

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 123

FISCAL  
NOTE

BY SENATORS BALDWIN AND OJEDA

[Introduced January 10, 2018; Referred  
to the Committee on Military; and then to the Committee on  
Finance]

1 A BILL to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §29-3E-7 and §29-3E-14 of said code, all relating to funding for  
 3 veterans' programs and volunteer fire departments; ending the sales tax exemption on  
 4 charges for memberships or services provided by health and fitness organizations relating  
 5 to personalized fitness programs; setting an effective date for the elimination of the  
 6 exemption; requiring revenue from the elimination of the exemption be deposited in the  
 7 Veterans Facility Support Fund; directing the Division of Veterans' Affairs to use the  
 8 revenue to fund bonds for certain purposes; ending the deposit of a portion of the fireworks  
 9 safety fee in the Veterans Facility Support Fund and instead depositing it into the Fire  
 10 Protection Fund for volunteer fire departments; and eliminating the annual report from the  
 11 Secretary of Veterans' Affairs to the Legislature regarding the amount of revenue collected  
 12 from the fireworks safety fee.

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

## **CHAPTER 11. TAXATION.**

### **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;

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

20 (4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are  
21 subject to the tax imposed by §17A-3-4-a of this code or like tax;

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

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

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

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

35 (C) A corporation or organization which annually receives more than one half of its support

36 from any combination of gifts, grants, direct or indirect charitable contributions, or membership  
37 fees;

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

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

47 (F) For purposes of this subsection:

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

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

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

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

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

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

60 (VI) The value of services or facilities (exclusive of services or facilities generally furnished  
61 to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of

62 the Internal Revenue Code of 1986, as amended, to an organization without charge. This term  
63 does not include any gain from the sale or other disposition of property which would be considered  
64 as gain from the sale or exchange of a capital asset or the value of an exemption from any federal,  
65 state, or local tax or any similar benefit;

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

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

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

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

88 (8) Sales of tangible personal property or of any taxable services rendered for use or  
89 consumption in connection with the commercial production of an agricultural product the ultimate  
90 sale of which is subject to the tax imposed by this article or which would have been subject to tax  
91 under this article: *Provided*, That sales of tangible personal property and services to be used or  
92 consumed in the construction of or permanent improvement to real property and sales of gasoline  
93 and special fuel are not exempt: *Provided, however*, That nails and fencing may not be considered  
94 as improvements to real property;

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

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

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

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

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

109 (14) Casual and occasional sales of property or services not conducted in a repeated  
110 manner or in the ordinary course of repetitive and successive transactions of like character by a  
111 corporation or organization which is exempt from tax under subdivision (6) of this subsection on  
112 its purchases of tangible personal property or services. For purposes of this subdivision, the term  
113 "casual and occasional sales not conducted in a repeated manner or in the ordinary course of

114 repetitive and successive transactions of like character" means sales of tangible personal property  
115 or services at fundraisers sponsored by a corporation or organization which is exempt, under  
116 subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases  
117 when the fundraisers are of limited duration and are held no more than six times during any  
118 twelve-month period and "limited duration" means no more than eighty-four consecutive hours:  
119 *Provided*, That sales for volunteer fire departments and volunteer school support groups, with  
120 duration of events being no more than eighty-four consecutive hours at a time, which are held no  
121 more than eighteen times in a twelve-month period for the purposes of this subdivision are  
122 considered "casual and occasional sales not conducted in a repeated manner or in the ordinary  
123 course of repetitive and successive transactions of a like character";

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

129 (16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery  
130 retailers authorized by the State Lottery Commission, under the provisions of §29A-22-1 *et seq.*  
131 of this code;

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

134 (18) Notwithstanding the provisions of §11-15-18 of this code or §11-15-18b of this code  
135 or any other provision of this article to the contrary, sales of propane to consumers for poultry  
136 house heating purposes, with any seller to the consumer who may have prior paid the tax in his  
137 or her price, to not pass on the same to the consumer, but to make application and receive refund  
138 of the tax from the Tax Commissioner pursuant to rules which are promulgated after being  
139 proposed for legislative approval in accordance with §29A-1-1 *et seq.* of this code by the Tax

140 Commissioner;

141 (19) Any sales of tangible personal property or services purchased and lawfully paid for  
142 with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, *et seq.*,  
143 as amended, or with drafts issued through the West Virginia special supplement food program for  
144 women, infants and children codified in 42 U. S. C. §1786;

