section does not apply to sales of gasoline and special fuel.

**§11-15-3d. Imposition of consumers sales tax on telecommunications service and ancillary services.**

1 (a) Notwithstanding the provisions of section eight of this article or any other provision of  
 2 this code to the contrary, on and after July 1, 2017, "telecommunications service," and "ancillary



3 services” as defined in section twenty, article fifteen-b of this chapter, shall be subject to the  
4 consumers sales and service tax imposed by this article, and the use tax imposed by article  
5 fifteen-a of this chapter: *Provided*, That payment of the tax imposed under this article or under  
6 article fifteen-a of this chapter on prepaid wireless services is sufficient to fulfill the mandate of  
7 this section, and prepaid wireless services shall not be subjected to double taxation under this  
8 article: *Provided, however*, That this section shall not be interpreted to prevent imposition of any  
9 other lawfully imposed municipal tax or fee or any other tax or fee lawfully imposed under any  
10 state or federal law, or the laws of any subdivision thereof on such prepaid wireless services.

11 (b) The tax imposed by this section shall be in addition to any municipal utilities tax,  
12 municipal consumers sales and service tax and use tax, or other tax lawfully imposed on  
13 telephone service, telecommunications service and ancillary services.

14 (c) The sale of telecommunications service and ancillary services on which tax is imposed  
15 by this section shall be subject to the sourcing rules set forth in sections nineteen and twenty,  
16 article fifteen-b of this chapter.

17 (d) Notwithstanding the fact that a service provider did not meet the threshold amount for  
18 the previous calendar year that would cause accelerated payment to be made in the current year,  
19 the accelerated payment rule imposed under subsection (g), section sixteen of this article applies  
20 to the tax imposed by this section if the service provider’s total combined monthly remittance of  
21 the taxes levied by this article and article fifteen-a of this chapter for any calendar month beginning  
22 on and after July 1, 2017, exceeds, or can reasonably be expected to exceed, \$100,000.

**§11-15-3e. Imposition of consumers sales tax on digital products.**

1 (a) Notwithstanding any other provision of this code to the contrary, on and after July 1,  
2 2017, sales of digital code and sales of digital products electronically transferred to the purchaser  
3 shall be subject to the consumers sales and service tax imposed by this article, and the use of  
4 digital code and the use of digital products electronically transferred to the purchaser shall be  
5 subject to the use tax imposed by article fifteen-a of this chapter. The tax imposed by this article

6 shall apply to sales of digital code and to sales of digital products electronically transferred to the  
7 purchaser regardless of whether the digital product is provided for permanent use or less than  
8 permanent use and regardless of whether continued payment is required.

9 (b) Definitions. --

10 (1) "Designated digital products" means digital audio works, digital audio-visual works,  
11 digital books, video game digital products and digital automated services that are electronically  
12 transferred to a purchaser.

13 (2) "Digital audio works" means works that result from the fixation of a series of musical,  
14 spoken, or other sounds including ringtones. Digital audio works includes such items as the  
15 following which may either be prerecorded or live: songs, music, readings of books or other written  
16 materials, speeches, ringtones, or other sound recordings. Digital audio works does not include  
17 audio greeting cards sent by electronic mail. Unless the context provides otherwise, in this chapter  
18 digital audio works includes the digital code, or a subscription to or access to a digital code, for  
19 receiving, accessing, or otherwise obtaining digital audio works.

20 (3) "Digital audio-visual works" means a series of related images which, when shown in  
21 succession, impart an impression of motion, together with accompanying sound, if any. Digital  
22 audio-visual works include such items as motion pictures, movies, music videos, news and  
23 entertainment and live events. Digital audio-visual works do not include audio greeting cards sent  
24 by electronic mail. Digital audio-visual works includes the digital code, or a subscription to or  
25 access to a digital code, for receiving, accessing, or otherwise obtaining digital audio-visual-  
26 works.

27 (4) "Digital automated services" defined.

28 (A) "Digital automated service," except as provided in paragraph (B) of this subdivision,  
29 means any service transferred electronically that uses one or more software applications.

30 (B) "Digital automated service" does not include:

31 (i) Any service that primarily involves the application of human effort by the seller, and the

32 human effort originated after the customer requested the service;

33 (ii) The loaning or transferring of money or the purchase, sale, or transfer of financial  
34 instruments. For purposes of this section, "financial instruments" include cash, accounts  
35 receivable and payable, loans and notes receivable and payable, debt securities, equity  
36 securities, as well as derivative contracts such as forward contracts, swap contracts, and options;

37 (iii) Dispensing cash or other physical items from a machine;

38 (iv) Payment processing services;

39 (vi) Telecommunications services and ancillary services as those terms are defined in  
40 article fifteen-b of this chapter; or

41 (vii) The Internet and Internet access.

42 (5) "Digital books" means works that are generally recognized in the ordinary and usual  
43 sense as "books." It includes works of fiction and nonfiction and short stories. It does not include  
44 periodicals, magazines, newspapers, or other news or information productions, chat rooms, or  
45 weblogs. Unless the context provides otherwise, in this chapter digital books includes the digital  
46 code, or a subscription to access to a digital code, for receiving, accessing, or otherwise obtaining  
47 digital books.

48 (6) "Digital code" means a code which provides a purchaser with a right to obtain one or  
49 more digital products. "Digital code" does not include a code that represents a stored monetary  
50 value that is deducted from the total as it is used by the purchaser. "Digital code" also does not  
51 include a code that represents a redeemable card, gift card, or gift certificate that entitles the  
52 holder to select digital products of an indicated cash value, which digital products are subject to  
53 tax when the digital product is selected. A digital code may be obtained by any means, including  
54 e-mail or by tangible means regardless of its designation as song code, video code, book code,  
55 or some other term.

56 (7) "Digital goods" defined.

57 (A) "Digital goods," except as provided in paragraph (B) of this subdivision, means sounds,

58 images, data, facts, or information, or any combination thereof, transferred electronically,  
59 including, but not limited to, designated digital products and other products transferred  
60 electronically not included within the definition of designated digital products.

61 (B) The term "digital goods" does not include:

62 (i) Telecommunications services and ancillary services as those terms are defined in  
63 article fifteen-b of this chapter;

64 (ii) Computer software as defined in article fifteen-b of this chapter;

65 (iii) The Internet and Internet access service as those terms are defined in the Internet Tax  
66 Freedom Act, Title 47, U.S.C. § 151 note, as existing on July 1, 2009.

67 (8) "Digital products" means digital audio-visual works, digital audio works, digital  
68 automated services, digital books, other digital products and designated digital products.

69 (9) "Electronically transferred" or "transferred electronically" means obtained by the  
70 purchaser by means other than tangible storage media. It is not necessary that a copy of the  
71 product be physically transferred to the purchaser. So long as the purchaser may access the  
72 product, it will be considered to have been electronically transferred to the purchaser.

73 (10) "Internet access service" means a service that enables users to access content,  
74 information, electronic mail, or other services offered over the Internet and may also include  
75 access to proprietary content, information, and other services as part of a package of services  
76 offered to consumers. The term does not include telecommunications services.

77 (11) "Other digital products" means and includes, but is not limited to, the following when  
78 electronically transferred:

79 (A) Greeting cards,

80 (B) Periodicals,

81 (C) Magazines,

82 (D) Video or electronic games, or

83 (E) Newspapers or other news or information products.

84 (12) "Ringtone" means digitized sound files that are downloaded onto a device and that  
 85 may be used to alert the customer with respect to a communication.

86 (c) The sales digital code and digital products on which tax is imposed by this section shall  
 87 be subject to the transaction sourcing rules in article fifteen-b of this chapter.

88 (d) For purposes of this section, the sale, license, lease, or rental of or the storage, use,  
 89 or other consumption of a digital code is treated the same as the sale, license, lease, or rental of  
 90 or the storage, use, or other consumption of any digital product to which the digital code relates.

