

WEST VIRGINIA LEGISLATURE
2017 FIRST EXTRAORDINARY SESSION

Introduced

Senate Bill 1004

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

[BY REQUEST OF THE EXECUTIVE]

[Introduced May 5, 2017]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto two new
2 sections, designated §11-13A-3f and §11-13A-3g; to amend and reenact §11-15-3, §11-
3 15-9, §11-15-9b and §11-15-9h of said code; to amend said code by adding thereto a new
4 section, designated §11-15-3d; to amend and reenact §11-15A-2 of said code; to amend
5 and reenact §11-21-8a and §11-21-8e of said code; to amend said code by adding thereto
6 three new sections, designated §11-21-4g, §11-21-4h and §11-21-12j; to amend said code
7 by adding thereto a new section, designated §11-24-4c; and to amend and reenact §11-
8 24-23a of said code, all relating generally to taxation; imposing graduated rate severance
9 tax on privilege of producing coal as of specified date; imposing graduated rate severance
10 tax on privilege of producing natural gas as of specified date; increasing rate of consumers
11 sales and service tax as of specified date; imposing tax on telecommunication services
12 and ancillary telecommunication services as of specified date; eliminating certain
13 exemptions from consumers sales and service tax as of specified date; increasing rate of
14 use tax as of specified date; reducing number of classifications and rates of personal
15 income tax as of January 1, 2018; providing for phase-out of personal income tax and
16 specifying triggering event; imposing temporary additional income tax on persons with
17 West Virginia taxable incomes of \$300,000 or more as of specified date; exempting
18 military retirement income from personal income tax after specified date; increasing
19 amount of credit allowed against personal and corporation net income taxes for qualified
20 rehabilitation expenditures made after specified date; temporarily increasing rate of
21 corporation net income tax; and making technical corrections in various sections.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto two
2 new sections, designated §11-13A-3f and §11-13A-3g; that §11-15-3, §11-15-9, §11-15-9b and
3 §11-15-9h of said code be amended and reenacted; that said code be amended by adding thereto
4 a new section, designated §11-15-3d; that §11-15A-2 of said code be amended and reenacted;

5 that §11-21-8a and §11-21-8e of said code be amended and reenacted; that said code be
6 amended by adding thereto three new sections, designated §11-21-4g, §11-21-4h and §11-21-
7 12j; that said code be amended by adding thereto a new section, designated §11-24-4c; and that
8 §11-24-23a of said code be amended and reenacted, all to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3f. Severance tax on privilege of producing coal after June 30, 2017.

1 (a) Notwithstanding the provisions of section three of this article, the rate of tax on the
2 privilege of engaging or continuing within this state in the business of severing, extracting,
3 reducing to possession, and producing coal for sale, profit or commercial use shall, for all tons of
4 coal produced on and after July 1, 2017, is as follows. The basis of the tax is per ton revenue
5 based on FOB mine realizations:

6 (1) For all tons of metallurgical grade coal produced on and after July 1, 2017, except for
7 tons of thin seam coal:

If gross income from sale of coal

During the reporting period is:..... The rate of tax is:

Not more than \$75 per ton..... 4.5%

\$75.01 to \$150 per ton 5.0%

More than \$150 per ton5.0% plus a 2%

surtax on gross income in excess of \$150 per ton.

14 These rates include the thirty-five one hundredths of one cent additional severance tax
15 imposed by the state for the benefit of counties and municipalities as provided in section six of
16 this article. The rate of tax for each reporting period shall be determined by dividing the gross
17 income of the taxpayer from sales of all coal metallurgical coal, except thin seam coal, during the
18 reporting period, by tons of all metallurgical grade coal, except thin seam coal, sold by the
19 taxpayer during the reporting period; and

20 (2) For all tons of steam grade coal produced on and after July 1, 2017, except for tons of

21 thin seam coal:

22 **If gross income from sale of coal**

23 **during the reporting period is: The rate of tax is:**

24 Less than \$42 per ton 2.5%

25 \$42 or more per ton but less than \$49 per ton3.25%

26 \$49 or more per ton but less than \$56 per ton 4.0%

27 \$56 per ton but less than \$61 per ton 5.0%

28 \$61 per ton but less than \$66 per ton 6.5%

29 \$66 per ton but less than \$74 per ton 8.0%

30 \$74 or more per ton10.0%

31 These rates include the thirty-five one hundredths of one percent additional severance tax
32 imposed by the state for the benefit of counties and municipalities as provided in section six of
33 this article. The rate of tax for each reporting period shall be determined by dividing the gross
34 income of the taxpayer from sales of all steam grade coal during the reporting period, exclusive
35 of sales of thin seam coal, by the tons of all tons of all steam grade coal sold by the taxpayer
36 during the reporting period but not including tons of thin seam coal.

37 (3) For tons of coal produced from seams of coal less than thirty-seven inches thick on
38 and after July 1, 2017:

39 **If gross income from sale of coal**

40 **during the reporting period is: The rate of tax is:**

41 Not more than \$75 per ton 0.5%

42 \$75.01 to \$150 per ton 1.0%

43 More than \$150 per ton1.0% plus a 2%

44 surtax on gross income in excess of \$150 per ton.

45 These rates include the thirty-five one hundredths of one percent additional severance tax
46 imposed by the state for the benefit of counties and municipalities as provided in section six of

47 this article.

48 (4) For tons of coal produced from seams of coal at least thirty-seven inches thick, but not
49 more than forty-five inches thick on and after July 1, 2017:

50 **If gross income from sale of coal**

51 **during the reporting period is: The rate of tax is:**

52 Not more than \$75 per ton..... 1.5%

53 \$75.01 to \$150 per ton 2.0%

54 More than \$150 per ton2.0% plus a 2%

55 surtax on gross income in excess of \$150 per ton.

56 These rates include the thirty-five one hundredths of one percent additional severance tax
57 imposed by the state for the benefit of counties and municipalities as provided in section six of
58 this article.

59 (b) In the event that subsection (a) of this section is found by a court of competent
60 jurisdiction to violate either the Constitution of this state or of the United States, and that decision
61 becomes final, this section shall become null and void by operation of law and the tax due shall
62 be determined under section three of this article for the tax year or years involved in the litigation
63 and all subsequent years.

