

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 3015

**FISCAL
NOTE**

2015 Carryover

(BY DELEGATE FAST)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating
2 to exempting from property tax certain properties in this state owned by nonprofit youth
3 organizations and built at cost of at least \$100 million whether or not the property is used
4 for the nonprofit youth organization's charitable or nonprofit purpose to help raise funds
5 for the benefit of the nonprofit youth organization; providing exceptions to the exemption;
6 setting forth programs that are to be considered charitable nonprofit uses; providing
7 where that three percent of gross revenues is to be transferred; setting forth where that
8 revenue is to be transferred; and establishing terms.

Be it enacted by the Legislature of West Virginia:

9 That §11-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted
10 to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

(a) All property, real and personal, described in this subsection, and to the extent limited by this section, is exempt from taxation:

(1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law;

(2) Property belonging exclusively to the state;

(3) Property belonging exclusively to any county, district, city, village or town in this state and used for public purposes;

(4) Property located in this state belonging to any city, town, village, county or any other political subdivision of another state and used for public purposes;

(5) Property used exclusively for divine worship;

(6) Parsonages and the household goods and furniture pertaining thereto;

(7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship or for the purpose of paying indebtedness thereon;

(8) Cemeteries;

(9) Property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture;

(10) Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university;

(11) Public and family libraries;

(12) Property used for charitable purposes and not held or leased out for profit;

(13) Property used for the public purposes of distributing electricity, water or natural gas or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit;

(14) Property used for area economic development purposes by nonprofit corporations when the property is not leased out for profit;

(15) All real estate not exceeding one acre in extent, and the buildings on the real estate, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization

affiliated with a university or college, when the property is used as residential accommodations or as a dormitory for members of the organization;

(16) All property belonging to benevolent associations not conducted for private profit;

(17) Property belonging to any public institution for the education of the deaf, ~~dumb~~ intellectually disabled or blind or any hospital not held or leased out for profit;

(18) Houses of refuge and mental health facility or orphanage;

(19) Homes for children or for the aged, friendless or infirm not conducted for private profit;

(20) Fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies;

(21) All property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year;

(22) Household goods to the value of \$200, whether or not held or used for profit;

(23) Bank deposits and money;

(24) Household goods, which for purposes of this section means only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property, when not held or used for profit;

(25) Personal effects, which for purposes of this section means only articles and items of personal property commonly worn on or about the human body or carried by a person and normally thought to be associated with the person when not held or used for profit;

(26) Dead victuals laid away for family use;

(27) All property belonging to the state, any county, district, city, village, town or other political subdivision or any state college or university which is subject to a lease purchase agreement and which provides that, during the term of the lease purchase agreement, title to the leased property rests in the lessee so long as lessee is not in default or shall not have terminated

the lease as to the property;

(28) Personal property, including vehicles that qualify for a farm use exemption certificate pursuant to section two, article three, chapter seventeen-a of this code and livestock, employed exclusively in agriculture, as defined in article ten, section one of the West Virginia Constitution: *Provided*, That this exemption only applies in the case of such personal property used on a farm or farming operation that annually produces for sale agricultural products, as defined in rules of the Tax Commissioner; and

(29) Property owned by a nonprofit organization whose primary purpose is youth development by means of adventure, educational or recreational activities for young people, at a nonprofit constructed facility built with the expenditure of no less than \$100 million, where such facility is capable of supporting additional activities within the region or State of West Virginia and which is leased or used to generate revenue for the nonprofit organization whether or not said property is used by the nonprofit organization for its nonprofit purpose, subject to the restrictions set forth in paragraph (A) of this subdivision. As used in this subdivision, "event," "events," "program," or "programs" include only nonprofit youth activities designed, organized and implemented for the purposes of religious and spiritual guidance, character building, mentoring, educational and vocational training and teaching of youth.

(A) Real property, otherwise exempt from taxation under this subdivision, is not exempt if any of the following restrictions apply:

(i) Lodging or camping facilities rented on a per-night for-profit basis to the general public or operated or advertised as a public motel, hotel, bed and breakfast, or campground. However, subject to paragraph (C) of this subdivision nothing herein may be construed to prohibit the use of lodging and campground facilities by persons participating in retreats, meetings, and multiday spectator sports events being held on-site wherein on-site lodging or camping is offered as part

of a program.

(ii) Operating any retail store located on the property that is open to persons other than who are attending programs on the property regardless of the nature of the program offered. However, this limitation does not apply to up to two gift shops at a welcome or information centers located adjacent to an entrance public highway operated by the nonprofit organization which is open to the general public.