**§11-15-9. Exemptions.**

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

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

11 (2) Sales of textbooks required to be used in any of the schools of this state or in any  
 12 institution in this state which qualifies as a nonprofit or educational institution subject to the West  
 13 Virginia Department of Education and the Arts, ~~the board of Trustees of the University System of~~  
 14 ~~West Virginia or the board of directors for~~ Higher Education Policy Commission or the Council for  
 15 Community and Technical College Education for universities and colleges located in this state;

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

19 including agencies of federal, state or local governments for distribution in public welfare or relief  
20 work;

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

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

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

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

34 (B) An elementary or secondary school which maintains a regular faculty and curriculum  
35 and has a regularly enrolled body of pupils or students in attendance at the place in this state  
36 where its educational activities are regularly carried on;

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

40 (D) An organization which has no paid employees and its gross income from fundraisers,  
41 less reasonable and necessary expenses incurred to raise the gross income (or the tangible  
42 personal property or services purchased with the net income), is donated to an organization which  
43 is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of  
44 1986, as amended;

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

49 (F) For purposes of this subsection:

50 (i) The term "support" includes, but is not limited to:

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

52 (II) Gross receipts from fundraisers which include receipts from admissions, sales of  
53 merchandise, performance of services or furnishing of facilities in any activity which is not an  
54 unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of  
55 1986, as amended;

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

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

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

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

68 (ii) The term "charitable contribution" means a contribution or gift to or for the use of a  
69 corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986,  
70 as amended; and

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

73 (G) The exemption allowed by this subdivision does not apply to sales of gasoline or  
74 special fuel or to sales of tangible personal property or services to be used or consumed in the  
75 generation of unrelated business income as defined in Section 513 of the Internal Revenue Code  
76 of 1986, as amended. The exemption granted in this subdivision applies only to services,  
77 equipment, supplies and materials used or consumed in the activities for which the organizations  
78 qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to  
79 purchases of gasoline or special fuel which are taxable as provided in section eighteen-b of this  
80 article and article fourteen-c of this chapter;

81 (7) An isolated transaction in which any taxable service or any tangible personal property  
82 is sold, transferred, offered for sale or delivered by the owner of the property or by his or her  
83 representative for the owner's account, the sale, transfer, offer for sale or delivery not being made  
84 in the ordinary course of repeated and successive transactions of like character by the owner or  
85 on his or her account by the representative: *Provided*, That nothing contained in this subdivision  
86 may be construed to prevent an owner who sells, transfers or offers for sale tangible personal  
87 property in an isolated transaction through an auctioneer from availing himself or herself of the  
88 exemption provided in this subdivision, regardless of where the isolated sale takes place. The  
89 Tax Commissioner may propose a legislative rule for promulgation pursuant to article three,  
90 chapter twenty-nine-a of this code which he or she considers necessary for the efficient  
91 administration of this exemption;

92 (8) Sales of tangible personal property or of any taxable services rendered for use or  
93 consumption in connection with the commercial production of an agricultural product the ultimate  
94 sale of which is subject to the tax imposed by this article or which would have been subject to tax  
95 under this article: *Provided*, That sales of tangible personal property and services to be used or  
96 consumed in the construction of or permanent improvement to real property and sales of gasoline



97 and special fuel are not exempt: *Provided, however,* That nails and fencing may not be considered  
98 as improvements to real property;

99 (9) Sales of tangible personal property to a person for the purpose of resale in the form of  
100 tangible personal property: *Provided,* That sales of gasoline and special fuel by distributors and  
101 importers is taxable except when the sale is to another distributor for resale: *Provided, however,*  
102 That sales of building materials or building supplies or other property to any person engaging in  
103 the activity of contracting, as defined in this article, which is to be installed in, affixed to or  
104 incorporated by that person or his or her agent into any real property, building or structure is not  
105 exempt under this subdivision;

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

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

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

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

113 (14) Casual and occasional sales of property or services not conducted in a repeated  
114 manner or in the ordinary course of repetitive and successive transactions of like character by a  
115 corporation or organization which is exempt from tax under subdivision (6) of this subsection on  
116 its purchases of tangible personal property or services. For purposes of this subdivision, the term  
117 "casual and occasional sales not conducted in a repeated manner or in the ordinary course of  
118 repetitive and successive transactions of like character" means sales of tangible personal property  
119 or services at fundraisers sponsored by a corporation or organization which is exempt, under  
120 subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases  
121 when the fundraisers are of limited duration and are held no more than six times during any  
122 twelve-month period and "limited duration" means no more than eighty-four consecutive hours:

123 *Provided*, That sales for volunteer fire departments and volunteer school support groups, with  
124 duration of events being no more than eighty-four consecutive hours at a time, which are held no  
125 more than eighteen times in a twelve-month period for the purposes of this subdivision are  
126 considered "casual and occasional sales not conducted in a repeated manner or in the ordinary  
127 course of repetitive and successive transactions of a like character";

128 (15) Sales of property or services to a school which has approval from the ~~board of~~  
129 ~~Trustees of the University System of West Virginia or the board of Directors of the state College~~  
130 ~~System~~ Higher Education Policy Commission or the Council for Community and Technical  
131 College Education to award degrees, which has its principal campus in this state and which is  
132 exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue  
133 Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel are taxable as  
134 provided in section eighteen-b of this article and article fourteen-c of this chapter;

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

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

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

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

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

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

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

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

159 ~~(B) Providing access to computer equipment for the purpose of processing data or~~  
160 ~~examining or acquiring data stored in or accessible to the computer equipment;~~

161 ~~(22)~~ (21) Tuition charged for attending educational summer camps;

162 ~~(23)~~ (22) Dispensing of services performed by one corporation, partnership or limited  
163 liability company for another corporation, partnership or limited liability company when the entities  
164 are members of the same controlled group or are related taxpayers as defined in Section 267 of  
165 the Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity  
166 interests or membership interests possessing fifty percent or more of the total combined voting  
167 power of all classes of the stock of a corporation, equity interests of a partnership or membership  
168 interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock,  
169 equity interests or membership interests possessing fifty percent or more of the value of the  
170 corporation, partnership or limited liability company;

171 ~~(24)~~ (23) Food for the following are exempt:

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

175 the general public;

176 (B) Food purchased or sold by a public or private college or university or by a student  
177 organization officially recognized by the college or university to students enrolled at the college  
178 or university when the sales are made on a contract basis so that a fixed price is paid for  
179 consumption of food products for a specific period of time without respect to the amount of food  
180 product actually consumed by the particular individual contracting for the sale and no money is  
181 paid at the time the food product is served or consumed;

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

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

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

193 (F) Food sold by any religious organization at a social or other gathering conducted by it  
194 or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and  
195 activities of the organization and the revenue obtained from selling the food is actually used in  
196 carrying out those functions and activities: *Provided*, That purchases made by the organizations  
197 are not exempt as a purchase for resale; or

198 (G) Food sold by volunteer fire departments and rescue squads that are exempt from  
199 federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as  
200 amended, when the purpose of the sale is to obtain revenue for the functions and activities of the

201 organization and the revenue obtained is exempt from federal income tax and actually expended  
202 for that purpose;

203 ~~(25)~~ (24) Sales of food by little leagues, midget football leagues, youth football or soccer  
204 leagues, band boosters or other school or athletic booster organizations supporting activities for  
205 grades kindergarten through twelve and similar types of organizations, including scouting groups  
206 and church youth groups, if the purpose in selling the food is to obtain revenue for the functions  
207 and activities of the organization and the revenues obtained from selling the food is actually used  
208 in supporting or carrying on functions and activities of the groups: *Provided*, That the purchases  
209 made by the organizations are not exempt as a purchase for resale;

210 ~~(26)~~ (25) Charges for room and meals by fraternities and sororities to their members:  
211 *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for  
212 resale;

213 ~~(27)~~ (26) Sales of or charges for the transportation of passengers in interstate commerce;