64 (c) Definition of metallurgical coal and steam coal. – For purposes of this section:

65 (1) Metallurgical coal is bituminous coal that is not steam coal.

66 (2) Steam coal is coal sold to an end-user or other intermediary that is intended for
67 combustion by coal-fired electric generating units.

68 (3) The determination of whether coal is metallurgical coal or steam coal is made when
69 the coal is first sold.

§11-13A-3g. Severance tax on privilege of producing natural gas after June 30, 2017.

1 (a) Notwithstanding the provisions of section three-a of this article, the rate of tax on the
2 privilege of engaging or continuing within this state in the business of severing, extracting,

3 reducing to possession and producing coal for sale, profit or commercial use shall, for all MCFs
4 of gas produced on and after July 1, 2017, be as follows:

5 **When the annualized gross value**

6 **Of natural gas per MCF is : The rate of tax is:**

7	<u>Less than \$3.00</u>	<u>5.0%</u>
8	<u>\$3.00 but less than \$3.50</u>	<u>5.5%</u>
9	<u>\$3.50 but less than \$4.00</u>	<u>6.0%</u>
10	<u>\$4.00 but less than \$4.50</u>	<u>6.5%</u>
11	<u>\$4.50 but less than \$5.00</u>	<u>7.0%</u>
12	<u>\$5.00 but less than \$5.50</u>	<u>8.0%</u>
13	<u>\$5.50 but less than \$6.00</u>	<u>9.0%</u>
14	<u>\$6.00 or more</u>	<u>10%</u>

15 (b) In the event that subsection (a) of this section is found by a court of competent
16 jurisdiction to violate either the Constitution of this state or of the United States, and that decision
17 becomes final, this section shall become null and void by operation of law and the tax due shall
18 be determined under section three-a of this article for the tax year or years involved in the litigation
19 and all subsequent years.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

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

6 (b) *Amount of tax.* -- The general consumer sales and service tax imposed by this article
7 shall be at the rate of ~~6¢ on the dollar~~ six percent of the sales price of sales or services tangible

8 personal property, custom software or taxable service purchased, excluding gasoline and special
 9 fuel sales, which remain taxable at the rate of ~~5¢ on the dollar of sales~~ five percent: *Provided,*
 10 That on and after July 1, 2017, the tax imposed by this article shall be seven percent of the
 11 purchase price, excluding sales of motor vehicles, which shall remain taxable at five percent of
 12 the sales price; and sales of motor fuels, which remain taxable at the rate of five percent of the
 13 average wholesale selling price of motor fuel.

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

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

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

19 ~~(3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.~~

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

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

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

23 ~~(7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any~~

24 ~~fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the~~

25 ~~dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢;~~

26 ~~3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional~~

27 ~~part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in~~

28 ~~excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For~~

29 ~~example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33,~~

30 ~~both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67,~~

31 ~~both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to~~

32 ~~\$2, both inclusive, 12¢: *Provided,* That beginning January 1, 2004, tax due under this article shall~~

33 ~~be calculated as provided in subsection (d) of this subsection and this subsection (c) does not~~

34 ~~apply to sales made after December 31, 2003.~~

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

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

47 ~~(f) (e) Rate of tax on certain mobile homes. --~~ Notwithstanding any provision of this article
48 to the contrary, ~~after December 31, 2003,~~ the tax levied on sales of mobile homes to be used by
49 the owner thereof as his or her principal year-round residence and dwelling shall be an amount
50 equal to six percent of fifty percent of the sales price: Provided, That on and after July 1, 2017,
51 notwithstanding any provision of this article to the contrary, the tax levied on sales of mobile
52 homes to be used by the owner thereof as his or her principal year-round residence and dwelling
53 shall be an amount equal to seven percent of fifty percent of the sales price.

54 ~~(g) (f) Construction; custom software. -- After December 31, 2003, whenever~~ Whenever
55 the words "tangible personal property" or "property" appear in this article, the same shall also
56 include the words "custom software".

57 ~~(h) (g) Computation of tax on sales of gasoline and special fuel. --~~ The method of
58 computation of tax provided in this section does not apply to sales of gasoline and special fuel.

59 (h) Notwithstanding any provision of this code to the contrary, on and after July 1, 2017,

60 when the words “six percent” appear in this article or article fifteen-a of this chapter they shall
61 mean the rate of the tax specified in subsection (a) of this section.

§11-15-3d. Imposition of consumers sales tax on telecommunications service and ancillary services.

1 (a) Notwithstanding the provisions of section eight of this article or any other provision of
2 this code, on and after July 1, 2017, “telecommunications service,” and “ancillary services” as
3 defined in article fifteen-b of this chapter, shall be subject to the consumers sales and service tax
4 imposed by this article, and the use tax imposed by article fifteen-a of this chapter: *Provided*, That
5 payment of the tax imposed under this article or under article fifteen-a of this chapter on prepaid
6 wireless services is sufficient to fulfill the mandate of this section, and prepaid wireless services
7 shall not be subjected to double taxation under this article: *Provided, however*, That this section
8 shall not be interpreted to prevent imposition of any other lawfully imposed municipal tax or fee
9 or any other tax or fee lawfully imposed under any state or federal law, or the laws of any
10 subdivision thereof on such prepaid wireless services.

11 (b) The tax imposed by this section shall be in addition to any municipal utilities tax,
12 municipal consumers sales and service tax and use tax, or other tax lawfully imposed on
13 telephone service, telecommunications service and ancillary services.

14 (c) The sale of telecommunications service and ancillary services on which tax is imposed
15 by this section shall be subject to sourcing rules set forth in sections nineteen and twenty, article
16 fifteen-b of this chapter.

17 (d) Notwithstanding the fact that a service provider did not meet the threshold amount for
18 the previous calendar year that would cause accelerated payment to be made in the current year,
19 the accelerated payment rule imposed under subsection (g), section sixteen of this article applies
20 to the tax imposed by this section, if the service provider’s total combined monthly remittance of
21 the taxes levied by this article and article fifteen-a of this chapter for any calendar month beginning
22 on and after July 1, 2017, exceeds, or can reasonably be expected to exceed, \$100,000.

