

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 335

FISCAL
NOTE

BY SENATORS KARNES, CARMICHAEL (MR. PRESIDENT),
MULLINS, MAYNARD, WELD, CLEMENTS, FERNS, CLINE,
SMITH, SYPOLT, AZINGER, SWOPE, BLAIR, GAUNCH,
TAKUBO, BOSO, MANN AND TRUMP

[Introduced February 16, 2017; Referred
to the Select Committee on Tax Reform; and then to
the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-13A-26; to amend said code by adding thereto a new section, designated
3 §11-15-34; to amend said code by adding thereto a new section, designated §11-15A-30;
4 to amend said code by adding thereto a new article, designated §11-15C-1, §11-15C-2,
5 §11-15C-3, §11-15C-4, §11-15C-5, §11-15C-6, §11-15C-7, §11-15C-8, §11-15C-9, §11-
6 15C-10, §11-15C-11, §11-15C-12, §11-15C-13, §11-15C-14, §11-15C-15, §11-15C-16,
7 §11-15C-17, §11-15C-18, §11-15C-19, §11-15C-20, §11-15C-21, §11-15C-22, §11-15C-
8 23, §11-15C-24, §11-15C-25, §11-15C-26 and §11-15C-27; to amend said code by adding
9 thereto a new section, designated §11-21-97; to amend said code by adding thereto a
10 new article, designated §11-21A-1, §11-21A-2, §11-21A-3, §11-21A-4, §11-21A-5, §11-
11 21A-6 and §11-21A-7; and to amend and reenact §11-24-4 of said code, all relating
12 generally to the prospective repeal of the consumers sales and service tax and of the use
13 tax; repealing personal income tax and the phase out and repeal of corporation net income
14 tax and to the enactment of the general consumption tax law and of the temporary single
15 rate income tax; making findings; defining terms; imposing the tax; authorizing
16 exemptions; providing compliance procedures; and establishing an effective date with
17 respect thereto.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §11-13A-26; that said code be amended by adding thereto a new section,
3 designated §11-15-34; that said code be amended by adding thereto a new section, designated
4 §11-15A-30; that said code be amended by adding thereto a new article, designated §11-15C-1,
5 §11-15C-2, §11-15C-3, §11-15C-4, §11-15C-5, §11-15C-6, §11-15C-7, §11-15C-8, §11-15C-9,
6 §11-15C-10, §11-15C-11, §11-15C-12, §11-15C-13, §11-15C-14, §11-15C-15, §11-15C-16, §11-
7 15C-17, §11-15C-18, §11-15C-19, §11-15C-20, §11-15C-21, §11-15C-22, §11-15C-23, §11-15C-
8 24, §11-15C-25, §11-15C-26 and §11-15C-27; that said code be amended by adding thereto a

9 new section, designated §11-21-97; that said code be amended by adding thereto a new article,
10 designated §11-21A-1, §11-21A-2, §11-21A-3, §11-21A-4, §11-21A-5, §11-21A-6 and §11-21A-
11 7; and that §11-24-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX.

§11-13A-26. Contingent Reduction of Tax Rate.

1 Notwithstanding anything contained in this article to the contrary, for all tax periods
2 beginning on and after January 1, 2018, the tax imposed in this article at the rate of five percent,
3 shall be reduced by one percentage point for each of two successive years: *Provided, That as a*
4 condition precedent to each such reduction in any tax year, the rate of the corporation net income
5 tax imposed pursuant to article twenty-four of this chapter, for the tax year immediately preceding
6 such year, shall be zero percent.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-34. Prospective termination of tax, preservation for prior periods.

1 Each and every provision of this article is repealed for all tax periods beginning on July 1,
2 2017: *Provided, That tax liabilities, if any, arising for taxable periods prior to July 1, 2017, shall be*
3 determined, administered, assessed and collected as if the taxes imposed by this article had not
4 been repealed; and the rights and duties of taxpayers and the state shall be fully and completely
5 preserved.

ARTICLE 15A. USE TAX.

§11-15A-30. Prospective termination of tax, preservation for prior periods.

1 Each and every provision of this article is repealed for all tax periods beginning on July 1,
2 2017: *Provided, That tax liabilities, if any, arising for taxable periods prior to July 1, 2017, shall be*
3 determined, administered, assessed and collected as if the taxes imposed by this article had not

4 been repealed; and the rights and duties of taxpayers and the state shall be fully and completely
5 preserved.

ARTICLE 15C. GENERAL CONSUMPTION TAX.

§11-15C-1. Short title.

1 This article is known and may be cited as the “General Consumption Tax Law.”

§11-15C-2. Legislative findings and declaration of purpose.

1 The Legislature finds that all vendors, purchasers and other persons, regardless of their
2 means, benefit from the availability of goods and services in the marketplaces of this state and
3 from the use of goods and services in this state. The Legislature further finds that the functions of
4 state government foster and protect those marketplaces and uses, and as a result, all vendors,
5 purchasers and other persons who avail themselves of those benefits should provide financial
6 support for those functions of state government through a broad-based tax in the form of a general
7 consumption tax on the selling, purchasing and using of goods and services in this state.

8 The Legislature further finds it to be imminently fair that, with few exceptions, the financial
9 support which each vendor and each other person would provide for the functions of state
10 government through such a tax should be measured by the extent to which they participate in the
11 marketplaces or acquire such goods and services for use. Thus, the Legislature further finds that,
12 in the free enterprise system, the best judge of a purchaser’s ability to pay, for the purchase of
13 goods and services, is the purchaser, and, thus a broad-based consumption tax is firmly based
14 on that principle of sound and fair taxation. The Legislature further finds that such a tax may
15 readily be structured to enhance the economic competitiveness of the state’s economy among
16 the economies of other states and nations.

17 The Legislature further finds that the only exceptions to such a broad-based general
18 consumption tax should be those which mitigate its potential either for pyramiding tax incidences
19 or for complicating its administration with respect to governmental purchases, purchases for
20 charitable, educational and public safety purposes that relieve the burdens of government and

21 purchases of goods and services by individuals for health care which are predominately paid or
22 reimbursed by third parties - including the government.

23 Finally, the Legislature finds that the general consumption tax imposed by this article shall
24 also be administered and collected in accordance with the provisions of article fifteen-B of this
25 chapter.

26 The Legislature does therefore declare that the purpose of this article shall be to impose
27 the general consumption tax for the privilege of selling, purchasing and using goods and services
28 in this state, and it shall be construed so as to give effect to the findings in this section.

§11-15C-3. Definitions of terms.

1 When used in this article, the words defined in this section have the meanings ascribed to
2 them herein, except in those instances where a different meaning is provided in this article or the
3 context in which the word is used clearly indicates a different meaning is intended by the
4 Legislature.

5 (a) *Agricultural production.* – The term “agricultural production” means the production of
6 food, fiber and woodland products by means of cultivation, tillage of the soil and the conduct of
7 animal, livestock, dairy, apiary, equine or poultry husbandry, horticulture, or any other plant or
8 animal production and all farm practices usually or incidentally related thereto, including the
9 storage, packing, shipping and marketing, but not including any manufacturing, milling or
10 processing of such products by persons other than the original producer thereof.

11 (b) *Business.* – The term “business” includes all activities engaged in or caused to be
12 engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the
13 state and its political subdivisions which involve sales of tangible personal property or the
14 rendering of services when those sales or services compete with or may compete with the
15 activities of other nongovernmental persons.

16 (c) *Delegate.* – The term “delegate” in the phrase “his or her delegate,” when used in
17 reference to the tax commissioner, means any officer or employee of the state tax division of the

18 department of tax and revenue duly authorized by the tax commissioner directly, or indirectly by
19 one or more redelegations of authority, to perform functions mentioned or described in this article
20 or regulations promulgated thereunder.

21 (d) Directly used or consumed. –

22 (1) General. – The term “directly used or consumed” in the activities of manufacturing,
23 natural resource production and agricultural production means used or consumed in those
24 activities or operations which constitute an integral and essential part of one of those activities,
25 as contrasted with and distinguished from those activities or operations which are simply
26 incidental, convenient or remote to one of those activities.

27 (2) Uses of tangible or intangible property which constitute direct use or consumption of
28 the property in the activities of manufacturing, natural resource production or agricultural
29 production includes only uses for the immediate purpose of:

30 (A) Physical incorporation of property into a finished product resulting from manufacturing,
31 natural resource production or agricultural production;

32 (B) Causing a direct physical, chemical or other change upon property undergoing
33 manufacturing, natural resource production or agricultural production;

34 (C) Transporting or storing property undergoing manufacturing, natural resource
35 production or agricultural production;

36 (D) Measuring or verifying a change in property directly used in manufacturing, natural
37 resource production or agricultural production;

38 (E) Physically controlling or directing the physical movement or operation of property
39 directly used in manufacturing, natural resource production or agricultural production;

40 (F) Directly and physically recording the flow of property undergoing manufacturing,
41 natural resource production or agricultural production;

42 (G) Producing energy for property directly used in manufacturing, natural resource
43 production or agricultural production;

44 (H) Facilitating the transmission of gas, water, steam or electricity from the point of their
45 diversion to property directly used in manufacturing, natural resource production or agricultural
46 production;

47 (I) Controlling or otherwise regulating atmospheric conditions required for manufacturing,
48 natural resource production or agricultural production;

49 (J) Serving as an operating supply for property undergoing manufacturing, natural
50 resource production or agricultural production, or for property directly used in manufacturing,
51 natural resource production or agricultural production;

52 (K) Maintenance or repair of property, including maintenance equipment, directly used in
53 manufacturing, natural resource production or agricultural production;

54 (L) Storage, removal or transportation of economic waste resulting from the activities of
55 manufacturing, natural resource production or agricultural production;

56 (M) Pollution control or environmental quality or protection activity directly relating to the
57 activities of manufacturing, natural resource production or agricultural production and personnel,
58 plant, product or community safety or security activity directly relating to the activities of
59 manufacturing, natural resource production or agricultural production; or

60 (N) Otherwise used as an integral and essential part of manufacturing, natural resource
61 production or agricultural production.