214 ~~(28)~~ (27) Sales of tangible personal property or services to any person which this state is  
215 prohibited from taxing under the laws of the United States or under the Constitution of this state;

216 ~~(29)~~ (28) Sales of tangible personal property or services to any person who claims  
217 exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the  
218 provision of any other chapter of this code;

219 ~~(30)~~ (29) Charges for the services of opening and closing a burial lot;

220 ~~(31)~~ (30) Sales of livestock, poultry or other farm products in their original state by the  
221 producer of the livestock, poultry or other farm products or a member of the producer's immediate  
222 family who is not otherwise engaged in making retail sales of tangible personal property; and  
223 sales of livestock sold at public sales sponsored by breeders or registry associations or livestock  
224 auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed  
225 without presenting or obtaining exemption certificates provided the farmer maintains adequate  
226 records;

227           ~~(32)~~ (31) Sales of motion picture films to motion picture exhibitors for exhibition if the sale  
228 of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by  
229 this article and sales of coin-operated video arcade machines or video arcade games to a person  
230 engaged in the business of providing the machines to the public for a charge upon which the tax  
231 imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption  
232 provided in this subdivision may be claimed by presenting to the seller a properly executed  
233 exemption certificate;

234           ~~(33)~~ (32) Sales of aircraft repair, remodeling and maintenance services when the services  
235 are to an aircraft operated by a certified or licensed carrier of persons or property, or by a  
236 governmental entity, or to an engine or other component part of an aircraft operated by a  
237 certificated or licensed carrier of persons or property, or by a governmental entity and sales of  
238 tangible personal property that is permanently affixed or permanently attached as a component  
239 part of an aircraft owned or operated by a certificated or licensed carrier of persons or property,  
240 or by a governmental entity, as part of the repair, remodeling or maintenance service and sales  
241 of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling  
242 or maintenance of aircraft, aircraft engines or aircraft component parts for a certificated or licensed  
243 carrier of persons or property or for a governmental entity;

244           ~~(34) Charges for memberships or services provided by health and fitness organizations~~  
245 ~~relating to personalized fitness programs;~~

246           ~~(35)~~ (33) Sales of services by individuals who babysit for a profit: *Provided*, That the gross  
247 receipts of the individual from the performance of baby-sitting services do not exceed \$5,000 in a  
248 taxable year;

249           ~~(36)~~ (34) Sales of services by public libraries or by libraries at academic institutions or by  
250 libraries at institutions of higher learning;

251           ~~(37)~~ (35) Commissions received by a manufacturer's representative;

252           ~~(38) Sales of primary opinion research services when:~~

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

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

258 ~~(C) The transfer of the results of the service activities is an indispensable part of the overall~~  
259 ~~service.~~

260 ~~For the purpose of this subdivision, the term "primary opinion research" means original~~  
261 ~~research in the form of telephone surveys, mall intercept surveys, focus group research, direct~~  
262 ~~mail surveys, personal interviews and other data collection methods commonly used for~~  
263 ~~quantitative and qualitative opinion research studies;~~

264 ~~(39)~~ (36) Sales of property or services to persons within the state when those sales are  
265 for the purposes of the production of value-added products: *Provided*, That the exemption granted  
266 in this subdivision applies only to services, equipment, supplies and materials directly used or  
267 consumed by those persons engaged solely in the production of value-added products: *Provided*,  
268 *however*, That this exemption may not be claimed by any one purchaser for more than five  
269 consecutive years, except as otherwise permitted in this section.

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

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

275 (B) Fruits into wine;

276 (C) Honey into wine;

277 (D) Wool into fabric;

278 (E) Raw hides into semifinished or finished leather products;

279 (F) Milk into cheese;

280 (G) Fruits or vegetables into a dried, canned or frozen product;

281 (H) Feeder cattle into commonly accepted slaughter weights;

282 (I) Aquatic animals into a dried, canned, cooked or frozen product; and

283 (J) Poultry into a dried, canned, cooked or frozen product;

284 ~~(40)~~ (37) Sales of music instructional services by a music teacher and artistic services or

285 artistic performances of an entertainer or performing artist pursuant to a contract with the owner

286 or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment

287 facility or any other business location in this state in which the public or a limited portion of the

288 public may assemble to hear or see musical works or other artistic works be performed for the

289 enjoyment of the members of the public there assembled when the amount paid by the owner or

290 operator for the artistic service or artistic performance does not exceed \$3,000: *Provided, That*

291 nothing contained herein may be construed to deprive private social gatherings, weddings or other

292 private parties from asserting the exemption set forth in this subdivision. For the purposes of this

293 exemption, artistic performance or artistic service means and is limited to the conscious use of

294 creative power, imagination and skill in the creation of aesthetic experience for an audience

295 present and in attendance and includes, and is limited to, stage plays, musical performances,

296 poetry recitations and other readings, dance presentation, circuses and similar presentations and

297 does not include the showing of any film or moving picture, gallery presentations of sculptural or

298 pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio

299 or television shows or any video or audio taped presentations or the sale or leasing of video or

300 audio tapes, air shows or any other public meeting, display or show other than those specified

301 herein: *Provided, however,* That nothing contained herein may be construed to exempt the sales

302 of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a

303 legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions

304 and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set



305 forth herein: *Provided further*, That nude dancers or strippers may not be considered as  
306 entertainers for the purposes of this exemption;

307 ~~(41)~~ (38) Charges to a member by a membership association or organization which is  
308 exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal  
309 Revenue Code of 1986, as amended, for membership in the association or organization, including  
310 charges to members for newsletters prepared by the association or organization for distribution  
311 primarily to its members, charges to members for continuing education seminars, workshops,  
312 conventions, lectures or courses put on or sponsored by the association or organization, including  
313 charges for related course materials prepared by the association or organization or by the speaker  
314 or speakers for use during the continuing education seminar, workshop, convention, lecture or  
315 course, but not including any separate charge or separately stated charge for meals, lodging,  
316 entertainment or transportation taxable under this article: *Provided*, That the association or  
317 organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment  
318 or transportation taxable under this article for which a separate or separately stated charge is not  
319 made. A membership association or organization which is exempt from paying federal income  
320 taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may  
321 elect to pay the tax imposed under this article on the purchases for which a separate charge or  
322 separately stated charge could apply and not charge its members the tax imposed by this article  
323 or the association or organization may avail itself of the exemption set forth in subdivision (9) of  
324 this subsection relating to purchases of tangible personal property for resale and then collect the  
325 tax imposed by this article on those items from its member;

326 ~~(42)~~ (39) Sales of governmental services or governmental materials by county assessors,  
327 county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

328 ~~(43)~~ (40) Direct or subscription sales by the Division of Natural Resources of the magazine  
329 currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the  
330 magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

- 331           ~~(44)~~ (41) Sales of soap to be used at car wash facilities;
- 332           ~~(45)~~ (42) Commissions received by a travel agency from an out-of-state vendor;
- 333           ~~(46)~~ ~~The service of providing technical evaluations for compliance with federal and state~~
- 334 ~~environmental standards provided by environmental and industrial consultants who have formal~~
- 335 ~~certification through the West Virginia Department of Environmental Protection or the West~~
- 336 ~~Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing~~
- 337 ~~technical evaluations for compliance with federal and state environmental standards includes~~
- 338 ~~those costs of tangible personal property directly used in providing such services that are~~
- 339 ~~separately billed to the purchaser of such services and on which the tax imposed by this article~~
- 340 ~~has previously been paid by the service provider;~~
- 341           ~~(47)~~ (43) Sales of tangible personal property and services by volunteer fire departments
- 342 and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4)
- 343 of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain
- 344 revenue for the functions and activities of the organization and the revenue obtained is exempt
- 345 from federal income tax and actually expended for that purpose;
- 346           ~~(48)~~ (44) Lodging franchise fees, including royalties, marketing fees, reservation system
- 347 fees or other fees assessed after December 1, 1997, that have been or may be imposed by a
- 348 lodging franchiser as a condition of the franchise agreement; and
- 349           ~~(49)~~ (45) Sales of the regulation size United States flag and the regulation size West
- 350 Virginia flag for display.
- 351           (b) *Refundable exemptions.* -- Any person having a right or claim to any exemption set
- 352 forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply
- 353 to the Tax Commissioner for a refund or credit, or as provided in section nine-d of this article, give
- 354 to the vendor his or her West Virginia direct pay permit number. The following sales of tangible
- 355 personal property and services are exempt from tax as provided in this subsection:
- 356           (1) Sales of property or services to bona fide charitable organizations who make no charge

