

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2933

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MAYNARD AND SHOTT

[Originating in the Committee on Finance;

March 24, 2017]

1 A BILL to repeal §11-15-9k of the Code of West Virginia, 1931, as amended; to amend and
2 reenact §11-15-3, §11-15-3a, §11-15-8, §11-15-8a and §11-15-9 of said code; to amend
3 said code by adding thereto a new section, designated §11-15-3d; to amend and reenact
4 §11-15A-2 and §11-15A-3 of said code; to amend and reenact §11-21-14, §11-21-16 and
5 §11-21-22; and to amend said code by adding thereto a new section, designated §11-21-
6 4g, all relating to the taxes generally; reducing the general rate of consumers sales and
7 service taxes and use taxation; imposing a reduced rate of taxation on sales, purchases
8 and uses of food and food ingredients intended for human consumption; imposing tax on
9 sales of telecommunications services and ancillary services; eliminating reduced rate of
10 taxation for sales of certain mobile homes and imposing tax on such sales at the general
11 rate; eliminating exemption for sales of certain personal services; eliminating exemption
12 for sales of certain professional services; imposing tax on portion of consideration paid for
13 contracting services; removing outdated language from the code regarding an obsolete
14 exemption related to contracting services; eliminating exemption for sales of electronic
15 data processing services and related software when purchased by an ultimate consumer;
16 eliminating exemption for sales of membership or services provided by health and fitness
17 organizations and related programs; eliminating exemption for sales of primary opinion
18 research when purchased by an ultimate consumer; eliminating exemption for sales of
19 instructional services by a music teacher and certain artistic services; eliminating
20 exemption for commissions received by a travel agency from an out-of-state vendor;
21 eliminating exemption for sales of services providing evaluations for compliance with
22 certain environmental laws when purchased by an ultimate consumer; deleting outdated
23 language in the code relating to an obsolete annual sales tax holiday for energy efficient
24 products; eliminating reduced rate of taxation for use of certain mobile homes and
25 imposing tax on such use at the general rate; eliminating the tax brackets under the
26 personal income tax and changing the rate of the tax; creating a standard deduction from

27 West Virginia taxable income for personal income taxation purposes; eliminating personal
28 exemptions; and eliminating the low-income family tax credit.

Be it enacted by the Legislature of West Virginia:

1 That §11-15-9k of the Code of West Virginia, 1931, as amended, be repealed; that §11-
2 15-3, §11-15-3a, §11-15-8, §11-15-8a and §11-15-9 of said code be amended and reenacted;
3 that said code be amended by adding thereto a new section, designated §11-15-3d; that §11-
4 15A-2 and §11-15A-3 of said code be amended and reenacted; that §11-21-14, §11-21-16 and
5 §11-21-22 be amended and reenacted; and that said code be amended by adding thereto a new
6 section, designated §11-21-4g, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

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

6 (b) *Amount of tax.* — The general consumer sales and service tax imposed by this article
7 shall be at the rate of 6¢ on the dollar of sales or services, excluding gasoline and special fuel
8 sales, which remain taxable at the rate of 5¢ on the dollar of sales. Beginning July 1, 2018, and
9 thereafter, the general consumer sales and service tax imposed by this article shall be at the rate
10 of 5¢ on the dollar of sales or services, including gasoline and special fuel sales.

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

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

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

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

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

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

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

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

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

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

38 period.

39 (e) *No aggregation of separate sales transactions, exception for coin-operated devices.*

40 — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of

41 computation of the tax even though the sales are aggregated in the billing or payment therefor.

42 Notwithstanding any other provision of this article, coin-operated amusement and vending
43 machine sales shall be aggregated for the purpose of computation of this tax.

44 (f) *Rate of tax on certain mobile homes.* — Notwithstanding any provision of this article to
45 the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the
46 owner thereof as his or her principal year-round residence and dwelling shall be an amount equal
47 to six percent of fifty percent of the sales price. Beginning on October 1, 2017, sales of mobile
48 homes to be used by the owner thereof as his or her principal year-round residence and dwelling
49 shall be taxed at the general rate.

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

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

55 (i) For purposes of this article and articles fifteen-a and fifteen-b of this chapter, the term
56 “general rate” refers to the current rate of the consumer sales and service tax as provided in
57 subsection (b) of this article.

