

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 555

(SENATORS LAIRD, WILLIAMS, BROWNING, PALUMBO, SNYDER,
MILLER, K. FACEMYER, WILLS, GREEN, STOLLINGS, PLYMALE,
JENKINS, UNGER AND FOSTER, *original sponsors*)

[Passed March 8, 2012; in effect from passage.]

AN ACT to amend and reenact §11-15-8d of the Code of West Virginia, 1931, as amended, relating to adding an exception to the limitation on the right of a contractor to assert sales and use tax exemptions of a purchaser when the purchaser is a nonprofit youth organization.

Be it enacted by the Legislature of West Virginia:

That §11-15-8d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-8d. Limitations on right to assert exemptions.

- 1 (a) Persons who perform “contracting” as defined in
- 2 section two of this article or persons acting in an agency
- 3 capacity may not assert any exemption to which the pur-

4 chaser of such contracting services or the principal is
5 entitled. Any statutory exemption to which a taxpayer may
6 be entitled is invalid unless the tangible personal property or
7 taxable service is actually purchased by such taxpayer and
8 is directly invoiced to and paid by such taxpayer. This
9 section does not apply to purchases by an employee for his or
10 her employer, purchases by a partner for his or her partner-
11 ship or purchases by a duly authorized officer of a corpora-
12 tion, or unincorporated organization, for his or her corpora-
13 tion or unincorporated organization so long as the purchase
14 is invoiced to and paid by the employer, partnership, corpo-
15 ration or unincorporated organization.

16 (b) *Transition rule.* — This section does not apply to
17 purchases of tangible personal property or taxable services
18 in fulfillment of a purchasing agent or procurement agent
19 contract executed and legally binding on the parties thereto
20 prior to September 15, 1999. This transition rule does not
21 apply to any purchases of tangible personal property or
22 taxable services made under such a contract after August 31,
23 1991, and this transition rule does not apply if the primary
24 purpose of the purchasing agent or procurement agent
25 contract was to avoid payment of consumers sales and use
26 taxes. Effective July 1, 2007, this section does not apply to
27 purchases of services, machinery, supplies or materials,
28 except gasoline and special fuel, to be directly used or
29 consumed in the construction, alteration, repair or improve-
30 ment of a new or existing building or structure by a person
31 performing “contracting”, as defined in section two of this
32 article, if the purchaser of the contracting services would be
33 entitled to claim the refundable exemption under subdivision
34 (2), subsection (b), section nine of this article had it pur-
35 chased the services, machinery, supplies or materials.
36 Effective July 1, 2009, this section does not apply to pur-
37 chases of services, computers, servers, building materials and
38 tangible personal property, except purchases of gasoline and
39 special fuel, to be installed into a building or facility or
40 directly used or consumed in the construction, alteration,
41 repair or improvement of a new or existing building or
42 structure by a person performing “contracting”, as defined

43 in section two of this article, if the purchaser of the contract-
44 ing services would be entitled to claim the exemption under
45 subdivision (7), subsection (a), section nine-h of this article.
46 This section shall not apply to qualified purchases of com-
47 puters and computer software, primary material handling
48 equipment, racking and racking systems, and their compo-
49 nents, or to qualified purchases of building materials and
50 certain tangible personal property, as those terms are
51 defined in section nine-n of this article, by a person perform-
52 ing “contracting”, as defined in section two of this article, if
53 the purchaser of the contracting services would be entitled
54 to claim the refundable exemption under section nine-n of
55 this article. Purchases of gasoline and special fuel shall not
56 be treated as exempt pursuant to this section.

57 (c) Effective July 1, 2011, notwithstanding any other
58 provision of this code to the contrary, this section shall apply
59 as to purchases of services, machinery, supplies or materials,
60 except gasoline and special fuel, to be directly used or
61 consumed in the construction, alteration, repair or improve-
62 ment of a new or existing natural gas compressor station or
63 gas transmission line having a diameter of twenty inches or
64 more by a person performing “contracting”, as defined in
65 section two of this article, even though the purchaser of the
66 contracting services would be entitled to claim the refund-
67 able exemption under subdivision (2), subsection (b), section
68 nine of this article had it purchased the services, machinery,
69 supplies or materials, unless the person or entity performing
70 contracting under this subsection, as the term “contracting”
71 is defined in section two of this article, complies with
72 subsection (e), section four, article thirteen-s of this chapter.

73 (d) (1) Effective July 1, 2012, this section does not apply
74 to purchases of services, building materials and tangible
75 personal property, except purchases of gasoline and special
76 fuel, to be installed into a building or facility or directly used
77 or consumed in the construction, alteration, repair or
78 improvement of a new or existing building or structure by a
79 person performing contracting, as defined in section two of
80 this article, if the purchaser of the contracting services is a

81 nonprofit youth organization that would be entitled to claim
82 the exemption under paragraph (E), subdivision (6), subsec-
83 tion (a), section nine of this article had it purchased the
84 services, machinery, supplies or materials.

85 (2) For purposes of this subsection, the term “nonprofit
86 youth organization” means any nonprofit organization,
87 including any subsidiary, affiliated or other related entity
88 within its corporate or business structure, that has been
89 chartered by the United States Congress to help train young
90 people to do things for themselves and others, and that has
91 established an area of at least six thousand contiguous acres
92 within West Virginia in which to provide adventure or
93 recreational activities for these young people and others.

94 (3) The exception provided in this subsection shall
95 terminate June 30, 2022.