357 whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision  
358 applies only to services, equipment, supplies, food, meals and materials directly used or  
359 consumed by these organizations and does not apply to purchases of gasoline or special fuel;

360 (2) Sales of services, machinery, supplies and materials directly used or consumed in the  
361 activities of manufacturing, transportation, transmission, communication, production of natural  
362 resources, gas storage, generation or production or selling electric power, provision of a public  
363 utility service or the operation of a utility service or the operation of a utility business, in the  
364 businesses or organizations named in this subdivision and does not apply to purchases of  
365 gasoline or special fuel;

366 (3) Sales of property or services to nationally chartered fraternal or social organizations  
367 for the sole purpose of free distribution in public welfare or relief work: *Provided*, That sales of  
368 gasoline and special fuel are taxable;

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

372 (5) Sales of building materials or building supplies or other property to an organization  
373 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended,  
374 which are to be installed in, affixed to or incorporated by the organization or its agent into real  
375 property or into a building or structure which is or will be used as permanent low-income housing,  
376 transitional housing, an emergency homeless shelter, a domestic violence shelter or an  
377 emergency children and youth shelter if the shelter is owned, managed, developed or operated  
378 by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of  
379 1986, as amended. and

380 ~~(6) Sales of construction and maintenance materials acquired by a second party for use~~  
381 ~~in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or~~  
382 ~~credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to~~

383 ~~the Division of Highways for deposit into the State Road Fund of the state reimbursement for the~~  
 384 ~~tax in the amount estimated under the provisions of this subdivision: *Provided, however,* That by~~  
 385 ~~June 15 of each fiscal year, the division shall provide to the Tax Department an itemized listing of~~  
 386 ~~highways projects with the amount of funds expended for highway construction and maintenance.~~  
 387 ~~The Commissioner of Highways shall request reimbursement of the tax based on an estimate that~~  
 388 ~~forty percent of the total gross funds expended by the agency during the fiscal period were for the~~  
 389 ~~acquisition of materials used for highway construction and maintenance. The amount of the~~  
 390 ~~reimbursement shall be calculated at six percent of the forty percent.~~

391 (c) *Effective date.* – The amendments to subsection (a) of this section made during the  
 392 First Extraordinary Session of the Legislature in 2017 shall take effect beginning July 1, 2017,  
 393 and apply to sales made on and after that date. The amendments to subsection (b) of this section  
 394 made during the First Extraordinary Session of the Legislature in 2017 shall take effect June 1,  
 395 2017, and shall be construed to prohibit all future transfers to the State Road Fund established in  
 396 the State Treasury pursuant to section fifty-two, article six of the Constitution of West Virginia,  
 397 under this section of taxes imposed by this article and article fifteen-a of this chapter.

**§11-15-9b. Exemption for purchases of tangible personal property and services for direct use in research and development.**

1 (a) Sales of tangible personal property and services after June 30, 2002, directly used or  
 2 consumed in the activity of research and development are exempt from tax imposed by this article.  
 3 Any person having a right or claim to the exemption set forth in this section shall first pay to the  
 4 vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or  
 5 credit or give to the vendor the person's West Virginia direct pay permit number in accordance  
 6 with the provisions of section nine-d of this article.

7 (b) For purposes of this article:

8 (1) "Directly used or consumed in the activity of research and development" means used  
 9 or consumed in those activities or operations which constitute an integral and essential part of

10 research and development, as contrasted with and distinguished from those activities or  
11 operations which are simply incidental, convenient or remote to research and development.

12 (A) Uses of property or consumption of services which constitute direct use or  
13 consumption in the activity of research and development include only:

14 (i) In the case of tangible personal property, physical incorporation of property into tangible  
15 personal property that is the subject of, or directly used in, research and development;

16 (ii) Causing a direct physical, chemical or other change upon property that is the subject  
17 of, or directly used in, research and development;

18 (iii) Transporting or storing property that is the subject of, or directly used in, research and  
19 development;

20 (iv) Measuring or verifying a change in property that is the subject of, or directly used in,  
21 research and development;

22 (v) Physically controlling or directing the physical movement or operation of property that  
23 is the subject of, or directly used in, research and development;

24 (vi) Directly and physically recording the flow of property that is the subject of, or directly  
25 used in, research and development;

26 (vii) Producing energy for property that is the subject of, or directly used in, research and  
27 development;

28 (viii) Controlling or otherwise regulating atmospheric or other environmental conditions  
29 required for research and development;

30 (ix) Serving as an operating supply for property that is the subject of, or directly used in,  
31 research and development;

32 (x) Maintenance or repair of property, including maintenance equipment, that is directly  
33 used in research and development;

34 (xi) Storage, removal or transportation of economic or other waste resulting from the  
35 activity of research and development;

36 (xii) Pollution control or environmental quality or environmental protection activity directly  
37 relating to the activity of research and development, and personnel, plant, property or community  
38 safety or security activity directly relating to the activity of research and development; or

39 (xiii) Otherwise being used as an integral and essential part of research and development.

40 (B) Uses of property or services which do not constitute direct use or consumption in the  
41 activity of research and development include, but are not limited to:

42 (i) Heating and illumination of office buildings;

43 (ii) Janitorial or general cleaning activities;

44 (iii) Personal comfort of personnel;

45 (iv) Planning or scheduling of work or inventory control;

46 (v) Marketing, general management, supervision, finance, training, accounting and  
47 administration; or

48 (vi) An activity or function incidental or convenient to research and development, rather  
49 than an integral and essential part of these activities.

50 (2) "Research and development" means systematic scientific, engineering or technological  
51 study and investigation in a field of knowledge in the physical, computer or software sciences,  
52 often involving the formulation of hypotheses and experimentation, for the purpose of revealing  
53 new facts, theories or principles, or increasing scientific knowledge, which may reveal the basis  
54 for new or enhanced products, equipment or manufacturing processes. Research and  
55 development includes, but is not limited to, design, refinement and testing of prototypes of new  
56 or improved products, or design, refinement and testing of manufacturing processes before  
57 commercial sales relating thereto have begun. For purposes of this section commercial sales  
58 include, but are not limited to, sales of prototypes or sales for market testing.

