

1 **H. B. 2662**

2
3 (By Delegates Moye, Sumner, Stephens and Rodighiero)

4
5 [Introduced January 20, 2011; referred to the
6 Committee on Energy, Industry and Labor, Economic
7 Development and Small Business then Finance.]

**FISCAL
NOTE**

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9
10 A BILL to amend and reenact §11-15-9 of the Code of West Virginia,
11 1931, as amended, relating to exempting existing churches from
12 paying tax on propane and other forms of heating oil used for
13 heating their church buildings.

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

15 That §11-15-9 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted to read as follows:

17 **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

18 **§11-15-9. Exemptions.**

19 (a) *Exemptions for which exemption certificate may be issued.*

20 -- A person having a right or claim to any exemption set forth in
21 this subsection may, in lieu of paying the tax imposed by this
22 article and filing a claim for refund, execute a certificate of
23 exemption, in the form required by the Tax Commissioner, and

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

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

9 (2) Sales of textbooks required to be used in any of the
10 schools of this state or in any institution in this state which
11 qualifies as a nonprofit or educational institution subject to the
12 West Virginia Department of Education and the Arts, the board of
13 Trustees of the University System of West Virginia or the board of
14 directors for colleges located in this state;

15 (3) Sales of property or services to this state, its
16 institutions or subdivisions, governmental units, institutions or
17 subdivisions of other states: *Provided*, That the law of the other
18 state provides the same exemption to governmental units or
19 subdivisions of this state and to the United States, including
20 agencies of federal, state or local governments for distribution in
21 public welfare or relief work;

22 (4) Sales of vehicles which are titled by the Division of
23 Motor Vehicles and which are subject to the tax imposed by section

1 four, article three, chapter seventeen-a of this code or like tax;

2 (5) Sales of property or services to churches which make no
3 charge whatsoever for the services they render: *Provided*, That the
4 exemption granted in this subdivision applies only to services,
5 equipment, supplies, food for meals and materials directly used or
6 consumed by these organizations and does not apply to purchases of
7 gasoline or special fuel;

8 (6) Sales of tangible personal property or services to a
9 corporation or organization which has a current registration
10 certificate issued under article twelve of this chapter, which is
11 exempt from federal income taxes under Section 501(c)(3) or (c)(4)
12 of the Internal Revenue Code of 1986, as amended, and which is:

13 (A) A church or a convention or association of churches as
14 defined in Section 170 of the Internal Revenue Code of 1986, as
15 amended;

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

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

23 (D) An organization which has no paid employees and its gross

1 income from fundraisers, less reasonable and necessary expenses
2 incurred to raise the gross income (or the tangible personal
3 property or services purchased with the net income), is donated to
4 an organization which is exempt from income taxes under Section
5 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
6 amended;

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

13 (F) For purposes of this subsection:

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

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

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

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

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

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

6 (VI) The value of services or facilities (exclusive of
7 services or facilities generally furnished to the public without
8 charge) furnished by a governmental unit referred to in Section
9 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an
10 organization without charge. This term does not include any gain
11 from the sale or other disposition of property which would be
12 considered as gain from the sale or exchange of a capital asset or
13 the value of an exemption from any federal, state or local tax or
14 any similar benefit;

15 (ii) The term "charitable contribution" means a contribution
16 or gift to or for the use of a corporation or organization,
17 described in Section 170(c)(2) of the Internal Revenue Code of
18 1986, as amended; and

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

22 (G) The exemption allowed by this subdivision does not apply
23 to sales of gasoline or special fuel or to sales of tangible

1 personal property or services to be used or consumed in the
2 generation of unrelated business income as defined in Section 513
3 of the Internal Revenue Code of 1986, as amended. The exemption
4 granted in this subdivision applies only to services, equipment,
5 supplies and materials used or consumed in the activities for which
6 the organizations qualify as tax-exempt organizations under the
7 Internal Revenue Code and does not apply to purchases of gasoline
8 or special fuel;

9 (7) An isolated transaction in which any taxable service or
10 any tangible personal property is sold, transferred, offered for
11 sale or delivered by the owner of the property or by his or her
12 representative for the owner's account, the sale, transfer, offer
13 for sale or delivery not being made in the ordinary course of
14 repeated and successive transactions of like character by the owner
15 or on his or her account by the representative: *Provided*, That
16 nothing contained in this subdivision may be construed to prevent
17 an owner who sells, transfers or offers for sale tangible personal
18 property in an isolated transaction through an auctioneer from
19 availing himself or herself of the exemption provided in this
20 subdivision, regardless of where the isolated sale takes place.
21 The Tax Commissioner may propose a legislative rule for
22 promulgation pursuant to article three, chapter twenty-nine-a of
23 this code which he or she considers necessary for the efficient

