

H. B. 2211

(By Mr. Speaker, (Mr. Armstead) and Delegate Miley))

[By Request of the Executive]

[Introduced January 22, 2015; referred to the
Committee on Roads and Transportation then Finance.]

A BILL to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to the sales tax exemption for certain sales of materials acquired for use in a highway construction or maintenance project; specifying elimination for the fiscal year beginning July 1, 2014, of the refundable exemption for the sales of construction and maintenance material acquired by a second party for use in the construction or maintenance of a highway project, with retroactive effect for the elapsed portion of that fiscal year.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9. Exemptions.

(a) Exemptions for which exemption certificate may be issued. -- A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this

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

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

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

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

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

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

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

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

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

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

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

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

21 (F) For purposes of this subsection:

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

- 1 (I) Gifts, grants, contributions or membership fees;
- 2 (II) Gross receipts from fundraisers which include receipts from admissions, sales of
3 merchandise, performance of services or furnishing of facilities in any activity which is not an
4 unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986,
5 as amended;
- 6 (III) Net income from unrelated business activities, whether or not the activities are carried
7 on regularly as a trade or business;
- 8 (IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of
9 1986, as amended;
- 10 (V) Tax revenues levied for the benefit of a corporation or organization either paid to or
11 expended on behalf of the organization; and
- 12 (VI) The value of services or facilities (exclusive of services or facilities generally furnished
13 to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of
14 the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does
15 not include any gain from the sale or other disposition of property which would be considered as gain
16 from the sale or exchange of a capital asset or the value of an exemption from any federal, state or
17 local tax or any similar benefit;
- 18 (ii) The term "charitable contribution" means a contribution or gift to or for the use of a
19 corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986,
20 as amended; and
- 21 (iii) The term "membership fee" does not include any amounts paid for tangible personal
22 property or specific services rendered to members by the corporation or organization;

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

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

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

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

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

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

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

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

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

18 (14) Casual and occasional sales of property or services not conducted in a repeated manner
19 or in the ordinary course of repetitive and successive transactions of like character by a corporation
20 or organization which is exempt from tax under subdivision (6) of this subsection on its purchases
21 of tangible personal property or services. For purposes of this subdivision, the term "casual and
22 occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and

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

11 (15) Sales of property or services to a school which has approval from the Board of Trustees
12 of the University System of West Virginia or the Board of Directors of the State College System to
13 award degrees, which has its principal campus in this state and which is exempt from federal and
14 state income taxes under Section 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 lottery sales agents and lottery retailers
17 authorized by the state Lottery Commission, under the provisions of article twenty-two, chapter
18 twenty-nine of this code;

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

21 (18) Notwithstanding the provisions of section eighteen or eighteen-b of this article or any
22 other provision of this article to the contrary, sales of propane to consumers for poultry house heating

1 purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not
2 pass on the same to the consumer, but to make application and receive refund of the tax from the Tax
3 Commissioner pursuant to rules which are promulgated after being proposed for legislative approval
4 in accordance with chapter twenty-nine-a of this code by the Tax Commissioner;

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

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

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

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

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

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

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

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

7 (24) Food for the following are exempt:

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

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

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

21 (D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or
22 a governmental agency under a program operating in West Virginia for a minimum of five years to

1 provide food at or below cost to individuals who perform a minimum of two hours of community
2 service for each unit of food purchased from the organization;

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

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

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

16 (25) Sales of food by little leagues, midget football leagues, youth football or soccer leagues,
17 band boosters or other school or athletic booster organizations supporting activities for grades
18 kindergarten through twelve and similar types of organizations, including scouting groups and
19 church youth groups, if the purpose in selling the food is to obtain revenue for the functions and
20 activities of the organization and the revenues obtained from selling the food is actually used in
21 supporting or carrying on functions and activities of the groups: *Provided*, That the purchases made
22 by the organizations are not exempt as a purchase for resale;

- 1 (26) Charges for room and meals by fraternities and sororities to their members: *Provided*,
2 That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;
- 3 (27) Sales of or charges for the transportation of passengers in interstate commerce;
- 4 (28) Sales of tangible personal property or services to any person which this state is
5 prohibited from taxing under the laws of the United States or under the Constitution of this state;
- 6 (29) Sales of tangible personal property or services to any person who claims exemption from
7 the tax imposed by this article or article fifteen-a of this chapter pursuant to the provision of any
8 other chapter of this code;
- 9 (30) Charges for the services of opening and closing a burial lot;
- 10 (31) Sales of livestock, poultry or other farm products in their original state by the producer
11 of the livestock, poultry or other farm products or a member of the producer's immediate family who
12 is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock
13 sold at public sales sponsored by breeders or registry associations or livestock auction markets:
14 *Provided*, That the exemptions allowed by this subdivision may be claimed without presenting or
15 obtaining exemption certificates provided the farmer maintains adequate records;
- 16 (32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of
17 tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this
18 article and sales of coin-operated video arcade machines or video arcade games to a person engaged
19 in the business of providing the machines to the public for a charge upon which the tax imposed by
20 this article is remitted to the Tax Commissioner: *Provided*, That the exemption provided in this
21 subdivision may be claimed by presenting to the seller a properly executed exemption certificate;
- 22 (33) Sales of aircraft repair, remodeling and maintenance services when the services are to

