

1 **H. B. 4456**

2
3 (By Delegate Morgan)

4 [Introduced February 11, 2014; referred to the
5 Committee on Finance.]

6 **FISCAL**
7 **NOTE**

8
9
10 A BILL to amend and reenact §11-15-3 of the Code of West Virginia,
11 1931, as amended; and to amend and reenact §11-15A-2 of said
12 code, all relating to increasing sales and use taxes by one
13 percent.

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

15 That §11-15-3 of the Code of West Virginia, 1931, as amended,
16 be amended and reenacted; and that §11-15A-2 of said code be
17 amended and reenacted, all to read as follows:

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

19 **§11-15-3. Amount of tax; allocation of tax and transfers.**

20 (a) *Vendor to collect.* -- For the privilege of selling
21 tangible personal property or custom software and for the privilege
22 of furnishing certain selected services defined in sections two and
23 eight of this article, the vendor shall collect from the purchaser

1 the tax as provided under this article and article fifteen-b of
 2 this chapter, and shall pay the amount of tax to the Tax
 3 Commissioner in accordance with the provisions of this article or
 4 article fifteen-b of this chapter.

5 (b) *Amount of tax.* -- The general consumer sales and service
 6 tax imposed by this article shall be at the rate of ~~6¢~~ \$0.07 on the
 7 dollar of sales or services, excluding gasoline and special fuel
 8 sales, which remain taxable at the rate of ~~5¢~~ \$0.05 on the dollar
 9 of sales: Provided, That, the one percent increase of tax on the
 10 purchase price adopted pursuant to the reenactment of this section
 11 during the 2014 Regular Session of the Legislature shall expire on
 12 June 30, 2018. Effective July 1, 2018, the tax on tangible personal
 13 property, custom software or taxable services shall be six percent
 14 of the purchase price, excluding gasoline and special fuel sales,
 15 which remain taxable at the rate of \$0.05 on the dollar of sales.

16 ~~(c) Calculation tax on fractional parts of a dollar until~~
 17 ~~January 1, 2004. -- There shall be no tax on sales where the~~
 18 ~~monetary consideration is 5¢ or less. The amount of the tax shall~~
 19 ~~be computed as follows:~~

20 ~~(1) On each sale, where the monetary consideration is from 6¢~~
 21 ~~to 16¢, both inclusive, 1¢.~~

22 ~~(2) On each sale, where the monetary consideration is from 17¢~~
 23 ~~to 33¢, both inclusive, 2¢.~~

24 ~~(3) On each sale, where the monetary consideration is from 34¢~~

1 ~~to 50¢, both inclusive, 3¢.~~

2 ~~(4) On each sale, where the monetary consideration is from 51¢~~
3 ~~to 67¢, both inclusive, 4¢.~~

4 ~~(5) On each sale, where the monetary consideration is from 68¢~~
5 ~~to 84¢, both inclusive, 5¢.~~

6 ~~(6) On each sale, where the monetary consideration is from 85¢~~
7 ~~to \$1, both inclusive, 6¢.~~

8 ~~(7) If the sale price is in excess of \$1, 6¢ on each whole~~
9 ~~dollar of sale price, and upon any fractional part of a dollar in~~
10 ~~excess of whole dollars as follows: 1¢ on the fractional part of~~
11 ~~the dollar if less than 17¢; 2¢ on the fractional part of the~~
12 ~~dollar if in excess of 16¢ but less than 34¢; 3¢ on the fractional~~
13 ~~part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the~~
14 ~~fractional part of the dollar if in excess of 50¢ but less than~~
15 ~~68¢; 5¢ on the fractional part of the dollar if in excess of 67¢~~
16 ~~but less than 85¢; and 6¢ on the fractional part of the dollar if~~
17 ~~in excess of 84¢. For example, the tax on sales from \$1.01 to~~
18 ~~\$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33, both~~
19 ~~inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on~~
20 ~~sales from \$1.51 to \$1.67, both inclusive, 10¢; on sales from \$1.68~~
21 ~~to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to \$2, both~~
22 ~~inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due~~
23 ~~under this article shall be calculated as provided in subsection~~
24 ~~(d) of this subsection and this subsection (c) does not apply to~~

1 ~~sales made after December 31, 2003.~~

2 ~~(d)~~ (c) *Calculation of tax on fractional parts of a dollar*
3 *after December 31, 2003.* -- Beginning January 1, 2004, the tax
4 computation under subsection (b) of this section shall be carried
5 to the third decimal place, and the tax rounded up to the next
6 whole cent whenever the third decimal place is greater than four
7 and rounded down to the lower whole cent whenever the third decimal
8 place is four or less. The vendor may elect to compute the tax due
9 on a transaction on a per item basis or on an invoice basis
10 provided the method used is consistently used during the reporting
11 period.

