

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

Introduced

### Senate Bill 121

FISCAL  
NOTE

BY SENATORS BALDWIN, LINDSAY, NELSON, AND ROMANO

[Introduced February 10, 2021; referred  
to the Committee on Agriculture and Rural  
Development; and then to the Committee on Finance]

1 A BILL to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating  
 2 to exempting from property tax certain real properties in this state owned by a nonprofit  
 3 corporation with the purpose of organizing, supporting, and maintaining a contemporary  
 4 agricultural and industrial fair and exposition.

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

**ARTICLE 3. ASSESSMENTS GENERALLY.**

**§11-3-9. Property exempt from taxation.**

1 (a) All property, real and personal, described in this subsection, and to the extent limited  
 2 by this section, is exempt from taxation:

3 (1) Property belonging to the United States, other than property permitted by the United  
 4 States to be taxed under state law;

5 (2) Property belonging exclusively to the state;

6 (3) Property belonging exclusively to any county, district, city, village, or town in this state  
 7 and used for public purposes;

8 (4) Property located in this state belonging to any city, town, village, county, or any other  
 9 political subdivision of another state and used for public purposes;

10 (5) Property used exclusively for divine worship;

11 (6) Parsonages and the household goods and furniture pertaining thereto;

12 (7) Mortgages, bonds, and other evidence of indebtedness in the hands of bona fide  
 13 owners and holders hereafter issued and sold by churches and religious societies for the  
 14 purposes of securing money to be used in the erection of church buildings used exclusively for  
 15 divine worship or for the purpose of paying indebtedness thereon;

16 (8) Cemeteries;

17 (9) Property belonging to, or held in trust for, colleges, seminaries, academies, and free  
 18 schools, if used for educational, literary, or scientific purposes, including books, apparatus,  
 19 annuities and furniture;

20 (10) Property belonging to, or held in trust for, colleges or universities located in West  
21 Virginia, or any public or private nonprofit foundation or corporation which receives contributions  
22 exclusively for such college or university, if the property or dividends, interest, rents, or royalties  
23 derived therefrom are used or devoted to educational purposes of such college or university;

24 (11) Public and family libraries;

25 (12) Property used for charitable purposes and not held or leased out for profit;

26 (13) Property used for the public purposes of distributing electricity, water or natural gas  
27 or providing sewer service by a duly chartered nonprofit corporation when such property is not  
28 held, leased out or used for profit;

29 (14) Property used for area economic development purposes by nonprofit corporations  
30 when the property is not leased out for profit;

31 (15) All real estate not exceeding one acre in extent, and the buildings on the real estate,  
32 used exclusively by any college or university society as a literary hall, or as a dormitory or  
33 clubroom, if not used with a view to profit, including, but not limited to, property owned by a  
34 fraternity or sorority organization affiliated with a university or college or property owned by a  
35 nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization  
36 affiliated with a university or college, when the property is used as residential accommodations or  
37 as a dormitory for members of the organization;

38 (16) All property belonging to benevolent associations not conducted for private profit;

39 (17) Property belonging to any public institution for the education of the deaf, intellectually  
40 disabled, or blind or any hospital not held or leased out for profit;

41 (18) Houses of refuge and mental health facility or orphanage;

42 (19) Homes for children or for the aged, friendless, or infirm not conducted for private  
43 profit;

44 (20) Fire engines and implements for extinguishing fires, and property used exclusively  
45 for the safekeeping thereof, and for the meeting of fire companies;

46 (21) All property on hand to be used in the subsistence of livestock on hand at the  
47 commencement of the assessment year;

48 (22) Household goods to the value of \$200, whether or not held or used for profit;

49 (23) Bank deposits and money;

50 (24) Household goods, which for purposes of this section means only personal property  
51 and household goods commonly found within the house and items used to care for the house and  
52 its surrounding property, when not held or used for profit;

53 (25) Personal effects, which for purposes of this section means only articles and items of  
54 personal property commonly worn on or about the human body or carried by a person and  
55 normally thought to be associated with the person when not held or used for profit;

56 (26) Dead victuals laid away for family use;

57 (27) All property belonging to the state, any county, district, city, village, town or other  
58 political subdivision or any state college or university which is subject to a lease purchase  
59 agreement and which provides that, during the term of the lease purchase agreement, title to the  
60 leased property rests in the lessee so long as lessee is not in default or shall not have terminated  
61 the lease as to the property;