62 (3) Uses of tangible or intangible property which do not constitute direct use or
63 consumption in the activities of manufacturing, natural resource production or agricultural
64 production include, but are not limited to:

65 (A) Heating and illumination of office buildings;

66 (B) Janitorial or general cleaning activities;

67 (C) Personal comfort of personnel;

68 (D) Production planning, scheduling of work or inventory control;

69 (E) Marketing, general management, supervision, finance, training, accounting and
70 administration; or

71 (F) An activity or function merely incidental or convenient to manufacturing, natural
72 resource production or agricultural production, rather than uses which are an integral and
73 essential part of those production activities.

74 (e) Generation or production of electric power. – The term “generation of electric power”
75 means the generation and production of electric power engaged in by persons who were subject
76 to the business and occupation tax imposed in article thirteen of this chapter.

77 (f) Gross proceeds. – The term “gross proceeds” means the amount received in money,
78 credits, property or other consideration from sales and services within this state, without deduction
79 on account of the cost of property sold, amounts paid for interest or discounts or other expenses
80 whatsoever. Losses may not be deducted, but any credit or refund made for goods returned may
81 be deducted.

82 (g) Includes and including. - The terms “includes” and “including,” when used in a definition
83 contained in this article, does not exclude other things within the meaning of the term being
84 defined.

85 (h) Licensed health care services. – The term “licensed health care services” means those
86 services for which a person is licensed by this state to act as a health care provider as defined in
87 section three, article twenty-six of this chapter, as in effect on June 1, 1991.

88 (i) Manufacturing. – The term “manufacturing” means a systematic operation or integrated
89 series of systematic operations engaged in as a business or segment of a business, including the
90 generation of electric power, which transforms or converts tangible personal property by physical,
91 chemical or other means into a different form, composition or character from that in which it
92 originally existed.

93 (j) Natural resource production. – The term “natural resource production” means, except
94 for oil and gas, the performance, by either the owner of the natural resources or another, of the

95 act or process of exploring, developing, severing, extracting, reducing to possession and loading
96 for shipment and shipment for sale, profit or commercial use of any natural resource products and
97 any reclamation, waste disposal or environmental activities associated therewith and the
98 construction, installation or fabrication of ventilation structures, mine shafts, slopes, boreholes,
99 dewatering structures, including associated facilities and apparatus, by the producer or others,
100 including contractors and subcontractors, at a coal mine or coal production facility. For the natural
101 resources oil and gas, “natural resource production” means the performance, by either the owner
102 of the natural resources, a contractor or a subcontractor, of the act or process of exploring,
103 developing, drilling, well-stimulation activities such as logging, perforating or fracturing, well-
104 completion activities such as the installation of the casing, tubing and other machinery and
105 equipment and any reclamation, waste disposal or environmental activities associated therewith,
106 including the installation of the gathering system or other pipeline to transport the oil and gas
107 produced or environmental activities associated therewith and any service work performed on the
108 well or well site after production of the well has initially commenced. All work performed to install
109 or maintain facilities up to the point of sale for severance tax purposes would be included in the
110 term “natural resources production” and subject to the direct use concept. “Natural resource
111 production” includes the performance or furnishing of work, or materials or work, in fulfillment of
112 a contract for the construction, alteration, repair, decoration or improvement of a new or existing
113 building or structure, or any part thereof, or for the alteration, improvement or development of real
114 property, by persons other than those otherwise directly engaged in the activities specifically set
115 forth in this subsection as “natural resource production.”

116 (k) *Person or persons.* – The terms “person” and “persons” means any individual, firm,
117 partnership, joint venture, joint stock company, association, public or private corporation,
118 cooperative, estate, trust, receiver, executor, administrator, other fiduciary, court-appointed
119 representative, state or its political subdivisions or agency of either, or any group or combination
120 of the same acting as a unit, and the plural as well as the singular number.

121 (l) Personal service. – The term “personal service” means that labor or work of an
122 individual person compensated by the payment of wage in the ordinary course of employment.

123 (m) Prepaid wireless calling service. – The term “prepaid wireless calling service” means
124 a telecommunications service that provides the right to utilize wireless service as well as other
125 nontelecommunications services, including the download of digital products delivered
126 electronically, content and ancillary services, which must be paid for in advance and that is sold
127 in predetermined units or dollars of which the number decline with use in a known amount.

128 (n) Providing a public service or operating a public utility business. – The terms “providing
129 a public service” or “operating a public utility business” mean the providing of a public service or
130 the operating of a public utility business by persons subject to the business and occupation tax
131 imposed in article thirteen of this chapter.

132 (o) Sale, sales or selling. – The terms “sale”, “sales” or “selling” means and includes any
133 transfer of the possession or ownership of tangible personal property for a consideration, including
134 a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor’s
135 business and is made to the transferee or his or her agent for consumption or use or any other
136 purpose. Unless the context provides otherwise, the terms “sale”, “sales” and selling shall also
137 mean the rendering of a service for a charge. Notwithstanding anything to the contrary in this
138 code, “sale” also includes the furnishing of prepaid wireless calling services for consideration.

139 (p) Service and selected service. – The terms “service” and “selected service” include all
140 activities engaged in for other persons for a consideration, which involve the rendering of a service
141 as distinguished from the sale of tangible personal property, but shall not include the services
142 rendered by an employee to his or her employer.

143 (q) Streamlined Sales and Use Tax Agreement. – The term “Streamlined Sales and Use
144 Tax Agreement” or “agreement,” when used in this article, has the same meaning as when used
145 in article fifteen-b of this chapter, except when the context, in which the word “agreement” is used,
146 clearly indicates that a different meaning is intended by the Legislature.

147 (r) Tax. – The term “tax” means the general consumption tax imposed in this article.

148 (s) Tax commissioner or commissioner. – The terms “tax commissioner” or
149 “commissioner” are used interchangeably herein and mean the tax commissioner of the state of
150 West Virginia, or his or her delegate.

151 (t) Taxpayer. – The term “taxpayer” means any person liable for the tax imposed by this
152 article.

153 (u) Temporarily used in this state. – The phrase “temporarily used in this state” means a
154 use made while passing through this state in a relatively uninterrupted manner and not intended
155 with reference to any specific location within this state.

156 (v) Use. – The term “use” means and includes the exercise of any person of any right or
157 power over tangible personal property incident to the ownership, possession or enjoyment of such
158 property, or by any transaction in which possession of or the exercise of any right or power over
159 tangible personal property is acquired for a consideration, including a lease, rental or conditional
160 sale of tangible personal property. As used in this definition, the term “enjoyment” includes a
161 person’s right to direct the disposition of the property, whether or not the person has possession
162 of the property. The term “use” does not include the keeping, retaining or exercising of any right
163 or power over tangible personal property for the purpose of subsequently transporting it outside
164 this state for use thereafter solely outside this state. Proof that tangible personal property was
165 sold for delivery in this state shall be prima facie evidence that such property was purchased for
166 use in this state. With respect to services, the term “use” means and includes the direct receipt
167 and active application of the results and benefits of services.

168 (w) Vendor. – The term “vendor” means any person engaged in this state in businesses
169 of furnishing services taxed by this article or making sales of, or leasing, tangible personal
170 property or custom software taxed by this article. “Vendor” and “seller” are used interchangeably
171 in this article.

172 (x) Other terms used in this article are defined in article fifteen-b of this chapter, which
 173 definitions are incorporated by reference into this article. Additionally, other sections of this article
 174 may define terms primarily used in the section in which the term is defined.

§11-15C-4. Imposition of general consumption tax; debt owed to this state; allocation of obligations for charging, paying, collecting and remitting tax; rate of tax.

1 (a) Imposition of tax. – A general consumption tax is hereby imposed on the vendor for
 2 the privilege of selling tangible personal property and of rendering services in this state and on
 3 the purchaser for the privilege of using tangible personal property and services in this state. The
 4 tax due to be remitted or paid under this article shall, until fully remitted or paid, constitute a debt
 5 owed by the taxpayer to this state.

6 (b) Allocation of obligations for charging, paying, collecting and remitting the tax. – It is the
 7 intent of this article that the tax imposed herein shall be passed on by the vendor to, and shall be
 8 paid by, the purchaser, in accordance with the following allocation of obligations:

9 (1) Vendor obligations. –

10 (A) General. – The vendor shall charge the purchaser for the tax, shall collect the tax from
 11 the purchaser and shall remit the tax to the Tax Commissioner all as provided in this article. The
 12 tax shall be added to and constitute a part of the sales price, and shall be collectible as such by
 13 the vendor who shall account to the Tax Commissioner for all tax paid by the purchaser.

14 (B) Tax kept separate from gross proceeds of sale. – The vendor shall keep the amount
 15 of tax paid separate from the gross proceeds of sale exclusive of the tax unless authorized in
 16 writing by the Tax Commissioner to keep such amount of tax in a different manner. Where such
 17 authorization is given, the state's claim shall be enforceable against and shall take precedence
 18 over all other claims against the moneys commingled.

19 (C) Nonresident vendors. – Every vendor engaging in business anywhere and making
 20 sales of tangible personal property for delivery into this state, or with the knowledge, directly or
 21 indirectly, that the property or services he, she or it are rendering are intended for use in this state,

22 that are not exempted under the provisions of section seven of this article, shall at the time of
23 making such sales or rendering such services, whether within or without the state, collect the tax
24 imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the
25 manner and form prescribed by the Tax Commissioner, if the Tax Commissioner shall, by
26 regulation, so prescribe.

27 Each such vendor shall list with the Tax Commissioner the name and address of all his,
28 her or its agents operating in this state, and the location of any and all distribution or sales houses
29 or offices or other places of business in this state. Any person required to collect the general
30 consumption tax under the provisions of this subdivision shall be required to obtain a business
31 registration certificate, as provided in article twelve of this chapter, unless the person does not
32 have sufficient presence in this state so that such registration would violate any provision of the
33 constitution or laws of this state or of the United States.

34 The Tax Commissioner may, in his or her discretion, upon application authorize the
35 collection of the tax herein imposed by any person not engaging in business within this state, who,
36 to the satisfaction of the Tax Commissioner, furnishes adequate security to insure collection and
37 payment of the tax. Such person shall be issued, without charge, a permit to collect such tax in
38 such manner, and subject to such regulations and agreements as the Tax Commissioner shall
39 prescribe. When so authorized, it shall be the duty of such person to collect the applicable tax, if
40 any, upon all tangible personal property and services sold to his, her or its knowledge for use
41 within this state, in the same manner and subject to the same requirements as a vendor engaging
42 in business within this state. Such authority and permit may be canceled when, at any time, the
43 Tax Commissioner considers the security inadequate, or that such tax can more effectively be
44 collected from the person using such property in this state.

