

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2822

FISCAL
NOTE

By Delegate Linville

[By Request of the Department of Transportation]

[Introduced January 19, 2023; Referred to the
Committee on Technology and Infrastructure then
Finance]

1 A BILL to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to
 2 the consumers sales and service tax and returning the refundable exemption for sales of
 3 construction and maintenance materials acquired by a second party for use in Division of
 4 Highways projects; specifying duties of Tax Commissioner and Division of Highways;
 5 specifying procedure of the exemption; and setting forth calculation of reimbursement.

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 this
 3 article and filing a claim for refund, execute a certificate of exemption, in the form required by the
 4 Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by
 5 the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those exemptions
 6 authorized in this subsection for which exemption certificates are not required. The following sales
 7 of tangible personal property and services are exempt as provided in this subsection:

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

10 (2) Sales of textbooks required to be used in any of the schools of this state or in any
 11 institution in this state which qualifies as a nonprofit or educational institution subject to the West
 12 Virginia Department of Education and the Arts, the Higher Education Policy Commission, or the
 13 Council for Community and Technical College Education for universities and colleges located in
 14 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 §11-15-3c 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 which are taxable as provided in §11-14C-1 *et seq.* of this
78 code;

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

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

96 (9) Sales of tangible personal property to a person for the purpose of resale in the form of

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

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

104 (11) Sales of drugs, durable medical goods, mobility-enhancing equipment and prosthetic
105 devices dispensed upon prescription and sales of insulin to consumers for medical purposes;

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 its
112 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 12-
118 month period and "limited duration" means no more than 84 consecutive hours: *Provided*, That
119 sales for volunteer fire departments and volunteer school support groups, with duration of events
120 being no more than 84 consecutive hours at a time, which are held no more than 18 times in a 12-
121 month period for the purposes of this subdivision are considered "casual and occasional sales not
122 conducted in a repeated manner or in the ordinary course of repetitive and successive

123 transactions of a like character";

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

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

133 (17) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 *et seq.* of this
134 code to lessees for a period of 30 or more consecutive days;

135 (18) Notwithstanding the provisions of §11-15-18 or §11-15-18b of this code or any other
136 provision of this article to the contrary, sales of propane to consumers for poultry house heating
137 purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not
138 pass on the same to the consumer, but to make application and receive refund of the tax from the
139 Tax Commissioner pursuant to rules which are promulgated after being proposed for legislative
140 approval in accordance with chapter 29A of this code by the Tax 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
151 data for the purpose of data entry or automatic processing and changing the medium on which
152 data 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 50 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 50 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 the
169 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 or
172 university when the sales are made on a contract basis so that a fixed price is paid for consumption
173 of food products for a specific period of time without respect to the amount of food product actually
174 consumed by the particular individual contracting for the sale and no money is paid at the time the

175 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 at
178 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 to
181 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 or
188 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 12 and similar types of organizations, including scouting groups and
200 church youth groups, if the purpose in selling the food is to obtain revenue for the functions and

201 activities of the organization and the revenues obtained from selling the food is actually used in
202 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, or pursuant to the provision
211 of 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 this
221 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, or
232 by a governmental entity, as part of the repair, remodeling, or maintenance service and sales of
233 machinery, tools, or equipment directly used or consumed exclusively in the repair, remodeling, or
234 maintenance of aircraft, aircraft engines, or aircraft component parts for a certificated or licensed
235 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;

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

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

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

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

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

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

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

251 For the purpose of this subdivision, the term "primary opinion research" means original
252 research in the form of telephone surveys, mall intercept surveys, focus group research, direct

253 mail surveys, personal interviews, and other data collection methods commonly used for
254 quantitative and qualitative opinion research studies;

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

261 For the purpose of this subdivision, the term "value-added product" means the following
262 products derived from processing a raw agricultural product, whether for human consumption or
263 for other use. For purposes of this subdivision, the following enterprises qualify as processing raw
264 agricultural products into value-added products: Those engaged in the conversion of:

- 265 (A) Lumber into furniture, toys, collectibles, and home furnishings;
- 266 (B) Fruits into wine;
- 267 (C) Honey into wine;
- 268 (D) Wool into fabric;
- 269 (E) Raw hides into semi-finished or finished leather products;
- 270 (F) Milk into cheese;
- 271 (G) Fruits or vegetables into a dried, canned, or frozen product;
- 272 (H) Feeder cattle into commonly accepted slaughter weights;
- 273 (I) Aquatic animals into a dried, canned, cooked, or frozen product; and
- 274 (J) Poultry into a dried, canned, cooked, or frozen product;

275 (40) Sales of music instructional services by a music teacher and artistic services or artistic
276 performances of an entertainer or performing artist pursuant to a contract with the owner or
277 operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility,
278 or any other business location in this state in which the public or a limited portion of the public may