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

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

3 (1) ~~Rate reduction.~~ — The rate of tax on sales, purchases and uses of food and food
4 ingredients intended for human consumption after ~~June 30, 2008~~ September 30, 2017, shall be
5 three percent of its sales price, as defined in section two, article fifteen-b of this chapter.

6 (2) ~~Additional rate reduction.~~ — ~~The rate of tax on sales, purchases and uses of food and~~
7 ~~food ingredients as defined in that section that is intended for human consumption after December~~
8 ~~31, 2011, shall be two percent of its sales price, as defined in that section. After June 30, 2012,~~

9 ~~the rate of tax on sales, purchases and uses of food and food ingredients as defined in that section~~
10 ~~that is intended for human consumption shall be one percent of its sales price, as defined in that~~
11 ~~section.~~

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

25 ~~(b) *Calculation of tax on fractional parts of a dollar.* — The tax computation under this~~
26 ~~section shall be carried to the third decimal place and the tax rounded up to the next whole cent~~
27 ~~whenever the third decimal place is greater than four and rounded down to the lower whole cent~~
28 ~~whenever the third decimal place is four or less. The seller may elect to compute the tax due on~~
29 ~~a transaction on a per item basis or on an invoice basis provided the method used is consistently~~
30 ~~used during the reporting period.~~

31 ~~(c) *Federal Food Stamp and Women, Infants and Children programs, other exemptions.*~~
32 ~~— Nothing in this section affects application of the exemption from tax provided in section nine of~~
33 ~~this article for food purchased by an eligible person using food stamps, electronic benefits transfer~~
34 ~~cards or vouchers issued by or pursuant to authorization of the United States Department of~~

35 Agriculture to individuals participating in the Federal Food Stamp Program, by whatever name
36 called, or the Women, Infants and Children (WIC) program, or application of any other exemption
37 from tax set forth in this article or article fifteen-a of this chapter.

§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 October 1, 2017, telecommunications service and ancillary
3 services, as defined in article fifteen-b of this chapter, shall be subject to the consumers sales
4 and service tax imposed by this article, and the use tax imposed by article fifteen-a of this chapter:
5 Provided, That payment of the tax imposed under this article or under article fifteen-a of this
6 chapter on prepaid wireless services is sufficient to fulfill the mandate of this section, and prepaid
7 wireless services shall not be subjected to double taxation under this article: *Provided, however,*
8 That this section shall not be interpreted to prevent imposition of any other lawfully imposed
9 municipal tax or fee or any other tax or fee lawfully imposed under any state or federal law, or the
10 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 sourcing rules of the Streamlined Sales Tax Agreement as
16 defined in article fifteen-b of this chapter.

§11-15-8. Furnishing of services included; exceptions.

1 (a) The provisions of this article apply not only to selling tangible personal property and
2 custom software, but also to the furnishing of all services, except professional and personal
3 services, and except those services furnished by businesses subject to the control of the Public

4 Service Commission when the service or the manner in which it is delivered is subject to regulation
5 by the Public Service Commission.

6 (b) Notwithstanding any provision of subsection (a) of this section to the contrary,
7 beginning October 1, 2017, professional services rendered by the following are subject to the tax
8 imposed under this article: Lawyers; certified public accountants; public accountants; architects;
9 professional engineers; landscape architects; enrolled agents; state licensed residential real
10 estate appraisers, state certified residential real estate appraiser and state certified general real
11 estate appraisers licensed in accordance with article thirty-eight, chapter thirty of this code;
12 licensed real estate brokers; financial brokers; and securities brokers.

13 (c) Notwithstanding any provision of subsection (a) of this section to the contrary,
14 beginning October 1, 2017, the following personal services done to or performed on the person
15 of an individual that are directly from one person to another are subject to the tax imposed under
16 this article: Barbering, massaging, manicuring, hair setting, hair washing and dyeing, shoe-
17 shining while the shoes are worn by the customer, and non-medical personal care services.

§11-15-8a. Contractors.