45 (D) *Failure to collect and remit.* – If any vendor required to collect and remit the tax to the
46 Tax Commissioner fails to do so, he, she or it shall be personally liable for such amount as he,
47 she or it failed to collect and remit: *Provided, That, except where the transaction is shown to be*

48 exempt from tax under section nine of this article or is subject to the provisions of section eleven
49 of this article, when a purchaser fails to pay the tax to the vendor, the vendor may avoid such
50 liability by reporting to the Tax Commissioner, in writing with the return due to be filed for that
51 same period, the fact of such failure and the purchaser's name, address and such other
52 information as the Tax Commissioner may require.

53 (E) *Absorbing tax.* – It shall be unlawful for any vendor to advertise or hold out or state to
54 the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part
55 thereof imposed by this article will be assumed or absorbed by the vendor or that it will not be
56 added to the price of the property sold or service rendered, or if added that it or any part thereof
57 will be refunded. The Tax Commissioner shall have the power to adopt and promulgate rules and
58 regulations for adding such tax, or the equivalent thereof, by providing different methods applying
59 uniformly to vendors within the same general classification for the purpose of enabling such
60 vendors to add and collect, as far as practicable, the amount of such tax.

61 (2) *Purchaser obligations.* – Any person who uses any tangible personal property or
62 service in this state upon which the tax imposed by this article has not been paid to a vendor or
63 directly to the Tax Commissioner, is, unless the purchase or use of the property or service is
64 exempt hereunder, liable for the amount of such tax. If any purchaser does not pay to the vendor
65 the tax imposed by this section, or, in the case of a sale made exempt from the tax, a purchaser
66 fails to present to the vendor an adequate written certification of the fact of, and basis by which,
67 the sale is not subject to this tax, or if the purchaser signs or presents to the vendor a false
68 certificate, or after signing and presenting a proper certificate uses the items purchased in such
69 manner that the sale would be subject to the tax, the purchaser shall be directly liable for the
70 amount of tax applicable to the transaction or transactions: *Provided*, That nothing herein relieves
71 any purchaser who owes the tax and who has not paid the tax from liability therefor. In such cases
72 the Tax Commissioner may make an assessment against such purchaser, based upon any
73 information within his or her possession or that may come into his or her possession. The

74 assessment and notice thereof shall be made and given in accordance with the provisions of
75 article ten of this chapter.

76 (3) Joint and separate liability. – Unless and until the tax due has been remitted by the
77 vendor or paid by the purchaser to the Tax Commissioner, both the vendor and the purchaser
78 shall remain liable for the tax except as otherwise provided in this article: *Provided*, That the tax
79 shall only be collected once by the Tax Commissioner.

80 (c) Rate of tax. – Beginning on the effective date of this article, the general consumption
81 tax imposed herein shall be at the rate of eight cents on each dollar of sales or services: *Provided*,
82 That:

83 (1) Sales or use of motor vehicles shall be taxable at the rates provided in section five of
84 this article, and

85 (2) Sales of gasoline and special fuel shall be taxable as provided in section twenty-one
86 of this article.

87 (d) Calculation of tax on fractional parts of a dollar. -- The tax computation under
88 subsection (c) of this section shall be carried to the third decimal place, and the tax rounded up
89 to the next whole cent whenever the third decimal place is greater than four and rounded down
90 to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to
91 compute the tax due on a transaction on a per item basis or on an invoice basis provided the
92 method used is consistently used during the reporting period.

93 (e) Separate transactions aggregated for billing; coin-operated vending devices. –
94 Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of
95 computation of the tax even though such sales are aggregated in the billing or payment therefor.
96 Notwithstanding any other provision, coin-operated amusement and vending machine sales shall
97 be aggregated for the purpose of computation of this tax.

§11-15C-5. Imposition of general consumption tax on motor vehicle sales; rate of tax; use
of motor vehicle purchased out-of-state; definition of sale; definition of motor

vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

1 (a) Notwithstanding any provision of this article, all motor vehicle sales to West Virginia
2 residents shall be subject to the general consumption tax imposed by this article.

3 (b) Rate of tax on motor vehicles. – Notwithstanding any provision of this article to the
4 contrary, the rate of tax on the sale and use of a motor vehicle shall be eight percent on the first
5 \$10,000 of its sale price, as defined in section two, article fifteen-b of this chapter, and six percent
6 on any part of its sales price, so defined, in excess of \$10,000: Provided, That so much of the
7 sale price or consideration as is represented by the exchange of other vehicles on which the tax
8 imposed by this section or section four, article three, chapter seventeen-a of this code has been
9 paid by the purchaser shall be deducted from the total actual sale price paid for the motor vehicle,
10 whether the motor vehicle be new or used.

11 (c) Motor vehicles purchased out of state. -- Notwithstanding this article to the contrary,
12 the tax imposed by this section shall apply to all motor vehicles, used as defined in this article,
13 within this state, regardless of whether the vehicle was purchased in a state other than West
14 Virginia.

15 (d) Definition of sale. – Notwithstanding any provision of this article to the contrary, for
16 purposes of this section, "sale", "sales" or "selling" means any transfer or lease of the possession
17 or ownership of a motor vehicle for consideration, including isolated transactions between
18 individuals not being made in the ordinary course of repeated and successive business and also
19 including casual and occasional sales between individuals not conducted in a repeated manner
20 or in the ordinary course of repetitive and successive transactions.

21 (e) Definition of motor vehicle. – For purposes of this section, "motor vehicle" means every
22 device capable of being propelled in or upon which any person or property is or may be
23 transported or drawn upon a highway including, but not limited to: Automobiles; buses; motor
24 homes; street-legal motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed

25 vehicles; trucks, truck tractors and road tractors having a weight of less than fifty-five thousand
26 pounds; trailers, semitrailers, full trailers, pole trailers and converter gear having a gross weight
27 of less than two thousand pounds; and motorboat trailers, fold-down camping trailers, traveling
28 trailers, house trailers and motor homes; except that the term "motor vehicle" does not include:
29 Modular homes, manufactured homes, mobile homes, similar nonmotive propelled vehicles
30 susceptible of being moved upon the highways but primarily designed for habitation and
31 occupancy; devices operated regularly for the transportation of persons for compensation under
32 a certificate of convenience and necessity or contract carrier permit issued by the Public Service
33 Commission; mobile equipment as defined in section one, article one, chapter seventeen-a of this
34 code; special mobile equipment as defined in section one, article one, chapter seventeen-a of this
35 code; trucks, truck tractors and road tractors having a gross weight of fifty-five thousand pounds
36 or more; trailers, semitrailers, full trailers, pole trailers and converter gear having weight of two
37 thousand pounds or greater: *Provided, That notwithstanding the provisions of section nine, article*
38 *fifteen, chapter eleven of this code, the exemption from tax under this section for mobile*
39 *equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile*
40 *equipment defined in section one, article one, chapter seventeen-a of this code; Class B trucks,*
41 *truck tractors and road tractors registered at a gross weight of fifty-five thousand pounds or more;*
42 *and Class C trailers, semitrailers, full trailers, pole trailers and converter gear having weight of*
43 *two thousand pounds or greater does not subject the sale or purchase of the vehicle to the*
44 *consumer sales and service tax imposed by section three of this article.*

45 (f) *Exemptions.* – Notwithstanding any other provision of this code to the contrary, the tax
46 imposed by this section shall not be subject to any exemption in this code other than the following:

47 (1) *The tax imposed by this section does not apply to any passenger vehicle offered for*
48 *rent in the normal course of business by a daily passenger rental car business as licensed under*
49 *the provisions of article six-d, chapter seventeen-a of this code. For purposes of this section, a*
50 *daily passenger car means a motor vehicle having a gross weight of eight thousand pounds or*

51 less and is registered in this state or any other state. In lieu of the tax imposed by this section,
52 there is hereby imposed a tax of not less than \$5 nor more than \$7.50 for each day or part of the
53 rental period. The Commissioner of Motor Vehicles shall propose an emergency rule in
54 accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this
55 tax.

56 (2) The tax imposed by this section does not apply where the motor vehicle has been
57 acquired by a corporation, partnership or limited liability company from another corporation,
58 partnership or limited liability company that is a member of the same controlled group and the
59 entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by
60 this section. For the purposes of this section, control means ownership, directly or indirectly, of
61 stock or equity interests possessing fifty percent or more of the total combined voting power of all
62 classes of the stock of a corporation or equity interests of a partnership or limited liability company
63 entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty
64 percent or more of the value of the corporation, partnership or limited liability company.

65 (3) The tax imposed by this section does not apply where motor vehicle has been acquired
66 by a senior citizen service organization which is exempt from the payment of income taxes under
67 the United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3) and which is recognized to
68 be a bona fide senior citizen service organization by the Bureau of Senior Services existing under
69 the provisions of article five, chapter sixteen of this code.

70 (4) The tax imposed by this section does not apply to any active duty military personnel
71 stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from
72 the date the person returns to this state.

73 (5) The tax imposed by this section does not apply to motor vehicles acquired by registered
74 dealers of this state for resale only.

75 (6) The tax imposed by this section does not apply to motor vehicles acquired by this state
76 or any political subdivision thereof or by any volunteer fire department or duly chartered rescue

77 or ambulance squad organized and incorporated under the laws of this state as a nonprofit
78 corporation for protection of life or property.

79 (7) The tax imposed by this section does not apply to motor vehicles acquired by an urban
80 mass transit authority, as defined in article twenty-seven, chapter eight of this code, or a nonprofit
81 entity exempt from federal and state income tax under the Internal Revenue Code for the purpose
82 of providing mass transportation to the public at large or designed for the transportation of persons
83 and being operated for the transportation of persons in the public interest.

84 (8) The tax imposed by this section does not apply to the registration of a vehicle owned
85 and titled in the name of a resident of this state if the applicant:

86 (A) Was not a resident of this state at the time the applicant purchased or otherwise
87 acquired ownership of the vehicle;

88 (B) Presents evidence as the Commissioner of Motor Vehicles may require of having titled
89 the vehicle in the applicant's previous state of residence;

90 (C) Has relocated to this state and can present such evidence as the Commissioner of
91 Motor Vehicles may require to show bona fide residency in this state; and

92 (D) Makes application to the Division of Motor Vehicles for a title and registration and pays
93 all other fees required by chapter seventeen-a of this code within thirty days of establishing
94 residency in this state as prescribed in subsection (a), section one-a of this article.