59 (A) Research and development does not include:

60 (i) Market research;

61 (ii) Sales research;

- 62 (iii) Efficiency surveys;
- 63 (iv) Consumer surveys;
- 64 (v) Product market testing;
- 65 (vi) Product testing by product consumers or through consumer surveys for evaluation of
- 66 consumer product performance or consumer product usability;
- 67 (vii) The ordinary testing or inspection of materials or products for quality control (quality
- 68 control testing);
- 69 (viii) Management studies;
- 70 (ix) Advertising;
- 71 (x) Promotions;
- 72 (xi) The acquisition of another's patent, model, production or process or investigation or
- 73 evaluation of the value or investment potential related thereto;
- 74 (xii) Research in connection with literary, historical or similar projects;
- 75 (xiii) Research in the social sciences, economics, humanities or psychology and other
- 76 nontechnical activities; and
- 77 (xiv) The providing of sales services or any other service, whether technical service or
- 78 nontechnical service.
- 79 ~~(e) No provision of this section may be interpreted to alter, abrogate or impede application~~
- 80 ~~of the exemption for sales of primary opinion research services set forth in section nine of this~~
- 81 ~~article.~~

**§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; sales of tangible personal property for direct use in a high-technology business or**

**Internet advertising business; definitions.**

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

7 (1) Sales of computer hardware or software (including custom designed software) to be  
8 directly incorporated by a manufacturer into a manufactured product. For purposes of this  
9 subsection, the payment of licensing fees for the right to incorporate hardware or software  
10 developed by persons other than the manufacturer into a manufactured product is exempt from  
11 the tax imposed by this article;

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

14 ~~(3) Sales of electronic data processing services;~~

15 ~~(4)~~ (3) Sales of educational software required to be used in any of the public schools of  
16 this state or in any institution in this state which qualifies as a nonprofit or educational institution  
17 subject to administration, regulation, certification or approval of the Department of Education, the  
18 Department of Education and the Arts or the Higher Education Policy Commission;

19 ~~(5)~~ (4) Sales of Internet advertising of goods and services;

20 ~~(6)~~ (5) Sales of high-technology business services to high-technology businesses which  
21 enter into contracts with this state, its institutions and subdivisions, governmental units, institutions  
22 or subdivisions of other states, or with the United States, including agencies of federal, state or  
23 local governments for direct use in fulfilling the government contract; and

24 ~~(7)~~ (6) Sales of prewritten computer software, computers, computer hardware, servers and  
25 building materials and tangible personal property to be installed into a building or facility for direct



26 use in a high-technology business or an Internet advertising business.

27 (b) *Definitions.* --

28 As used in this article, the following terms have the following meanings:

29 (1) "Computer hardware" means a computer, as defined in article fifteen-b of this chapter,  
30 and the directly and immediately connected physical equipment involved in the performance of  
31 data processing or communications functions, including data input, data output, data processing,  
32 data storage, and data communication apparatus that is directly and immediately connected to  
33 the computer. The term "computer hardware" does not include computer software.

34 (2) "High-technology business" means and is limited to businesses primarily engaged in  
35 the following activities: Computer hardware design and development; computer software design,  
36 development, customization and upgrade; computer systems design and development; website  
37 design and development; network design and development; design and development of new  
38 manufactured products which incorporate computer hardware and software; electronic data  
39 processing; network management, maintenance, engineering, administration and security  
40 services; website management, maintenance, engineering, administration and security services  
41 and computer systems management, maintenance, engineering, administration and security  
42 services. High-technology business as defined herein is intended to include businesses which  
43 engage in the activities enumerated in this definition as their primary business activity, and not as  
44 a secondary or incidental activity and not as an activity in support of or incidental to business  
45 activity not specifically enumerated in this definition.

46 (3) "High-technology business services" means and is limited to computer hardware  
47 design and development; computer software design, development, customization and upgrade;  
48 computer systems design and development; website design and development; network design  
49 and development; electronic data processing; computer systems management; computer  
50 systems maintenance; computer systems engineering; computer systems administration and  
51 computer systems security services.

52 (4) "Internet advertising business" means a for-profit business that is engaged, for  
53 monetary remuneration, in the primary business activity of announcing, or calling public attention  
54 to, goods or services in order to induce the public to purchase those goods or services, and which  
55 uses the Internet as its sole advertising communications medium. For purposes of this definition,  
56 Internet advertising must be the primary business activity of the business and not a secondary or  
57 incidental activity and not an activity in support of or incidental to other business activity.

58 (5) "Network" means a group of two or more computer systems linked together.

59 (6) "Server" means a computer or device on a network that manages network resources.

60 (c) The amendments to this section made in the first extraordinary session of the  
61 Legislature in ~~2009~~ 2017 shall apply to purchases made on and after July 1, ~~2009~~ 2017.

## **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 excise tax is hereby levied and imposed on the use in this state of tangible personal  
2 property, digital code, digital products, custom software or taxable services, to be collected and  
3 paid as provided in this article or article fifteen-b of this chapter, at the rate of six percent of the  
4 purchase price of the property or taxable services, except as otherwise provided in this article:  
5 Provided, That on and after July 1, 2017, the tax imposed by this article shall be collected and  
6 paid, as provided in this article or article fifteen-b of this chapter, at the rate of six and three  
7 quarters percent of the purchase price of the tangible personal property, digital code, digital  
8 products, custom software or taxable services, except as otherwise provided in this article.

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

14 method used is consistently used during the reporting period.

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

19 (d) Use tax is hereby imposed upon every person using tangible personal property, custom  
20 software, ~~or~~ digital code, digital products, telecommunication service, ancillary services, or other  
21 taxable service within this state. That person's liability is not extinguished until the tax has been  
22 paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in  
23 this state, or by a foreign retailer who is authorized by the Tax Commissioner to collect the tax  
24 imposed by this article, relieves the purchaser from further liability for the tax to which the receipt  
25 refers.

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

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

#### **§11-15A-10. Payment to Tax Commissioner.**

1 (a) Each retailer required or authorized, pursuant to section six, six-a or seven, or pursuant  
2 to article fifteen-b of this chapter, to collect the tax imposed in section two of this article, is required  
3 to pay to the Tax Commissioner the amount of the tax on or before the twentieth day of the month  
4 next succeeding each calendar month, except as otherwise provided in this article or article  
5 fifteen-b of this chapter.

6 (b) Each certified service provider for a Model I seller shall pay to the Tax Commissioner

7 the tax levied by this article on or before the twentieth day of the month next succeeding the  
8 calendar month in which the tax accrued, except as otherwise provided in this article or article  
9 fifteen-b of this chapter.

10 (c) At that time, each retailer, seller or certified service provider shall file with the Tax  
11 Commissioner a return for the preceding monthly period, except as otherwise provided in this  
12 article or article fifteen-b of this chapter, in the form prescribed by the Tax Commissioner showing  
13 the sales price of any or all tangible personal property, custom software and taxable services sold  
14 by the retailer or seller during the preceding quarterly period, the use of which is subject to the  
15 tax imposed by this article, and any other information the Tax Commissioner may consider  
16 necessary for the proper administration of this article. The return shall be accompanied by a  
17 remittance of the amount of the tax, for the period covered by the return, except as otherwise  
18 provided in this article or article fifteen-b of this chapter: *Provided*, That where the tangible  
19 personal property or custom software is sold under a conditional sales contract, or under any  
20 other form of sale wherein the payment of the principal sum, or a part of the sum is extended over  
21 a period longer than sixty days from the date of the sale, the retailer may collect and remit each  
22 monthly period that portion of the tax equal to ~~six~~ six and three quarters percent of that portion of  
23 the purchase price actually received during the monthly period.

24 (d) The Tax Commissioner may, upon request and a proper showing of the necessity to  
25 do so, grant an extension of time not to exceed thirty days for making any return and payment.

26 (e) Returns shall be signed by the retailer or seller or his or her duly authorized agent, and  
27 must be certified by him or her to be correct, except as otherwise provided in this article or article  
28 fifteen-b of this chapter.

29 (f) *Accelerated payment.* --

30 (1) ~~For calendar years beginning after December 31, 2002, taxpayers~~ Taxpayers whose  
31 average monthly payment of the taxes levied by this article and article fifteen of this chapter during  
32 the previous calendar year exceeds \$100,000, shall remit the tax attributable to the first fifteen

33 days of June each year on or before June 20 of said month.

34 (2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall  
35 remit an amount equal to the amount of tax imposed by this article and article fifteen of this chapter  
36 on actual taxable sales of tangible personal property and custom software and sales of taxable  
37 services during the first fifteen days of June or, at the taxpayer's election, taxpayer may remit an  
38 amount equal to fifty percent of taxpayer's liability for tax under this article on taxable sales of  
39 tangible personal property and custom software and sales of taxable services made during the  
40 preceding month of May.