1 administration of this exemption;

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

12 (9) Sales of tangible personal property to a person for the
13 purpose of resale in the form of tangible personal property:
14 *Provided*, That sales of gasoline and special fuel by distributors
15 and importers is taxable except when the sale is to another
16 distributor for resale: *Provided, however*, That sales of building
17 materials or building supplies or other property to any person
18 engaging in the activity of contracting, as defined in this
19 article, which is to be installed in, affixed to or incorporated by
20 that person or his or her agent into any real property, building or
21 structure is not exempt under this subdivision;

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

1 (11) Sales of drugs, durable medical goods, mobility-enhancing
2 equipment and prosthetic devices dispensed upon prescription and
3 sales of insulin to consumers for medical purposes. The amendment
4 to this subdivision shall apply to sales made after December 31,
5 2003;

6 (12) Sales of radio and television broadcasting time,
7 preprinted advertising circulars and newspaper and outdoor
8 advertising space for the advertisement of goods or services;

9 (13) Sales and services performed by day care centers;

10 (14) Casual and occasional sales of property or services not
11 conducted in a repeated manner or in the ordinary course of
12 repetitive and successive transactions of like character by a
13 corporation or organization which is exempt from tax under
14 subdivision (6) of this subsection on its purchases of tangible
15 personal property or services. For purposes of this subdivision,
16 the term "casual and occasional sales not conducted in a repeated
17 manner or in the ordinary course of repetitive and successive
18 transactions of like character" means sales of tangible personal
19 property or services at fundraisers sponsored by a corporation or
20 organization which is exempt, under subdivision (6) of this
21 subsection, from payment of the tax imposed by this article on its
22 purchases when the fundraisers are of limited duration and are held
23 no more than six times during any twelve-month period and "limited

1 duration" means no more than eighty-four consecutive hours:

2 *Provided*, That sales for volunteer fire departments and volunteer
3 school support groups, with duration of events being no more than
4 eighty-four consecutive hours at a time, which are held no more
5 than **eighteen** times in a twelve-month period for the purposes of
6 this subdivision are considered "casual and occasional sales not
7 conducted in a repeated manner or in the ordinary course of
8 repetitive and successive transactions of a like character";

9 (15) Sales of property or services to a school which has
10 approval from the **Board of Trustees of the University System of**
11 **West Virginia** or the **Board of Directors of the State College System**
12 to award degrees, which has its principal campus in this state and
13 which is exempt from federal and state income taxes under Section
14 501(c)(3) of the Internal Revenue Code of 1986, as amended:

15 *Provided*, That sales of gasoline and special fuel are taxable;

16 (16) Sales of lottery tickets and materials by licensed
17 lottery sales agents and lottery retailers authorized by the **State**
18 **Lottery Commission**, under the provisions of article twenty-two,
19 chapter twenty-nine of this code;

20 (17) Leases of motor vehicles titled pursuant to the
21 provisions of article three, chapter seventeen-a of this code to
22 lessees for a period of thirty or more consecutive days;

23 (18) Notwithstanding the provisions of section eighteen or

1 eighteen-b of this article or any other provision of this article
2 to the contrary, sales of propane to consumers for poultry house
3 heating purposes, with any seller to the consumer who may have
4 prior paid the tax in his or her price, to not pass on the same to
5 the consumer, but to make application and receive refund of the tax
6 from the Tax Commissioner pursuant to rules which are promulgated
7 after being proposed for legislative approval in accordance with
8 chapter twenty-nine-a of this code by the Tax Commissioner;

9 (19) Any sales of tangible personal property or services
10 purchased and lawfully paid for with food stamps pursuant to the
11 federal food stamp program codified in 7 U. S. C. §2011, *et seq.*,
12 as amended, or with drafts issued through the West Virginia Special
13 Supplement Food Program for Women, Infants and Children codified in
14 42 U. S. C. §1786;

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

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

20 (A) The processing of another's data, including all processes
21 incident to processing of data such as keypunching, keystroke
22 verification, rearranging or sorting of previously documented data
23 for the purpose of data entry or automatic processing and changing

1 the medium on which data is sorted, whether these processes are
2 done by the same person or several persons; and

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

6 (22) Tuition charged for attending educational summer camps;