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

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

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

15 (36) Sales of services by public libraries or by libraries at academic institutions or by libraries
16 at institutions of higher 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 limited to, reports, lists of focus
21 group recruits and compilation of data are transferred to the client across state lines by mail, wire or
22 other means of interstate commerce, for use by the client outside the State of West Virginia; and

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

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

7 (39) Sales of property or services to persons within the state when those sales are for the
8 purposes of the production of value-added products: *Provided*, That the exemption granted in this
9 subdivision applies only to services, equipment, supplies and materials directly used or consumed
10 by those persons engaged solely in the production of value-added products: *Provided, however*, That
11 this exemption may not be claimed by any one purchaser for more than five consecutive years,
12 except as otherwise permitted in this section. For the purpose of this subdivision, the term "value-
13 added product" means the following products derived from processing a raw agricultural product,
14 whether for human consumption or for other use. For purposes of this subdivision, the following
15 enterprises qualify as processing raw agricultural products into value-added products: Those engaged
16 in the conversion of:

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

18 (B) Fruits into wine;

19 (C) Honey into wine;

20 (D) Wool into fabric;

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

22 (F) Milk into cheese;

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

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

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

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

5 (40) Sales of music instructional services by a music teacher and artistic services or artistic

6 performances of an entertainer or performing artist pursuant to a contract with the owner or operator

7 of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any

8 other business location in this state in which the public or a limited portion of the public may

9 assemble to hear or see musical works or other artistic works be performed for the enjoyment of the

10 members of the public there assembled when the amount paid by the owner or operator for the

11 artistic service or artistic performance does not exceed \$3,000: *Provided*, That nothing contained

12 herein may be construed to deprive private social gatherings, weddings or other private parties from

13 asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic

14 performance or artistic service means and is limited to the conscious use of creative power,

15 imagination and skill in the creation of aesthetic experience for an audience present and in

16 attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and

17 other readings, dance presentation, circuses and similar presentations and does not include the

18 showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or

19 strip show presentations, video games, video arcades, carnival rides, radio or television shows or any

20 video or audio taped presentations or the sale or leasing of video or audio tapes, air shows or any

21 other public meeting, display or show other than those specified herein: *Provided, however*, That

22 nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in

1 this article. The State Tax Commissioner shall propose a legislative rule pursuant to article three,
2 chapter twenty-nine-a of this code establishing definitions and eligibility criteria for asserting this
3 exemption which is not inconsistent with the provisions set forth herein: *Provided further*, That nude
4 dancers or strippers may not be considered as entertainers for the purposes of this exemption;

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

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

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

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

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

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

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

21 (48) Lodging franchise fees, including royalties, marketing fees, reservation system fees or
22 other fees assessed after December, 1997, that have been or may be imposed by a lodging franchiser

1 as a condition of the franchise agreement; and

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

4 (b) Refundable exemptions. -- Any person having a right or claim to any exemption set forth
5 in this subsection shall first pay 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 nine-d of this article, give to the
7 vendor his or her West Virginia direct pay permit number. The following sales of tangible personal
8 property and services are exempt from tax as provided in this subsection:

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

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

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

21 (4) Sales and services, firefighting or station house equipment, including construction and
22 automotive, made to any volunteer fire department organized and incorporated under the laws of the

1 State of West Virginia: *Provided*, That sales of gasoline and special fuel are taxable;

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

9 (6) Sales of construction and maintenance materials acquired by a second party for use in the
10 construction or maintenance of a highway project: *Provided*, That in lieu of any refund or credit to
11 the person that paid the tax imposed by this article, the Tax Commissioner shall pay to the Division
12 of Highways for deposit into the State Road Fund of the state reimbursement for the tax in the
13 amount estimated under the provisions of this subdivision: *Provided, however*, That June, 15 of each
14 fiscal year, the division shall provide to the Tax Department an itemized listing of highways projects
15 with the amount of funds expended for highway construction and maintenance. The Commissioner
16 of Highways shall request reimbursement of the tax based on an estimate that forty percent of the
17 total gross funds expended by the agency during the fiscal period were for the acquisition of
18 materials used for highway construction and maintenance. The amount of the reimbursement shall
19 be calculated at six percent of the forty percent: *Provided, further*, That the exemption authorized
20 under this subdivision (6) is eliminated for the fiscal year beginning on July 1, 2014, with retroactive
21 effect back to July 1, 2014, and the exemption authorized under this subdivision (6) shall then
22 resume beginning on July 1, 2015.

NOTE: The purpose of this bill is to eliminate the consumers sales and service tax exemption on purchases of certain materials by a second party in construction or maintenance of a highways project for the 2015 fiscal year, and to resume the exemption for the 2016 fiscal year and thereafter.

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