

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 857

**FISCAL
NOTE**

By Senator Helton

[Introduced March 20, 2025; referred
to the Committee on Economic Development; and
then to the Committee on Finance]

1 A BILL to amend and reenact §11-13-2o and §11-15-9 of the Code of West Virginia, 1931, as
2 amended; and to amend the code by adding a new article, designated §11-6N-1, §11-6N-2,
3 §11-6N-3, §11-6N-4, §11-6N-5, §11-6N-6, §11-6N-7, §11-6N-8, §11-6N-9, and §11-6N-10,
4 relating to establishing economic incentives for data centers to locate within the state;
5 specifying a short title; defining terms; providing legislative findings and purpose;
6 establishing eligibility criteria; clarifying property tax treatment for eligible data centers;
7 creating tax exemptions; creating an application process; requiring compliance and
8 recapture; authorizing rule-making authority; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6N. SPECIAL PROPERTY TAX TREATMENT FOR NEW DATA CENTERS
AND PROVIDING A TAX CREDIT FOR THE COAL-FIRED ELECTRIC
UTILITIES THAT SUPPLY THEM.

§11-6N-1. Short title.

1 This article may be cited as the "West Virginia-Powered Data Center Incentive Act".

§11-6N-2. Legislative findings and purpose.

1 (a) Purpose and Intent. The Legislature of West Virginia finds and declares that the
2 establishment of large data centers within the state is critical to fostering economic growth,
3 technological advancement, and job creation. By providing targeted economic incentives, West
4 Virginia can attract significant private investment, enhance its digital infrastructure, and solidify its
5 position as a competitive player in the global digital economy. These data centers will be reliably
6 supported by West Virginia coal-generated electricity, contributing to grid-stability and industrial
7 growth within the state.

8 (b) Economic and Employment Benefits of Data Centers. Data centers represent a
9 cornerstone of the modern economy, providing essential infrastructure to support cloud
10 computing, e-commerce, artificial intelligence, and advanced analytics. The presence of such

11 facilities in West Virginia will:

12 (1) Generate substantial direct investment in construction and operations, contributing to
13 state and local tax revenues;

14 (2) Create high-quality jobs, including skilled technology positions, construction jobs, and
15 support roles in maintenance, security, and administration; and

16 (3) Spur ancillary economic activity by fostering the growth of supply chains, local
17 businesses, and technology-focused educational initiatives.

18 The long-term operational presence of data centers will provide stable economic benefits,
19 as these facilities typically operate for decades and require consistent investment in equipment,
20 upgrades, and workforce development.

21 (c) *Optimization of Coal Production and Employment.* Production of electricity utilizing coal
22 produced in West Virginia is now inadequately developed in comparison to nearby states with
23 which West Virginia competes for economically beneficial projects. Coal electric generation
24 projects have been undermined by existing regulatory requirements and related time delays. The
25 Legislature declares that facilitating the development of business activity directly and indirectly
26 related to coal electric generation development, transportation, storage, and use serves the public
27 interest of the citizens of this state by promoting economic development, by improving economic
28 opportunities for the citizens of this state, and providing additional opportunities to stabilize the
29 price of electricity while increasing its reliability and availability.

30 (d) *Infrastructure and Technological Advancement.* By attracting large data centers, West
31 Virginia can accelerate the development of state-of-the-art broadband networks and power
32 infrastructure, which are prerequisites for such facilities. These improvements will:

33 (1) Enhance connectivity for residents and businesses throughout the state.

34 (2) Provide critical infrastructure for emerging industries reliant on high-speed Internet and
35 advanced computing capabilities.

36 (e) *Competitive Advantage and Regional Development.* Surrounding states have

37 successfully leveraged incentive programs to attract data centers, underscoring the need for West
38 Virginia to adopt competitive measures to attract similar investments. Incentivizing data center
39 development in rural and/or economically distressed areas will promote balanced regional growth,
40 reduce economic disparities, and provide opportunities for workforce training and education in
41 areas historically impacted by declining job opportunities. The state's geographical advantages,
42 including its proximity to major population centers and relative insulation from natural disasters,
43 make it an ideal location for data center operations. Moreover, the state's coal-fired electric
44 generating facilities provide affordable, reliable electricity needed to power large-scale data center
45 operations.

46 (f) *Commitment to Strategic Partnerships.* The Legislature supports fostering partnerships
47 between data center operators, educational institutions, and workforce development programs to
48 prepare a skilled workforce equipped to meet the demands of the digital economy and create
49 pipelines for local talent to secure high-paying, high-tech jobs within the state.