1 (a) The provisions of this article shall not apply to contracting services: Provided, That
2 except for purchases by a contractor of tangible personal property or taxable services for use or
3 consumption in the providing of a contracting service, beginning on October 1, 2017, the
4 provisions of this article shall apply to the first \$40,000 of consideration paid for contracting
5 services pursuant to a contract entered into on or after October 1, 2017: *Provided, however, That*
6 ~~However,~~ purchases by a contractor of tangible personal property or taxable services for use or
7 consumption in the providing of a contracting service shall be taxable beginning March 1, 1989,
8 except as otherwise provided in this article.

9 ~~(b) Transition rules. — The exemption from payment of tax on purchases of tangible~~
10 ~~personal property or taxable services directly used or consumed in the activity of contracting, as~~

11 ~~defined in section two of this article, which expires as of March 1, 1989, shall nevertheless remain~~
12 ~~in effect with respect to:~~

13 ~~(1) Tangible personal property or taxable services purchased by a contractor on or after~~
14 ~~said first day of March in fulfillment of a written contract for contracting, as defined in section two~~
15 ~~of this article, that was executed and legally binding on the parties thereto on or before February~~
16 ~~15, 1989; or in fulfillment of a written contract entered into after February 15 pursuant to a written~~
17 ~~bid for contracting that was made on or before February 15 that was binding on the contractor,~~
18 ~~but only to the extent that the bid is subsequently incorporated into a written contract; or~~

19 ~~(2) Tangible personal property or taxable services purchased by a contractor on or after~~
20 ~~March 1 pursuant to a written contract executed on or before February 15, 1989, to purchase in~~
21 ~~specified quantities identified tangible personal property or specified taxable services; or~~

22 ~~(3) Tangible personal property or taxable services purchased by a contractor for~~
23 ~~consumption or use in fulfillment of a written contract entered into before September 1, 1989,~~
24 ~~when such contract is for the construction of a new improvement to real property the construction~~
25 ~~or operation of which was approved by a federal or state regulatory body prior to February 1,~~
26 ~~1989, or pursuant to a federal grant awarded prior to such first day of February.~~

27 (c) Renewals and extensions. — A renewal of any contract shall constitute a new contract
28 for purposes of this section, and the date of entry into a contract renewal by the parties, the date
29 or dates of tender of consideration and the time of performance of any contractual obligations
30 under a renewed contract shall be treated as the dates for determining application of this section
31 to the renewed contract. Extensions of time granted or agreed upon by the parties to a contract
32 for performance of the contract or for tender of consideration under the contract shall not be
33 treated as contract renewals. Contracts to which such extensions apply shall be treated under
34 these transition rules as if the original contractual provisions for performance and tender of
35 consideration remain in effect.

36 (d) *Definitions.* — For purposes of this section:

37 (1) The term “contract” or “contracts” means written agreements reciting or setting forth a
38 fixed price consideration or a consideration based upon cost plus a stated percentage or a stated
39 monetary increment. This term shall not mean or include ongoing sales contracts, contracts
40 whereby any element of the consideration or the property or services sold or to be rendered in
41 performance of the contract are undefined, or determined, as to either nature or quantity,
42 subsequent to the making of the contract, or any open-ended contract.

43 (2) The term “contract renewal” or “renewal” means a covenant or agreement entered into
44 or assumed by parties which have a current contractual relation or which have had a past
45 contractual relation, whereby the parties agree to incur obligations beyond those which they were,
46 or would have been, required, at the minimum, to carry out under their current or past contractual
47 relation.

§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 colleges located in this state;

15 (3) Sales of property or services to this state, its institutions or subdivisions, governmental
16 units, institutions or subdivisions of other states: *Provided*, That the law of the other state provides
17 the same exemption to governmental units or subdivisions of this state and to the United States,
18 including agencies of federal, state or local governments for distribution in public welfare or relief
19 work;

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

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

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

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

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

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

39 (D) An organization which has no paid employees and its gross income from fundraisers,
40 less reasonable and necessary expenses incurred to raise the gross income (or the tangible

41 personal property or services purchased with the net income), is donated to an organization which
42 is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
43 1986, as amended;

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

48 (F) For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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

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

90 (8) Sales of tangible personal property or of any taxable services rendered for use or
91 consumption in connection with the commercial production of an agricultural product the ultimate
92 sale of which is subject to the tax imposed by this article or which would have been subject to tax

93 under this article: *Provided*, That sales of tangible personal property and services to be used or
94 consumed in the construction of or permanent improvement to real property and sales of gasoline
95 and special fuel are not exempt: *Provided, however*, That nails and fencing may not be considered
96 as improvements to real property;

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

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

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

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

110 (13) Sales and services performed by day care centers.