95 (9) The tax imposed by this section does not apply to Class B trucks, truck tractors and
96 road tractors registered at a gross weight of fifty-five thousand pounds or more or to Class C
97 trailers, semitrailers, full trailers, pole trailers and converter gear having a weight of two thousand
98 pounds or greater. If an owner of a vehicle has previously titled the vehicle at a declared gross
99 weight of fifty-five thousand pounds or more and the title was issued without the payment of the
100 tax imposed by this section, then before the owner may obtain registration for the vehicle at a
101 gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner
102 the exempted registration, the exempted certificate of title and pay the tax imposed by this section

103 based upon the current market value of the vehicle.

104 (10) The tax imposed by this section applies to, and is imposed upon, the monthly
105 payments for the lease of any motor vehicle leased under a written contract of lease by a resident
106 of West Virginia for a contractually specified continuous period of more than thirty days, which tax
107 is equal to eight percent of the amount of the monthly payment, applied to each payment, and
108 continuing for the entire term of the initial lease period. The tax shall be remitted to the Division
109 of Motor Vehicles on a monthly basis by the lessor of the vehicle. Leases of thirty days or less are
110 taxable under the provisions of this article without reference to this section.

111 (g) *Division of Motor Vehicles to collect.* – Notwithstanding any provision of this article and
112 article ten of this chapter to the contrary, the Division of Motor Vehicles shall collect the tax
113 imposed by this section: *Provided,* That such tax is imposed upon the monthly payments for the
114 lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to eight percent
115 of the amount of the monthly payment, applied to each payment, and continuing for the entire
116 term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a
117 monthly basis by the lessor of the vehicle.

118 (h) *Dedication of tax to highways.* – Notwithstanding any provision of this article to the
119 contrary, all taxes collected pursuant to this section, after deducting the amount of any refunds
120 lawfully paid, shall be deposited in the State Road Fund in the State Treasury and expended by
121 the Commissioner of Highways for design, maintenance and construction of roads in the state
122 highway system.

123 (i) *Legislative rules; emergency rules.* – Notwithstanding any provision of this article and
124 article ten of this chapter to the contrary, the Commissioner of Motor Vehicles shall promulgate
125 legislative rules explaining and implementing this section, which rules shall be promulgated in
126 accordance with the provisions of article three, chapter twenty-nine-a of this code and should
127 include a minimum taxable value and set forth instances when a vehicle is to be taxed at fair
128 market value rather than its purchase price. The authority to promulgate rules includes authority

129 to amend or repeal those rules.

130 (j) Notwithstanding any other provision of this code, no municipal sales or use tax or local
 131 sales or use tax or special downtown redevelopment district excise tax or special district excise
 132 tax shall be imposed under article twenty-two, chapter seven of this code or article thirteen,
 133 chapter eight of this code or article thirteen-b of said chapter or article thirty-eight of said chapter
 134 or any other provision of this code, except this section, on sales of motor vehicles as defined in
 135 this article or on any tangible personal property excepted or exempted from tax under this section.
 136 Nothing in this subsection shall be construed to prevent the application of the municipal business
 137 and occupation tax on motor vehicle retailers and leasing companies.

**§11-15C-6. Collection of fee in addition to the general consumption tax for sales of mobile
 factory-built homes; deposit of additional fee in West Virginia Affordable Housing
 Trust Fund.**

1 (a) There is imposed, in addition to the general consumption tax imposed by the provisions
 2 of this article, a fee of twenty dollars on all sales by licensed dealers of factory-built homes as that
 3 term is defined in section two, article fifteen, chapter thirty-seven of this code to be collected as
 4 provided in article fifteen-b of this chapter and remitted to the Tax Commissioner to be deposited
 5 by the commissioner in the West Virginia Affordable Housing Trust Fund, as provided in article
 6 eighteen-d, chapter thirty-one of this code.

7 (b) The moneys collected from this additional fee shall be segregated from other funds in
 8 the West Virginia Affordable Housing Trust Fund and shall be accounted for separately. Not more
 9 than ten percent of these additional moneys may be expended by the West Virginia Affordable
 10 Housing Trust Fund to defray administrative and operating costs and expenses actually incurred
 11 by the West Virginia Affordable Housing Trust Fund.

§11-15C-7. Total amount collected is to be remitted.

1 No profit shall accrue to any person as a result of the collection of the tax imposed by this
 2 article notwithstanding the total amount of such taxes collected may be in excess of the amount

3 for which such person would be liable by the application of the levy of eight percent to the gross
 4 proceeds of his, her or its sales, and the total of all taxes collected by such person shall be
 5 returned and remitted to the Tax Commissioner as hereinafter provided.

§11-15C-8. Vendor and purchaser must show sale or use exempt; presumption.

1 In the case of sales and uses exempt from the tax imposed by this article, the burden of
 2 proving that a sale or use was exempt from the tax shall be upon both the purchaser and the
 3 vendor, unless in the case of the vendor he, she or it takes from the purchaser a certificate signed
 4 by and bearing the address of the purchaser and setting forth the reason for the exemption and
 5 substantially in the form prescribed by the Tax Commissioner. To prevent evasion, it shall be
 6 presumed that all sales and uses are subject to the tax until the contrary is clearly established in
 7 a particular case.

§11-15C-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 or uses of tangible personal property and services are exempt as provided in this
 8 subsection:

9 (1) School textbooks. – Sales and use of textbooks required to be used in any of the
 10 schools of this state or in any institution in this state which qualifies as a nonprofit or educational
 11 institution subject to the West Virginia department of education and the arts, the board of trustees
 12 of the university system of West Virginia or the board of directors for colleges located in this state;

13 (2) Government purchases. – Purchases and uses of property and services by this state,
 14 its institutions or subdivisions, governmental units, institutions or subdivisions of other states:

15 Provided, That the law of the other state allows the same exemption to governmental units or
16 subdivisions of this state and to the United States, including agencies of federal, state or local
17 governments for distribution in public welfare or relief work;

18 (3) Certain sales to churches. – Sales and use of property or services to churches which
19 make no charge whatsoever for the services they render: Provided, That the exemption granted
20 in this subdivision applies only to services, equipment, supplies, food for meals and materials
21 directly used or consumed by these organizations and does not apply to purchases of gasoline
22 or special fuel;

23 (4) Certain purchases by certain nonprofit and charitable organizations. – Purchases and
24 use of tangible personal property or services by a corporation or organization which is exempt
25 from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
26 as amended, and which is:

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

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

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

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

40 (E) A youth organization, such as the Girl Scouts of the United States of America, the Boy

41 Scouts of America or the YMCA Indian Guide/Princess program and the local affiliates thereof,
42 which is organized and operated exclusively for charitable purposes and has as its primary
43 purpose the nonsectarian character development and citizenship training of its members;

44 (F) For purposes of this subsection:

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

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

47 (II) Gross receipts from fund raisers which include receipts from admissions, sales of
48 merchandise, performance of services or furnishing of facilities in any activity which is not an
49 unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of
50 1986, as amended;

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

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

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

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

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

66 (iii) The term "membership fee" does not include any amounts paid for tangible personal

67 property or specific services rendered to members by the corporation or organization;

68 (G) The exemption allowed by this subdivision does not apply to purchases or use of
69 gasoline or special fuel, or to purchases or use of motor vehicles titled by the division of motor
70 vehicles under the provisions of article three, chapter seventeen-a of this code or to purchases of
71 tangible personal property or services to be used or consumed in the generation of unrelated
72 business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended:
73 Provided, That the exemption granted in this subdivision applies only to purchases and use of
74 services, equipment, supplies and materials used or consumed in the activities for which the
75 organizations qualify as tax exempt organizations under the Internal Revenue Code and does not
76 apply to purchases or use of gasoline or special fuel or of motor vehicles titled by the Division of
77 Motor Vehicles under the provisions of article three, chapter seventeen-a of this code;

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

89 (6) Sales for resale. – Sales of services for resale as such and of tangible personal
90 property to a person for the purpose of reselling the tangible personal property: Provided, That
91 sales of gasoline and special fuel by distributors and importers are taxable except when the sale
92 is to another distributor for resale: Provided, however, That sales of building materials or building

93 supplies or other property to any person engaging in the activity of contracting, as defined in this
94 article, which is to be installed in, affixed to or incorporated by that person or his or her agent into
95 any real property, building or structure is exempt under this subdivision;

96 (7) Prescription drugs, insulin and appliances. – Sales and use of drugs dispensed upon
97 prescription and sales of insulin and appliances to consumers for medical purposes;

98 (8) Licensed health care services. – Charges to patients for licensed health care services
99 and for goods incidental to the rendering of such services.

100 (9) Licensed day care centers. – Charges for licensed day care center services.

