

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Senate Bill 149

By Senators Roberts, Trump, Phillips, Deeds,
Azinger, Stuart, Clements, Maynard, Maroney, and
Karnes

[Passed March 09, 2023; in effect 90 days from passage]

1 AN ACT to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating
2 to exempt property from taxation used exclusively for divine worship and the operation of a
3 pre-K school, primary school, middle school, secondary school, daycare center, or church
4 camp for children, which school, daycare center, or church camp is operated by the church
5 which owns the property or is operated by another not-for-profit organization or entity.

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 by
2 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, or used exclusively for divine worship and
11 the operation of a pre-K school, primary school, middle school, secondary school, daycare center,
12 or church camp for children, which school, daycare center, or church camp is operated by the
13 church which owns the property or is operated by another not-for-profit organization or entity;

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

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

19 (8) Cemeteries;

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

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

27 (11) Public and family libraries;

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

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

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

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

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

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

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

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

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

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

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

51 (23) Bank deposits and money;

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

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

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

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

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

69 (29) Real property owned by a nonprofit organization whose primary purpose is youth
70 development by means of adventure, educational, or recreational activities for young people,

71 which real property contains a facility built with the expenditure of not less than \$100 million that is
72 capable of supporting additional activities within the region or the state and which is leased or used
73 to generate revenue for the nonprofit organization whether or not the property is used by the
74 nonprofit organization for its nonprofit purpose, subject to the requirements, limitations, and
75 conditions set forth in §11-3-9(h) of this code; and

76 (30) Any other property or security exempted by any other provision of law.

77 (b) Notwithstanding the provisions of §11-3-9(a) of this code, no property is exempt from
78 taxation which has been purchased or procured for the purpose of evading taxation whether
79 temporarily holding the same over the first day of the assessment year or otherwise.

80 (c) Real property which is exempt from taxation by §11-3-9(a) of this code shall be entered
81 upon the assessor's books, together with the true and actual value thereof, but no taxes may be
82 levied upon the property or extended upon the assessor's books.

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

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

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

94 (g) The amendment to §11-3-9(a)(27) of this code, passed during the 2005 regular session
95 of the Legislature, shall apply to all applicable lease purchase agreements in existence upon the
96 effective date of the amendment.

97 (h) *Nonprofit youth organization exemption.* — Limitations, conditions, collection, and
98 administration of one and one quarter percent fee, limitations, and distribution of moneys.

99 (1) The exemption from ad valorem taxation provided pursuant to the provisions of §11-3-
100 9(a)(29) of this code does not apply to a property owned by a nonprofit organization otherwise
101 qualifying for the exemption but which property or facilities are used for profit or outside the
102 primary purpose of the owner which result in unrelated business taxable income as defined by
103 Section 512 of the Internal Revenue Code of 1986, as amended, unless the income is generated
104 by an activity upon which the one and one quarter percent fee authorized by §11-3-9(h)(2) of this
105 code is applied as provided in §11-3-9(h)(3) of this code.

106 (2) The owner of real property exempt from ad valorem taxation under §11-3-9(a)(29) of
107 this code shall pay an amount equal to one and one quarter percent of the gross revenues the
108 owner receives in accordance with this subsection. For purposes of this subsection, "gross
109 revenues" means the gross amount received by the owner as payment for use of the property or
110 the facilities thereon.

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

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

119 (B) Gross revenues derived from any retail store located at the facility that is open only to
120 those persons who are attending meetings, spectator sports, recreational, celebratory, or
121 ceremonial events held onsite at the facility.

122 (C) Gross revenues derived from operations of gift shops at a welcome or information

123 center located adjacent to a public highway operated by the nonprofit organization which is open
124 to the general public.

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

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

135 (F) Gross revenues derived from leases or agreements for use of the property for meetings
136 and multiday spectator sports or events or multiday recreational, celebratory, or ceremonial
137 events, held onsite.