111 (14) Casual and occasional sales of property or services not conducted in a repeated
112 manner or in the ordinary course of repetitive and successive transactions of like character by a
113 corporation or organization which is exempt from tax under subdivision (6) of this subsection on
114 its purchases of tangible personal property or services. For purposes of this subdivision, the term
115 “casual and occasional sales not conducted in a repeated manner or in the ordinary course of
116 repetitive and successive transactions of like character” means sales of tangible personal property
117 or services at fundraisers sponsored by a corporation or organization which is exempt, under
118 subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases

119 when the fundraisers are of limited duration and are held no more than six times during any
120 twelve-month period and “limited duration” means no more than eighty-four consecutive hours:
121 *Provided*, That sales for volunteer fire departments and volunteer school support groups, with
122 duration of events being no more than eighty-four consecutive hours at a time, which are held no
123 more than eighteen times in a twelve-month period for the purposes of this subdivision are
124 considered “casual and occasional sales not conducted in a repeated manner or in the ordinary
125 course of repetitive and successive transactions of a like character”;

126 (15) Sales of property or services to a school which has approval from the board of
127 Trustees of the University System of West Virginia or the board of Directors of the state College
128 System to award degrees, which has its principal campus in this state and which is exempt from
129 federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as
130 amended: *Provided*, That sales of gasoline and special fuel are taxable;

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

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

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

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

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

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

149 (21) Sales of electronic data processing services and related software: Provided, That
150 beginning on January 1, 2018, sales of electronic data processing services and related software
151 to an ultimate consumer are subject to the tax imposed by this article: Provided, however, That,
152 for the purposes of this subdivision, “electronic data processing services” means:

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

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

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

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

169 (24) Food for the following are exempt:

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

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

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

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

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

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

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

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

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

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

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

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

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

217 (31) Sales of livestock, poultry or other farm products in their original state by the producer
218 of the livestock, poultry or other farm products or a member of the producer's immediate family
219 who is not otherwise engaged in making retail sales of tangible personal property; and sales of
220 livestock sold at public sales sponsored by breeders or registry associations or livestock auction

221 markets: *Provided*, That the exemptions allowed by this subdivision may be claimed without
222 presenting or obtaining exemption certificates provided the farmer maintains adequate records;

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

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

240 (34) Charges for memberships or services provided by health and fitness organizations
241 relating to personalized fitness programs: *Provided*, That beginning on January 1, 2018, charges
242 for memberships or services provided by health and fitness organizations relating to personalized
243 fitness programs shall be subject to the tax imposed by this article;

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

247 (36) Sales of services by public libraries or by libraries at academic institutions or by
248 libraries at institutions of higher learning;

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

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

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

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

256 ~~(C)~~ (iii) The transfer of the results of the service activities is an indispensable part of the
257 overall service.

258 (B) Beginning on January 1, 2018, all sales of primary opinion research services to an
259 ultimate consumer shall be subject to the tax imposed by this article.

260 (C) 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) Sales of property or services to persons within the state when those sales are for the
265 purposes of the production of value-added products: *Provided*, That the exemption granted in this
266 subdivision applies only to services, equipment, supplies and materials directly used or consumed
267 by those persons engaged solely in the production of value-added products: *Provided, however*,
268 That this exemption may not be claimed by any one purchaser for more than five consecutive
269 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)(A) 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 (B) Beginning on January 1, 2018, all sales of music instructional services by a music
308 teacher and artistic services or artistic performances of an entertainer or performing artist
309 pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar,
310 tavern, sports or other entertainment facility or any other business location in this state in which
311 the public or a limited portion of the public may assemble to hear or see musical works or other
312 artistic works be performed for the enjoyment of the members of the public there assembled shall
313 be subject to the tax imposed by this article.

