

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 4157

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Originated in the Committee on Finance;

February 14, 2018.]

1 A BILL to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating
2 to the elimination of the refundable exemption for road construction contractors; prohibiting
3 the transfer of revenues collected from the state's consumers sales and service tax and
4 the state's use tax to the State Road Fund; updating references to certain entities;
5 updating references to the code; removing references to obsolete dates; and specifying
6 the effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9. Exemptions.

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

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

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

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

22 (4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are
23 subject to the tax imposed by ~~section four, article three, chapter seventeen-a~~ §11-15-3c of this
24 code or like tax;

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

29 (6) Sales of tangible personal property or services to a corporation or organization which
30 has a current registration certificate issued under §11-12-1 *et seq.* of this code, which is exempt
31 from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
32 as amended, and which is:

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

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

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

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

43 personal property or services purchased with the net income), is donated to an organization which
44 is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
45 1986, as amended;

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

50 (F) For purposes of this subsection:

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

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

53 (II) Gross receipts from fundraisers which include receipts from admissions, sales of
54 merchandise, performance of services or furnishing of facilities in any activity which is not an
55 unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of
56 1986, as amended;

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

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

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

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

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

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

74 (G) The exemption allowed by this subdivision does not apply to sales of gasoline or
75 special fuel or to sales of tangible personal property or services to be used or consumed in the
76 generation of unrelated business income as defined in Section 513 of the Internal Revenue Code
77 of 1986, as amended. The exemption granted in this subdivision applies only to services,
78 equipment, supplies and materials used or consumed in the activities for which the organizations
79 qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to
80 purchases of gasoline or special fuel which are taxable as provided in §11-14C-1 et seq. of this
81 code;

82 (7) An isolated transaction in which any taxable service or any tangible personal property
83 is sold, transferred, offered for sale or delivered by the owner of the property or by his or her
84 representative for the owner’s account, the sale, transfer, offer for sale or delivery not being made
85 in the ordinary course of repeated and successive transactions of like character by the owner or
86 on his or her account by the representative: *Provided*, That nothing contained in this subdivision
87 may be construed to prevent an owner who sells, transfers or offers for sale tangible personal
88 property in an isolated transaction through an auctioneer from availing himself or herself of the
89 exemption provided in this subdivision, regardless of where the isolated sale takes place. The
90 Tax Commissioner may propose a legislative rule for promulgation pursuant to §29A-3-1 *et seq.*
91 of this code which he or she considers necessary for the efficient administration of this exemption;

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

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

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

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

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

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

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

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

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

128 (15) Sales of property or services to a school which has approval from the ~~board of~~
129 ~~Trustees of the University System of West Virginia or the board of Directors of the state College~~
130 ~~System~~ Higher Education Policy Commission or the Council for Community and Technical
131 College Education to award degrees, which has its principal campus in this state and which is
132 exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue
133 Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel are taxable as
134 provided in §11-15-18, §11-15-18b and §11-14C-1 et seq. of this code;

135 (16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery
136 retailers authorized by the state Lottery Commission, under the provisions of §29-22-1 *et seq.* of
137 this code;

138 (17) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 *et seq.* of this
139 code to lessees for a period of thirty or more consecutive days;

140 (18) Notwithstanding the provisions of §11-15-18 or §11-15-18b of this code or any other
141 provision of this article to the contrary, sales of propane to consumers for poultry house heating
142 purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to
143 not pass on the same to the consumer, but to make application and receive refund of the tax from
144 the Tax Commissioner pursuant to rules which are promulgated after being proposed for
145 legislative approval in accordance with chapter 29A of this code by the Tax Commissioner;

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

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

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

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

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

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

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

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

170 (24) Food for the following are exempt:

171 (A) Food purchased or sold by a public or private school, school-sponsored student
172 organizations or school-sponsored parent-teacher associations to students enrolled in the school

173 or to employees of the school during normal school hours; but not those sales of food made to
174 the general public;

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

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

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

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

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

197 (G) Food sold by volunteer fire departments and rescue squads that are exempt from
198 federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as

199 amended, when the purpose of the sale is to obtain revenue for the functions and activities of the
200 organization and the revenue obtained is exempt from federal income tax and actually expended
201 for that purpose;

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

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

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

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

214 (29) Sales of tangible personal property or services to any person who claims exemption
215 from the tax imposed by this article or §11-15A-1 *et seq.* of this code, or pursuant to the provision
216 of any other chapter of this code;

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

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

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

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

241 (34) Charges for memberships or services provided by health and fitness organizations
242 relating to personalized fitness programs;

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

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

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

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

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

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

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

257 For the purpose of this subdivision, the term “primary opinion research” means original
258 research in the form of telephone surveys, mall intercept surveys, focus group research, direct
259 mail surveys, personal interviews and other data collection methods commonly used for
260 quantitative and qualitative opinion research studies;

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

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

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

272 (B) Fruits into wine;

273 (C) Honey into wine;

274 (D) Wool into fabric;

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

276 (F) Milk into cheese;

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

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

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

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

281 (40) Sales of music instructional services by a music teacher and artistic services or artistic

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

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

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

285 may assemble to hear or see musical works or other artistic works be performed for the enjoyment

286 of the members of the public there assembled when the amount paid by the owner or operator for

287 the artistic service or artistic performance does not exceed \$3,000: *Provided*, That nothing

288 contained herein may be construed to deprive private social gatherings, weddings or other private

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

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

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

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

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

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

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

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

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

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

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

300 legislative rule pursuant to §29A-3-1 *et seq.* of this code establishing definitions and eligibility

301 criteria for asserting this exemption which is not inconsistent with the provisions set forth herein:

302 *Provided further*, That nude dancers or strippers may not be considered as entertainers for the
303 purposes of this exemption;

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

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

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

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

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

330 (46) The service of providing technical evaluations for compliance with federal and state
331 environmental standards provided by environmental and industrial consultants who have formal
332 certification through the West Virginia Department of Environmental Protection or the West
333 Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing
334 technical evaluations for compliance with federal and state environmental standards includes
335 those costs of tangible personal property directly used in providing such services that are
336 separately billed to the purchaser of such services and on which the tax imposed by this article
337 has previously been paid by the service provider;

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

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

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

348 (b) *Refundable exemptions.* — Any person having a right or claim to any exemption set
349 forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply
350 to the Tax Commissioner for a refund or credit, or as provided in §11-15-9d of this code give to
351 the vendor his or her West Virginia direct pay permit number. The following sales of tangible
352 personal property and services are exempt from tax as provided in this subsection:

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

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

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

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

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

377 ~~(6) Sales of construction and maintenance materials acquired by a second party for use~~
378 ~~in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or~~

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

388 (c) *Effective date.* – The amendments to this section in 2018 shall take effect beginning
389 July 1, 2018, and apply to sales made on and after that date: *Provided,* That the amendments to
390 subdivision (6), subsection (b) of this section takes effect upon passage of this act of the
391 Legislature and shall be construed to prohibit on and after January 1, 2018, all transfers to the
392 State Road Fund established in the State Treasury pursuant to section fifty-two, article six of the
393 Constitution, of the taxes imposed by §11-15-1 *et seq.* and §11-15A-1 *et seq.* of this code.