§11-15-9. Exemptions.

1 (a) *Exemptions for which exemption certificate may be issued.* -- A person having a right
2 or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by
3 this article and filing a claim for refund, execute a certificate of exemption, in the form required by
4 the Tax Commissioner, and deliver it to the vendor of the property or service in the manner
5 required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those
6 exemptions authorized in this subsection for which exemption certificates are not required. The
7 following sales of tangible personal property and services are exempt as provided in this
8 subsection:

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

11 (2) Sales of textbooks required to be used in any of the schools of this state or in any
12 institution in this state which qualifies as a nonprofit or educational institution subject to the West
13 Virginia Department of Education and the Arts, ~~the board of Trustees of the University System of~~
14 ~~West Virginia or the board of directors for~~ Higher Education Policy Commission or the Council for
15 Community and Technical College Education for universities and colleges located in this state;

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

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

24 (5) Sales of property or services to churches which make no charge whatsoever for the
25 services they render: *Provided*, That the exemption granted in this subdivision applies only to

26 services, equipment, supplies, food for meals and materials directly used or consumed by these
27 organizations and does not apply to purchases of gasoline or special fuel;

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

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

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

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

40 (D) An organization which has no paid employees and its gross income from fundraisers,
41 less reasonable and necessary expenses incurred to raise the gross income (or the tangible
42 personal property or services purchased with the net income), is donated to an organization which
43 is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
44 1986, as amended;

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

49 (F) For purposes of this subsection:

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

51 (l) Gifts, grants, contributions or membership fees;

52 (II) Gross receipts from fundraisers which include receipts from admissions, sales of
53 merchandise, performance of services or furnishing of facilities in any activity which is not an
54 unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of
55 1986, as amended;

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

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

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

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

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

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

73 (G) The exemption allowed by this subdivision does not apply to sales of gasoline or
74 special fuel or to sales of tangible personal property or services to be used or consumed in the
75 generation of unrelated business income as defined in Section 513 of the Internal Revenue Code
76 of 1986, as amended. The exemption granted in this subdivision applies only to services,
77 equipment, supplies and materials used or consumed in the activities for which the organizations

78 qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to
79 purchases of gasoline or special fuel which are taxable as provided in section eighteen-b of this
80 article and article fourteen-c of this chapter;

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

92 (8) Sales of tangible personal property or of any taxable services rendered for use or
93 consumption in connection with the commercial production of an agricultural product the ultimate
94 sale of which is subject to the tax imposed by this article or which would have been subject to tax
95 under this article: *Provided*, That sales of tangible personal property and services to be used or
96 consumed in the construction of or permanent improvement to real property and sales of gasoline
97 and special fuel are not exempt: *Provided, however*, That nails and fencing may not be considered
98 as improvements to real property;

99 (9) Sales of tangible personal property to a person for the purpose of resale in the form of
100 tangible personal property: *Provided*, That sales of gasoline and special fuel by distributors and
101 importers is taxable except when the sale is to another distributor for resale: *Provided, however*,
102 That sales of building materials or building supplies or other property to any person engaging in
103 the activity of contracting, as defined in this article, which is to be installed in, affixed to or

104 incorporated by that person or his or her agent into any real property, building or structure is not
105 exempt under this subdivision;

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

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

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

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

113 (14) Casual and occasional sales of property or services not conducted in a repeated
114 manner or in the ordinary course of repetitive and successive transactions of like character by a
115 corporation or organization which is exempt from tax under subdivision (6) of this subsection on
116 its purchases of tangible personal property or services. For purposes of this subdivision, the term
117 "casual and occasional sales not conducted in a repeated manner or in the ordinary course of
118 repetitive and successive transactions of like character" means sales of tangible personal property
119 or services at fundraisers sponsored by a corporation or organization which is exempt, under
120 subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases
121 when the fundraisers are of limited duration and are held no more than six times during any
122 twelve-month period and "limited duration" means no more than eighty-four consecutive hours:
123 *Provided*, That sales for volunteer fire departments and volunteer school support groups, with
124 duration of events being no more than eighty-four consecutive hours at a time, which are held no
125 more than eighteen times in a twelve-month period for the purposes of this subdivision are
126 considered "casual and occasional sales not conducted in a repeated manner or in the ordinary
127 course of repetitive and successive transactions of a like character";

128 (15) Sales of property or services to a school which has approval from the ~~board of~~
129 ~~Trustees of the University System of West Virginia or the board of Directors of the state College~~

130 ~~System~~ Higher Education Policy Commission or the Council for Community and Technical
131 College Education to award degrees, which has its principal campus in this state and which is
132 exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue
133 Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel are taxable as
134 provided in section eighteen-b of this article and article fourteen-c of this chapter;

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

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

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

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

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

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

155 ~~(A) The processing of another's data, including all processes incident to processing of data~~

156 ~~such as keypunching, keystroke verification, rearranging or sorting of previously documented data~~
157 ~~for the purpose of data entry or automatic processing and changing the medium on which data is~~
158 ~~sorted, whether these processes are done by the same person or several persons; and~~

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

161 ~~(22)~~ (21) Tuition charged for attending educational summer camps;

162 ~~(23)~~ (22) Dispensing of services performed by one corporation, partnership or limited
163 liability company for another corporation, partnership or limited liability company when the entities
164 are members of the same controlled group or are related taxpayers as defined in Section 267 of
165 the Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity
166 interests or membership interests possessing fifty percent or more of the total combined voting
167 power of all classes of the stock of a corporation, equity interests of a partnership or membership
168 interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock,
169 equity interests or membership interests possessing fifty percent or more of the value of the
170 corporation, partnership or limited liability company;

171 ~~(24)~~ (23) Food for the following are exempt:

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

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

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

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

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

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

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

203 ~~(25)~~ (24) Sales of food by little leagues, midget football leagues, youth football or soccer
204 leagues, band boosters or other school or athletic booster organizations supporting activities for
205 grades kindergarten through twelve and similar types of organizations, including scouting groups
206 and church youth groups, if the purpose in selling the food is to obtain revenue for the functions
207 and activities of the organization and the revenues obtained from selling the food is actually used