101 (10) Casual and occasional sales by certain nonprofit organizations. – Casual and
102 occasional sales of property or services not conducted in a repeated manner or in the ordinary
103 course of repetitive and successive transactions of like character by a corporation or organization
104 which is exempt from tax under subdivision (4) of this subsection on its purchases of tangible
105 personal property or services:

106 (A) For purposes of this subdivision, the term “casual and occasional sales not conducted
107 in a repeated manner or in the ordinary course of repetitive and successive transactions of like
108 character” means sales of tangible personal property or services at fund raisers sponsored by a
109 corporation or organization which is exempt, under subdivision (6) of this subsection, from
110 payment of the tax imposed by this article on its purchases, when the fund raisers are of limited
111 duration and are held no more than six times during any twelve-month period and “limited
112 duration” means no more than eighty-four consecutive hours; and

113 (B) The provisions of this subdivision apply to sales made after June 30, 2004;

114 (11) Sales to certain private colleges. – Sales of property or services to a school which
115 has approval from the board of trustees of the university system of West Virginia or the board of
116 directors of the state college system to award degrees, which has its principal campus in this
117 state, and which is exempt from federal and state income taxes under Section 501(c) (3) of the

118 Internal Revenue Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel
119 are taxable;

120 (12) *Lottery tickets, materials and services.* – Sales of lottery tickets, materials and
121 services by licensed lottery sales agents and lottery retailers authorized by the State Lottery
122 Commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

123 (13) *Food stamps and WIC drafts.* – Any sales of tangible personal property or services
124 lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U.S.C.
125 § 2011 et seq., as amended, or with drafts issued through the West Virginia Special Supplement
126 Food Program for Women, Infants and Children codified in 42 U.S.C. § 1786;

127 (14) *Tickets for admission to certain school activities.* – Sales of tickets for admission to
128 activities sponsored by elementary and secondary schools located within this state;

129 (15) *Sales between related business entities.* – The sale and use of tangible personal
130 property and the rendering and use of services by one corporation, partnership or limited liability
131 company to or for another corporation, partnership or limited liability company when the entities
132 are members of the same controlled group or are related taxpayers as defined in Section 267 of
133 the Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, partnership
134 interests or membership interests possessing fifty percent or more of the total combined voting
135 power of all classes of the stock of a corporation, partnership interests of a partnership or
136 membership interests of a limited liability company entitled to vote or ownership, directly or
137 indirectly, of stock, equity interests or membership interests possessing fifty percent or more of
138 the value of the corporation, partnership or limited liability company;

139 (16) *Certain sales or purchases of food.* – Food for the following are exempt:

140 (A) Food used, purchased or sold by a public or private school, school-sponsored student
141 organizations or school-sponsored parent-teacher associations to students enrolled in the school
142 or to employees of the school for consumption during normal school hours; but not those sales of
143 food made to the general public;

144 (B) Food used, purchased or sold by a public or private college or university to students
145 enrolled at the college or university when the sales are made on a contract basis so that a fixed
146 price is paid for consumption of food products for a specific period of time without respect to the
147 amount of food product actually consumed by the particular individual contracting for the sale and
148 no money is paid at the time the food product is served or consumed;

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

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

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

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

165 (17) *Tax prohibited transactions.* – Sales and use of tangible personal property or services
166 to any person which this state is prohibited from taxing under the laws of the United States or
167 under the Constitution of this State;

168 (18) Certain babysitting services. – Sales of baby-sitting services by individuals who baby-
169 sit for a profit: Provided, That the gross receipts of the individual from the performance of baby-
170 sitting services do not exceed \$5,000 in a taxable year;

171 (19) Certain government services and materials. – Sales and use of governmental
172 services or governmental materials sold in the normal course of government operations, including,
173 but not limited to, sales and use of services and materials by public libraries and by libraries at
174 either public or private, not-for-profit schools and institutions of higher learning;

175 (20) Certain sales by volunteer fire and emergency rescue organizations. – Sales and
176 use of tangible personal property and services by volunteer fire departments and rescue squads
177 that are exempt from federal income taxes under Section 501(c) (3) or (c) (4) of the Internal
178 Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the
179 functions and activities of the organization and the revenue obtained is exempt from federal
180 income tax and actually expended for that purpose;

181 (21) Certain sales of food by certain youth organizations. – Sales of food by little leagues,
182 midget football leagues, youth football or soccer leagues, band boosters or other school or athletic
183 booster organizations supporting activities for grades kindergarten through twelve and similar
184 types of organizations, including scouting groups and church youth groups, if the purpose in
185 selling the food is to obtain revenue for the functions and activities of the organization and the
186 revenues obtained from selling the food are actually used in supporting or carrying on functions
187 and activities of the groups: Provided, That the purchases made by the organizations are not
188 exempt as a purchase for resale; and

189 (22) Special district excise tax. – Any sale, service or use upon which a special district
190 excise tax is paid, pursuant to the provisions of section eleven, article thirteen-b, chapter eight of
191 this code.

192 (23) Property and services temporarily used in this state. – All tangible personal property
193 and services purchased in another state but temporarily used in this state by a nonresident

194 individual, except gasoline or special fuel not contained in the supply tank of a motor vehicle that
195 is not a motor carrier;

196 (24) Residence or business moved to this state. – All tangible personal property and
197 services purchased outside this state for use outside this state by a nonresident person who, at
198 least six months thereafter, uses such property or services in this state following the permanent
199 establishment of his, her or its business or residence in this state.

200 (b) Refundable exemptions – Any person having a right or claim to any exemption set forth
201 in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the
202 Tax Commissioner for a refund or credit, or as provided in section nine of this article, give to the
203 vendor his, her or its West Virginia direct pay permit number. The following sales of tangible
204 personal property and services are exempt from tax as provided in this subsection:

205 (1) Sales to certain charitable organizations. – Sales of property or services to bona fide
206 charitable organizations which make no charge whatsoever for the services they render:
207 Provided, That the exemption granted in this subdivision applies only to services, equipment,
208 supplies, food, meals and materials directly used or consumed by these organizations and does
209 not apply to purchases of gasoline or special fuel;

210 (2) Sales for direct use in certain production activities. – Sales and use of tangible personal
211 property, such as machinery, supplies, materials and other tangible personal property directly
212 used or consumed in the activities of manufacturing, natural resource production, agricultural
213 production or generation of electric power to persons engaged in the activities named in this
214 subdivision as a business: Provided, That this exemption does not apply to purchases of gasoline
215 or special fuel;

216 (3) Certain sales to certain fraternal or social organizations. – Sales of tangible personal
217 property to nationally chartered fraternal or social organizations for the sole purpose of free
218 distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel are
219 taxable;

220 (4) Certain sales to fire fighting organizations. – Sales and use of services, including, but
221 not limited to, those for construction or improvement of real estate and for vehicle repair and
222 modification, and of tangible personal property, including, but not limited to, fire fighting or station
223 house equipment, to any volunteer fire department organized and incorporated under the laws of
224 the state of West Virginia, if such services or property are directly used or consumed for the public
225 safety purposes of such organizations: *Provided*, That sales of gasoline and special fuel are
226 taxable.

§11-15C-10. Exemptions; exceptions for sales of liquors and wines to private clubs.

1 The exemption provided in this article for sales of tangible personal property for the
2 purpose of resale in the form of tangible personal property shall not apply to persons or
3 organizations licensed under authority of article seven, chapter sixty of this code for the purchase
4 of liquor or wines for resale either from the alcohol beverage control commissioner or from retail
5 liquor licensees licensed under authority of article three-a, chapter sixty of this code.

§11-15C-11. Direct pay permits.

1 (a) *Authorized*. – Notwithstanding any other provision of this article, the Tax Commissioner
2 may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-
3 nine-a of this code, authorize a person that is a purchaser, user, distributor or lessee to which
4 sales or leases of tangible personal property are made or services provided, to pay any tax
5 imposed by this article directly to the Tax Commissioner and waive the collection of the tax by
6 that person's vendor. No such authority shall be granted or exercised except upon application to
7 the tax commissioner and after issuance by the Tax Commissioner of a direct pay permit. Each
8 direct pay permit granted pursuant to this section is valid until surrendered by the holder or
9 canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated
10 in accordance with article three, chapter twenty-nine-a of this code, those activities which will
11 cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of a direct
12 pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article on

13 sales and leases of tangible personal property and sales of taxable services from the vendors of
14 the personal property or services shall be made directly to the Tax Commissioner by the permit
15 holder.

16 (b) Returns. – On or before the fifteenth day of each month, every permit holder shall make
17 and file with the Tax Commissioner a general excise tax direct pay permit return for the preceding
18 month in the form prescribed by the tax commissioner showing the total value of the tangible
19 personal property used, the amount of taxable services purchased, the amount of general excise
20 tax due from the permit holder, which shall be paid to the Tax Commissioner with the return, and
21 any other information as the tax commissioner considers necessary: *Provided*, That if the amount
22 of tax due averages less than \$250 per month, the Tax Commissioner may permit the filing of
23 quarterly returns in lieu of monthly returns and the amount of tax shown on the returns to be due
24 shall be remitted on or before the fifteenth day following the close of the calendar quarter; and if
25 the amount of tax due averages less than \$150 per calendar quarter, the Tax Commissioner may
26 permit the filing of an annual direct pay permit return and the amount of tax shown on the return
27 to be due shall be remitted on or before the last day of January each year: *Provided, however*,
28 That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to
29 article three, chapter twenty-nine-a of this code, change the minimum amounts established in this
30 subsection. The Tax Commissioner, upon written request by the permit holder, may grant a
31 reasonable extension of time, upon such terms as the Tax Commissioner may require, for the
32 making and filing of direct pay permit returns and paying the tax due. Interest on the tax shall be
33 chargeable on every extended payment at the rate specified in section seventeen, article ten of
34 this chapter.

35 (c) Term of permit. – A permit issued pursuant to this section is valid until expiration of the
36 taxpayer's registration year under article twelve of this chapter. This permit is automatically
37 renewed when the taxpayers business registration certificate is issued for the next succeeding

38 fiscal year, unless the permit is surrendered by the holder or canceled for cause by the Tax
 39 Commissioner.

40 (d) Effect of holding permit. – Persons who hold a direct payment permit which has not
 41 been canceled are not required to pay the tax to the vendor as otherwise provided in this article.
 42 In lieu of paying the tax, such persons shall notify each vendor from whom tangible personal
 43 property is purchased or leased or from whom services are purchased of their direct payment
 44 permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of
 45 the notice, the vendor is absolved from all duties and liabilities imposed by this chapter for the
 46 collection and remittance of the tax with respect to sales of tangible personal property and sales
 47 of services to the permit holder. Vendors who make sales upon which the tax is not collected by
 48 reason of the provisions of this section shall maintain records in such manner that the amount
 49 involved and identity of each purchaser may be ascertained.

50 (e) Termination of permit. – Upon the expiration, cancellation or surrender of a direct
 51 payment permit, the provisions of this chapter, without regard to this section, will thereafter apply
 52 to the person who previously held the permit, and that person shall promptly notify in writing
 53 vendors from whom tangible personal property or services are purchased or leased of the
 54 cancellation or surrender. Upon receipt of the notice, the vendor is subject to the provisions of
 55 this chapter, without regard to this section, with respect to all sales, distributions, leases or storage
 56 of tangible personal property, thereafter made to or for that person.

§11-15C-12. Discretionary designation of per se exemptions.

1 Notwithstanding any other provision of this code, the Tax Commissioner may, by rule,
 2 specify those exemptions authorized in this article or in other provisions of this code or applicable
 3 federal law for which exemption certificates or direct pay permits are not required.

§11-15C-13. Apportionment of gross proceeds.