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

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

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

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

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

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

165 (24) Food for the following are exempt:

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

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

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

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

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

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

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

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

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

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

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

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

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

213 (31) Sales of livestock, poultry, or other farm products in their original state by the producer  
214 of the livestock, poultry, or other farm products or a member of the producer's immediate family  
215 who is not otherwise engaged in making retail sales of tangible personal property; and sales of  
216 livestock sold at public sales sponsored by breeders or registry associations or livestock auction  
217 markets: *Provided*, That the exemptions allowed by this subdivision may be claimed without

218 presenting or obtaining exemption certificates provided the farmer maintains adequate records;

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

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

236 (34) Charges for memberships or services provided by health and fitness organizations  
237 relating to personalized fitness programs: *Provided*, That this exemption shall not be allowable on  
238 and after July 1, 2018, and all revenue generated from the elimination of this exemption shall be  
239 deposited in the special account in the State Treasury, designated the Veterans' Facility Support  
240 Fund established by the provisions of §9A-1-11 of this code for expenditure on veterans'  
241 programs: *Provided, however*, That the Division of Veterans' Affairs is directed to use the revenue  
242 deposited pursuant to this subdivision to fund bonds for the purpose of building a veteran's nursing  
243 home south of Kanawha County.

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

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

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

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

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

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

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

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

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

268 For the purpose of this subdivision, the term "value-added product" means the following  
269 products derived from processing a raw agricultural product, whether for human consumption or

270 for other use. For purposes of this subdivision, the following enterprises qualify as processing raw  
271 agricultural products into value-added products: Those engaged in the conversion of:

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

273 (B) Fruits into wine;

274 (C) Honey into wine;

275 (D) Wool into fabric;

276 (E) Raw hides into semi-finished or finished leather products;

277 (F) Milk into cheese;

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

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

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

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

282 (40) Sales of music instructional services by a music teacher and artistic services or artistic  
283 performances of an entertainer or performing artist pursuant to a contract with the owner or  
284 operator of a retail establishment, restaurant, inn, bar, tavern, sports, or other entertainment  
285 facility or any other business location in this state in which the public or a limited portion of the  
286 public may assemble to hear or see musical works or other artistic works be performed for the  
287 enjoyment of the members of the public there assembled when the amount paid by the owner or  
288 operator for the artistic service or artistic performance does not exceed \$3,000: *Provided*, That  
289 nothing contained herein may be construed to deprive private social gatherings, weddings, or  
290 other private parties from asserting the exemption set forth in this subdivision. For the purposes  
291 of this exemption, artistic performance or artistic service means and is limited to the conscious  
292 use of creative power, imagination, and skill in the creation of aesthetic experience for an  
293 audience present and in attendance and includes, and is limited to, stage plays, musical  
294 performances, poetry recitations and other readings, dance presentation, circuses, and similar  
295 presentations and does not include the showing of any film or moving picture, gallery

296 presentations of sculptural or pictorial art, nude or strip show presentations, video games, video  
297 arcades, carnival rides, radio or television shows or any video or audio taped presentations or the  
298 sale or leasing of video or audio tapes, air shows or any other public meeting, display, or show  
299 other than those specified herein: *Provided, however,* That nothing contained herein may be  
300 construed to exempt the sales of tickets from the tax imposed in this article. The State Tax  
301 Commissioner shall propose a legislative rule pursuant to §29A-3-1 *et seq.* of this code  
302 establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent  
303 with the provisions set forth herein: *Provided further,* That nude dancers or strippers may not be  
304 considered as entertainers for the purposes of this exemption;

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

322 in subdivision (9) of this subsection relating to purchases of tangible personal property for resale  
323 and then collect the tax imposed by this article on those items from its member;

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

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

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

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

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

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

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

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

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

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

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

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

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

371 (5) Sales of building materials or building supplies or other property to an organization  
372 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended,  
373 which are to be installed in, affixed to, or incorporated by the organization or its agent into real

374 property or into a building or structure which is or will be used as permanent low-income housing,  
 375 transitional housing, an emergency homeless shelter, a domestic violence shelter, or an  
 376 emergency children and youth shelter if the shelter is owned, managed, developed, or operated  
 377 by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of  
 378 1986, as amended; and