7 (23) Dispensing of services performed by one corporation,
8 partnership or limited liability company for another corporation,
9 partnership or limited liability company when the entities are
10 members of the same controlled group or are related taxpayers as
11 defined in Section 267 of the Internal Revenue Code. "Control"
12 means ownership, directly or indirectly, of stock, equity interests
13 or membership interests possessing fifty percent or more of the
14 total combined voting power of all classes of the stock of a
15 corporation, equity interests of a partnership or membership
16 interests of a limited liability company entitled to vote or
17 ownership, directly or indirectly, of stock, equity interests or
18 membership interests possessing fifty percent or more of the value
19 of the corporation, partnership or limited liability company;

20 (24) Food for the following are exempt:

21 (A) Food purchased or sold by a public or private school,
22 school-sponsored student organizations or school-sponsored parent-
23 teacher associations to students enrolled in the school or to

1 employees of the school during normal school hours; but not those
2 sales of food made to the general public;

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

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

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

22 (E) Food sold in an occasional sale by a charitable or
23 nonprofit organization, including volunteer fire departments and

1 rescue squads, if the purpose of the sale is to obtain revenue for
2 the functions and activities of the organization and the revenue
3 obtained is actually expended for that purpose;

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

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

17 (25) Sales of food by little leagues, midget football leagues,
18 youth football or soccer leagues, band boosters or other school or
19 athletic booster organizations supporting activities for grades
20 kindergarten through twelve and similar types of organizations,
21 including scouting groups and church youth groups, if the purpose
22 in selling the food is to obtain revenue for the functions and
23 activities of the organization and the revenues obtained from

1 selling the food is actually used in supporting or carrying on
2 functions and activities of the groups: *Provided*, That the
3 purchases made by the organizations are not exempt as a purchase
4 for resale;

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

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

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

13 (29) Sales of tangible personal property or services to any
14 person who claims exemption from the tax imposed by this article or
15 article fifteen-a of this chapter pursuant to the provision of any
16 other chapter of this code;

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

19 (31) Sales of livestock, poultry or other farm products in
20 their original state by the producer of the livestock, poultry or
21 other farm products or a member of the producer's immediate family
22 who is not otherwise engaged in making retail sales of tangible
23 personal property; and sales of livestock sold at public sales

1 sponsored by breeders or registry associations or livestock auction
2 markets: *Provided*, That the exemptions allowed by this subdivision
3 may be claimed without presenting or obtaining exemption
4 certificates provided the farmer maintains adequate records;

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

15 (33) Sales of aircraft repair, remodeling and maintenance
16 services when the services are to an aircraft operated by a
17 certified or licensed carrier of persons or property, or by a
18 governmental entity, or to an engine or other component part of an
19 aircraft operated by a certificated or licensed carrier of persons
20 or property, or by a governmental entity and sales of tangible
21 personal property that is permanently affixed or permanently
22 attached as a component part of an aircraft owned or operated by a
23 certificated or licensed carrier of persons or property, or by a

1 governmental entity, as part of the repair, remodeling or
2 maintenance service and sales of machinery, tools or equipment
3 directly used or consumed exclusively in the repair, remodeling or
4 maintenance of aircraft, aircraft engines or aircraft component
5 parts for a certificated or licensed carrier of persons or property
6 or for a governmental entity;

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

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

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

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

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

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

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

1 outside the State of West Virginia; and

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

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

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

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

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

3 (B) Fruits into wine;

4 (C) Honey into wine;

5 (D) Wool into fabric;

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

7 (F) Milk into cheese;

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

10 (H) Feeder cattle into commonly accepted slaughter weights;

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

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

14 (40) Sales of music instructional services by a music teacher
15 and artistic services or artistic performances of an entertainer or
16 performing artist pursuant to a contract with the owner or operator
17 of a retail establishment, restaurant, inn, bar, tavern, sports or
18 other entertainment facility or any other business location in this
19 state in which the public or a limited portion of the public may
20 assemble to hear or see musical works or other artistic works be
21 performed for the enjoyment of the members of the public there
22 assembled when the amount paid by the owner or operator for the
23 artistic service or artistic performance does not exceed \$3,000:

1 *Provided*, That nothing contained herein may be construed to deprive
2 private social gatherings, weddings or other private parties from
3 asserting the exemption set forth in this subdivision. For the
4 purposes of this exemption, artistic performance or artistic
5 service means and is limited to the conscious use of creative
6 power, imagination and skill in the creation of aesthetic
7 experience for an audience present and in attendance and includes,
8 and is limited to, stage plays, musical performances, poetry
9 recitations and other readings, dance presentation, circuses and
10 similar presentations and does not include the showing of any film
11 or moving picture, gallery presentations of sculptural or pictorial
12 art, nude or strip show presentations, video games, video arcades,
13 carnival rides, radio or television shows or any video or audio
14 taped presentations or the sale or leasing of video or audio tapes,
15 air shows or any other public meeting, display or show other than
16 those specified herein: *Provided, however*, That nothing contained
17 herein may be construed to exempt the sales of tickets from the tax
18 imposed in this article. The State Tax Commissioner shall propose
19 a legislative rule pursuant to article three, chapter twenty-nine-a
20 of this code establishing definitions and eligibility criteria for
21 asserting this exemption which is not inconsistent with the
22 provisions set forth herein: *Provided further*, That nude dancers
23 or strippers may not be considered as entertainers for the purposes