1 (a) Exempt and taxable uses. – Whenever a taxpayer uses or will use purchased or leased
 2 tangible personal property, a service or the results of a service for both exempt and nonexempt

3 purposes, to determine the portion of the gross proceeds paid to the vendor for such property or
4 service upon which the tax imposed by this article shall apply, the gross proceeds shall be
5 apportioned between the exempt and taxable uses in a manner established as reasonable by the
6 Tax Commissioner by regulations the Tax Commissioner may prescribe.

7 (b) Uses inside and outside this state. – Whenever a person uses purchased or leased
8 tangible personal property, a service or the results of a service both inside and outside this state,
9 to determine the portion of the gross proceeds paid to the vendor for such property or service
10 upon which the tax imposed by this article shall apply, the gross proceeds shall be apportioned
11 between the in-state and out-of-state uses in a manner established as reasonable by the tax
12 commissioner by regulations the Tax Commissioner may prescribe.

§11-15C-14. Agreements by competing taxpayers.

1 To provide uniform methods of adding the average equivalent of the tax to the selling price
2 in each sale or transaction subject to the tax, appropriate rules and regulations, except as
3 otherwise herein provided, may be agreed upon or adopted by competing taxpayers or
4 associations of taxpayers, except that all collections shall be made on the basis of the total
5 transaction at the time of sale, without regard to the value of the separate items making up the
6 total amount of the sale. Such rules and regulations, if they do not involve price fixing, shall not
7 be deemed illegal as in restraint of trade or commerce. The Tax Commissioner shall cooperate in
8 formulating such rules and regulations, and, in the event appropriate rules and regulations are
9 not submitted to him or her within thirty days after this article takes effect, or within a reasonable
10 extended period fixed by the Tax Commissioner, he or she shall formulate and promulgate
11 appropriate rules and regulations to effectuate the purpose of this section.

§11-15C-15. Collection of tax when sale on credit.

1 A vendor doing business wholly or partially on a credit basis shall require the purchaser
2 to pay the full amount of tax due upon a credit sale at the time such sale is made or within thirty
3 days thereafter.

§11-15C-16. When separate records of sales required.

- 1 (a) Each vendor shall keep records necessary to account for:
- 2 (1) The vendor's gross proceeds from sales of personal property and services;
- 3 (2) The vendor's gross proceeds from taxable sales;
- 4 (3) The vendor's gross proceeds from exempt sales;
- 5 (4) The amount of taxes collected under this article, which taxes shall be held in trust for
 6 the state of West Virginia until paid over to the tax commissioner; and
- 7 (5) Any other information as required by this article, or article fifteen-b of this chapter, or
 8 as required by the tax commissioner.
- 9 (b) If any vendor engaged in a business making sales or rendering services subject to the
 10 tax imposed under this article, who is at the same time engaged in some other kind of business
 11 making sales or rendering services, not taxable under this article, fails to keep such the separate
 12 records required by this section, there shall be levied upon such vendor a tax based upon the
 13 entire gross proceeds of both or all of his, her or its businesses.

§11-15C-17. Sales to affiliated companies or persons.

1 In determining gross proceeds of sales from one to another of two or more related or
 2 affiliated persons, or under other circumstances where as a result of the relationship or affiliation
 3 between the vendor and purchaser the gross proceeds from a sale are not indicative of the true
 4 value of the subject matter of the sale, the Tax Commissioner shall prescribe uniform and
 5 equitable rules for determining the amount upon which the tax shall be imposed, corresponding
 6 as nearly as possible to gross proceeds from the sale of similar products or services of like quality
 7 or character, where no common interest exists between the parties.

§11-15C-18. Tax return and payment; exception.

1 (a) *Payment of tax.* – The tax levied by this article is due and payable in monthly
 2 installments, on or before the twentieth day of the month next succeeding the month in which the
 3 tax accrued, except as otherwise provided in this article.

4 (b) Tax return. – The taxpayer shall, on or before the twentieth day of each month, make
5 out and mail to the Tax Commissioner a return for the preceding month, in the form prescribed by
6 the Tax Commissioner, showing:

7 (1) The total gross proceeds of the vendor's business for the preceding month;

8 (2) The gross proceeds of the vendor's business upon which the tax is based;

9 (3) The amount of the tax for which the vendor is liable; and

10 (4) Any further information necessary in the computation and collection of the tax which
11 the Tax Commissioner may require, except as otherwise provided in this article or article fifteen-
12 b of this chapter.

13 (c) Remittance to accompany return. – Except as otherwise provided in this article or
14 article fifteen-b of this chapter, a remittance for the amount of the tax shall accompany the return.

15 (d) Deposit of collected tax. – Tax collected by the Tax Commissioner shall be deposited
16 as provided in section thirty of this article, except that:

17 (1) Tax collected on sales of gasoline and special fuel shall be deposited in the State Road
18 Fund; and

19 (2) Any tax collected by the Alcohol Beverage Control Commissioner from persons or
20 organizations licensed under authority of article seven, chapter sixty of this code shall be paid into
21 a revolving fund account in the State Treasury, designated the Drunk Driving Prevention Fund, to
22 be administered by the Commission on Drunk Driving Prevention, subject to appropriations by
23 the Legislature.

24 (e) Return to be signed. – A return shall be signed by the taxpayer or the taxpayer's duly
25 authorized agent, when a paper return is prepared and filed. When the return is filed electronically,
26 the return shall include the digital mark or digital signature, as defined in article three, chapter
27 thirty-nine-a of this code, or the personal identification number of the taxpayer, or the taxpayer's
28 duly authorized agent, made in accordance with any procedural rule that may be promulgated by
29 the Tax Commissioner.

30 (f) Accelerated payment. –

31 (1) Notwithstanding any other provision of this code to the contrary, taxpayers whose
32 average monthly payment of the taxes levied by this article during the previous calendar year
33 exceeds \$100,000, shall remit the tax attributable to the first fifteen days of June each year by
34 June 20.

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

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

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

52 (g) Quarterly and annual returns exception.

53 (1) When the total general consumption tax remittance for which a person is liable does
54 not exceed an average monthly amount over the taxable year of \$250, he or she may pay the tax

55 and make a quarterly return on or before the twentieth day of the first month in the next succeeding
56 quarter in lieu of monthly returns.

57 (2) When the total general consumption tax remittance for which a person is liable does
58 not in the aggregate exceed \$600 for the taxable year, he or she may pay the tax and make an
59 annual return on or before thirty days after the end of his or her taxable year for federal income
60 tax purposes.

61 (3) The Tax Commissioner may, by nonemergency legislative rules promulgated pursuant
62 to article three, chapter twenty-nine-a of this code, change either or both the minimum amounts
63 established in this subsection.

§11-15C-19. Liability of officers of corporation.

1 If a vendor is an association or corporation, the officers thereof having actual control of
2 the funds thereof, or any other responsible person, shall be personally liable, jointly and severally,
3 for any default on the part of the association or corporation in complying with the provisions of
4 this article, and payment of the tax and any additions to tax, penalties and interest thereon
5 imposed with respect thereto by article ten of this chapter may be enforced against them as
6 against the association or corporation which they represent.

§11-15C-20. Receivership; bankruptcy; priority of tax.

1 In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of
2 the property or estate of any person, all taxes due and unpaid under this article shall be paid from
3 the first money available for distribution in priority to all claims and liens except taxes and debts
4 due the United States which under federal law are given priority over the debts and liens created
5 by this article. Any person charged with the administration or distribution of any such property or
6 estate who shall violate the provisions of this section shall be personally liable for any taxes
7 accrued and unpaid under this article which are chargeable against the person whose property
8 or estate is in administration or distribution.

§11-15C-21. Tax on motor fuel.

1 (a) General. – All sales of motor fuel and alternative fuel subject to the flat rate of the tax
2 imposed by section five, article fourteen-c of this chapter, are subject to the tax imposed by this
3 article and comprises the variable component of the tax imposed by section five, article fourteen-
4 c of this chapter and is collected and remitted at the time the tax imposed by said section is
5 remitted. Sales of motor fuel and alternative fuel upon which the tax imposed by this article has
6 been paid is not again taxed under the provisions of this article. This section means that all gallons
7 of motor fuel and equivalent gallons of alternative fuel sold and delivered or delivered in this state
8 are taxed one time.

9 (b) Measure of tax. – The measure of tax imposed by this article is as follows:

10 (1) On sales of motor fuel, the average wholesale price as defined and determined in
11 section five, article fourteen-c of this chapter. For purposes of maintaining revenue for highways,
12 and recognizing that the tax imposed by this article is generally imposed on gross proceeds from
13 sales to ultimate consumers, whereas the tax on motor fuel herein is imposed on the average
14 wholesale price of the motor fuel; in no case, for the purposes of taxation under this article, may
15 the average wholesale price be determined to be less than 97¢ per gallon of motor fuel for all
16 gallons of motor fuel sold during the reporting period, notwithstanding any provision of this article
17 to the contrary. For the purpose of taxation under this article, in no case may the average
18 wholesale price be determined to be less than \$2.34 per gallon of motor fuel for all gallons of
19 motor fuel sold during the reporting period notwithstanding any provision of this article to the
20 contrary. Any limitation on the average wholesale price of motor fuel contained in this subsection
21 shall not be applicable to alternative fuel.

22 (2) On sales of alternative fuel, the average wholesale price as defined and determined in
23 section five, article fourteen-c of this chapter.

24 (c) Definitions. – For purposes of this article, the terms “gasoline” and “special fuel” and
25 “alternative fuel” are defined as provided in section two, article fourteen-c of this chapter. Other
26 terms used in this section have the same meaning as when used in a similar context in said article.

27 (d) Tax return and tax due. –

28 (1) The tax imposed by this article on sales of motor fuel shall be paid by each taxpayer
29 on or before the last day of the calendar month by check, bank draft, certified check or money
30 order payable to the Tax Commissioner for the amount of tax due for the preceding month
31 notwithstanding any provision of this article to the contrary. The commissioner may require all or
32 certain taxpayers to file tax returns and payments electronically. The return required by the
33 commissioner shall accompany the payment of tax. If no tax is due, the return required by the
34 commissioner shall be completed and filed on or before the last day of the month.

35 (2) The tax due under this article comprising the variable component of the tax due under
36 article fourteen-c of this chapter on alternative fuel, is due and shall be collected and remitted at
37 the time the tax imposed by section five, article fourteen-c of this chapter is due, collected and
38 remitted.

