

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**House Bill 2816**

BY DELEGATE MILEY

[BY REQUEST OF THE EXECUTIVE]

[Originating in the Committee on Finance;

March 24, 2017]



1 A BILL to amend and reenact §11-13X-4 and §11-13X-13 of the Code of West Virginia, 1931, as  
2 amended; to amend and reenact §11-15-9 of said code; and to amend and reenact §11-  
3 16-13 of said code, all relating to taxation, generally; eliminating new film tax credits but  
4 preserving credit for taxpayers authorized to claim credit prior to specified date; eliminating  
5 exemption from consumers sales and service tax for certain purchases of materials  
6 acquired for use in state highway projects; and increasing rate of barrel tax on  
7 nonintoxicating beer.

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

1 That §11-13X-4 and §11-13X-13 of the Code of West Virginia, 1931, as amended, be  
2 amended and reenacted; that §11-15-9 of said code be amended and reenacted; and that §11-  
3 16-13 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.**

#### **§11-13X-4. Creation of the tax credit.**

1 (a) An eligible company may apply for, and the Tax Commissioner shall allow, a  
2 nonrefundable tax credit in an amount equal to the percentage specified in section five of this  
3 article of:

4 (1) Direct production expenditures incurred in West Virginia that are directly attributable to  
5 the production in West Virginia of a qualified project and that occur in West Virginia or with a West  
6 Virginia vendor; and

7 (2) Postproduction expenditures incurred in West Virginia that are:

8 (A) Directly attributable to the production of a qualified project;

9 (B) For services performed in West Virginia.

10 (b) Expenditures utilized by an eligible company for purposes of calculating the tax credit  
11 authorized by this article shall in no event be utilized by the eligible company for the purpose

12 calculating or qualifying investment for claiming the economic opportunity tax credit authorized by  
13 article thirteen-q of this chapter or the manufacturing investment tax credit authorized by article  
14 thirteen-s of this chapter.

15 (c) Elimination of the West Virginia Film Industry Investment Act. – The tax credit allowed  
16 by this article shall be eliminated on and after July 1, 2017: Provided, That any taxpayer who was  
17 entitled to take the credit provided for by this article prior to July 1, 2017, shall continue to be  
18 eligible to claim such credit subject to the limitations set forth in section eight of this article.

**§11-13X-13. Effective date.**

1 (a) The credit allowed by this article shall be allowed upon eligible expenditures occurring  
2 after December 31, 2007, and shall terminate with, and be limited to, projects approved by the  
3 Film Office before July 1, 2017, in accordance with the termination of the West Virginia Film  
4 Industry Investment Act set forth in section four of this article: Provided, That tax credit based  
5 upon expenditures, if any, for projects approved by the Film Office before July 1, 2017, and not  
6 completed on or before July 1, 2018, shall be forfeited. Entitlement to such credit shall be revoked,  
7 and all credit allocated, or provisionally allocated, to such projects shall be terminated, null and  
8 void.

9 (b) The amendments to this article enacted in the year 2009 shall apply to all taxable years  
10 beginning after December 31, 2007, and shall apply with retroactive effect with relation to taxable  
11 years beginning prior to the date of passage of such amendments.

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

**§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 colleges located in this State;

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

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

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

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

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

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

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

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

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

48 (F) For purposes of this subsection:

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

50 (I) Gifts, grants, contributions or membership fees;

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

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

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

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

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

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

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

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

79 (7) An isolated transaction in which any taxable service or any tangible personal property  
80 is sold, transferred, offered for sale or delivered by the owner of the property or by his or her  
81 representative for the owner’s account, the sale, transfer, offer for sale or delivery not being made  
82 in the ordinary course of repeated and successive transactions of like character by the owner or

83 on his or her account by the representative: *Provided*, That nothing contained in this subdivision  
84 may be construed to prevent an owner who sells, transfers or offers for sale tangible personal  
85 property in an isolated transaction through an auctioneer from availing himself or herself of the  
86 exemption provided in this subdivision, regardless of where the isolated sale takes place. The  
87 Tax Commissioner may propose a legislative rule for promulgation pursuant to article three,  
88 chapter twenty-nine-a of this code which he or she considers necessary for the efficient  
89 administration of this exemption;

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

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

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

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



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

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

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

127           (15) Sales of property or services to a school which has approval from the Board of  
128 Trustees of the University System of West Virginia or the Board of Directors of the State College  
129 System to award degrees, which has its principal campus in this state and which is exempt from  
130 federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as  
131 amended: *Provided*, That sales of gasoline and special fuel are taxable;

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

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

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

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

148           (20) Sales of tickets for activities sponsored by elementary and secondary schools located  
149 within this State;