50 (g) *Conclusion.* By enacting targeted economic incentives, such as special property tax
51 treatment for data centers and B&O tax reduction to the electric utilities supplying them, West
52 Virginia can position itself a premiere designation for large-scale data center investment,
53 delivering sustained economic, technological, and societal benefits for its citizens, all while
54 supporting local electricity generators and the coal miners who supply and provide them with the
55 affordable power necessary to thrive in the digital economy. The Legislature commits to pursuing
56 all policies and strategic partnerships that will support these objectives, thereby ensuring a
57 prosperous and innovative future for all West Virginians.

§11-6N-3. Definitions.

1 (a) *General.* - When used in this article, or in the administration of this article, terms defined
2 in subsection (b) shall have the meanings ascribed to them by this section, unless a different
3 meaning is clearly required by either the context in which the term is used, or by specific definition,
4 in this article.

5 (b) Terms defined. --

6 "Data Center" means a facility that (1) Houses computer systems and associated
7 components, including storage systems and telecommunications equipment, for the purposes of
8 processing, storage, retrieval, or communication of data; and (2) Maintains a minimum electricity
9 consumption capacity of design plans, for the operation of its systems and infrastructure.

10 "Coal-Generated Electricity" means electricity where at least 75% of the energy is derived
11 from coal combusted from a coal-fired power plant that is either.

12 (1) Burning West Virginia coal; or

13 (2) A coal-fired power plant physically located within the state of West Virginia.

14 "Qualifying Data Center" means a data center meeting the eligibility requirements set forth
15 under this Act.

§11-6N-4. Eligibility criteria.

1 To qualify for the incentives outlined in this act, a data center must meet the following
2 criteria:

3 (1) Be located within the state of West Virginia;

4 (2) Make a new capital investment of at least \$50 million on or after January 1, 2025;

5 (3) Create at least 50 new jobs directly associated with the operation or maintenance of the
6 data center;

7 (4) Use coal-generated electricity for at least 80% of its primary operational capacity; and

8 (5) Eligibility shall not apply to capacity used for backup, redundancy, or secondary
9 capacity.

§11-6N-5. Property tax treatment of qualifying data centers.

1 Notwithstanding any other provision of this code to the contrary, all personal property used
2 at any qualifying data center as defined in this article shall be afforded salvage value for the
3 purposes of ad valorem property taxation under Chapter 11 of this code and under Article X of the
4 Constitution of the State of West Virginia:

(1) For purposes of this section, "salvage value" shall mean the lower of fair market salvage value or five percent of the total value of the qualifying data center, including all equipment and infrastructure necessary for its operation.

(2) The valuation and assessment of any qualifying data center, including the process of protest and appeal from any such valuation, shall be conducted in the manner set forth and more fully described in §11-6-1 *et seq.* of this code and any applicable rules.

§11-6N-6. Sales and use tax exemption.

To further support the development of qualified data centers within the state, §11-15-9 of this code shall be amended to include an exemption from the Consumer Sales and Use Tax, provided the data center meets the eligibility requirements of §11-6N-4 of this code.

§11-6N-7. Application process.

(a) Taxpayers seeking incentives under this act must submit an application to the West Virginia State Tax Division.

(b) Applications must include:

(1) Proof of certification as a qualifying data center by the West Virginia Department of Commerce;

(2) Documentation of capital investments, employment creation, and utility agreements verifying compliance with coal-generated electricity usage requirements; and

(3) Evidence of compliance with the eligibility requirements outlined in §11-6N-3 of this code.

§11-6N-8. Compliance and recapture.

If a qualifying data center ceases operations, fails to meet the coal-generated electricity usage requirement, or fails to maintain the required job creation threshold within five years of claiming the incentive, the taxpayer shall repay the full amount of benefits claimed during the prior three tax years.

§11-6N-9. Rules.

1 The Tax Commissioner shall promulgate rules to ensure compliance, including audit
2 procedures, penalties for false claims, and prescribing forms and deadlines for the application
3 process.

§11-6N-10. Effective date.

1 This act shall apply to tax years beginning on or after January 1, 2025.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2o. Business of generating or producing or selling electricity on and after June 1, 1995; definitions; rate of tax; exemptions; effective date.

1 (a) *Definitions.* — As used in this section:

2 (1) "Average four-year generation" is computed by dividing by four the sum of a generating
3 unit's net generation, expressed in kilowatt hours, for calendar years 1991, 1992, 1993, and 1994.
4 For any generating unit which was newly installed and placed into commercial operation after
5 January 1, 1991, and prior to the effective date of this section, "average four-year generation" is
6 computed by dividing the unit's net generation for the period beginning with the month in which the
7 unit was placed into commercial operation and ending with the month preceding the effective date
8 of this section by the number of months in the period and multiplying the resulting amount by
9 twelve with the result being a representative 12-month average of the unit's net generation while in
10 an operational status.