62 (28) Personal property, including vehicles that qualify for a farm use exemption certificate  
63 pursuant to §17A-3-2 of this code and livestock, employed exclusively in agriculture, as defined  
64 in article ten, section one of the West Virginia Constitution: *Provided*, That this exemption only  
65 applies in the case of such personal property used on a farm or farming operation that annually  
66 produces for sale agricultural products, as defined in rules of the Tax Commissioner;

67 (29) Real property owned by a nonprofit organization whose primary purpose is youth  
68 development by means of adventure, educational or recreational activities for young people,  
69 which real property contains a facility built with the expenditure of not less than \$100 million that  
70 is capable of supporting additional activities within the region or the state and which is leased or  
71 used to generate revenue for the nonprofit organization whether or not the property is used by

72 the nonprofit organization for its nonprofit purpose, subject to the requirements, limitations and  
73 conditions set forth in subsection (h) of this section; and

74 (30) Real property owned by a nonprofit corporation with the purpose of organizing,  
75 support and maintaining a contemporary agricultural and industrial fair and exposition, with  
76 educational facilities, programs, exhibits, demonstrations, competitions, community functions,  
77 and relevant and related activities which promote knowledge, appreciation and growth of  
78 agriculture and industrial activity in the state and community; and

79 ~~(30)~~ (31) Any other property or security exempted by any other provision of law.

80 (b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt  
81 from taxation which has been purchased or procured for the purpose of evading taxation whether  
82 temporarily holding the same over the first day of the assessment year or otherwise.

83 (c) Real property which is exempt from taxation by subsection (a) of this section shall be  
84 entered upon the assessor's books, together with the true and actual value thereof, but no taxes  
85 may be levied upon the property or extended upon the assessor's books.

86 (d) Notwithstanding any other provisions of this section, this section does not exempt from  
87 taxation any property owned by, or held in trust for, educational, literary, scientific, religious or  
88 other charitable corporations or organizations, including any public or private nonprofit foundation  
89 or corporation existing for the support of any college or university located in West Virginia, unless  
90 such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily  
91 and immediately for the purposes of the corporations or organizations.

92 (e) The Tax Commissioner shall, by issuance of rules, provide each assessor with  
93 guidelines to ensure uniform assessment practices statewide to effect the intent of this section.

94 (f) Inasmuch as there is litigation pending regarding application of this section to property  
95 held by fraternities and sororities, amendments to this section enacted in the year 1998 shall apply  
96 to all cases and controversies pending on the date of such enactment.

97 (g) The amendment to subdivision (27), subsection (a) of this section, passed during the

98 2005 regular session of the Legislature, shall apply to all applicable lease purchase agreements  
99 in existence upon the effective date of the amendment.

100 (h) Nonprofit youth organization exemption - Limitations, Conditions, Collection, and  
101 administration of one and one quarter percent fee, limitations, and distribution of ~~monies~~ moneys.

102 (1) The exemption from ad valorem taxation provided pursuant to the provisions of  
103 subdivision (29), subsection (a) of this section does not apply to a property owned by a nonprofit  
104 organization otherwise qualifying for the exemption but which property or facilities are used for-  
105 profit or outside the primary purpose of the owner which result in unrelated business taxable  
106 income as defined by Section 512 of the Internal Revenue Code of 1986, as amended, unless  
107 the income is generated by an activity upon which the one and one quarter percent fee authorized  
108 by subdivision (2) of this ~~section~~ subsection is applied as provided in subdivision (3) of this  
109 subsection.

110 (2) The owner of real property exempt from ad valorem taxation under subdivision (29),  
111 subsection (a) of this section shall pay an amount equal to one and one quarter percent of the  
112 gross revenues the owner receives in accordance with this subsection. For purposes of this  
113 subsection, "gross revenues" means the gross amount received by the owner as payment for use  
114 of the property or the facilities thereon.

115 (3) Gross revenues derived from the following facilities, uses, activities and operations are  
116 subject to a fee of one and one quarter percent of such gross revenues:

117 (A) Gross revenues derived from the use of lodging and campground facilities by persons  
118 participating in meetings and multiday spectator sports or multiday recreational, celebratory, or  
119 ceremonial events held on-site where on-site lodging or camping is offered as part of the program.  
120 For purposes of this section the term "meeting" means, and is limited to, a gathering, assembly,  
121 or conference of two or more persons who have deliberately convened at a single specific location  
122 at a single specified time and date for a common specific purpose.