208 in supporting or carrying on functions and activities of the groups: *Provided*, That the purchases
209 made by the organizations are not exempt as a purchase for resale;

210 ~~(26)~~ (25) Charges for room and meals by fraternities and sororities to their members:
211 *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for
212 resale;

213 ~~(27)~~ (26) Sales of or charges for the transportation of passengers in interstate commerce;

214 ~~(28)~~ (27) Sales of tangible personal property or services to any person which this state is
215 prohibited from taxing under the laws of the United States or under the Constitution of this state;

216 ~~(29)~~ (28) Sales of tangible personal property or services to any person who claims
217 exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the
218 provision of any other chapter of this code;

219 ~~(30)~~ (29) Charges for the services of opening and closing a burial lot;

220 ~~(34)~~ (30) Sales of livestock, poultry or other farm products in their original state by the
221 producer of the livestock, poultry or other farm products or a member of the producer's immediate
222 family who is not otherwise engaged in making retail sales of tangible personal property; and
223 sales of livestock sold at public sales sponsored by breeders or registry associations or livestock
224 auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed
225 without presenting or obtaining exemption certificates provided the farmer maintains adequate
226 records;

227 ~~(32)~~ (31) Sales of motion picture films to motion picture exhibitors for exhibition if the sale
228 of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by
229 this article and sales of coin-operated video arcade machines or video arcade games to a person
230 engaged in the business of providing the machines to the public for a charge upon which the tax
231 imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption
232 provided in this subdivision may be claimed by presenting to the seller a properly executed
233 exemption certificate;

234 ~~(33)~~ (32) Sales of aircraft repair, remodeling and maintenance services when the services
235 are to an aircraft operated by a certified or licensed carrier of persons or property, or by a
236 governmental entity, or to an engine or other component part of an aircraft operated by a
237 certificated or licensed carrier of persons or property, or by a governmental entity and sales of
238 tangible personal property that is permanently affixed or permanently attached as a component
239 part of an aircraft owned or operated by a certificated or licensed carrier of persons or property,
240 or by a governmental entity, as part of the repair, remodeling or maintenance service and sales
241 of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling
242 or maintenance of aircraft, aircraft engines or aircraft component parts for a certificated or licensed
243 carrier of persons or property or for a governmental entity;

244 ~~(34)~~ ~~Charges for memberships or services provided by health and fitness organizations~~
245 ~~relating to personalized fitness programs;~~

246 ~~(35)~~ (33) Sales of services by individuals who babysit for a profit: *Provided*, That the gross
247 receipts of the individual from the performance of baby-sitting services do not exceed \$5,000 in a
248 taxable year;

249 ~~(36)~~ (34) Sales of services by public libraries or by libraries at academic institutions or by
250 libraries at institutions of higher learning;

251 ~~(37)~~ (35) Commissions received by a manufacturer's representative;

252 ~~(38)~~ (36) Sales of primary opinion research services when:

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

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

258 (C) The transfer of the results of the service activities is an indispensable part of the overall
259 service: *Provided*, That this exemption shall not be allowable on and after July 1, 2017.

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

264 ~~(39)~~ (37) Sales of property or services to persons within the state when those sales are
265 for the purposes of the production of value-added products: *Provided*, That the exemption granted
266 in this subdivision applies only to services, equipment, supplies and materials directly used or
267 consumed by those persons engaged solely in the production of value-added products: *Provided*,
268 *however*, That this exemption may not be claimed by any one purchaser for more than five
269 consecutive years, except as otherwise permitted in this section.

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

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

275 (B) Fruits into wine;

276 (C) Honey into wine;

277 (D) Wool into fabric;

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

279 (F) Milk into cheese;

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

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

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

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

284 ~~(40)~~ (38) Sales of music instructional services by a music teacher and artistic services or
285 artistic performances of an entertainer or performing artist pursuant to a contract with the owner

286 or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment
287 facility or any other business location in this state in which the public or a limited portion of the
288 public may assemble to hear or see musical works or other artistic works be performed for the
289 enjoyment of the members of the public there assembled when the amount paid by the owner or
290 operator for the artistic service or artistic performance does not exceed \$3,000: *Provided*, That
291 nothing contained herein may be construed to deprive private social gatherings, weddings or other
292 private parties from asserting the exemption set forth in this subdivision. For the purposes of this
293 exemption, artistic performance or artistic service means and is limited to the conscious use of
294 creative power, imagination and skill in the creation of aesthetic experience for an audience
295 present and in attendance and includes, and is limited to, stage plays, musical performances,
296 poetry recitations and other readings, dance presentation, circuses and similar presentations and
297 does not include the showing of any film or moving picture, gallery presentations of sculptural or
298 pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio
299 or television shows or any video or audio taped presentations or the sale or leasing of video or
300 audio tapes, air shows or any other public meeting, display or show other than those specified
301 herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales
302 of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a
303 legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions
304 and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set
305 forth herein: *Provided further*, That nude dancers or strippers may not be considered as
306 entertainers for the purposes of this exemption;

307 ~~(44)~~ (39) Charges to a member by a membership association or organization which is
308 exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal
309 Revenue Code of 1986, as amended, for membership in the association or organization, including
310 charges to members for newsletters prepared by the association or organization for distribution
311 primarily to its members, charges to members for continuing education seminars, workshops,

312 conventions, lectures or courses put on or sponsored by the association or organization, including
313 charges for related course materials prepared by the association or organization or by the speaker
314 or speakers for use during the continuing education seminar, workshop, convention, lecture or
315 course, but not including any separate charge or separately stated charge for meals, lodging,
316 entertainment or transportation taxable under this article: *Provided*, That the association or
317 organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment
318 or transportation taxable under this article for which a separate or separately stated charge is not
319 made. A membership association or organization which is exempt from paying federal income
320 taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may
321 elect to pay the tax imposed under this article on the purchases for which a separate charge or
322 separately stated charge could apply and not charge its members the tax imposed by this article
323 or the association or organization may avail itself of the exemption set forth in subdivision (9) of
324 this subsection relating to purchases of tangible personal property for resale and then collect the
325 tax imposed by this article on those items from its member;

326 ~~(42)~~ (40) Sales of governmental services or governmental materials by county assessors,
327 county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