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

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 3E. FIREWORKS SAFETY.**

#### **§29-3E-7. Fireworks safety fee; administration; tax crimes; collections; remittances; deposits; distributions; rules.**

1 (a) In addition to the sales tax, a fireworks safety fee of twelve percent of all sales is levied  
 2 on retail sales of consumer fireworks in this state. The fee shall be distributed pursuant to the  
 3 provisions of this subsection. The fee computation under this subsection shall be carried to the  
 4 third decimal place, and the fee rounded up to the next whole cent whenever the third decimal  
 5 place is greater than four, and rounded down to the lower whole cent whenever the third decimal

6 place is four or less.

7 The State Tax Commissioner shall disburse all proceeds of the fireworks safety fee into  
8 ~~the State Treasury each month in the following manner~~

9 ~~(1) Seventy five percent shall be deposited into a special account in the State Treasury,~~  
10 ~~designated the Veterans' Facility Support Fund established by the provisions of section eleven,~~  
11 ~~article one, chapter nine-a for expenditure on veterans' programs~~

12 ~~(2) Twenty five percent shall be deposited into a special account in the State Treasury,~~  
13 ~~designated the Fire Protection Fund established in §33-3-33 of this code and distributed in~~  
14 ~~accordance with that section to each volunteer fire company or department on an equal share~~  
15 ~~basis by the State Treasurer.~~

16 (b) A person who purchases consumer fireworks in a retail transaction shall pay to the  
17 retailer the amount of the fee levied by this section, which fee is added to and constitutes a part  
18 of the sale price, and is collectible by the retailer who shall account to the state for all fees paid  
19 by a purchaser. If the retailer fails to collect the fee, or fails to account to the state for the fees  
20 paid by a purchaser, then the retailer is liable for the payment of the fee to the state.

21 (c) A retailer shall remit to the State Tax Commissioner no later than thirty days after the  
22 end of each preceding month all moneys collected for such preceding month, pursuant to the  
23 requirements of this section, and shall report such collections on forms and in the manner  
24 prescribed by the State Tax Commissioner.

25 (d) All moneys so remitted, net of refunds and adjustments, shall be paid by the State Tax  
26 Commissioner into the funds specified in this section.

27 (e) Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth  
28 in §11-9-1 *et seq.* of this code applies to the fees imposed pursuant to this article, with like effect  
29 as if that act were applicable only to the fees imposed by this article and were set forth *in extenso*  
30 in this article.

31 (f) The State Tax Commissioner shall propose legislative rules and may promulgate such  
 32 emergency rules as are necessary to implement the provisions of this article.

**§29-3E-14. Reporting requirements; duration of reporting requirements.**

1 Annually, on or before January 15, 2017, 2018 and 2019:

2 (1) The State Treasurer shall submit to the President of the Senate and the Speaker of  
 3 the House of Delegates a report detailing the amount of revenue received and deposited from the  
 4 Fireworks Safety Fee into the Fire Safety Fund authorized by §29-3E-7 of this code and the  
 5 distribution of said funds;

6 ~~(2) The Secretary of Veterans' Assistance shall supply the President of the Senate and~~  
 7 ~~Speaker of the House of Delegates with a report detailing the revenue received from the Fireworks~~  
 8 ~~Safety Fee and deposited in the Veterans' Facility Support Fund and the purposes for which the~~  
 9 ~~money was expended~~

10 ~~(3)~~ (2) The State Tax Commissioner shall provide to the President of the Senate and  
 11 Speaker of the House of Delegates a report detailing the revenue received from the sales tax  
 12 received from the sale of fireworks authorized by the provisions of the article and revenue received  
 13 from the Fireworks Safety Fee authorized by §29-3E-7 of this code; and

14 ~~(4)~~ (3) The State Fire Marshal shall submit to the President of the Senate and Speaker of  
 15 the House of Delegates a report detailing the amounts of revenue received from the registration  
 16 fees imposed pursuant to the provisions of §29-3E-5 of this code, the purposes for which the fees  
 17 were expended and the adequacy of the fees received in relation to the duties required of the  
 18 office.

NOTE: The purpose of this bill is to find sufficient funding for the Veterans' Facility Support Fund to fund a veteran's nursing home and improve funding to volunteer fire departments by eliminating a current tax exemption and redirecting certain revenue.

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