11 (2) "Capacity factor" means a fraction, the numerator of which is average four-year
12 generation and the denominator of which is the maximum possible annual generation.

13 (3) "Generating unit" means a mechanical apparatus or structure which through the
14 operation of its component parts is capable of generating or producing electricity and is regularly
15 used for this purpose.

16 (4) "Inactive reserve" means the removal of a generating unit from commercial service for a
17 period of not less than 12 consecutive months as a result of lack of need for generation from the
18 generating unit or as a result of the requirements of state or federal law or the removal of a

generating unit from commercial service for any period as a result of any physical exigency which is beyond the reasonable control of the taxpayer.

(5) "Maximum possible annual generation" means the product, expressed in kilowatt hours, of official capability times 8,760 hours.

(6) "Official capability" means the nameplate capacity rating of a generating unit expressed in kilowatts.

(7) "Peaking unit" means a generating unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements.

(8) "Retired from service" means the removal of a generating unit from commercial service for a period of at least 12 consecutive months with the intent that the unit may not thereafter be returned to active service.

(9) "Taxable generating capacity" means the product, expressed in kilowatts, of the capacity factor times the official capability of a generating unit, subject to the modifications set forth in subdivisions (2) and (3), subsection (c) of this section.

(10) "Net generation" for a period means the kilowatt hours of net generation available for sale generated or produced by the generating unit in this state during the period less the following:

(A) Twenty-one twenty-sixths of the kilowatt hours of electricity generated at the generating unit and sold during the period to a plant location of a customer engaged in manufacturing activity if the contract demand at the plant location exceeds 200,000 kilowatts per hour in a year or where the usage at the plant location exceeds 200,000 kilowatts per hour in a year;

(B) Twenty-one twenty-sixths of the kilowatt hours of electricity produced or generated at the generating unit during the period by any person producing electric power and an alternative form of energy at a facility located in this state substantially from gob or other mine refuse;

(C) The total kilowatt hours of electricity generated at the generating unit exempted from tax during the period by §11-13-2(n)(b) of this code.

(b) *Rate of tax.* — Upon every person engaging or continuing within this state in the

business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or in part, or in the business of selling electricity to consumers, or in both businesses, the tax imposed by §11-13-2 of this code shall be equal to:

(1) For taxpayers who generate or produce electricity for sale, profit or commercial use, the product of \$22.78 multiplied by the taxable generating capacity of each generating unit in this state owned or leased by the taxpayer, subject to the modifications set forth in subsection (c) of this section: *Provided*, That with respect to each generating unit in this state which has installed a flue gas desulfurization system, the tax imposed by section two of this article shall, on and after January 31, 1996, be equal to the product of \$20.70 multiplied by the taxable generating capacity of the units, subject to the modifications set forth in subsection (c) of this section: *Provided, however*, That with respect to kilowatt hours sold to or used by a plant location engaged in manufacturing activity in which the contract demand at the plant location exceeds 200,000 kilowatts per hour per year or if the usage at the plant location exceeds 200,000 kilowatts per hour in a year, in no event may the tax imposed by this article with respect to the sale or use of the electricity exceed five hundredths of one cent times the kilowatt hours sold to or used by a plant engaged in a manufacturing activity; and

(2) For taxpayers who sell electricity to consumers in this state that is not generated or produced in this state by the taxpayer, nineteen hundredths of one cent times the kilowatt hours of electricity sold to consumers in this state that were not generated or produced in this state by the taxpayer, except that the rate shall be five hundredths of one cent times the kilowatt hours of electricity not generated or produced in this state by the taxpayer which is sold to a plant location in this state of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds 200,000 kilowatts per hour per year or if the usage at such plant location exceeds 200,000 kilowatts per hour in a year. The measure of tax under this subdivision shall be equal to the total kilowatt hours of electricity sold to consumers in the state during the taxable year, that were not generated or produced in this state by the taxpayer, to be determined by subtracting from

the total kilowatt hours of electricity sold to consumers in the state the net kilowatt hours of electricity generated or produced in the state by the taxpayer during the taxable year. For the purposes of this subdivision, net kilowatt hours of electricity generated or produced in this state by the taxpayer includes the taxpayer's pro rata share of electricity generated or produced in this state by a partnership or limited liability company of which the taxpayer is a partner or member. The provisions of this subdivision may not apply to those kilowatt hours exempt under §11-13-2(n)(b) of this code. Any person taxable under this subdivision shall be allowed a credit against the amount of tax due under this subdivision for any electric power generation taxes or a tax similar to the tax imposed by subdivision (1) of this subsection paid by the taxpayer with respect to the electric power to the state in which the power was generated or produced. The amount of credit allowed may not exceed the tax liability arising under this subdivision with respect to the sale of the power.