328 ~~(43)~~ (41) Direct or subscription sales by the Division of Natural Resources of the magazine
329 currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the
330 magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

331 ~~(44)~~ (42) Sales of soap to be used at car wash facilities;

332 ~~(45)~~ (43) Commissions received by a travel agency from an out-of-state vendor;

333 ~~(46)~~ (44) The service of providing technical evaluations for compliance with federal and
334 state environmental standards provided by environmental and industrial consultants who have
335 formal certification through the West Virginia Department of Environmental Protection or the West
336 Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing
337 technical evaluations for compliance with federal and state environmental standards includes

338 those costs of tangible personal property directly used in providing such services that are
339 separately billed to the purchaser of such services and on which the tax imposed by this article
340 has previously been paid by the service provider;

341 ~~(47)~~ (45) Sales of tangible personal property and services by volunteer fire departments
342 and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4)
343 of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain
344 revenue for the functions and activities of the organization and the revenue obtained is exempt
345 from federal income tax and actually expended for that purpose;

346 ~~(48)~~ (46) Lodging franchise fees, including royalties, marketing fees, reservation system
347 fees or other fees assessed after December 1, 1997, that have been or may be imposed by a
348 lodging franchiser as a condition of the franchise agreement; and

349 ~~(49)~~ (47) Sales of the regulation size United States flag and the regulation size West
350 Virginia flag for display; and

351 (48) The services of "professional employer organizations" as defined in subsection (g),
352 section two, article forty-six-a, chapter thirty-three of this code.

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

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

362 (2) Sales of services, machinery, supplies and materials directly used or consumed in the
363 activities of manufacturing, transportation, transmission, communication, production of natural

364 resources, gas storage, generation or production or selling electric power, provision of a public
365 utility service or the operation of a utility service or the operation of a utility business, in the
366 businesses or organizations named in this subdivision and does not apply to purchases of
367 gasoline or special fuel;

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

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

374 (5) Sales of building materials or building supplies or other property to an organization
375 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended,
376 which are to be installed in, affixed to or incorporated by the organization or its agent into real
377 property or into a building or structure which is or will be used as permanent low-income housing,
378 transitional housing, an emergency homeless shelter, a domestic violence shelter or an
379 emergency children and youth shelter if the shelter is owned, managed, developed or operated
380 by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
381 1986, as amended; and

382 ~~(6) Sales of construction and maintenance materials acquired by a second party for use~~
383 ~~in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or~~
384 ~~credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to~~
385 ~~the Division of Highways for deposit into the State Road Fund of the state reimbursement for the~~
386 ~~tax in the amount estimated under the provisions of this subdivision: *Provided, however*, That by~~
387 ~~June 15 of each fiscal year, the division shall provide to the Tax Department an itemized listing of~~
388 ~~highways projects with the amount of funds expended for highway construction and maintenance.~~
389 ~~The Commissioner of Highways shall request reimbursement of the tax based on an estimate that~~

390 ~~forty percent of the total gross funds expended by the agency during the fiscal period were for the~~
 391 ~~acquisition of materials used for highway construction and maintenance. The amount of the~~
 392 ~~reimbursement shall be calculated at six percent of the forty percent.~~

393 (c) Effective date. – The amendments to this section in 2017 shall take effect beginning
 394 July 1, 2017, and apply to sales made on and after that date: *Provided*, That the amendments to
 395 subsection (b) of this section shall take effect May 1, 2017, and shall be construed to prohibit all
 396 future transfers to the State Road Fund established in the State Treasury pursuant to section fifty-
 397 two, article six of the Constitution, under this section of taxes imposed by this article and article
 398 fifteen-a of this chapter.

§11-15-9b. Exemption for purchases of tangible personal property and services for direct use in research and development.

1 (a) Sales of tangible personal property and services after June 30, 2002, directly used or
 2 consumed in the activity of research and development are exempt from tax imposed by this article.
 3 Any person having a right or claim to the exemption set forth in this section shall first pay to the
 4 vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or
 5 credit or give to the vendor the person's West Virginia direct pay permit number in accordance
 6 with the provisions of section nine-d of this article.

7 (b) For purposes of this article:

8 (1) "Directly used or consumed in the activity of research and development" means used
 9 or consumed in those activities or operations which constitute an integral and essential part of
 10 research and development, as contrasted with and distinguished from those activities or
 11 operations which are simply incidental, convenient or remote to research and development.

12 (A) Uses of property or consumption of services which constitute direct use or
 13 consumption in the activity of research and development include only:

14 (i) In the case of tangible personal property, physical incorporation of property into tangible
 15 personal property that is the subject of, or directly used in, research and development;

- 16 (ii) Causing a direct physical, chemical or other change upon property that is the subject
17 of, or directly used in, research and development;
- 18 (iii) Transporting or storing property that is the subject of, or directly used in, research and
19 development;
- 20 (iv) Measuring or verifying a change in property that is the subject of, or directly used in,
21 research and development;
- 22 (v) Physically controlling or directing the physical movement or operation of property that
23 is the subject of, or directly used in, research and development;
- 24 (vi) Directly and physically recording the flow of property that is the subject of, or directly
25 used in, research and development;
- 26 (vii) Producing energy for property that is the subject of, or directly used in, research and
27 development;
- 28 (viii) Controlling or otherwise regulating atmospheric or other environmental conditions
29 required for research and development;
- 30 (ix) Serving as an operating supply for property that is the subject of, or directly used in,
31 research and development;
- 32 (x) Maintenance or repair of property, including maintenance equipment, that is directly
33 used in research and development;
- 34 (xi) Storage, removal or transportation of economic or other waste resulting from the
35 activity of research and development;
- 36 (xii) Pollution control or environmental quality or environmental protection activity directly
37 relating to the activity of research and development, and personnel, plant, property or community
38 safety or security activity directly relating to the activity of research and development; or
- 39 (xiii) Otherwise being used as an integral and essential part of research and development.
- 40 (B) Uses of property or services which do not constitute direct use or consumption in the
41 activity of research and development include, but are not limited to:

- 42 (i) Heating and illumination of office buildings;
- 43 (ii) Janitorial or general cleaning activities;
- 44 (iii) Personal comfort of personnel;
- 45 (iv) Planning or scheduling of work or inventory control;
- 46 (v) Marketing, general management, supervision, finance, training, accounting and
- 47 administration; or
- 48 (vi) An activity or function incidental or convenient to research and development, rather
- 49 than an integral and essential part of these activities.

