

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4416**

4 (By Mr. Speaker (Mr. Miley) and Delegates Fragale  
5 and Iaquina)

6  
7 (Originating in the House Committee on Finance)

8 [February 20, 2014]

9  
10 A BILL to amend and reenact §11-15-9 of the Code of West Virginia,  
11 1931, as amended, relating to exempting certified professional  
12 estimator services from consumer sales and service tax; and  
13 providing definitions.

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. CONSUMER 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  
24 deliver it to the vendor of the property or service in the manner  
25 required by the Tax Commissioner. However, the Tax Commissioner

1 may, by rule, specify those exemptions authorized in this  
2 subsection for which exemption certificates are not required. The  
3 following sales of tangible personal property and services are  
4 exempt as provided in this subsection:

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

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

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

20 (4) Sales of vehicles which are titled by the Division of  
21 Motor Vehicles and which are subject to the tax imposed by section  
22 four, article three, chapter seventeen-a of this code or like tax;

23 (5) Sales of property or services to churches which make no  
24 charge whatsoever for the services they render: *Provided*, That the

1 exemption granted in this subdivision applies only to services,  
2 equipment, supplies, food for meals and materials directly used or  
3 consumed by these organizations and does not apply to purchases of  
4 gasoline or special fuel;

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

10 (A) A church or a convention or association of churches as  
11 defined in Section 170 of the Internal Revenue Code of 1986, as  
12 amended;

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

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

20 (D) An organization which has no paid employees and its gross  
21 income from fundraisers, less reasonable and necessary expenses  
22 incurred to raise the gross income (or the tangible personal  
23 property or services purchased with the net income), is donated to  
24 an organization which is exempt from income taxes under Section

1 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as  
2 amended;

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

9 (F) For purposes of this subsection:

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

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

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

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

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

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

1 (VI) The value of services or facilities (exclusive of  
2 services or facilities generally furnished to the public without  
3 charge) furnished by a governmental unit referred to in Section  
4 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an  
5 organization without charge. This term does not include any gain  
6 from the sale or other disposition of property which would be  
7 considered as gain from the sale or exchange of a capital asset or  
8 the value of an exemption from any federal, state or local tax or  
9 any similar benefit;

10 (ii) The term "charitable contribution" means a contribution  
11 or gift to or for the use of a corporation or organization,  
12 described in Section 170(c)(2) of the Internal Revenue Code of  
13 1986, as amended; and

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

17 (G) The exemption allowed by this subdivision does not apply  
18 to sales of gasoline or special fuel or to sales of tangible  
19 personal property or services to be used or consumed in the  
20 generation of unrelated business income as defined in Section 513  
21 of the Internal Revenue Code of 1986, as amended. The exemption  
22 granted in this subdivision applies only to services, equipment,  
23 supplies and materials used or consumed in the activities for which  
24 the organizations qualify as tax-exempt organizations under the

1 Internal Revenue Code and does not apply to purchases of gasoline  
2 or special fuel;

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

19 (8) Sales of tangible personal property or of any taxable  
20 services rendered for use or consumption in connection with the  
21 commercial production of an agricultural product the ultimate sale  
22 of which is subject to the tax imposed by this article or which  
23 would have been subject to tax under this article: *Provided, That*  
24 sales of tangible personal property and services to be used or

1 consumed in the construction of or permanent improvement to real  
2 property and sales of gasoline and special fuel are not exempt:  
3 *Provided, however,* That nails and fencing may not be considered as  
4 improvements to real property;

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

15 (10) Sales of newspapers when delivered to consumers by route  
16 carriers;

17 (11) Sales of drugs, durable medical goods, mobility-enhancing  
18 equipment and prosthetic devices dispensed upon prescription and  
19 sales of insulin to consumers for medical purposes. The amendment  
20 to this subdivision shall apply to sales made after December 31,  
21 2003;

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

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

2 (14) Casual and occasional sales of property or services not  
3 conducted in a repeated manner or in the ordinary course of  
4 repetitive and successive transactions of like character by a  
5 corporation or organization which is exempt from tax under  
6 subdivision (6) of this subsection on its purchases of tangible  
7 personal property or services. For purposes of this subdivision,  
8 the term "casual and occasional sales not conducted in a repeated  
9 manner or in the ordinary course of repetitive and successive  
10 transactions of like character" means sales of tangible personal  
11 property or services at fundraisers sponsored by a corporation or  
12 organization which is exempt, under subdivision (6) of this  
13 subsection, from payment of the tax imposed by this article on its  
14 purchases when the fundraisers are of limited duration and are held  
15 no more than six times during any twelve-month period and "limited  
16 duration" means no more than eighty-four consecutive hours:  
17 *Provided*, That sales for volunteer fire departments and volunteer  
18 school support groups, with duration of events being no more than  
19 eighty-four consecutive hours at a time, which are held no more  
20 than eighteen times in a twelve-month period for the purposes of  
21 this subdivision are considered "casual and occasional sales not  
22 conducted in a repeated manner or in the ordinary course of  
23 repetitive and successive transactions of a like character";