314 (41) Charges to a member by a membership association or organization which is exempt
315 from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
316 of 1986, as amended, for membership in the association or organization, including charges to
317 members for newsletters prepared by the association or organization for distribution primarily to
318 its members, charges to members for continuing education seminars, workshops, conventions,
319 lectures or courses put on or sponsored by the association or organization, including charges for
320 related course materials prepared by the association or organization or by the speaker or
321 speakers for use during the continuing education seminar, workshop, convention, lecture or
322 course, but not including any separate charge or separately stated charge for meals, lodging,
323 entertainment or transportation taxable under this article: *Provided,* That the association or

324 organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment
325 or transportation taxable under this article for which a separate or separately stated charge is not
326 made. A membership association or organization which is exempt from paying federal income
327 taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may
328 elect to pay the tax imposed under this article on the purchases for which a separate charge or
329 separately stated charge could apply and not charge its members the tax imposed by this article
330 or the association or organization may avail itself of the exemption set forth in subdivision (9) of
331 this subsection relating to purchases of tangible personal property for resale and then collect the
332 tax imposed by this article on those items from its member;

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

335 (43) Direct or subscription sales by the Division of Natural Resources of the magazine
336 currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the
337 magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

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

339 (45) Commissions received by a travel agency from an out-of-state vendor: Provided, That
340 beginning on October 1, 2017, commissions received by a travel agency from an out-of-state
341 vendor shall be subject to the tax imposed by this article;

342 (46)(A) The service of providing technical evaluations for compliance with federal and
343 state environmental standards provided by environmental and industrial consultants who have
344 formal certification through the West Virginia Department of Environmental Protection or the West
345 Virginia Bureau for Public Health or both.

346 (B) Beginning on January 1, 2018, the service of providing technical evaluations for
347 compliance with federal and state environmental standards provided by environmental and
348 industrial consultants who have formal certification through the West Virginia Department of

349 Environmental Protection or the West Virginia Bureau for Public Health shall be subject to the tax
350 imposed by this article when the service is purchased by an ultimate consumer.

351 (C) For purposes of this exemption, the service of providing technical evaluations for
352 compliance with federal and state environmental standards includes those costs of tangible
353 personal property directly used in providing such services that are separately billed to the
354 purchaser of such services and on which the tax imposed by this article has previously been paid
355 by the service provider;

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

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

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

366 (b) *Refundable exemptions.* — Any person having a right or claim to any exemption set
367 forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply
368 to the Tax Commissioner for a refund or credit, or as provided in section nine-d of this article, give
369 to the vendor his or her West Virginia direct pay permit number. The following sales of tangible
370 personal property and services are exempt from tax as provided in this subsection:

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

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

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

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

387 (5) Sales of building materials or building supplies or other property to an organization
388 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended,
389 which are to be installed in, affixed to or incorporated by the organization or its agent into real
390 property or into a building or structure which is or will be used as permanent low-income housing,
391 transitional housing, an emergency homeless shelter, a domestic violence shelter or an
392 emergency children and youth shelter if the shelter is owned, managed, developed or operated
393 by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
394 1986, as amended; and

395 (6) Sales of construction and maintenance materials acquired by a second party for use
396 in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or
397 credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to
398 the Division of Highways for deposit into the state Road Fund of the state reimbursement for the
399 tax in the amount estimated under the provisions of this subdivision: *Provided, however*, That by
400 June 15 of each fiscal year, the division shall provide to the Tax Department an itemized listing of

401 highways projects with the amount of funds expended for highway construction and maintenance.
402 The Commissioner of Highways shall request reimbursement of the tax based on an estimate that
403 forty percent of the total gross funds expended by the agency during the fiscal period were for the
404 acquisition of materials used for highway construction and maintenance. The amount of the
405 reimbursement shall be calculated at six percent of the forty percent.

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) (1) An excise tax is hereby levied and imposed on the use in this state of tangible
2 personal property, custom software or taxable services, to be collected and paid as provided in
3 this article or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the
4 property or taxable services, except as otherwise provided in this article. Beginning on January
5 1, 2018, the tax imposed by this section shall be at the rate of the consumers sales and service
6 tax, as provided in section three, article fifteen of this chapter: *Provided*, That any reductions to
7 the consumers sales and service tax pursuant to section three, article fifteen shall also apply to
8 the tax imposed by this section.