50 (2) "Research and development" means systematic scientific, engineering or technological

51 study and investigation in a field of knowledge in the physical, computer or software sciences,

52 often involving the formulation of hypotheses and experimentation, for the purpose of revealing

53 new facts, theories or principles, or increasing scientific knowledge, which may reveal the basis

54 for new or enhanced products, equipment or manufacturing processes. Research and

55 development includes, but is not limited to, design, refinement and testing of prototypes of new

56 or improved products, or design, refinement and testing of manufacturing processes before

57 commercial sales relating thereto have begun. For purposes of this section commercial sales

58 include, but are not limited to, sales of prototypes or sales for market testing.

59 (A) Research and development does not include:

- 60 (i) Market research;
- 61 (ii) Sales research;
- 62 (iii) Efficiency surveys;
- 63 (iv) Consumer surveys;
- 64 (v) Product market testing;
- 65 (vi) Product testing by product consumers or through consumer surveys for evaluation of
- 66 consumer product performance or consumer product usability;
- 67 (vii) The ordinary testing or inspection of materials or products for quality control (quality

- 68 control testing);
- 69 (viii) Management studies;
- 70 (ix) Advertising;
- 71 (x) Promotions;
- 72 (xi) The acquisition of another's patent, model, production or process or investigation or
73 evaluation of the value or investment potential related thereto;
- 74 (xii) Research in connection with literary, historical or similar projects;
- 75 (xiii) Research in the social sciences, economics, humanities or psychology and other
76 nontechnical activities; and
- 77 (xiv) The providing of sales services or any other service, whether technical service or
78 nontechnical service.
- 79 (c) No provision of this section may be interpreted to alter, abrogate or impede application
80 of the exemption for sales of primary opinion research services set forth in section nine of this
81 article: Provided, That on and after July 1, 2017, the exemption for primary opinion research shall
82 not be an allowable exemption.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of Internet advertising; sales of high-technology business services directly used in fulfillment of a government contract; sales of tangible personal property for direct use in a high-technology business or Internet advertising business; definitions.

- 1 (a) In order to modernize the exemptions from tax contained in this article as a result of
2 technological advances in computers and the expanded role of computers, the Internet and global
3 instant communications in business and to encourage computer software developers, computer
4 hardware designers, systems engineering firms, ~~electronic data processing companies~~ and other

5 high-technology companies to locate and expand their businesses in West Virginia, the following
6 sales of tangible personal property and software are exempt:

7 (1) Sales of computer hardware or software (including custom designed software) to be
8 directly incorporated by a manufacturer into a manufactured product. For purposes of this
9 subsection, the payment of licensing fees for the right to incorporate hardware or software
10 developed by persons other than the manufacturer into a manufactured product is exempt from
11 the tax imposed by this article;

12 (2) Sales of computer hardware or software (including custom designed software) directly
13 used in communication as defined in this article;

14 ~~(3) Sales of electronic data processing services;~~

15 ~~(4)~~ (3) Sales of educational software required to be used in any of the public schools of
16 this state or in any institution in this state which qualifies as a nonprofit or educational institution
17 subject to administration, regulation, certification or approval of the Department of Education, the
18 Department of Education and the Arts or the Higher Education Policy Commission;

19 ~~(5)~~ (4) Sales of Internet advertising of goods and services;

20 ~~(6)~~ (5) Sales of high-technology business services to high-technology businesses which
21 enter into contracts with this state, its institutions and subdivisions, governmental units, institutions
22 or subdivisions of other states, or with the United States, including agencies of federal, state or
23 local governments for direct use in fulfilling the government contract; and

24 ~~(7)~~ (6) Sales of prewritten computer software, computers, computer hardware, servers and
25 building materials and tangible personal property to be installed into a building or facility for direct
26 use in a high-technology business or an Internet advertising business.

27 (b) *Definitions.* --

28 As used in this article, the following terms have the following meanings:

29 (1) "Computer hardware" means a computer, as defined in article fifteen-b of this chapter,
30 and the directly and immediately connected physical equipment involved in the performance of

31 data processing or communications functions, including data input, data output, data processing,
32 data storage, and data communication apparatus that is directly and immediately connected to
33 the computer. The term "computer hardware" does not include computer software.

34 (2) "High-technology business" means and is limited to businesses primarily engaged in
35 the following activities: Computer hardware design and development; computer software design,
36 development, customization and upgrade; computer systems design and development; website
37 design and development; network design and development; design and development of new
38 manufactured products which incorporate computer hardware and software; electronic data
39 processing; network management, maintenance, engineering, administration and security
40 services; website management, maintenance, engineering, administration and security services
41 and computer systems management, maintenance, engineering, administration and security
42 services. High-technology business as defined herein is intended to include businesses which
43 engage in the activities enumerated in this definition as their primary business activity, and not as
44 a secondary or incidental activity and not as an activity in support of or incidental to business
45 activity not specifically enumerated in this definition.

46 (3) "High-technology business services" means and is limited to computer hardware
47 design and development; computer software design, development, customization and upgrade;
48 computer systems design and development; website design and development; network design
49 and development; electronic data processing; computer systems management; computer
50 systems maintenance; computer systems engineering; computer systems administration and
51 computer systems security services.

52 (4) "Internet advertising business" means a for-profit business that is engaged, for
53 monetary remuneration, in the primary business activity of announcing, or calling public attention
54 to, goods or services in order to induce the public to purchase those goods or services, and which
55 uses the Internet as its sole advertising communications medium. For purposes of this definition,
56 Internet advertising must be the primary business activity of the business and not a secondary or

57 incidental activity and not an activity in support of or incidental to other business activity.

58 (5) "Network" means a group of two or more computer systems linked together.

59 (6) "Server" means a computer or device on a network that manages network resources.

60 (c) The amendments to this section made in the first extraordinary session of the
61 Legislature in 2009 shall apply to purchases made on and after July 1, 2009. The amendments
62 to this section made in 2017 shall apply on and after July 1, 2017.