279 assemble to hear or see musical works or other artistic works be performed for the enjoyment of
280 the members of the public there assembled when the amount paid by the owner or operator for the
281 artistic service or artistic performance does not exceed \$3,000: *Provided*, That nothing contained
282 herein may be construed to deprive private social gatherings, weddings, or other private parties
283 from asserting the exemption set forth in this subdivision. For the purposes of this exemption,
284 artistic performance or artistic service means and is limited to the conscious use of creative power,
285 imagination, and skill in the creation of aesthetic experience for an audience present and in
286 attendance and includes, and is limited to, stage plays, musical performances, poetry recitations
287 and other readings, dance presentation, circuses and similar presentations, and does not include
288 the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude
289 or strip show presentations, video games, video arcades, carnival rides, radio or television shows,
290 or any video or audio taped presentations, or the sale or leasing of video or audio tapes, air shows,
291 or any other public meeting, display or show other than those specified herein: *Provided, however*,
292 That nothing contained herein may be construed to exempt the sales of tickets from the tax
293 imposed in this article. The State Tax Commissioner shall propose a legislative rule pursuant to
294 §29A-3-1 *et seq.* of this code establishing definitions and eligibility criteria for asserting this
295 exemption which is not inconsistent with the provisions set forth herein: *Provided further*, That
296 nude dancers or strippers may not be considered as entertainers for the purposes of this
297 exemption;

298 (41) Charges to a member by a membership association or organization which is exempt
299 from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
300 of 1986, as amended, for membership in the association or organization, including charges to
301 members for newsletters prepared by the association or organization for distribution primarily to its
302 members, charges to members for continuing education seminars, workshops, conventions,
303 lectures, or courses put on or sponsored by the association or organization, including charges for
304 related course materials prepared by the association or organization or by the speaker or

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

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

320 (43) Direct or subscription sales by the Division of Natural Resources of the magazine
321 currently entitled Wonderful West Virginia and by the Division of Culture and History of the
322 magazine currently entitled Goldenseal and the journal currently entitled West Virginia History;

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

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

325 (46) The service of providing technical evaluations for compliance with federal and state
326 environmental standards provided by environmental and industrial consultants who have formal
327 certification through the West Virginia Department of Environmental Protection or the West
328 Virginia Bureau for Public Health, or both. For purposes of this exemption, the service of providing
329 technical evaluations for compliance with federal and state environmental standards includes
330 those costs of tangible personal property directly used in providing such services that are

331 separately billed to the purchaser of such services and on which the tax imposed by this article has
332 previously been paid by the service provider;

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

338 (48) Lodging franchise fees, including royalties, marketing fees, reservation system fees,
339 or other fees assessed that have been or may be imposed by a lodging franchiser as a condition of
340 the franchise agreement;

341 (49) Sales of the regulation size United States flag and the regulation size West Virginia
342 flag for display; and

343 (50) Sales of an aircraft sold in this state on or after July 1, 2020, as evidenced by a
344 Federal Aviation Administration Bill of Sale AC Form 8050-2 and registered outside of this state as
345 evidenced by Federal Aviation Administration Aircraft Registration AC Form 8050-1 shall be
346 exempt, so long as the aircraft is removed from this state within 60 days of the date of purchase on
347 the bill of sale. The time between the date of purchase and the removal of the aircraft shall not be
348 counted for purposes of determining whether the aircraft is subject to use tax.

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

354 (1) Sales of property or services to bona fide charitable organizations who make no charge
355 whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision
356 applies only to services, equipment, supplies, food, meals, and materials directly used or

357 consumed by these organizations and does not apply to purchases of gasoline or special fuel;

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

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

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

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

378 (6) Sales of construction and maintenance materials acquired by a second party for use in
379 the construction or maintenance of a Division of Highways road, highway, or bridge project:
380 *Provided*, That in lieu of any refund or credit to the person that paid the tax imposed by this article,
381 the Tax Commissioner shall pay to the Division of Highways, for deposit into the State Road Fund,
382 reimbursement for the tax in the amount estimated under the provisions of this subdivision:

383 Provided, however, That by June 15 of each fiscal year, the Division of Highways shall provide to
384 the Tax Department an itemized listing of Division of Highways projects with the amount of funds
385 expended for construction and maintenance. The Commissioner of Highways shall request
386 reimbursement on the tax based on an estimate that 40 percent of the total gross funds expended
387 by the Division of Highways during the fiscal period were for the acquisition of materials used by
388 contractors for construction and maintenance on Division of Highways projects. The amount of the
389 reimbursement shall be calculated at six percent of the 40 percent.

390 (c) *Effective date.* – The amendments to this section in ~~2018~~ 2023 shall take effect
391 beginning ~~July 1, 2018~~ January 1, 2023 and apply to former sales made on and after that date.
392 ~~Provided, That the amendments to subdivision (6), subsection (b) of this section take effect upon~~
393 ~~passage of this act of the Legislature and shall be construed to prohibit on and after January 1,~~
394 ~~2018, all transfers to the State Road Fund established in the State Treasury pursuant to section~~
395 ~~52, article VI of the Constitution of West Virginia, of the taxes imposed by §11-15-1 et seq. and~~
396 ~~§11-15A-1 et seq. of this code~~

NOTE: The purpose of this bill is to return to the Division of Highways the sales tax collected from contractors for materials used in Highways construction and maintenance projects. As long as the contractors sales tax is going to the general revenue, DOH is paying sales tax to the state. No other agency of state government pays state sales tax.

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