24 (15) Sales of property or services to a school which has



1 approval from the board of Trustees of the University System of  
2 West Virginia or the board of Directors of the state College System  
3 to award degrees, which has its principal campus in this state and  
4 which is exempt from federal and state income taxes under Section  
5 501(c)(3) of the Internal Revenue Code of 1986, as amended:

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

7 (16) Sales of lottery tickets and materials by licensed  
8 lottery sales agents and lottery retailers authorized by the state  
9 Lottery Commission, under the provisions of article twenty-two,  
10 chapter twenty-nine of this code;

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

14 (18) Notwithstanding the provisions of section eighteen or  
15 eighteen-b of this article or any other provision of this article  
16 to the contrary, sales of propane to consumers for poultry house  
17 heating purposes, with any seller to the consumer who may have  
18 prior paid the tax in his or her price, to not pass on the same to  
19 the consumer, but to make application and receive refund of the tax  
20 from the Tax Commissioner pursuant to rules which are promulgated  
21 after being proposed for legislative approval in accordance with  
22 chapter twenty-nine-a of this code by the Tax Commissioner;

23 (19) Any sales of tangible personal property or services  
24 purchased and lawfully paid for with food stamps pursuant to the

1 federal food stamp program codified in 7 U. S. C. §2011, *et seq.*,  
2 as amended, or with drafts issued through the West Virginia special  
3 supplement food program for women, infants and children codified in  
4 42 U. S. C. §1786;

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

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

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

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

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

20 (23) Dispensing of services performed by one corporation,  
21 partnership or limited liability company for another corporation,  
22 partnership or limited liability company when the entities are  
23 members of the same controlled group or are related taxpayers as  
24 defined in Section 267 of the Internal Revenue Code. "Control"

1 means ownership, directly or indirectly, of stock, equity interests  
2 or membership interests possessing fifty percent or more of the  
3 total combined voting power of all classes of the stock of a  
4 corporation, equity interests of a partnership or membership  
5 interests of a limited liability company entitled to vote or  
6 ownership, directly or indirectly, of stock, equity interests or  
7 membership interests possessing fifty percent or more of the value  
8 of the corporation, partnership or limited liability company;

9 (24) Food for the following are exempt:

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

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

24 (C) Food purchased or sold by a charitable or private

1 nonprofit organization, a nonprofit organization or a governmental  
2 agency under a program to provide food to low-income persons at or  
3 below cost;

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

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

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

22 (G) Food sold by volunteer fire departments and rescue squads  
23 that are exempt from federal income taxes under Section 501(c)(3)  
24 or (c)(4) of the Internal Revenue Code of 1986, as amended, when

1 the purpose of the sale is to obtain revenue for the functions and  
2 activities of the organization and the revenue obtained is exempt  
3 from federal income tax and actually expended for that purpose;

4 (25) Sales of food by little leagues, midget football leagues,  
5 youth football or soccer leagues, band boosters or other school or  
6 athletic booster organizations supporting activities for grades  
7 kindergarten through twelve and similar types of organizations,  
8 including scouting groups and church youth groups, if the purpose  
9 in selling the food is to obtain revenue for the functions and  
10 activities of the organization and the revenues obtained from  
11 selling the food is actually used in supporting or carrying on  
12 functions and activities of the groups: *Provided*, That the  
13 purchases made by the organizations are not exempt as a purchase  
14 for resale;

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

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

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

23 (29) Sales of tangible personal property or services to any  
24 person who claims exemption from the tax imposed by this article or

1 article fifteen-a of this chapter pursuant to the provision of any  
2 other chapter of this code;

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

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

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

24 (33) Sales of aircraft repair, remodeling and maintenance

1 services when the services are to an aircraft operated by a  
2 certified or licensed carrier of persons or property, or by a  
3 governmental entity, or to an engine or other component part of an  
4 aircraft operated by a certificated or licensed carrier of persons  
5 or property, or by a governmental entity and sales of tangible  
6 personal property that is permanently affixed or permanently  
7 attached as a component part of an aircraft owned or operated by a  
8 certificated or licensed carrier of persons or property, or by a  
9 governmental entity, as part of the repair, remodeling or  
10 maintenance service and sales of machinery, tools or equipment  
11 directly used or consumed exclusively in the repair, remodeling or  
12 maintenance of aircraft, aircraft engines or aircraft component  
13 parts for a certificated or licensed carrier of persons or property  
14 or for a governmental entity;