(iii) Utilization of zip-lines, canopy tours, wheeled sports and climbing facilities by the general public on a for-profit fee basis. However, this restriction does not preclude the sale of individual visitor passes allowing for tours and access to limited paid-admission areas of the facility open to the public for the purpose of viewing programs consistent with the owner's nonprofit purposes where zip-lines, canopy tours, wheeled sports or climbing facilities are merely components of the programs on the property used, and provided that all such visitor fees are sold subject to the applicable state and local sales tax. Except as otherwise provided, visitors purchasing one-day admissions under this provision are not allowed to rent or utilize any on-site overnight lodging or camping facilities.

(iv) Leasing or renting the otherwise exempt property, or portion thereof on a for-profit basis for spectator activities including, but not limited to, zip-lining, canopy tours, wheeled sports, climbing, sporting competitions, concerts, exhibitions or mass gatherings.

(B) Programs or activities at the facility held in conjunction with a government organization or sponsored by other nonprofit organizations serving youth, veterans, military services, public services including, fire, police, emergency and search and rescue services, government agencies, schools and universities, health care providers and similar organizations or groups which are designed to provide opportunities for learning or training in the areas of leadership, character education, science, technology, engineering, arts and mathematics (STEAM) programs, physical

challenges, sustainability, conservation and outdoor learning programs shall be considered a charitable or nonprofit use for the purposes of this section.

(C) When exempt property or facilities are used in a manner outside the restrictions set forth in this section, the owner of the exempt property shall pay an amount equal to three percent of the gross revenue for such use as follows:

(1) One and one-half percent of the gross revenues shall be paid quarterly to the Tourism Promotion Fund established in section twelve, article two, chapter five-b of this code.

(2) One and one-half percent of the gross revenues shall be paid quarterly into separate accounts established and maintained by the sheriffs of Fayette, Nicholas and Raleigh counties to be used solely for the establishment and delivery of a science, technology, engineering, art and math (STEAM) program in conjunction with the owner of the exempt property. The funds shall be divided equally for use in each county and the programs must be approved by the respective superintendents of the county board of education. Expenditures from the accounts shall be authorized by the superintendents.

(D) If during periods of use which are subject to the restrictions of this section merchants are allowed to do business on the property resulting in the required payments under paragraph (C) of this subdivision, the owner or lessee of the property shall offer space to local merchants on terms at least as favorable as are offered to other merchants.

(E) As used herein, owner includes the owner holding record title to the property and its affiliates to the extent they are commonly owned, controlled or have the power to appoint the governing body of the affiliate.

(F) Nothing in this subdivision may be construed to prohibit the owner of property otherwise subject to this section from having portions of the property severed from the remainder of the property, assessed and taxed as if nonexempt and thereafter conducting business on such

property the same as any other nonexempt property, with any severed property to include all surrounding property which serves to support the nonexempt business or activity.

~~(29)~~ (30) Any other property or security exempted by any other provision of law.

(b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt from taxation which has been purchased or procured for the purpose of evading taxation whether temporarily holding the same over the first day of the assessment year or otherwise.

(c) Real property which is exempt from taxation by subsection (a) of this section shall be entered upon the assessor's books, together with the true and actual value thereof, but no taxes may be levied upon the property or extended upon the assessor's books.

(d) Notwithstanding any other provisions of this section, this section does not exempt from taxation any property owned by, or held in trust for, educational, literary, scientific, religious or other charitable corporations or organizations, including any public or private nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and immediately for the purposes of the corporations or organizations.

(e) The Tax Commissioner shall, by issuance of rules, provide each assessor with guidelines to ensure uniform assessment practices statewide to effect the intent of this section.

(f) Inasmuch as there is litigation pending regarding application of this section to property held by fraternities and sororities, amendments to this section enacted in the year one thousand nine hundred ninety-eight shall apply to all cases and controversies pending on the date of such enactment.

(g) The amendment to subdivision (27), subsection (a) of this section, passed during the 2005 five regular session of the Legislature, shall apply to all applicable lease purchase agreements in existence upon the effective date of the amendment.

NOTE: The purpose of this bill is to enact enabling legislation for the "Nonprofit Youth Organization Tax Exemption Support Amendment" to Article X of the Constitution of the State of West Virginia passed by the voters of the state at the general election of November 4, 2014. The bill exempts from property tax certain properties in this state owned by nonprofit youth organizations and built at cost of at least \$100 million whether or not the property is used for the nonprofit youth organization's charitable or nonprofit purpose to help raise funds for the benefit of the nonprofit youth organization. The bill provides exceptions to the exemption. The bill sets forth programs that are to be considered charitable nonprofit uses. The bill provides for that three percent of gross revenues are to be paid in certain instances. The bill setting forth where that revenue is to be transferred. The bill establishes terms.

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