1 of this exemption;

2 (41) Charges to a member by a membership association or
3 organization which is exempt from paying federal income taxes under
4 Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986,
5 as amended, for membership in the association or organization,
6 including charges to members for newsletters prepared by the
7 association or organization for distribution primarily to its
8 members, charges to members for continuing education seminars,
9 workshops, conventions, lectures or courses put on or sponsored by
10 the association or organization, including charges for related
11 course materials prepared by the association or organization or by
12 the speaker or speakers for use during the continuing education
13 seminar, workshop, convention, lecture or course, but not including
14 any separate charge or separately stated charge for meals, lodging,
15 entertainment or transportation taxable under this article:
16 *Provided*, That the association or organization pays the tax imposed
17 by this article on its purchases of meals, lodging, entertainment
18 or transportation taxable under this article for which a separate
19 or separately stated charge is not made. A membership association
20 or organization which is exempt from paying federal income taxes
21 under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of
22 1986, as amended, may elect to pay the tax imposed under this
23 article on the purchases for which a separate charge or separately

1 stated charge could apply and not charge its members the tax
2 imposed by this article or the association or organization may
3 avail itself of the exemption set forth in subdivision (9) of this
4 subsection relating to purchases of tangible personal property for
5 resale and then collect the tax imposed by this article on those
6 items from its member;

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

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

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

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

18 (46) The service of providing technical evaluations for
19 compliance with federal and state environmental standards provided
20 by environmental and industrial consultants who have formal
21 certification through the West Virginia Department of Environmental
22 Protection or the West Virginia Bureau for Public Health or both.
23 For purposes of this exemption, the service of providing technical

1 evaluations for compliance with federal and state environmental
2 standards includes those costs of tangible personal property
3 directly used in providing such services that are separately billed
4 to the purchaser of such services and on which the tax imposed by
5 this article has previously been paid by the service provider;

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

13 (48) Lodging franchise fees, including royalties, marketing
14 fees, reservation system fees or other fees assessed after December
15 1, 1997, that have been or may be imposed by a lodging franchiser
16 as a condition of the franchise agreement; ~~and~~

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

19 (50) Sales of propane and other forms of heating oil to
20 churches, existing as of July 1, 2010, which are used exclusively
21 for the purpose of heating church buildings.

22 (b) *Refundable exemptions.* -- Any person having a right or
23 claim to any exemption set forth in this subsection shall first pay

1 to the vendor the tax imposed by this article and then apply to the
2 Tax Commissioner for a refund or credit, or as provided in section
3 nine-d of this article, give to the vendor his or her West Virginia
4 direct pay permit number. The following sales of tangible personal
5 property and services are exempt from tax as provided in this
6 subsection:

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

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

22 (3) Sales of property or services to nationally chartered
23 fraternal or social organizations for the sole purpose of free

1 distribution in public welfare or relief work: *Provided*, That
2 sales of gasoline and special fuel are taxable;

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

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

19 (6) Sales of construction and maintenance materials acquired
20 by a second party for use in the construction or maintenance of a
21 highway project: *Provided*, That in lieu of any refund or credit to
22 the person that paid the tax imposed by this article, the Tax
23 Commissioner shall pay to the Division of Highways for deposit into

1 the State Road Fund of the state reimbursement for the tax in the
2 amount estimated under the provisions of this subdivision:
3 *Provided, however,* That by June 15 of each fiscal year, the
4 division shall provide to the Tax Department an itemized listing of
5 highways projects with the amount of funds expended for highway
6 construction and maintenance. The Commissioner of Highways shall
7 request reimbursement of the tax based on an estimate that **forty**
8 **percent** of the total gross funds expended by the agency during the
9 fiscal period were for the acquisition of materials used for
10 highway construction and maintenance. The amount of the
11 reimbursement shall be calculated at six percent of the forty
12 percent.

NOTE: The purpose of this bill is to exempt existing churches from paying a tax on propane and other heating oils used for the purpose of heating a church building.

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