39 (e) Compliance. – To facilitate ease of administration and compliance by taxpayers, the
40 Tax Commissioner shall require persons liable for the tax imposed by this article on sales of motor
41 fuel to file a combined return and make a combined payment of the tax due under this article on
42 sales of motor fuel and the tax due under article fourteen-c of this chapter on motor fuel. In order
43 to encourage use of a combined return each month and the making of a single payment each
44 month for both taxes, the due date of the return and tax due under article fourteen-c of this chapter
45 is the last day of each month notwithstanding any provision in said article to the contrary. The Tax
46 Commissioner may prescribe reporting and payment requirements for tax due under this article
47 on alternative fuel which accommodate the due dates and requirements prescribed in this article
48 and article fourteen-c of this chapter, either under a separate return and payment or a combined
49 return and payment, within the discretion of the Tax Commissioner.

50 (f) Dedication of tax. – All tax collected under the provisions of this section, after deducting
51 the amount of refunds lawfully paid, shall be deposited in the road fund in the State Treasurer's
52 office and used only for the purpose of construction, reconstruction, maintenance and repair of

53 highways and payment of principal and interest on state bonds issued for highway purposes.
 54 Notwithstanding any provision to the contrary, tax collected on the sale of aviation fuel after
 55 deducting the amount of refunds lawfully paid shall be deposited in the State Treasurer's office
 56 and transferred to the State Aeronautical Commission to be used for the purpose of matching
 57 federal funds available for the reconstruction, maintenance and repair of public airports and airport
 58 runways.

59 (g) Construction. – This section does not tax a sale of motor fuel which this state is
 60 prohibited from taxing under the Constitution of this State or the Cconstitution or laws of the United
 61 States.

§11-15C-22. Keeping and preserving of taxpayer records; nonresidents.

1 (a) General. – Each taxpayer shall keep complete and accurate records of taxable sales,
 2 purchases and of charges, together with a record of the tax collected or paid thereon, and shall
 3 keep all invoices, bills of lading and such other pertinent documents in such form as the tax
 4 commissioner may by regulation require. Such records and other documents shall be preserved
 5 for a period of time not less than three years, unless the Tax Commissioner shall consent in writing
 6 to their destruction within that period or by order require that they be kept longer.

7 (b) Nonresidents. – A nonresident person engaged in a business within this state in
 8 conduct as a result of which the tax imposed by this article becomes due, shall keep within this
 9 state adequate records concerning the operation of the business, and all taxes collected and paid
 10 in the course of the business. The amount of the tax collected shall not be transmitted outside of
 11 this state without the written consent of, and in accordance with the conditions prescribed by the
 12 Tax Commissioner.

§11-15C-23. Records of Tax Commissioner; preservation of returns.

1 The Tax Commissioner shall keep full and accurate records of all moneys received by him
 2 or her. He or she shall preserve all returns filed with him or her hereunder for five years.

§11-15C-24. Proceeds of tax; appropriation of certain revenues.

1 (a) The proceeds of the tax imposed by this article shall be deposited in the General
2 Revenue Fund of the state except as otherwise expressly provided in this article.

3 (b) School Major Improvement Fund. -- After the payment or commitment of the proceeds
4 or collections of this tax for the purposes set forth in section sixteen of this article, on the first day
5 of each month, there shall be dedicated monthly from the collections of this tax, the amount of
6 \$416,667 and the amount dedicated shall be deposited on a monthly basis into the School Major
7 Improvement Fund created pursuant to section six, article nine-d, chapter eighteen of this code:
8 Provided, That for fiscal year 2016, the amount so dedicated and deposited annually under this
9 subdivision is reduced by \$2,000,004, and the amount so dedicated and deposited monthly is
10 reduced to \$250,000 for fiscal year 2016. This reduction shall cease for fiscal years beginning
11 after June 30, 2016: Provided, That for fiscal year 2017, the amount so dedicated and deposited
12 annually under this subdivision is reduced by \$999,996 and the amount so dedicated and
13 deposited monthly is reduced to \$333,334 for fiscal year 2017. This reduction shall cease for
14 fiscal years beginning after June 30, 2017.

15 (c) School Construction Fund. – After the payment or commitment of the proceeds or
16 collections of this tax for the purposes set forth in section sixteen of this article:

17 (1) On the first day of each month, there shall be dedicated monthly from the collections
18 of this tax the amount of \$1,416,667 and the amount dedicated shall be deposited into the School
19 Construction Fund created pursuant to section six, article nine-d, chapter eighteen of this code.

20 (2) Except as provided in subdivision (3) of this subsection, effective July 1, 1998, there
21 shall be dedicated from the collections of this tax an amount equal to any annual difference that
22 may occur between the debt service payment for the 1997 fiscal year for school improvement
23 bonds issued under the Better School Building Amendment under the provisions of article nine-c,
24 chapter eighteen of this code and the amount of funds required for debt service on these school
25 improvement bonds in any current fiscal year thereafter. This annual difference shall be prorated
26 monthly, added to the monthly deposit in subdivision (1) of this subsection and deposited into the

27 School Construction Fund created pursuant to section six, article nine-d, chapter eighteen of this
28 code.

29 (3) After June 30, 2015, the provisions of subdivisions (1) and (2) of this subsection shall
30 have no force or effect. After June 30, 2015, there shall be dedicated from the collections of this
31 tax the amount of \$27,216,996 annually. This amount shall be prorated monthly and deposited
32 into the School Construction Fund created pursuant to section six, article nine-d, chapter eighteen
33 of this code: *Provided*, That for fiscal year 2016, the amount so dedicated annually under this
34 subdivision is reduced by \$6 million. This reduction shall cease for fiscal years beginning after
35 June 30, 2016: *Provided, however*, That for fiscal year 2017, the amount so dedicated and
36 deposited annually under this subdivision is reduced by \$3 million. This reduction shall cease for
37 fiscal years beginning after June 30, 2017. Amendments to this subdivision enacted in the 2016
38 regular legislative session are retroactive, in accordance with dates and fiscal years specified
39 herein.

40 (d) *Prepaid wireless calling service.* – The proceeds or collections of this tax from the sale
41 of prepaid wireless service are dedicated as follows:

42 (1) The tax imposed by this article upon the sale of prepaid wireless calling service is in
43 lieu of the wireless enhanced 911 fee imposed by section six-b, article six, chapter twenty-four of
44 this code.

45 (2) Within thirty days following the end of each calendar month, the Tax Commissioner
46 shall remit to the Public Service Commission the proceeds of the tax imposed by this article upon
47 the sale of prepaid wireless calling service in the preceding month, determined as follows: For
48 purposes of determining the amount of those monthly proceeds, the Tax Commissioner shall use
49 an amount equal to one twelfth of the wireless enhanced 911 fees collected from prepaid wireless
50 calling service under section six-b, article six, chapter twenty-four of this code during the period
51 beginning on July 1, 2007, and ending on June 30, 2008. Beginning on July 1, 2009, the Tax
52 Commissioner shall adjust this amount annually by an amount proportionate to the increase or

53 decrease in the enhanced wireless 911 fees paid to the Public Service Commission under said
54 section during the previous twelve months. The Public Service Commission shall receive, deposit
55 and disburse the proceeds in the manner prescribed in said section.

56 (e) After the payment or commitment of the proceeds or collections of this tax as provided
57 in section eighteen of this article, and after satisfaction of the provisions of subsections (b), (c)
58 and (d) of this section, commencing on July 1 of the first year following the year in which the voters
59 ratify the Fair and Simple Tax Reform Amendment to the constitution of this state, and continuing
60 in each year thereafter, if the combined balance of funds, as of the thirtieth day of June of that
61 same year, in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve
62 Fund - Part B established in section twenty, article two, chapter eleven-b of this code, exceeds
63 ten percent of the general revenue fund budgeted for the fiscal year ending on that same said
64 date, then one half of the amount, if any, by which the annual receipts from the tax imposed by
65 this article in that year exceeds the amount of receipts budgeted to be collected therefrom in the
66 fiscal year commencing on July 1, 2017, shall be deposited into the Revenue Fund Shortfall
67 Reserve Fund, to be retained and applied as provided herein and in article two, of chapter eleven-
68 b of this code, and the balance of such excess shall remain in the General Fund: *Provided, That,*
69 notwithstanding any provision of this code to the contrary, the funds to be deposited in the
70 Revenue Fund Shortfall Reserve Fund pursuant to this section shall, in any given fiscal year, only
71 be appropriated for expenditure in an amount which exceeds the difference between the amount
72 of revenue estimated to be collected for that year from the corporation net income tax imposed
73 by article twenty-four, of chapter eleven of this code and the amount which would have been
74 estimated to be collected for that year from the imposition of the said corporation net income tax
75 but for the reduction in the rate of such tax provided in section four of that article, if any.

§11-15C-25. Construction and severability.

1 (a) Construction. – If a court of competent jurisdiction finds that the provisions of this article
 2 and of article fifteen-b of this chapter conflict and cannot be harmonized, then the provisions of
 3 article fifteen-b shall control.

4 (b) Severability. – If any section, subsection, subdivision, paragraph, sentence, clause or
 5 phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision
 6 may not affect the validity of the remaining portions of this article or any part thereof.

§11-15C-26. General procedure and administration; Streamlined Sales and Use Tax Agreement.

1 Each and every provision of articles ten and fifteen-b of this chapter shall apply to the tax
 2 imposed by this article with like effect as if said articles were applicable only to the tax imposed
 3 by this article and were set forth in extenso in this article.

§11-15C-27. Effective date.

1 This article shall take effect on July 1, 2017.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-97. Repeal of tax, preservation for prior periods.

1 Each and every other provision of this article, except this section, is repealed for all tax
 2 periods beginning on the January 1, 2018: *Provided*, That tax liabilities, if any, arising for taxable
 3 periods prior to January 1, 2018, shall be determined, administered, assessed and collected as if
 4 the tax imposed by this article had not been repealed; and the rights and duties of taxpayers and
 5 the state shall be fully and completely preserved.

ARTICLE 21A. TEMPORARY SINGLE RATE INCOME TAX.

§11-21A-1. Short title.

1 This article is known and may be cited as the “Temporary Single Rate Income Tax Law.”

§11-21A-2. Imposition of tax.