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 taxable service within this state. That person's liability is not extinguished until the tax
21 has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in
22 business in this state, or by a foreign retailer who is authorized by the Tax Commissioner to collect
23 the tax imposed by this article, relieves the purchaser from further liability for the tax to which the
24 receipt refers.

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

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

§11-15A-3. Exemptions.

1 (a) The use in this state of the following tangible personal property, custom software and
2 services is hereby specifically exempted from the tax imposed by this article to the extent
3 specified:

4 (1) All articles of tangible personal property and custom software brought into the State of
5 West Virginia by a nonresident individual thereof for his or her use or enjoyment while temporarily
6 within this state or while passing through this state, except gasoline and special fuel: *Provided,*
7 That fuel contained in the supply tank of a motor vehicle that is not a motor carrier may not be
8 taxable.

9 (2) Tangible personal property, custom software or services, the gross receipts from the
10 sale of which are exempt from the sales tax by the terms of article fifteen, chapter eleven of the
11 Code of West Virginia, 1931, as amended, and the property or services are being used for the
12 purpose for which it was exempted.

13 (3) Tangible personal property, custom software or services, the gross receipts or the
14 gross proceeds from the sale of which are required to be included in the measure of the tax
15 imposed by article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, and
16 upon which the tax imposed by said article fifteen has been paid.

17 (4) Tangible personal property, custom software or services, the sale of which in this state
18 is not subject to the West Virginia consumers sales tax.

19 (5) Fifty percent of the measure of tax on mobile homes utilized by the owners thereof as
20 their principal year-round residence and dwelling: Provided, That beginning on January 1, 2018,
21 the exemption created by this subdivision is discontinued.

22 (b) The provisions of this section, as amended in the year 2003, shall apply on and after
23 January 1, 2004.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4g. Rate of tax — Taxable years beginning on or after January 1, 2018.

1 (a) Rate of tax on individuals, married individuals filing separate returns, individuals filing
2 joint returns, heads of households, estates and trusts. — The tax imposed by section three of this
3 article on the West Virginia taxable income of every individual; every individual who is a head of
4 a household in the determination of his or her federal income tax for the taxable year; every
5 husband and wife who file a joint return under this article; married individuals filing separate
6 returns; every individual who is entitled to file his or her federal income tax return for the taxable
7 year as a surviving spouse; and every estate and trust, is five and one-tenth percent of the taxable
8 income.

9 (b) Applicability of this section. — The provisions of this section are applicable in
10 determining the rate of tax imposed by this article for all taxable years beginning after December
11 31, 2017, and are in lieu of the rates of tax specified in section four-e of this article.

§11-21-14. West Virginia standard deduction of a resident individual.

12 (a) *General.* — ~~The~~ (1) For taxable years beginning after December 31, 2017, the West
13 Virginia standard deduction of a resident individual whose West Virginia adjusted gross income
14 is less than \$50,000 , ~~or of husband and wife whose West Virginia taxable income is determined~~
15 ~~jointly, shall be ten per centum of West Virginia adjusted gross income or \$1,000, whichever is~~
16 ~~less~~ \$10,000.

17 (2) For taxable years beginning after December 31, 2017, the West Virginia standard
18 deduction of each spouse of a husband and wife whose West Virginia taxable income is
19 determined jointly and whose West Virginia adjusted gross income is less than \$25,000, shall be
20 \$5,000.

21 (b) *Husband and wife determining income separately.* — ~~The~~ For taxable years beginning
22 after December 31, 2017, the West Virginia standard deductions of each spouse of a husband
23 and wife whose West Virginia standard deductions are determined separately and whose West
24 Virginia adjusted gross income is less than \$25,000, (whether or not on a single form) shall not
25 exceed ten per centum of the aggregate of their separate West Virginia adjusted gross incomes
26 or \$1,000, whichever is less shall be \$5,000, but may be taken by either or divided between them
27 in such proportions as they may elect.