(c) The following provisions are applicable to taxpayers subject to tax under subdivision (1), subsection (b) of this section:

(1) *Retired units; inactive reserve.* — If a generating unit is retired from service or placed in inactive reserve, a taxpayer may not be liable for tax computed with respect to the taxable generating capacity of the unit for the period that the unit is inactive or retired. The taxpayer shall provide written notice to the Joint Committee on Government and Finance, as well as to any other entity as may be otherwise provided by law, 18 months prior to retiring any generating unit from service in this state.

(2) *New generating units.* — If a new generating unit, other than a peaking unit, is placed in initial service on or after the effective date of this section, the generating unit's taxable generating capacity shall equal 40 percent of the official capability of the unit: *Provided*, That the taxable generating capacity of a county-owned or municipally owned generating unit shall equal zero percent of the official capability of the unit and for taxable periods ending on or before December 31, 2007, the taxable generating capacity of a generating unit utilizing a turbine powered primarily

by wind shall equal five percent of the official capability of the unit: *Provided, however,* That for taxable periods beginning on or after January 1, 2008, the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind shall equal 12 percent of the official capability of the unit: *Provided further,* That for taxable periods beginning on or after January 1, 2020, the taxable generating capacity of a generating unit utilizing solar photovoltaic methods shall equal eight percent of the official capacity of the unit. For purposes of this subsection, "solar photovoltaic methods" means a module or array of solar cells electronically connected in a series or in parallel to provide suitable voltages and currents for electricity generation. Methods include, but are not limited to, a grid-connected photovoltaic system designed to operate in parallel with an electric utility grid.

(3) *Peaking units.* — If a peaking unit is placed in initial service on or after the effective date of this section, the generating unit's taxable generating capacity shall equal five percent of the official capability of the unit: *Provided,* That the taxable generating capacity of a county-owned or municipally owned generating plant shall equal zero percent of the official capability of the unit.

(4) *Transfers of interests in generating units.* — If a taxpayer acquires an interest in a generating unit, the taxpayer shall include the computation of taxable generating capacity of the unit in the determination of the taxpayer's tax liability as of the date of the acquisition. Conversely, if a taxpayer transfers an interest in a generating unit, the taxpayer may not for periods thereafter be liable for tax computed with respect to the taxable generating capacity of the transferred unit.

(5) *Proration, allocation.* — The Tax Commissioner shall promulgate rules in conformity with §29A-3-1 *et seq.* of this code to provide for the administration of this section and to equitably prorate taxes for a taxable year in which a generating unit is first placed in service, retired, or placed in inactive reserve, or in which a taxpayer acquires or transfers an interest in a generating unit, to equitably allocate and reallocate adjustments to net generation, and to equitably allocate taxes among multiple taxpayers with interests in a single generating unit, it being the intent of the Legislature to prohibit multiple taxation of the same taxable generating capacity.

So as to provide for an orderly transition with respect to the rate-making effect of this section, those electric light and power companies which, as of the effective date of this section, are permitted by the West Virginia Public Service Commission to utilize deferred accounting for purposes of recovery from ratepayers of any portion of business and occupation tax expense under this article shall be permitted, until the time that action pursuant to a rate application or order of the commission provides for appropriate alternative rate-making treatment for that expense, to recover the tax expense imposed by this section by means of deferred accounting to the extent that the tax expense imposed by this section exceeds the level of business and occupation tax under this article currently allowed in rates.

(6) Electricity generated by manufacturer or affiliate for use in manufacturing activity. — When electricity used in a manufacturing activity is generated in this state by the person who owns the manufacturing facility in which the electricity is used and the electricity-generating unit or units producing the electricity so used are owned by the manufacturer, or by a member of the manufacturer's controlled group, as defined in Section 267 of the Internal Revenue Code of 1986, as amended, the generation of the electricity may not be taxable under this article: *Provided, That* any electricity generated or produced at the generating unit or units which is sold or used for purposes other than in the manufacturing activity shall be taxed under this section and the amount of tax payable shall be adjusted to be equal to an amount which is proportional to the electricity sold for purposes other than the manufacturing activity. The Department of Revenue shall promulgate rules in accordance with §29A-3-1 *et seq.* of this code: *Provided, however, That* the rules shall be promulgated as emergency rules.