1 There is hereby imposed an annual tax on the West Virginia taxable income of each
2 resident individual and on the West Virginia source taxable income of each nonresident individual.

3 (a) In the case of taxable periods beginning on and after January 1, 2018, the rate of the
4 tax shall be 0.60 percent.

5 (b) In the case of taxable periods beginning on and after January 1, 2019, the rate of the
6 tax shall be 0.40 percent.

7 (c) In the case of taxable periods beginning on and after January 1, 2020, the rate of the
8 tax shall be 0.20 percent.

9 (d) The Legislature may by general law accelerate the rate reduction or eliminate the tax
10 imposed by this article altogether.

§11-21A-3. Definitions.

1 For the purposes of this article, the following terms shall have the meanings set forth in
2 this section:

3 (a) "Nonresident individual" means an individual natural person who is not a resident of
4 this state for the entire taxable year.

5 (b) "Part-year resident individual" means a resident individual natural person who is not a
6 resident of this state for the entire taxable year.

7 (c) "Resident individual" means an individual natural person who maintains his or her
8 permanent place of abode in this state.

9 (d) "West Virginia source taxable income" means the sum of the net amount of income,
10 gain, loss and deduction entering into the federal adjusted gross income of a nonresident taxpayer
11 for the taxable year, reduced by \$2,000 for each personal or dependent exemption claimed, which
12 income is derived from or connected with West Virginia sources, including:

13 (1) His or her distributive share of partnership income, gain, loss and deductions,
14 determined for federal income tax purposes; and

15 (2) His or her pro rata share of S corporation income, loss and deductions, increased by
16 deductions for taxes, determined for federal income tax purposes; and

17 (3) His or her share of estate or trust income, gain, loss and deductions, determined for
18 federal income tax purposes.

19 (4) Income, gain, loss and deduction derived from or connected with West Virginia sources
20 shall be those items attributable to: (A) The ownership of any interest in real or tangible personal
21 property in this state; (B) a business, trade, profession or occupation carried on in this state; (C)
22 in the case of a shareholder of an S corporation, the ownership of shares issued by such
23 corporation, to the extent the income of such an entity is apportioned or allocated to this state
24 pursuant to regulations promulgated by the Tax Commissioner; and (D) prizes awarded under
25 article twenty-two, chapter twenty-nine of this code by the West Virginia State Lottery
26 Commission: *Provided*, That, the deduction allowed by section 215 of the Internal Revenue Code,
27 relating to alimony, shall not constitute income or deduction derived from West Virginia sources
28 regardless of whether the recipient of such alimony is resident individual: *Provided, however*, That
29 a nonresident individual, other than a dealer holding property for sale to customers in the ordinary
30 course of his or her trade or business, shall not be deemed to carry on a business, trade,
31 profession or occupation in this state solely by reason of the purchase and sale of property for his
32 or her own account.

33 (e) "West Virginia taxable income" means the federal adjusted gross income reported by
34 a resident taxpayer, including a part-year resident individual, reduced by \$2,000 for each personal
35 or dependent exemption claimed, on his or her federal income tax return for the taxable year.

36 (f) Every term used in this article has the same meaning as when used in a comparable
37 context in the laws of the United States relating to income taxes, unless a different meaning is
38 clearly required. Any reference in this article to the laws of the United States means the provisions
39 of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the
40 United States that relate to the determination of income for federal income tax purposes. All

41 amendments made to the laws of the United States after December 31, 2014, but prior to January
42 1, 2016, shall be given effect in determining the taxes imposed by this article to the same extent
43 those changes are allowed for federal income tax purposes, whether the changes are retroactive
44 or prospective, but no amendment to the laws of the United States made on or after January 1,
45 2016, may be given any effect.

§11-21A-4. Credit for income tax of another state.

1 (a) Credit for resident individuals. – A resident individual, including a part-year resident
2 individual, shall be allowed a credit against the tax otherwise due under this article for any income
3 tax imposed for the taxable year by another state of the United States or by the District of
4 Columbia, upon income both derived therefrom and subject to tax under this article.

5 (b) Limitations. – (1) The credit under subsection (a) of this section shall not exceed the
6 percentage of the tax otherwise due under this article determined by dividing the portion of the
7 taxpayer's West Virginia taxable income also subject to taxation by such other jurisdiction by the
8 total amount of the taxpayer's West Virginia taxable income.

9 (2) The credit under this section shall not reduce the tax otherwise due under this article
10 to an amount less than would have been due if the income subject to taxation by such other
11 jurisdiction were excluded from the taxpayer's West Virginia income.

12 (c) Exception. – No credit shall be allowed under subsection (a) of this section for a tax of
13 a jurisdiction which allows residents of this state a credit against the taxes imposed by such other
14 jurisdiction for the tax under this article, if such other credit is substantially similar to the credit
15 granted in subsection (d) of this section.

16 (d) Credit for nonresident individuals. A nonresident individual shall be allowed a credit
17 against the tax otherwise due under this article for any income tax imposed for the taxable year
18 by another state of the United States or by the District of Columbia, of which the taxpayer is a
19 resident: *Provided*, That the credit under this section shall not exceed either:

20 (1) The percentage of the other tax determined by dividing the portion of the taxpayer's

21 West Virginia income which is also subject to the other tax by the total amount of his or her income
22 subject to such other tax, or

23 (2) The percentage of the tax otherwise due under this article, determined by dividing the
24 portion of the taxpayer's West Virginia source income which is also subject to the other tax by the
25 total amount of the taxpayer's federal adjusted gross income.

26 (3) No credit may be allowed to a nonresident individual under this subsection for a taxable
27 year beginning after the December 31, 2017, except pursuant to a written agreement between
28 this state and the nonresident individual's state of residence. The State Tax Commissioner is
29 hereby authorized to enter into such agreements necessary to effectuate the purpose of this
30 section when he or she determines that such agreements are in the best interest of this state and
31 its residents.

§11-21A-5. Computation of tax on income of part-year resident individuals.

1 The tax due under this article on taxable income derived from sources in this state by a
2 part-year resident individual shall be calculated as provided in this section.

3 (a) An individual shall first calculate tax liability under this article as if he or she were a
4 resident of this state for the entire taxable year. When determining tentative tax liability under this
5 subdivision, a part-year resident individual shall be allowed the same deductions, exemptions and
6 credits that would be allowable if taxpayer were a nonresident individual, as the case may be, for
7 the entire taxable year, except that no credit shall be allowed under section four of this article.

8 (b) The amount of tentative tax determined under subdivision (a) of this section shall then
9 be multiplied by a fraction the numerator of which is the taxpayer's West Virginia source income
10 for the taxable year, and the denominator of which is such taxpayer's "federal adjusted gross
11 income" for the taxable year: *Provided*, That if this computation produces a result that is out of all
12 appropriate proportion to the amount of taxpayer's West Virginia source income, the Tax
13 Commissioner may provide such equitable relief as the Tax Commissioner, in his or her discretion,
14 considers to be appropriate under the circumstances.

15 (c) For purposes of this section, the “federal adjusted gross income” of a part-year resident
 16 individual shall be the taxpayer's federal adjusted gross income for the taxable year, increased or
 17 decreased, as the case may be, for items which are not otherwise included in federal adjusted
 18 gross income for the taxable year, and decreased or increased, as the case may be, for items
 19 which are included in federal adjusted gross income for the taxable year; due to his or her change
 20 of residence during the year, all as provided in forms and instructions issued for such purposes
 21 by the Tax Commissioner.

§11-21A-6. General procedure and administration.

1 Each and every provision of the “West Virginia Tax Procedure and Administration Act” set
 2 forth in article ten of this chapter shall apply to the tax imposed by this article twenty-one-a with
 3 like effect as if said act were applicable only to the tax imposed by this article twenty-one-a and
 4 were set forth in extenso in this article twenty-one-a.

§11-21A-7. Effective date, termination.

1 The tax imposed in this article shall first apply to taxable periods beginning January 1,
 2 2018, and, unless extended or reenacted by an affirmative vote of not less than three fifths of the
 3 members of each house of the Legislature, shall terminate and no longer apply to taxable periods
 4 beginning on and after January 1, 2021: *Provided*, That tax liabilities arising for taxable periods
 5 prior to January 1, 2021, shall be determined, administered, assessed and collected as if this
 6 article had not terminated; and the rights and duties of taxpayers and the state for such prior
 7 periods shall be fully and completely preserved.

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 the January 1, 1983, a tax is hereby imposed for each taxable year at the rate of six
 3 percent per annum on the West Virginia taxable income of every domestic or foreign corporation

4 engaging in business in this state or deriving income from property, activity or other sources in
5 this state, 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 first day of July thereafter
19 for four successive calendar years, the rate shall be reduced by fifteen one hundredths of one
20 percent 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 the first day of July of the
57 preceding year.

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

71 (9) In the case of taxable periods beginning on and after January 1, 2018, a tax is hereby
72 imposed for each taxable year on the West Virginia taxable income of every domestic or foreign
73 corporation engaging in business in this state or deriving income from property, activity or other
74 sources in this state, except corporations exempt under section five of this article, at a rate which
75 is one percent lower than the percentage that was the rate of such tax that applied to the
76 immediately preceding taxable year or zero percent, whichever is greater: *Provided*, That the
77 reduction in the rate of tax on the first day of any calendar year authorized by this subsection shall
78 be suspended if either: (i) the tax rate authorized in section two, article twenty-one-A of this
79 chapter is greater than zero percent or (ii) the combined balance of funds as of the thirtieth day
80 of June of the preceding year in the Revenue Fund Shortfall Reserve Fund and the Revenue
81 Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b

82 of this code does not equal or exceed ten percent of the general revenue fund budgeted for the
83 fiscal year commencing the first day of July of the preceding year, and such rate reduction shall
84 be postponed until the next subsequent taxable year, following the first year thereafter in which
85 both the same two said contingencies, herein otherwise requiring suspension of the rate
86 reduction, are next satisfied: *Provided*, That once the rate of the corporation income tax has been
87 reduced pursuant to this subsection, that rate shall not again be raised, notwithstanding any such
88 contingency.

Note: The purpose of this bill is to prospectively repeal the consumer sales and service tax, the use tax and the personal income tax, to enact the general consumption tax law and the temporary single rate income tax law and to phase out and repeal the corporation net income tax.

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