123 (B) Gross revenues derived from any retail store located at the facility that is open only to

124 those persons who are attending meetings, spectator sports, recreational, celebratory, or  
125 ceremonial events held on-site at the facility.

126 (C) Gross revenues derived from operations of gift shops at a welcome or information  
127 center located adjacent to a public highway operated by the nonprofit organization which is open  
128 to the general public.

129 (D) Gross revenues derived from the leasing of zip-lines, canopy tours, wheeled sports  
130 and climbing facilities used by the general public on a for-profit basis: (i) Under a written  
131 agreement with a licensed commercial outfitter operating a business utilizing zip-lines, canopy  
132 tours, wheeled sports or climbing areas of a similar nature in the same or an adjacent county  
133 where the facilities are located; and (ii) When the property or facilities are used as part of a training  
134 or advanced experience offered by the licensed commercial outfitter.

135 (E) Gross revenues derived from the use or operation of zip-lines, canopy tours, wheeled  
136 sports facilities, or activities, climbing facilities or activities and the use or operation of other  
137 sporting facilities on the exempt property that are leased on a for-profit basis for spectator events,  
138 such as concerts, spectator sporting events or exhibitions or similar mass gathering events.

139 (F) Gross revenues derived from leases or agreements for use of the property for meetings  
140 and multiday spectator sports or events or multiday recreational, celebratory, or ceremonial  
141 events, held on site.

142 (4) Notwithstanding any other provision of this section to the contrary, programs or  
143 activities ~~occurring~~ occurring on the property or its facilities held in conjunction with a government  
144 organization or sponsored by other nonprofit organizations serving youth, veterans, military  
145 services, public service agencies including, fire, police, emergency and search and rescue  
146 services, government agencies, schools and universities, health care providers and similar  
147 organizations or groups which are designed to provide opportunities for learning or training in the  
148 areas of leadership, character education, science, technology, engineering, arts and mathematics  
149 (STEAM) programs, physical challenges, sustainability, conservation and outdoor learning shall

150 be considered a charitable or nonprofit use for the purposes of this section and not subject to the  
151 one and one quarter percent fee.

152 (5) Notwithstanding any other provision of this section to the contrary, activities open to  
153 the public through individual visitor passes allowing tours and access to the property and its  
154 facilities for the purpose of viewing or participating in demonstrations, programs and facilities  
155 providing information and experiences consistent with the owner's nonprofit purposes where zip-  
156 lines, canopy tours, wheeled sports or climbing facilities are merely components of the  
157 demonstrations, programs and facilities used shall be considered a charitable or nonprofit use for  
158 the purposes of this section and not subject to the one and one quarter percent fee: *Provided,*  
159 That such individual visitor passes may not include the rental or use of on-site overnight lodging  
160 or camping facilities.

161 (6) Administration –

162 (A) The sheriff of the county wherein the majority of the acreage of the property is located  
163 as specified in the deed to such property, shall collect, on a monthly basis, all ~~monies~~ moneys  
164 derived from the fee of one and one quarter percent of the gross revenues imposed under this  
165 subsection.

166 (B) The sheriff of the county wherein the majority of the acreage of the property is located  
167 as specified in the deed to such property, shall prescribe such forms and schedules as may be  
168 necessary for the efficient, accurate, and expeditious payment and reporting of the one and one  
169 quarter percent fee specified in this subsection on gross revenues.

170 (C) The sheriff of the county wherein the majority of the acreage of the property is located  
171 as specified in the deed to such property, shall administer the fee imposed under this subsection,  
172 including refunds and adjustments.

173 (D) Payment, administration and compliance of fee payers and administrators shall be  
174 subject to audit by the Office of Chief Inspector.

175 (E) All ~~monies~~ moneys so collected, net of refunds and adjustments, shall be paid into a



176 special account in the State Treasury, which is hereby created, and the amount thereof shall be  
177 distributed and paid annually, by the State Treasurer, on October 1 of each year, into the funds  
178 and to the distributees specified in subdivision (7) of this subsection in the amounts specified  
179 therein.