12 ~~(e)~~ (d) *No aggregation of separate sales transactions,*
13 *exception for coin-operated devices.* -- Separate sales, such as
14 daily or weekly deliveries, shall not be aggregated for the purpose
15 of computation of the tax even though the sales are aggregated in
16 the billing or payment therefor. Notwithstanding any other
17 provision of this article, coin-operated amusement and vending
18 machine sales shall be aggregated for the purpose of computation of
19 this tax.

20 ~~(f)~~ (e) *Rate of tax on certain mobile homes.* -- Notwithstanding
21 any provision of this article to the contrary, after December 31,
22 2003, the tax levied on sales of mobile homes to be used by the
23 owner thereof as his or her principal year-round residence and
24 dwelling shall be an amount equal to six percent of fifty percent

1 of the sales price.

2 (g) *Construction; custom software.* -- After December 31, 2003,
3 whenever the words "tangible personal property" or "property"
4 appear in this article, the same shall also include the words
5 "custom software".

6 (h) *Computation of tax on sales of gasoline and special fuel.*
7 -- The method of computation of tax provided in this section does
8 not apply to sales of gasoline and special fuel.

9 **ARTICLE 15A. USE TAX.**

10 **§11-15A-2. Imposition of tax; ~~six percent~~ seven percent tax rate;**
11 **inclusion of services as taxable; transition rules;**
12 **allocation of tax and transfers.**

13 (a) An excise tax is hereby levied and imposed on the use in
14 this state of tangible personal property, custom software or
15 taxable services, to be collected and paid as provided in this
16 article or article fifteen-b of this chapter, at the rate of ~~six~~
17 ~~percent~~ seven percent of the purchase price of the property or
18 taxable services, except as otherwise provided in this article:
19 Provided, That, the one percent increase of tax on the purchase
20 price adopted pursuant to the reenactment of this section during
21 the 2014 Regular Session of the Legislature shall expire on June
22 30, 2018. Effective July 1, 2018, the tax on tangible personal
23 property, custom software or taxable services shall be six percent

1 of the purchase price.

2 (b) *Calculation of tax on fractional parts of a dollar.* -- The
3 tax computation under subsection (a) of this section shall be
4 carried to the third decimal place and the tax rounded up to the
5 next whole cent whenever the third decimal place is greater than
6 four and rounded down to the lower whole cent whenever the third
7 decimal place is four or less. The vendor may elect to compute the
8 tax due on a transaction on a per item basis or on an invoice basis
9 provided the method used is consistently used during the reporting
10 period.

11 (c) "Taxable services," for the purposes of this article,
12 means services of the nature that are subject to the tax imposed by
13 article fifteen of this chapter. In this article, wherever the
14 words "tangible personal property" or "property" appear, the same
15 shall include the words "or taxable services," where the context so
16 requires.

17 (d) Use tax is hereby imposed upon every person using tangible
18 personal property, custom software or taxable service within this
19 state. That person's liability is not extinguished until the tax
20 has been paid. A receipt with the tax separately stated thereon
21 issued by a retailer engaged in business in this state, or by a
22 foreign retailer who is authorized by the Tax Commissioner to
23 collect the tax imposed by this article, relieves the purchaser
24 from further liability for the tax to which the receipt refers.

1 (e) Purchases of tangible personal property or taxable
2 services made for the government of the United States or any of its
3 agencies by ultimate consumers is subject to the tax imposed by
4 this section. Industrial materials and equipment owned by the
5 federal government within the State of West Virginia of a character
6 not ordinarily readily obtainable within the state, is not subject
7 to use tax when sold, if the industrial materials and equipment
8 would not be subject to use taxes if sold outside of the state for
9 use in West Virginia.

10 (f) This article does not apply to purchases made by counties
11 or municipal corporations.

NOTE: The purpose of this bill is to increase the consumer sales and use taxes by one cent (from six percent to seven percent), with certain exceptions. The tax increase authorized by this bill sunsets July 1, 2018.

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