41 (3) For a business which has not been in existence for a full calendar year, the total tax  
42 due from the business during the prior calendar year shall be divided by the number of months,  
43 including fractions of a month, that it was in business during the prior calendar year; and if that  
44 amount exceeds \$100,000, the tax attributable to the first fifteen days of June each year shall be  
45 remitted on or before June 20 of said month as provided in subdivision (2) of this subsection.

46 (4) When a taxpayer required to make an advanced payment of tax under subdivision (1)  
47 of this subsection makes out its return for the month of June, which is due on July 20, the taxpayer  
48 may claim as a credit against its liability under this article for tax on taxable transactions during  
49 the month of June, the amount of the advanced payment of tax made under subdivision (1) of this  
50 subsection.

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-4g. Additional fair share surcharge beginning on and after January 1, 2018.**

1 (a) General. -- For taxable years beginning on and after January 1, 2018, the tax imposed  
2 by section three of this article shall include an additional fair share surcharge pursuant to  
3 subsection (b) or (c) of this section, as appropriate.

4 (b) Fair share surcharge on individuals except married individuals filing separate returns,  
5 individuals filing joint returns, heads of households, estates and trusts. -- The tax imposed by  
6 section three of this article on the West Virginia taxable income of every individual, except married

7 individuals filing separate returns; every individual who is a head of a household in the  
8 determination of his or her federal income tax for the taxable year; married individuals who file a  
9 joint return under this article; every individual who is entitled to file his or her federal income tax  
10 return for the taxable year as a surviving spouse; and every estate and trust with West Virginia  
11 taxable income above \$200,000, shall include an additional fair share surcharge of one percent  
12 of West Virginia taxable income.

13 (c) Fair share surcharge on married individuals filing separate returns. -- In the case of  
14 married individuals filing separate returns under this article for the taxable year, the tax imposed  
15 by section three of this article on the West Virginia taxable income of each spouse with West  
16 Virginia taxable income above \$100,000, shall include an additional fair share surcharge of one  
17 percent of West Virginia taxable income.

#### **§11-21-8. Credits against tax.**

1 (a) *Business and occupation tax credit.*--A credit shall be allowed against the tax imposed  
2 by section three of this article equal to the amount of the liability of the taxpayer for the taxable  
3 year for any tax imposed under article thirteen, chapter eleven of this code: *Provided*, That the  
4 amount of such business and occupation tax credit shall not exceed the portion of the tax imposed  
5 by this article which is attributable to the West Virginia taxable income derived by the taxpayer for  
6 the taxable year from the business or occupation with respect to which said tax under article  
7 thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income  
8 from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the  
9 Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate,  
10 trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the  
11 credit provided for by this section, in an amount proportionate to the income of such partnership,  
12 estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

13 For purposes of this section, the tax imposed under article thirteen, chapter eleven of this  
14 code shall be the amount of the liability of the taxpayer for such tax under said article thirteen

15 computed without reduction for the tax credit for industrial expansion or revitalization allowed for  
16 such year.

17 (b) *Severance tax credit.*--On and after July 1, 1987, a credit shall be allowed against the  
18 tax imposed by section three of this article equal to the amount of the liability of the taxpayer for  
19 the taxable year for any tax imposed under article thirteen-a, chapter eleven of this code:  
20 *Provided,* That the amount of such severance tax credit shall not exceed the portion of the tax  
21 imposed by this article which is attributable to the West Virginia taxable income derived by the  
22 taxpayer for the taxable year from the activities with respect to which said tax under article  
23 thirteen-a was imposed. In case the West Virginia taxable income of a taxpayer includes income  
24 from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the  
25 Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate,  
26 trust or corporation under said article thirteen-a shall be allowed to the taxpayer, in computing the  
27 credit provided for by this section, in an amount proportionate to the income of such partnership,  
28 estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

29 (c) *Expiration of credit.*--The credit authorized in subsection (b) of this section shall expire  
30 and not be authorized or allowed for any taxable year beginning on or after October 1, 1990.

31 (d) *Classroom teacher credit.* -- For any taxable year beginning after December 21, 2017,  
32 a credit in the amount of \$750.00 shall be allowed against the tax imposed by section three of this  
33 article for any resident individual employed as professional educator, who has a direct  
34 instructional or counseling relationship with students at any grade level from kindergarten through  
35 the twelfth grade, as a full-time employee and who has been so employed for at least one hundred  
36 twenty instructional days during the taxable year.

**§11-21-8a. Credit for qualified rehabilitated buildings investment.**

1 A credit against the tax imposed by the provisions of this article shall be allowed as follows:

2 *Certified historic structures.* -- For certified historic structures, the credit is equal to ten  
3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United

4 States Code, as amended: Provided, That for qualified rehabilitation expenditures made after  
5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified  
6 rehabilitation expenditure: Provided, however, That the credit authorized by this section for  
7 qualified rehabilitation expenditures made after June 30, 2017, may not be used to offset tax  
8 liabilities prior to the tax year beginning January 1, 2019: Provided further, That the taxpayer may  
9 not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by  
10 the Tax Division or the taxpayer is delinquent in the payment of property taxes on the property  
11 containing the certified historic tax structure when the applicant begins to claim the credit and  
12 throughout the time period within which the credit is claimed. The Tax Commissioner shall  
13 promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code  
14 that provide what information must accompany any claim for the tax credit for the determination  
15 that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor  
16 is the taxpayer delinquent in the payment of property taxes on the property containing the certified  
17 historic tax structure. This credit is available for both residential and nonresidential buildings  
18 located in this state, that are reviewed by the West Virginia Division of Culture and History and  
19 designated by the national park service, United States department of the interior as "certified  
20 historic structures," and further defined as a "qualified rehabilitated building," as defined under  
21 §47(c)(1), Title 26 of the United States Code, as amended.

22 The credit authorized pursuant to this section may not exceed the greater of \$3.75 million  
23 for the portion of a certified rehabilitation as defined in 26 U.S.C. §47(c)(2)(C) placed in service in  
24 the state in the taxable year, or \$3.75 million for each building that is a component of a certified  
25 historic structure for which a credit is claimed under this section.

**§11-21-8e. Carryback Credit carryback, carryforward.**

1 (a) Any unused portion of the credit for qualified rehabilitated buildings investment  
2 authorized by section eight-a of this article which may not be taken in the taxable year to which  
3 the credit applies qualifies for carryback and carryforward treatment subject to the identical



4 general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That  
5 the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for  
6 the taxable year: *Provided, however, That for tax years beginning on and after January 1, 2019,*  
7 *any unused portion of the credit authorized by section eight-a of this article may not be carried*  
8 *back to any prior taxable year: *Provided further, That for tax years beginning on and after January**  
9 *1, 2019, any unused portion of the credit authorized by section eight-a of this article may be*  
10 *carried over to each of the next ten tax years following the unused credit year until used or forfeited*  
11 *due to lapse of time.*

12 (b) Effective for taxable years beginning on and after January 1, 2001, credits granted to  
13 an electing small business corporation (S corporation), limited partnership, general partnership,  
14 limited liability company or multiple owners of property shall be passed through to the  
15 shareholders, partners, members or owners, either pro rata or pursuant to an agreement among  
16 the shareholders, partners, members or owners documenting an alternative distribution method.  
17 The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter  
18 twenty-nine-a of this code that provide the method of reporting the alternative method of  
19 distribution authorized by this section.

**§11-21-12. West Virginia adjusted gross income of resident individual.**

1 (a) *General.* -- The West Virginia adjusted gross income of a resident individual means his  
2 or her federal adjusted gross income as defined in the laws of the United States for the taxable  
3 year with the modifications specified in this section.