180 (7) Distribution –

181 (A) Twenty-five percent of ~~monies~~ moneys so collected, net of refunds and adjustments,  
182 shall be paid annually to the Tourism Promotion Fund established pursuant to §5B-2-12 of this  
183 code.

184 (B) Twenty-five percent of ~~monies~~ moneys so collected, net of refunds and adjustments,  
185 shall be paid annually to the sheriff of the county where the property is located which, but for the  
186 exemption provided in subdivision (29), subsection (a) of this section, would be entitled to receive  
187 ad valorem taxes on the property. The sheriff shall treat all such payments in the same manner  
188 as payments in lieu of taxes, and such payments are subject to the adjustment mandated under  
189 §18-9A-12 of this code. For properties located in more than one county, the amount paid to the  
190 sheriff of the county shall be in proportion to the total number of acres located in each county at  
191 the close of the fiscal year, as specified in the deed to such property.

192 (C) Fifty percent of ~~monies~~ moneys so collected, net of refunds and adjustments, shall be  
193 divided equally and paid annually into separate accounts established and maintained by the  
194 sheriffs of the county or counties wherein the property is located and the sheriffs of any other  
195 county that is within the jurisdiction of the same economic development authority as the county  
196 or counties wherein the property is located to be used solely for the establishment and delivery of  
197 a science, technology, engineering, art and math (STEAM) program in conjunction with the owner  
198 of the exempt property. The funds shall be divided equally for use in each county and the  
199 programs must be approved by the respective county superintendents of schools. Expenditures  
200 from the accounts shall be authorized by the county superintendent of schools.

201 (8) If lodging is furnished as part of a retreat, meeting, or multiday spectator sport or event

202 being held on-site wherein on-site lodging or camping is offered as part of the program, any  
203 applicable hotel occupancy tax and state and local consumers sales and service tax and use tax  
204 shall be paid based upon the actual location of such lodging.

205 (9) If merchants are allowed to do business on the property, the owner or lessee of the  
206 property shall offer space to local merchants on terms at least as favorable as are offered to other  
207 merchants.

208 (10) For the purposes of this subsection, owner includes the owner holding record title to  
209 the property and its affiliates to the extent they are commonly owned, controlled or have the power  
210 to appoint the governing body of the affiliate.

211 (11) The Tourism Commission shall include in its annual report submitted to the Governor  
212 and the Legislature a summary of funds paid into the Tourism Promotion Fund and  
213 recommendations pertaining to the administration of this section.

214 (12) This subsection may not be construed to prohibit the owner of property otherwise  
215 subject to this section from having portions of the property severed from the remainder of the  
216 property, assessed and taxed as if nonexempt and thereafter conducting business on such  
217 property the same as any other nonexempt property: *Provided*, That the area of property to be  
218 severed shall be approved by the county commission wherein the property lies so as to include  
219 in the severance all property substantially supporting the for profit or business activity giving rise  
220 to the specific purpose of the severance and excluding all property entitled to the continued  
221 benefits of this act.

222 (i) To assure the implementation of subsection (h) of this section does not harm local and  
223 regionally located businesses by use of the tax exempt facility in a manner that cause unfair  
224 competition and unreasonable loss of revenue to those businesses, studies shall be periodically  
225 conducted to assure that further legislation is in order regarding the uses of the tax exempt facility.  
226 The county commission of any county where such a property is located shall report to the Joint  
227 Committee on Government and Finance by the first day of January every five years after the

228 effective date of this section. The report shall include information on any unfair business  
229 competition resulting from the establishment of the nonprofit status, and include a report of the  
230 costs and benefits to its county of the tax exemption and associated fee, including an audit of that  
231 county's use of the net revenues. The West Virginia University Bureau of Business and Economic  
232 Research in coordination of the Center for Business and Economic Research at Marshall  
233 University, by January 1, 2020, shall undertake a study and report to the Committee, the economic  
234 impact of this tax exemption and fee to the county and that region of the state, and make any  
235 recommendations regarding the benefits and disadvantages for continuing the provision of this  
236 tax exemption and fee, included, but not limited to, the impacts to other small and large  
237 businesses in the county, the costs to the county has incurred as a result of use of the facility,  
238 and any other relevant data that the universities may ~~deem~~ determine relevant.

NOTE: The purpose of this bill is to exempt from property tax certain real properties in this state-owned by a nonprofit corporation with the purpose of organizing, support and maintaining a contemporary agricultural and industrial fair and exposition.

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