ARTICLE 15A. USE TAX.

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

1 (a) An excise tax is hereby levied and imposed on the use in this state of tangible personal
2 property, custom software or taxable services, to be collected and paid as provided in this article
3 or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the property
4 or taxable services, except as otherwise provided in this article: Provided, That on and after July
5 1, 2017, the tax imposed by this article shall be collected and paid, as provided in this article or
6 article fifteen-b of this chapter, at the rate of seven percent of the purchase price of the tangible
7 personal property, custom software or taxable services, except as otherwise provided in this
8 article.

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

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

18 services," where the context so requires.

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

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

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

32 (g) Notwithstanding any provisions of this code to the contrary, on and after July 1 2017,
 33 when the words "six percent" appear in this article, those words shall mean seven percent.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4g. Rate of tax – Taxable years beginning on or after January 1, 2018.

1 (a) For taxable years beginning on and after January 1, 2018, the tax imposed by section
 2 three of this article shall be determined under either subsection (b) or subsection (c) of this
 3 section, as appropriate.

4 (b) Rate of tax on individuals (except married individuals filing separate returns),
 5 individuals filing joint returns, heads of households, estates and trusts. -- The tax imposed by
 6 section three of this article on the West Virginia taxable income of every individual (except married
 7 individuals filing separate returns); every individual who is a head of a household in the
 8 determination of his or her federal income tax for the taxable year; every husband and wife who

9 file a joint return under this article; every individual who is entitled to file his or her federal income
 10 tax return for the taxable year as a surviving spouse; and every estate and trust shall be
 11 determined in accordance with the following table:

<u>If the West Virginia</u>	
<u>taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$20,000</u>	<u>2.0% of taxable income</u>
<u>Over \$20,000 but not over \$35,000</u>	<u>\$400.00 plus 3.7% of taxable income over \$20,000</u>
<u>Over \$35,000</u>	<u>\$955.00 plus 5.6% of taxable income over \$35,000</u>

17 (c) Rate of tax on married individuals filing separate returns. -- In the case of husband and
 18 wife filing separate returns under this article for the taxable year, the tax imposed by section three
 19 of this article on the West Virginia taxable income of each spouse shall be determined in
 20 accordance with the following table:

<u>If the West Virginia</u>	
<u>taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$10,000</u>	<u>2.0% of taxable income</u>
<u>Over \$10,000 but not over \$17,500</u>	<u>\$200.00 plus 3.7% of taxable income over \$10,000</u>
<u>Over \$17,500,</u>	<u>\$477.50 plus 5.6% of taxable income over \$17,500</u>

26 (d) Tax rate reduction in years subsequent to 2019. – (1) For purposes of this subsection
 27 (d),

28 (A) “Trigger index” means the cumulative rate of change in not seasonally adjusted federal
 29 Consumer Price Index for All Urban Consumers plus 1.5 percent per year over a five-year period
 30 ending in June of each year.

31 (B) “General Revenue Fund benchmark” means the General Revenue Fund revenue
 32 collections as of June 30 of the fiscal year ended five years prior.

33 (C) “Prospective General Revenue Fund revenue collections” means the General
 34 Revenue Fund benchmark inflated by the trigger index as prescribed in this section.

35 (D) "Actual General Revenue Fund revenue collections" means the actual net collections
36 of the General Revenue Fund as of June 30 of the fiscal year immediately preceding the August
37 1 calculation.

38 (E) "Current analysis period" means the August 1 calculation of the factors as prescribed
39 in this section for any given year.

40 (2) Beginning on August 1, 2017, and on each August 1 thereafter, the Tax Commissioner
41 shall determine the following:

42 (A) The "General Revenue Fund benchmark" for the current analysis period;

43 (B) The "trigger index" by adding one to the percentage difference between the Consumer
44 Price Index for All Urban Consumers for June of the current year and June of five years prior,
45 then increasing this base by 1.5 percent per year over five years;

46 (C) The "prospective General Revenue Fund revenue collections" for the current fiscal
47 year by multiplying the General Revenue Fund benchmark as of June 30 of the fiscal year ended
48 five years prior by the trigger index.

49 (D) The "actual General Revenue Fund revenue collections" for the current analysis
50 period.

51 (3) If for any fiscal year ending after July 1, 2016, in which the prospective General
52 Revenue Fund revenue collections are less than the actual General Revenue Fund revenue
53 collections, then the personal Income tax rates specified in subsections (b) and (c) of this section
54 shall be reduced by 0.1 percentage points for the calendar tax year, that begins seventeen months
55 after the August 1 determination date specified in subdivision (2) of this subsection (d).
56 Compliance with the August 1 determination date shall continue each year until the personal
57 income tax is fully eliminated.

§11-21-4h. Temporary additional tax for calendar years 2017, 2018 and 2019.

1 For the tax year beginning on January 1, 2017, January 1, 2018, and January 1, 2019,
2 there is hereby imposed in addition to the tax imposed by sections four-e and four-g of this article

3 an additional tax the amount of which is determined as follows:

<u>If West Virginia Taxable Income is</u>	<u>The Additional Tax Is:</u>
5 <u>Over \$300,000 but not over \$350,000</u>	<u>\$250</u>
6 <u>Over \$350,000 but not over \$400,000</u>	<u>\$350</u>
7 <u>Over \$400,000 but not over \$500,000</u>	<u>\$500</u>
8 <u>Over \$500,000.....</u>	<u>\$1,000</u>

§11-21-8a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of this article shall be allowed as follows:

2 (1) Certified historic structures. -- For certified historic structures, the credit is equal to ten
3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
4 States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after
5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified
6 rehabilitation expenditure: *Provided, however*, That the credit authorized by this section for
7 qualified rehabilitation expenditures made after June 30, 2017, may not be used to offset tax
8 liabilities prior to the tax year beginning January 1, 2019: *Provided further*, That the taxpayer may
9 not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by
10 the Tax Division or the taxpayer is delinquent in the payment of property taxes on the property
11 containing the certified historic tax structure when the applicant begins to claim the credit and
12 throughout the time period within which the credit is claimed. The Tax Commissioner shall
13 promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code
14 that provide what information must accompany any claim for the tax credit for the determination
15 that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor
16 is the taxpayer delinquent in the payment of property taxes on the property containing the certified
17 historic tax structure. This credit is available for both residential and nonresidential buildings
18 located in this state, that are reviewed by the West Virginia Division of Culture and History and
19 designated by the national park service, United States department of the interior as "certified

20 historic structures," and further defined as a "qualified rehabilitated building," as defined under
21 §47(c)(1), Title 26 of the United States Code, as amended.