138 (4) Notwithstanding any other provision of this section to the contrary, programs or
139 activities occurring on the property or its facilities held in conjunction with a government
140 organization or sponsored by other nonprofit organizations serving youth, veterans, military
141 services, public service agencies including, fire, police, emergency, and search and rescue
142 services, government agencies, schools and universities, health care providers, and similar
143 organizations or groups which are designed to provide opportunities for learning or training in the
144 areas of leadership, character education, science, technology, engineering, arts, and mathematics
145 (STEAM) programs, physical challenges, sustainability, conservation, and outdoor learning shall
146 be considered a charitable or nonprofit use for the purposes of this section and not subject to the
147 one and one quarter percent fee.

148 (5) Notwithstanding any other provision of this section to the contrary, activities open to the

149 public through individual visitor passes allowing tours and access to the property and its facilities
150 for the purpose of viewing or participating in demonstrations, programs, and facilities providing
151 information and experiences consistent with the owner's nonprofit purposes where zip-lines,
152 canopy tours, wheeled sports, or climbing facilities are merely components of the demonstrations,
153 programs, and facilities used shall be considered a charitable or nonprofit use for the purposes of
154 this section and not subject to the one and one quarter percent fee: *Provided*, That such individual
155 visitor passes may not include the rental or use of onsite overnight lodging or camping facilities.

156 (6) *Administration.* —

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

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

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

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

169 (E) All moneys so collected, net of refunds and adjustments, shall be paid into a special
170 account in the State Treasury, which is hereby created, and the amount thereof shall be distributed
171 and paid annually, by the State Treasurer, on October 1 of each year, into the funds and to the
172 distributees specified in of this code in the amounts specified therein.

173 (7) *Distribution.* —

174 (A) Twenty-five percent of moneys so collected, net of refunds and adjustments, shall be

175 paid annually to the Tourism Promotion Fund established pursuant to §5B-2-12 of this code.

176 (B) Twenty-five percent of moneys so collected, net of refunds and adjustments, shall be
177 paid annually to the sheriff of the county where the property is located which, but for the exemption
178 provided in §11-3-9(a)(29) of this code, would be entitled to receive ad valorem taxes on the
179 property. The sheriff shall treat all such payments in the same manner as payments in lieu of taxes,
180 and such payments are subject to the adjustment mandated under §18-9A-12 of this code. For
181 properties located in more than one county, the amount paid to the sheriff of the county shall be in
182 proportion to the total number of acres located in each county at the close of the fiscal year, as
183 specified in the deed to such property.

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

193 (8) If lodging is furnished as part of a retreat, meeting, or multiday spectator sport or event
194 being held onsite wherein onsite lodging or camping is offered as part of the program, any
195 applicable hotel occupancy tax and state and local consumers sales and service tax and use tax
196 shall be paid based upon the actual location of such lodging.

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

200 (10) For the purposes of this subsection, owner includes the owner holding record title to

201 the property and its affiliates to the extent they are commonly owned, controlled or have the power
202 to appoint the governing body of the affiliate.

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

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

214 (i) To assure the implementation of §11-3-9(h) of this code does not harm local and
215 regionally located businesses by use of the tax-exempt facility in a manner that cause unfair
216 competition and unreasonable loss of revenue to those businesses, studies shall be periodically
217 conducted to assure that further legislation is in order regarding the uses of the tax-exempt facility.
218 The county commission of any county where such a property is located shall report to the Joint
219 Committee on Government and Finance by the first day of January every five years after the
220 effective date of this section. The report shall include information on any unfair business
221 competition resulting from the establishment of the nonprofit status, and include a report of the
222 costs and benefits to its county of the tax exemption and associated fee, including an audit of that
223 county's use of the net revenues. The West Virginia University Bureau of Business and Economic
224 Research in coordination of the Center for Business and Economic Research at Marshall
225 University, by January 1, 2020, shall undertake a study and report to the committee, the economic
226 impact of this tax exemption and fee to the county and that region of the state, and make any

227 recommendations regarding the benefits and disadvantages for continuing the provision of this tax
228 exemption and fee, included, but not limited to, the impacts to other small and large businesses in
229 the county, the costs to the county has incurred as a result of use of the facility, and any other
230 relevant data that the universities may deem relevant.