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

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

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

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

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

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

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

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

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

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



1 For the purpose of this subdivision, the term "value-added  
2 product" means the following products derived from processing a raw  
3 agricultural product, whether for human consumption or for other  
4 use. For purposes of this subdivision, the following enterprises  
5 qualify as processing raw agricultural products into value-added  
6 products: Those engaged in the conversion of:

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

9 (B) Fruits into wine;

10 (C) Honey into wine;

11 (D) Wool into fabric;

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

13 (F) Milk into cheese;

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

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

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

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

20 (40) Sales of music instructional services by a music teacher  
21 and artistic services or artistic performances of an entertainer or  
22 performing artist pursuant to a contract with the owner or operator  
23 of a retail establishment, restaurant, inn, bar, tavern, sports or  
24 other entertainment facility or any other business location in this

1 state in which the public or a limited portion of the public may  
2 assemble to hear or see musical works or other artistic works be  
3 performed for the enjoyment of the members of the public there  
4 assembled when the amount paid by the owner or operator for the  
5 artistic service or artistic performance does not exceed \$3,000:  
6 *Provided*, That nothing contained herein may be construed to deprive  
7 private social gatherings, weddings or other private parties from  
8 asserting the exemption set forth in this subdivision. For the  
9 purposes of this exemption, artistic performance or artistic  
10 service means and is limited to the conscious use of creative  
11 power, imagination and skill in the creation of aesthetic  
12 experience for an audience present and in attendance and includes,  
13 and is limited to, stage plays, musical performances, poetry  
14 recitations and other readings, dance presentation, circuses and  
15 similar presentations and does not include the showing of any film  
16 or moving picture, gallery presentations of sculptural or pictorial  
17 art, nude or strip show presentations, video games, video arcades,  
18 carnival rides, radio or television shows or any video or audio  
19 taped presentations or the sale or leasing of video or audio tapes,  
20 air shows or any other public meeting, display or show other than  
21 those specified herein: *Provided, however*, That nothing contained  
22 herein may be construed to exempt the sales of tickets from the tax  
23 imposed in this article. The State Tax Commissioner shall propose  
24 a legislative rule pursuant to article three, chapter twenty-nine-a

1 of this code establishing definitions and eligibility criteria for  
2 asserting this exemption which is not inconsistent with the  
3 provisions set forth herein: *Provided further,* That nude dancers  
4 or strippers may not be considered as entertainers for the purposes  
5 of this exemption;

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

1 under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of  
2 1986, as amended, may elect to pay the tax imposed under this  
3 article on the purchases for which a separate charge or separately  
4 stated charge could apply and not charge its members the tax  
5 imposed by this article or the association or organization may  
6 avail itself of the exemption set forth in subdivision (9) of this  
7 subsection relating to purchases of tangible personal property for  
8 resale and then collect the tax imposed by this article on those  
9 items from its member;

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

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

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

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

21 (46) The service of providing technical evaluations for  
22 compliance with federal and state environmental standards provided  
23 by environmental and industrial consultants who have formal  
24 certification through the West Virginia Department of Environmental

1 Protection or the West Virginia Bureau for Public Health or both.  
2 For purposes of this exemption, the service of providing technical  
3 evaluations for compliance with federal and state environmental  
4 standards includes those costs of tangible personal property  
5 directly used in providing such services that are separately billed  
6 to the purchaser of such services and on which the tax imposed by  
7 this article has previously been paid by the service provider;

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

15 (48) Lodging franchise fees, including royalties, marketing  
16 fees, reservation system fees or other fees assessed after December  
17 1, 1997, that have been or may be imposed by a lodging franchiser  
18 as a condition of the franchise agreement; and

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

21 (50) Services provided by certified professional estimators.  
22 For purposes of this subdivision, a certified professional  
23 estimator is a person who holds a certificate from the American  
24 Society of Professional Estimators and provides professional

1 construction cost consulting services for residential, commercial,  
2 industrial or public works construction projects.

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

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

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

1 fuel;

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

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

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

22 (6) Sales of construction and maintenance materials acquired  
23 by a second party for use in the construction or maintenance of a  
24 highway project: *Provided*, That in lieu of any refund or credit to

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