(7) Electricity generated by coal-fired power plant for use in qualifying data center. After January 1, 2025, when coal-generated electricity is sold to a qualifying data center pursuant to the provisions of §11-6N-1 et seq. of this code, the generation of the coal-generated electricity used by the qualifying data center may not be taxed under this article; Provided, That any electricity generated or produced at the generating unit or units which is sold or used for purposes other than

149 to power the qualifying data center shall be taxed in accordance with this section, and the amount
150 of the tax payable by the electric generator shall be adjusted to equal an amount which is
151 proportional to the electricity sold for purposes other than the qualifying data center uses or other
152 uses exempt under this article.

153 (d) Beginning June 1, 1995, electric light and power companies that actually paid tax based
154 on §11-13-2d(a)(3) of this code or §11-13-2m of this code for every taxable month in 1994 shall
155 determine their liability for payment of tax under this article in accordance with subdivisions (1) and
156 (2) of this subsection. All other electric light and power companies shall determine their liability for
157 payment of tax under this article exclusively under this section beginning June 1, 1995, and
158 thereafter.

159 (1) If for taxable months beginning on or after June 1, 1995, liability for tax under this
160 section is equal to or greater than the sum of the power company's liability for payment of tax
161 under §11-13-2d(a)(3) of this code and this section, then the company shall pay the tax due under
162 this section and not the tax due under §11-13-2d(a)(3) of this code and §11-13-2m of this code. If
163 tax liability under this section is less, then the tax shall be paid under §11-13-2d(a)(3) of this code
164 and §11-13-2m of this code and the tax due under this section may not be paid.

165 (2) Notwithstanding subdivision (1) of this subsection, for taxable years beginning on or
166 after January 1, 1998, all electric and light power companies shall determine their liability for
167 payment of tax under this article exclusively under this section.

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;

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

(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions, or membership fees;

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

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

(F) For purposes of this subsection:

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

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

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

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

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

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

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state, or local tax or any similar benefit;

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

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

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The exemption granted in this subdivision applies only to services, equipment, supplies, and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel which are taxable as provided in §11-14C-1 *et seq.* of this code;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale, or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on 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

manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term "casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character" means sales of tangible personal property or services at fundraisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any 12-month period and "limited duration" means no more than 84 consecutive hours: *Provided*, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than 84 consecutive hours at a time, which are held no more than 18 times in a 12-month period for the purposes of this subdivision are considered "casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character";

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

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

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

(18) Notwithstanding the provisions of §11-15-18 or §11-15-18b of this code or any other

provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the Tax Commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with Chapter 29A of this code by the Tax Commissioner;

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

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

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

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

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

(22) Tuition charged for attending educational summer camps;

(23) (A) Dispensing of services performed by one corporation, partnership, or limited liability company for another corporation, partnership, or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code of 1986, as amended. For purposes of this subdivision, "control" means ownership, directly or indirectly, of stock, equity interests, or membership interests possessing 50 percent or more of the total combined voting power of all classes of the stock of a

corporation, equity interests of a partnership, or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests, or membership interests possessing 50 percent or more of the value of the corporation, partnership, or limited liability company;

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

(24) Food for the following is exempt:

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

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

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

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

(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

from the tax imposed by this article or §11-15A-1 *et seq.* of this code, or pursuant to the provision of any other chapter of this code;

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

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

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

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

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

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

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

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

(38) Sales of primary opinion research services when:

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

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

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

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

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

For the purpose of this subdivision, the term "value-added product" means the following

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

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

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

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

(H) Feeder cattle into commonly accepted slaughter weights;

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

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

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

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

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

imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

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

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

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

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

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

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

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

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

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

(51) Sales of equipment and tangible personal property purchased for use in the operation and maintenance of a qualifying data center, as defined in §11- 6N-3 of this code.

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

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

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

(3) Sales of property or services to nationally chartered fraternal or social organizations for

the sole purpose of free distribution in public welfare or relief work: *Provided*, That sales of gasoline and special fuel are taxable;

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

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

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

NOTE: The purpose of this bill is to is to create economic incentives for data centers to locate within the state and further stimulate the state's economy by relying on locally sourced coal-generated electricity. The bill provides salvage value treatment for personal property

used by qualifying data centers; an exemption from the B&O tax for all coal-generated electricity sold to qualifying data centers; and provides a sales tax exemption for all personal property sold to and used in the construction or maintenance of a qualifying data center.

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