4 (b) *Modifications increasing federal adjusted gross income.* -- There shall be added to  
5 federal adjusted gross income unless already included therein the following items:

6 (1) Interest income on obligations of any state other than this state or of a political  
7 subdivision of any other state unless created by compact or agreement to which this state is a  
8 party;

9 (2) Interest or dividend income on obligations or securities of any authority, commission

10 or instrumentality of the United States, which the laws of the United States exempt from federal  
11 income tax but not from state income taxes;

12 (3) Any deduction allowed when determining federal adjusted gross income for federal  
13 income tax purposes for the taxable year that is not allowed as a deduction under this article for  
14 the taxable year;

15 (4) Interest on indebtedness incurred or continued to purchase or carry obligations or  
16 securities the income from which is exempt from tax under this article, to the extent deductible in  
17 determining federal adjusted gross income;

18 (5) Interest on a depository institution tax-exempt savings certificate which is allowed as  
19 an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the  
20 federal taxable year;

21 (6) The amount of a lump sum distribution for which the taxpayer has elected under  
22 Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for  
23 federal income tax purposes; and

24 (7) Amounts withdrawn from a medical savings account established by or for an individual  
25 under section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article  
26 sixteen of said chapter that are used for a purpose other than payment of medical expenses, as  
27 defined in those sections.

28 (c) *Modifications reducing federal adjusted gross income.* -- There shall be subtracted from  
29 federal adjusted gross income to the extent included therein:

30 (1) Interest income on obligations of the United States and its possessions to the extent  
31 includable in gross income for federal income tax purposes;

32 (2) Interest or dividend income on obligations or securities of any authority, commission  
33 or instrumentality of the United States or of the State of West Virginia to the extent includable in  
34 gross income for federal income tax purposes but exempt from state income taxes under the laws  
35 of the United States or of the State of West Virginia, including federal interest or dividends paid

36 to shareholders of a regulated investment company, under Section 852 of the Internal Revenue  
37 Code for taxable years ending after June 30, 1987;

38 (3) Any amount included in federal adjusted gross income for federal income tax purposes  
39 for the taxable year that is not included in federal adjusted gross income under this article for the  
40 taxable year;

41 (4) The amount of any refund or credit for overpayment of income taxes imposed by this  
42 state, or any other taxing jurisdiction, to the extent properly included in gross income for federal  
43 income tax purposes;

44 (5) Annuities, retirement allowances, returns of contributions and any other benefit  
45 received under the West Virginia Public Employees Retirement System, the West Virginia State  
46 Teachers Retirement System, ~~and all forms of military retirement, including regular Armed Forces,~~  
47 ~~reserves and National Guard~~ including any survivorship annuities derived therefrom, to the extent  
48 includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any  
49 provisions in this code to the contrary this modification shall be limited to the first \$2,000 of  
50 benefits received under the West Virginia Public Employees Retirement System, the West Virginia  
51 State Teachers Retirement System and, including any survivorship annuities derived therefrom,  
52 to the extent includable in gross income for federal income tax purposes for taxable years  
53 beginning after December 31, 1986; and the first \$2,000 of benefits received under any federal  
54 retirement system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total  
55 modification under this paragraph shall not exceed \$2,000 per person receiving retirement  
56 benefits and this limitation shall apply to all returns or amended returns filed after December 31,  
57 1988;

58 (6) Retirement income received in the form of pensions and annuities after December 31,  
59 1979, under any West Virginia police, West Virginia Firemen=s Retirement System or the West  
60 Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police  
61 Retirement System or the West Virginia Deputy Sheriff Retirement System, including any

62 survivorship annuities derived from any of these programs, to the extent includable in gross  
63 income for federal income tax purposes;

64 (7) (A) ~~For taxable years beginning after December 31, 2000, and ending prior to January~~  
65 ~~1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the~~  
66 ~~Armed Forces of the United States of America with the product thereof multiplied by the first~~  
67 ~~\$30,000 of military retirement income, including In recognition of the distinct and sacrificial nature~~  
68 ~~of a career in military service, involving repetitive periods of hazardous duty assignments,~~  
69 ~~enduring numerous family separations and being subjected to extreme personal hardships, all~~  
70 ~~forms of military retirement income from the regular Armed Forces, Reserves and National Guard~~  
71 ~~paid by the United States or by this state after December 31, 2000~~ 2017, including any  
72 survivorship annuities derived therefrom, to the extent included in gross income for federal income  
73 tax purposes for the taxable year.

74 (B) ~~For taxable years beginning after December 31, 2002, the first \$20,000 of military~~  
75 ~~retirement income, including retirement income from the regular Armed Forces, reserves and~~  
76 ~~National Guard paid by the United States or by this state after December 31, 2002, including any~~  
77 ~~survivorship annuities, to the extent included in gross income for federal income tax purposes for~~  
78 ~~the taxable year.~~

79 (C) (B) In the event that any of the provisions of this subdivision are found by a court of  
80 competent jurisdiction to violate either the Constitution of this state or of the United States, or is  
81 held to be extended to persons other than specified in this subdivision, this subdivision shall  
82 become null and void by operation of law.

83 (8) Federal adjusted gross income in the amount of \$8,000 received from any source after  
84 December 31, 1986, by any person who has attained the age of sixty-five on or before the last  
85 day of the taxable year, or by any person certified by proper authority as permanently and totally  
86 disabled, regardless of age, on or before the last day of the taxable year, to the extent includable  
87 in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a

88 medical certification from a prior year and he or she is still permanently and totally disabled, a  
89 copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the  
90 federal disability income tax exclusion is acceptable: *Provided, however, That:*

91 (i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this  
92 subsection is \$8,000 per person or more, no deduction shall be allowed under this subdivision;  
93 and

94 (ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this  
95 subsection is less than \$8,000 per person, the total modification allowed under this subdivision  
96 for all gross income received by that person shall be limited to the difference between \$8,000 and  
97 the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

98 (9) Federal adjusted gross income in the amount of \$8,000 received from any source after  
99 December 31, 1986, by the surviving spouse of any person who had attained the age of sixty-five  
100 or who had been certified as permanently and totally disabled, to the extent includable in federal  
101 adjusted gross income for federal tax purposes: *Provided, That:*

102 (i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this  
103 subsection is \$8,000 or more, no deduction shall be allowed under this subdivision; and

104 (ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this  
105 subsection is less than \$8,000 per person, the total modification allowed under this subdivision  
106 for all gross income received by that person shall be limited to the difference between \$8,000 and  
107 the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

108 (10) Contributions from any source to a medical savings account established by or for the  
109 individual pursuant to section twenty, article fifteen, chapter thirty-three of this code or section  
110 fifteen, article sixteen of said chapter, plus interest earned on the account, to the extent includable  
111 in federal adjusted gross income for federal tax purposes: *Provided, That* the amount subtracted  
112 pursuant to this subdivision for any one taxable year may not exceed \$2,000 plus interest earned  
113 on the account. For married individuals filing a joint return, the maximum deduction is computed

114 separately for each individual;

115 (11) For the 2006 taxable year only, severance wages received by a taxpayer from an  
116 employer as the result of the taxpayer's permanent termination from employment through a  
117 reduction in force and through no fault of the employee, not to exceed \$30,000. For purposes of  
118 this subdivision:

119 (i) The term "severance wages" means any monetary compensation paid by the employer  
120 in the taxable year as a result of permanent termination from employment in excess of regular  
121 annual wages or regular annual salary;

122 (ii) The term "reduction in force" means a net reduction in the number of employees  
123 employed by the employer in West Virginia, determined based on total West Virginia employment  
124 of the employer=s controlled group;

125 (iii) The term "controlled group" means one or more chains of corporations connected  
126 through stock ownership with a common parent corporation if stock possessing at least fifty  
127 percent of the voting power of all classes of stock of each of the corporations is owned directly or  
128 indirectly by one or more of the corporations and the common parent owns directly stock  
129 possessing at least fifty percent of the voting power of all classes of stock of at least one of the  
130 other corporations;

131 (iv) The term "corporation" means any corporation, joint-stock company or association and  
132 any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a  
133 certificate of interest or ownership or similar written instrument; and

134 (12) Any other income which this state is prohibited from taxing under the laws of the  
135 United States.