28 (c) *Expiration.* — ~~The West Virginia standard deduction provided in this section shall not~~
29 ~~apply to taxable years beginning after December 31, 1986.~~ For resident individuals whose West
30 Virginia adjusted gross income is \$50,000 or greater but less than \$60,000, and for a husband
31 and wife whose West Virginia taxable income is determined jointly or separately and whose
32 combined West Virginia taxable incomes is \$50,000 or greater but less than \$60,000, the West
33 Virginia standard deductions otherwise provided by this section shall be reduced proportionally to
34 the degree to which their West Virginia adjusted gross income, or combined income, as the case
35 may be, is \$50,000 or greater but less than \$60,000, pursuant to emergency rules promulgated,
36 and legislative rules proposed for promulgation by the tax commissioner, pursuant to article three,
37 chapter twenty-nine-a of this code. No standard deduction is allowed under this section for

38 resident individuals whose West Virginia adjusted gross income is \$60,000 or greater, or for a
39 husband and wife whose West Virginia taxable income is determined jointly or separately and
40 whose combined West Virginia taxable incomes is \$60,000 or greater.

§11-21-16. West Virginia personal exemptions of resident individual.

1 (a) *General.* — For any tax imposed under the provisions of this article with respect to any
2 taxable year prior to January 1, 1983, a resident individual shall be allowed a West Virginia
3 exemption of \$600 for each exemption for which he or she is entitled to a deduction for the taxable
4 year for federal income tax purposes. With respect to any taxable year beginning on or after
5 January 1, 1983, and prior to January 1, 1984, said exemption shall be \$700; with respect to any
6 taxable year beginning on or after January 1, 1984, said exemption shall be \$800; and with
7 respect to any taxable year beginning on or after January 1, 1987, said exemption shall be \$2,000.

8 (b) *Husband and wife.* — If the West Virginia income taxes of a husband and wife are
9 separately determined but their federal income tax is determined on a joint return, each of them
10 shall be separately entitled, with respect to any taxable year prior to January 1, 1983, to a West
11 Virginia exemption of \$600 for each federal exemption to which he or she would be separately
12 entitled for the taxable year if their federal income taxes had been determined on separate returns.
13 With respect to any taxable year beginning on or after January 1, 1983, and prior to January 1,
14 1984, said exemption shall be \$700; with respect to any taxable year beginning on or after January
15 1, 1984, said exemption shall be \$800; and with respect to any taxable year beginning on or after
16 January 1, 1987, said exemption shall be \$2,000.

17 (c) *Surviving spouse.* — For taxable years beginning after December 31, 1986, a surviving
18 spouse shall be allowed one additional exemption of \$2,000 for the two taxable years beginning
19 after the year of death of the deceased spouse.

20 For purposes of this section and section twelve of this article, a surviving spouse means
21 a taxpayer whose spouse died during the taxable year prior to the taxable year for which the

22 annual return is being filed and who has not remarried at any time before the end of the taxable
23 year for which the annual return is being filed.

24 (d) *Certain dependents.* — Notwithstanding any provisions in this section, for taxable
25 years beginning after December 31, 1986, a resident individual whose exemption amount for
26 federal tax purposes is zero by virtue of section 151(d)(2) of the Internal Revenue Code of 1986,
27 shall be allowed a single West Virginia exemption in the amount of \$500.

28 (e) The exemptions provided in this section shall not apply to taxable years beginning after
29 December 31, 2017.

§11-21-22. Low-income family tax credit.

1 In order to eliminate West Virginia personal income tax on families with incomes below
2 the federal poverty guidelines and to reduce the West Virginia personal income tax on families
3 with incomes that are immediately above the federal poverty guidelines, there is hereby created
4 a nonrefundable tax credit, to be known as the low-income family tax credit, against the West
5 Virginia personal income tax. The low-income family tax credit is based upon family size and the
6 federal poverty guidelines. The low-income tax credit reduces the tax imposed by the provisions
7 of this article on families with modified federal adjusted gross income below or near the federal
8 poverty guidelines: *Provided*, That for tax years beginning on and after January 1, 2009, any
9 person who is required to pay the federal alternative minimum income tax in the current tax year
10 is disqualified from receiving any tax credit provided under this section. The credit provided in this
11 section and sections twenty-two-a, twenty-two-b and twenty-two-c of this article shall not apply to
12 taxable years beginning after December 31, 2017.