22 (2) The credit authorized pursuant to this section may not exceed the greater of \$3.75
23 million for the portion of a certified rehabilitation as defined in Title 26, §47(c)(2)(C) placed in
24 service in the state in the taxable year, or \$3.75 million for each building that is a component of a
25 certified historic structure for which a credit is claimed under this section.

§11-21-8e. ~~Carryback~~ Credit carryback, carryforward.

1 (a) Any unused portion of the credit for qualified rehabilitated buildings investment
2 authorized by section eight-a of this article which may not be taken in the taxable year to which
3 the credit applies qualifies for carryback and carryforward treatment subject to the identical
4 general provisions under §39, Title 26 of the United States Code, as amended: *Provided*, That
5 the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for
6 the taxable year: *Provided, however, That for tax years beginning on and after January 1, 2019,*
7 *any unused portion of the credit authorized by section eight-a of this article, may not be carried*
8 *back to any prior taxable year: *Provided further, That for tax years beginning on and after January**
9 *1, 2019, any unused portion of the credit authorized by section eight-a of this article may be*
10 *carried over to each of the next ten tax years following the unused credit year until used or forfeited*
11 *due to lapse of time.*

12 (b) Effective for taxable years beginning on and after January 1, 2001, credits granted to
13 an electing small business corporation (S corporation), limited partnership, general partnership,
14 limited liability company or multiple owners of property shall be passed through to the
15 shareholders, partners, members or owners, either pro rata or pursuant to an agreement among
16 the shareholders, partners, members or owners documenting an alternative distribution method.
17 The Tax Commissioner shall promulgate procedural rules in accordance with article three, chapter
18 twenty-nine-a of this code that provide the method of reporting the alternative method of
19 distribution authorized by this section.

§11-21-12j. Decreasing modification reducing federal adjusted gross income for military retirement income after December 31, 2018.

1 (a) In lieu of the provisions for military retirement income in section twelve of this article,
 2 for taxable years beginning on and after January 1, 2019, the entire amount of military retirement
 3 income, including retirement income from the regular Armed Forces, Reserves, and National
 4 Guard, paid by the United States or this state after December 31, 2018, that is included in federal
 5 adjusted gross income for the taxable year shall be allowed as a decreasing modification of
 6 federal adjusted gross income when determining West Virginia taxable income subject to the tax
 7 imposed by this article.

8 (b) In the event that any provision of this section is found by a court of competent
 9 jurisdiction to violate either the Constitution of the United States or this state, or is held to be
 10 extended to persons other than those specified in this section, this section shall become null and
 11 void by operation of law.

ARTICLE 24. CORPORATE NET INCOME TAX.

§11-24-4c. Rate of tax – Taxable years beginning on or after January 1, 2018 but before January 1, 2020.

1 (a) In lieu of the rate of tax specified in section four of this article, for taxable year beginning
 2 on and after January 1, 2018, but before January 1, 2020, the tax imposed by section four of this
 3 article shall be levied at the rate of 7.5 percent of West Virginia taxable income.

4 (b) For taxable years beginning on or after January 1, 2020, the rate of tax shall be that
 5 specified in section four of this article.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of this article shall be allowed as follows:
 2 Certified historic structures. -- For certified historic structures, the credit is equal to ten
 3 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United
 4 States Code, as amended: Provided, That for qualified rehabilitation expenditures made after

5 June 30, 2017, the credit allowed by this section is equal to twenty-five percent of the qualified
6 rehabilitation expenditure: *Provided, however,* That the credit authorized by this section for
7 qualified rehabilitation expenditures made after June 30, 2017, may not be used to offset tax
8 liabilities prior to the tax year beginning January 1, 2019; *Provided further,* That the taxpayer may
9 not be entitled to this credit if the taxpayer is in arrears in the payment of any tax administered by
10 the Tax Division or the taxpayer is delinquent in the payment of property taxes on the property
11 containing the certified historic tax structure when the applicant begins to claim the credit and
12 throughout the time period within which the credit is claimed. The Tax Commissioner shall
13 promulgate procedural rules in accordance with article three, chapter twenty-nine-a of this code
14 that provide what information must accompany any claim for the tax credit for the determination
15 that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division nor
16 is the taxpayer delinquent in the payment of property taxes on the property containing the certified
17 historic tax structure. This credit is available for both residential and nonresidential buildings
18 located in this state that are reviewed by the West Virginia Division of Culture and History and
19 designated by the national park service, United States department of the interior as "certified
20 historic building", and further defined as a "qualified rehabilitated building", as defined under
21 §47(c)(1), Title 26, of the United States Code, as amended.

NOTE: The purpose of this bill is to provide increased funding for the General Revenue Fund by imposing severance tax on the privilege of producing coal and natural gas at graduated rates after June 30, 2017; increasing the rate of the consumers sales and service tax and use tax to 7 percent beginning July 1, 2017; imposing sales and use taxes on telecommunication services and ancillary telecommunication services beginning July 1, 2017. Eliminating exemptions from sales tax as of July 1, 2017, for services provided by health and fitness clubs and providers of primary opinion research and making technical corrections; exempting military retirement from personal income tax after December 31, 2018; imposing a temporary additional personal income tax on persons with West Virginia taxable incomes of \$300,000 or more; collapsing the number of bracket in the personal income tax, specifying new rates of tax for taxable years beginning on and after specified first day of January 1, 2019 and providing for phase-out of personal income tax over period of years when certain conditions exist. The credits against personal and corporation net income taxes for qualified rehabilitation expenditures made after December 31, 2017 are increased; rules are provided for claiming credit and for disallowance of credit. The rate of the corporation net income tax is temporarily increased to 7.5 percent for taxable years

beginning on or after January 1, 2018 but before January 1, 2020.

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