

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 7**

By Senators Clements and Smith

[Originating in the Committee on Transportation and  
Infrastructure; reported on January 17, 2023]

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  
94 gasoline and special fuel are not exempt: *Provided, however*, That nails and fencing may not be  
95 considered 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 data  
151 for the purpose of data entry or automatic processing, and changing the medium on which data is  
152 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) (A) Dispensing of services performed by one corporation, partnership, or limited  
157 liability company for another corporation, partnership, or limited liability company when the entities  
158 are members of the same controlled group or are related taxpayers as defined in Section 267 of  
159 the Internal Revenue Code of 1986, as amended. For purposes of this subdivision, "control"  
160 means ownership, directly or indirectly, of stock, equity interests, or membership interests  
161 possessing 50 percent or more of the total combined voting power of all classes of the stock of a  
162 corporation, equity interests of a partnership, or membership interests of a limited liability  
163 company entitled to vote or ownership, directly or indirectly, of stock, equity interests, or  
164 membership interests possessing 50 percent or more of the value of the corporation, partnership,  
165 or limited liability company;

166 (B) Leases of heavy equipment or machinery among corporations, partnerships, or limited  
167 liability companies when the entities are members of the same control group or are related  
168 taxpayers as defined in Section 267 of the Internal Revenue Code of 1986, as amended;

169 (24) Food for the following is exempt:

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

174 (B) Food purchased or sold by a public or private college or university or by a student

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

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

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

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

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

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

201           (25) Sales of food by little leagues, midget football leagues, youth football or soccer  
202 leagues, band boosters, or other school or athletic booster organizations supporting activities for  
203 grades kindergarten through 12 and similar types of organizations, including scouting groups and  
204 church youth groups, if the purpose in selling the food is to obtain revenue for the functions and  
205 activities of the organization and the revenues obtained from selling the food is actually used in  
206 supporting or carrying on functions and activities of the groups: *Provided*, That the purchases  
207 made by the organizations are not exempt as a purchase for resale;

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

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

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

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

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

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

223           (32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of  
224 tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this  
225 article and sales of coin-operated video arcade machines or video arcade games to a person  
226 engaged in the business of providing the machines to the public for a charge upon which the tax

227 imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption  
228 provided in this subdivision may be claimed by presenting to the seller a properly executed  
229 exemption certificate;

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

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

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

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

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

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

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

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

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

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

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

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

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

279 (40) Sales of music instructional services by a music teacher and artistic services or artistic  
280 performances of an entertainer or performing artist pursuant to a contract with the owner or  
281 operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility,  
282 or any other business location in this state in which the public or a limited portion of the public may  
283 assemble to hear or see musical works or other artistic works be performed for the enjoyment of  
284 the members of the public there assembled when the amount paid by the owner or operator for the  
285 artistic service or artistic performance does not exceed \$3,000: *Provided*, That nothing contained  
286 herein may be construed to deprive private social gatherings, weddings or other private parties  
287 from asserting the exemption set forth in this subdivision. For the purposes of this exemption,  
288 artistic performance or artistic service means and is limited to the conscious use of creative power,  
289 imagination, and skill in the creation of aesthetic experience for an audience present and in  
290 attendance and includes, and is limited to, stage plays, musical performances, poetry recitations  
291 and other readings, dance presentation, circuses, and similar presentations and does not include  
292 the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude  
293 or strip show presentations, video games, video arcades, carnival rides, radio or television shows,  
294 or any video or audio-taped presentations or the sale or leasing of video or audio tapes, air shows,  
295 or any other public meeting, display, or show other than those specified herein: *Provided*,  
296 *however*, That nothing contained herein may be construed to exempt the sales of tickets from the  
297 tax imposed in this article. The State Tax Commissioner shall propose a legislative rule pursuant to  
298 §29A-3-1 *et seq.* of this code establishing definitions and eligibility criteria for asserting this  
299 exemption which is not inconsistent with the provisions set forth herein: *Provided further*, That  
300 nude dancers or strippers may not be considered as entertainers for the purposes of this  
301 exemption;

302 (41) Charges to a member by a membership association or organization which is exempt  
303 from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code  
304 of 1986, as amended, for membership in the association or organization, including charges to

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

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

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

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

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

328 (46) The service of providing technical evaluations for compliance with federal and state  
329 environmental standards provided by environmental and industrial consultants who have formal  
330 certification through the West Virginia Department of Environmental Protection or the West

331 Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing  
332 technical evaluations for compliance with federal and state environmental standards includes  
333 those costs of tangible personal property directly used in providing such services that are  
334 separately billed to the purchaser of such services and on which the tax imposed by this article has  
335 previously been paid by the service provider;

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

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

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

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

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

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

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

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

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

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

381 (6) Sales of construction and maintenance materials acquired by a second party for use in  
382 the construction or maintenance of a Division of Highways road, highway, or bridge project:

383 Provided, That in lieu of any refund or credit to the person that paid the tax imposed by this article,  
384 the Tax Commissioner shall pay to the Division of Highways, for deposit into the State Road Fund,  
385 reimbursement for the tax in the amount estimated under the provisions of this subdivision:  
386 Provided, however, That by June 15 of each fiscal year, the Division of Highways shall provide to  
387 the Tax Department an itemized listing of Division of Highways projects with the amount of funds  
388 expended for construction and maintenance. The Commissioner of Highways shall request  
389 reimbursement on the tax based on an estimate that 40 percent of the total gross funds expended  
390 by the Division of Highways during the fiscal period were for the acquisition of materials used by  
391 contractors for construction and maintenance on Division of Highways projects. The amount of the  
392 reimbursement shall be calculated at six percent of the 40 percent.

393 ~~(c) *Effective date.* — The amendments to this section in 2018 shall take effect beginning~~  
394 ~~July 1, 2018, and apply to former sales made on and after that date: *Provided, That the*~~  
395 ~~amendments to subdivision (6), subsection (b) of this section take effect upon passage of this act~~  
396 ~~of the Legislature and shall be construed to prohibit on and after January 1, 2018, all transfers to~~  
397 ~~the State Road Fund established in the State Treasury pursuant to section 52, article VI of the~~  
398 ~~Constitution of West Virginia, of the taxes imposed by §11-15-1 *et seq.* and §11-15A-1 *et seq.* of~~  
399 ~~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.