136 (d) *Modification for West Virginia fiduciary adjustment.* -- There shall be added to or  
137 subtracted from federal adjusted gross income, as the case may be, the taxpayer=s share, as  
138 beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under  
139 section nineteen of this article.

140 (e) *Partners and S corporation shareholders.* -- The amounts of modifications required to  
 141 be made under this section by a partner or an S corporation shareholder, which relate to items of  
 142 income, gain, loss or deduction of a partnership or an S corporation, shall be determined under  
 143 section seventeen of this article.

144 (f) *Husband and wife.* -- If husband and wife determine their federal income tax on a joint  
 145 return but determine their West Virginia income taxes separately, they shall determine their West  
 146 Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been  
 147 determined separately.

148 (g) *Effective date.* --

149 (1) Changes in the language of this section enacted in the year 2000 shall apply to taxable  
 150 years beginning after December 31, 2000.

151 (2) Changes in the language of this section enacted in the year 2002 shall apply to taxable  
 152 years beginning after December 31, 2002.

153 (3) Changes in the language of this section enacted in the year 2017 apply to taxable  
 154 years beginning after December 31, 2017.

**§11-21-22d. West Virginia Earned Income Tax Credit.**

1 (a) For each taxable year beginning on or after January 1, 2017, a West Virginia resident  
 2 who is eligible for the federal earned income tax credit under Section 32, Title 26 of the Internal  
 3 Revenue Code is eligible for a credit under this article equal to five percent of the amount of the  
 4 federal earned income tax credit that the individual:

5 (1) Is eligible to receive in the taxable year; and

6 (2) Claimed for the taxable year under Section 32, Title 26 of the Internal Revenue Code.

7 (b) If other credits allowed are used by the taxpayer for the taxable year, the West Virginia  
 8 Earned Income Tax Credit shall be applied last.

9 (c) If the amount of the credit allowed exceeds the taxpayer's West Virginia personal  
 10 income tax liability, the commissioner shall treat the excess as an overpayment and shall pay the

11 taxpayer the amount of the excess, without interest.

12 (d) The commissioner may propose legislative rules for legislative approval in accordance  
13 with article three, chapter twenty-nine-a of this code for the administration of the provisions of this  
14 section, file administrative notices in the State Register in accordance with section three, article  
15 two, chapter twenty-nine-a of this code, and develop and publish any instructions, any or all of  
16 which as may be determined to be necessary to provide to taxpayers guidance and assistance  
17 when claiming the West Virginia Earned Income Tax Credit.

## **ARTICLE 24. CORPORATION NET INCOME TAX.**

### **§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.**

1 *Primary tax.* -- (1) In the case of taxable periods beginning after June 30, 1967, and ending  
2 prior to January 1, 1983, a tax is hereby imposed for each taxable year at the rate of six percent  
3 per annum on the West Virginia taxable income of every domestic or foreign corporation engaging  
4 in business in this state or deriving income from property, activity or other sources in this state,  
5 except corporations exempt under section five.

6 (2) In the case of taxable periods beginning on or after January 1, 1983, and ending prior  
7 to July 1, 1987, a tax is hereby imposed for each taxable year on the West Virginia taxable income  
8 of every domestic or foreign corporation engaging in business in this state or deriving income  
9 from property, activity or other sources in this state, except corporations exempt under section  
10 five of this article, and any banks, banking associations or corporations, trust companies, building  
11 and loan associations and savings and loan associations, at the rates which follow:

12 (A) On taxable income not in excess of \$50,000, the rate of six percent; and

13 (B) On taxable income in excess of \$50,000, the rate of seven percent.

14 (3) In the case of taxable periods beginning on or after July 1, 1987, a tax is hereby  
15 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
16 corporation engaging in business in this state or deriving income from property, activity or other  
17 sources in this state, except corporations exempt under section five of this article, at the rate of



18 nine and three-quarters percent. Beginning July 1, 1988, and on each July 1 thereafter for four  
19 successive calendar years, the rate shall be reduced by fifteen one hundredths of one percent  
20 per year, with such rate to be nine percent on and after July 1, 1992.

21 (4) In the case of taxable periods beginning on or after January 1, 2007, a tax is hereby  
22 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
23 corporation engaging in business in this state or deriving income from property, activity or other  
24 sources in this state, except corporations exempt under section five of this article, at the rate of  
25 eight and three-quarters percent.

26 (5) In the case of taxable periods beginning on or after January 1, 2009, a tax is hereby  
27 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
28 corporation engaging in business in this state or deriving income from property, activity or other  
29 sources in this state, except corporations exempt under section five of this article, at the rate of  
30 eight and one-half percent.

31 (6) In the case of taxable periods beginning on or after January 1, 2012, a tax is hereby  
32 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
33 corporation engaging in business in this state or deriving income from property, activity or other  
34 sources in this state, except corporations exempt under section five of this article, at the rate of  
35 seven and three-quarters percent: *Provided*, That the reduction in tax authorized by this  
36 subsection shall be suspended if the combined balance of funds as of June 30, 2011, in the  
37 Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B  
38 established in section twenty, article two, chapter eleven-b of this code does not equal or exceed  
39 ten percent of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2011:  
40 *Provided, however*, That the rate reduction schedule will resume in the calendar year immediately  
41 following any subsequent fiscal year when the combined balance of funds as of June 30 of that  
42 fiscal year in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve  
43 Fund - Part B next equals or exceeds ten percent of the General Revenue Fund budgeted for the

44 immediately succeeding fiscal year.

45 (7) In the case of taxable periods beginning on or after January 1, 2013, a tax is hereby  
46 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
47 corporation engaging in business in this state or deriving income from property, activity or other  
48 sources in this state, except corporations exempt under section five of this article, at the rate of  
49 seven percent: *Provided*, That the reduction in tax authorized by this subsection shall be  
50 suspended for one calendar year subsequent to the occurrence of the suspension of the reduction  
51 in tax authorized by subdivision (6) of this section: *Provided, however*, That the reduction in tax  
52 on the first day of any calendar year authorized by this subsection shall be suspended if the  
53 combined balance of funds as of June 30 of the preceding year in the Revenue Fund Shortfall  
54 Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section  
55 twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent of the  
56 General Revenue Fund budgeted for the fiscal year commencing July 1, of the preceding year.

57 (8) In the case of taxable periods beginning on or after January 1, 2014, a tax is hereby  
58 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
59 corporation engaging in business in this state or deriving income from property, activity or other  
60 sources in this state, except corporations exempt under section five of this article, at the rate of  
61 six and one-half percent: *Provided*, That the reduction in tax authorized by this subsection shall  
62 be suspended for one calendar year subsequent to the occurrence of the suspension of the  
63 reduction in tax authorized by subdivision (7) of this section: *Provided, however*, That the  
64 reduction in tax on the first day of any calendar year authorized by this subsection shall be  
65 suspended if the combined balance of funds as of June 30 of the preceding year in the Revenue  
66 Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established  
67 in section twenty, article two, chapter eleven-b of this code does not equal or exceed ten percent  
68 of the General Revenue Fund budgeted for the fiscal year commencing July 1, of the preceding  
69 year.

70           (9) In the case of taxable periods beginning on or after January 1, 2018, a tax is hereby  
71 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign  
72 corporation engaging in business in this state or deriving income from property, activity or other  
73 sources in this state, except corporations exempt under section five of this article, at the rate of  
74 seven and one-half percent.

NOTE: The purpose of this bill is to create a fair and equitable solution to the budget crisis in West Virginia. The bill increases the sales and use taxes to 6.75 percent and broadens the base of the sales tax. It ends the transfer of sales tax revenue to the road fund. It creates a fair share surcharge for wealthy West Virginians. It grants a \$750 tax credit to full-time, classroom teachers. It modifies certain exemptions from sales and use taxes and exempts veterans' military benefits from personal income tax. It creates an Earned Income Tax Credit to put more money in the hands of working people who earn low wages. Finally, it increases the rate of corporate net income tax by one percent.

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