

H. B. 2704

(By Delegate Morgan)

[Introduced February 12, 2015; referred to the
Committee on Finance.]

**FISCAL
NOTE**

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

(a) *Vendor to collect.* — For the privilege of selling tangible personal property or custom
software and for the privilege of furnishing certain selected services defined in sections two and eight
of this article, the vendor shall collect from the purchaser the tax as provided under this article and
article fifteen-b of this chapter, and shall pay the amount of tax to the Tax Commissioner in
accordance with the provisions of this article or article fifteen-b of this chapter.

1 (b) *Amount of tax.* — The general consumer sales and service tax imposed by this article shall
 2 be at the rate of ~~6¢~~ 7¢ on the dollar of sales or services, excluding gasoline and special fuel sales,
 3 which remain taxable at the rate of 5¢ on the dollar of sales: Provided, That, the one percent
 4 increase of tax on the purchase price adopted pursuant to the reenactment of this section during the
 5 2015 Regular Session of the Legislature expires on June 30, 2019. Effective July 1, 2019, the tax on
 6 tangible personal property, custom software or taxable services is six percent of the purchase price,
 7 excluding gasoline and special fuel sales, which remain taxable at the rate of 5¢ on the dollar of
 8 sales.

9 ~~(e) *Calculation tax on fractional parts of a dollar until January 1, 2004.* — There shall be~~
 10 ~~no tax on sales where the monetary consideration is 5¢ or less. The amount of the tax shall be~~
 11 ~~computed as follows:~~

- 12 ~~(1) On each sale, where the monetary consideration is from 6¢ to 16¢, both inclusive, 1¢.~~
 13 ~~(2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.~~
 14 ~~(3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.~~
 15 ~~(4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.~~
 16 ~~(5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.~~
 17 ~~(6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.~~
 18 ~~(7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any~~
 19 ~~fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the dollar~~
 20 ~~if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢; 3¢ on the~~
 21 ~~fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional part of the~~
 22 ~~dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in excess of 67¢~~

1 but less than 85¢, and 6¢ on the fractional part of the dollar if in excess of 84¢. For example, the
 2 tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33, both inclusive,
 3 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67, both inclusive,
 4 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to \$2, both inclusive,
 5 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall be calculated as
 6 provided in subsection (d) of this subsection and this subsection (c) does not apply to sales made
 7 after December 31, 2003.

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

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

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

1 six percent of fifty percent of the sales price.

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

5 ~~(h)~~ (g) *Computation of tax on sales of gasoline and special fuel.* — The method of
6 computation of tax provided in this section does not apply to sales of gasoline and special fuel.

7 **ARTICLE 15A. USE TAX.**

8 **§11-15A-2. Imposition of tax; ~~six percent~~ seven percent tax rate; inclusion of services as**
9 **taxable; transition rules; allocation of tax and transfers.**

10 (a) An excise tax is hereby levied and imposed on the use in this state of tangible personal
11 property, custom software or taxable services, to be collected and paid as provided in this article or
12 article fifteen-b of this chapter, at the rate of ~~six percent~~ seven percent of the purchase price of the
13 property or taxable services, except as otherwise provided in this article: Provided, That, the one
14 percent increase of tax on the purchase price adopted pursuant to the reenactment of this section
15 during the 2015 Regular Session of the Legislature expires on June 30, 2019. Effective July 1, 2019,
16 the tax on tangible personal property, custom software or taxable services is six percent of the
17 purchase price.

18 (b) *Calculation of tax on fractional parts of a dollar.* — The tax computation under
19 subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to the
20 next whole cent whenever the third decimal place is greater than four and rounded down to the lower
21 whole cent whenever the third decimal place is four or less. The vendor may elect to compute the
22 tax due on a transaction on a per item basis or on an invoice basis provided the method used is

1 consistently used during the reporting period.

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

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

12 (e) Purchases of tangible personal property or taxable services made for the government of
13 the United States or any of its agencies by ultimate consumers is subject to the tax imposed by this
14 section. Industrial materials and equipment owned by the federal government within the State of
15 West Virginia of a character not ordinarily readily obtainable within the state, is not subject to use
16 tax when sold, if the industrial materials and equipment would not be subject to use taxes if sold
17 outside of the state for use in West Virginia.

18 (f) This article does not apply to purchases made by counties 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

sunsetts July 1, 2019.

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