150           (21) Sales of electronic data processing services and related software: *Provided*, That, for  
151 the purposes of this subdivision, “electronic data processing services” means:

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

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

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

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

168 (24) Food for the following are exempt:

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

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

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

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

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

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

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

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

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

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

209 (27) Sales of or charges for the transportation of passengers in interstate commerce;

210 (28) Sales of tangible personal property or services to any person which this State is  
211 prohibited from taxing under the laws of the United States or under the constitution of this State;

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

215 (30) Charges for the services of opening and closing a burial lot;

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

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

229 (33) Sales of aircraft repair, remodeling and maintenance services when the services are  
230 to an aircraft operated by a certified or licensed carrier of persons or property, or by a  
231 governmental entity, or to an engine or other component part of an aircraft operated by a  
232 certificated or licensed carrier of persons or property, or by a governmental entity and sales of  
233 tangible personal property that is permanently affixed or permanently attached as a component  
234 part of an aircraft owned or operated by a certificated or licensed carrier of persons or property,  
235 or by a governmental entity, as part of the repair, remodeling or maintenance service and sales

236 of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling  
237 or maintenance of aircraft, aircraft engines or aircraft component parts for a certificated or licensed  
238 carrier of persons or property or for a governmental entity;

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

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

244 (36) Sales of services by public libraries or by libraries at academic institutions or by  
245 libraries at institutions of higher learning;

246 (37) Commissions received by a manufacturer's representative;

247 (38) Sales of primary opinion research services when:

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

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

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

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

259 (39) Sales of property or services to persons within the State when those sales are for the  
260 purposes of the production of value-added products: *Provided*, That the exemption granted in this  
261 subdivision applies only to services, equipment, supplies and materials directly used or consumed

262 by those persons engaged solely in the production of value-added products: *Provided, however,*  
263 That this exemption may not be claimed by any one purchaser for more than five consecutive  
264 years, except as otherwise permitted in this section.

265 For the purpose of this subdivision, the term “value-added product” means the following  
266 products derived from processing a raw agricultural product, whether for human consumption or  
267 for other use. For purposes of this subdivision, the following enterprises qualify as processing raw  
268 agricultural products into value-added products: Those engaged in the conversion of:

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

270 (B) Fruits into wine;

271 (C) Honey into wine;

272 (D) Wool into fabric;

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

274 (F) Milk into cheese;

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

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

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

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

279 (40) Sales of music instructional services by a music teacher and artistic services or artistic  
280 performances of an entertainer or performing artist pursuant to a contract with the owner or  
281 operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility  
282 or any other business location in this State in which the public or a limited portion of the public  
283 may assemble to hear or see musical works or other artistic works be performed for the enjoyment  
284 of the members of the public there assembled when the amount paid by the owner or operator for  
285 the artistic service or artistic performance does not exceed \$3,000 dollars: *Provided,* That nothing  
286 contained herein may be construed to deprive private social gatherings, weddings or other private  
287 parties from asserting the exemption set forth in this subdivision. For the purposes of this

288 exemption, artistic performance or artistic service means and is limited to the conscious use of  
289 creative power, imagination and skill in the creation of aesthetic experience for an audience  
290 present and in attendance and includes, and is limited to, stage plays, musical performances,  
291 poetry recitations and other readings, dance presentation, circuses and similar presentations and  
292 does not include the showing of any film or moving picture, gallery presentations of sculptural or  
293 pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio  
294 or television shows or any video or audio taped presentations or the sale or leasing of video or  
295 audio tapes, air shows or any other public meeting, display or show other than those specified  
296 herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales  
297 of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a  
298 legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions  
299 and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set  
300 forth herein: *Provided further*, That nude dancers or strippers may not be considered as  
301 entertainers for the purposes of this exemption;

302 (41) Charges to a member by a membership association or organization which is exempt  
303 from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code  
304 of 1986, as amended, for membership in the association or organization, including charges to  
305 members for newsletters prepared by the association or organization for distribution primarily to  
306 its members, charges to members for continuing education seminars, workshops, conventions,  
307 lectures or courses put on or sponsored by the association or organization, including charges for  
308 related course materials prepared by the association or organization or by the speaker or  
309 speakers for use during the continuing education seminar, workshop, convention, lecture or  
310 course, but not including any separate charge or separately stated charge for meals, lodging,  
311 entertainment or transportation taxable under this article: *Provided*, That the association or  
312 organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment  
313 or transportation taxable under this article for which a separate or separately stated charge is not



314 made. A membership association or organization which is exempt from paying federal income  
315 taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may  
316 elect to pay the tax imposed under this article on the purchases for which a separate charge or  
317 separately stated charge could apply and not charge its members the tax imposed by this article  
318 or the association or organization may avail itself of the exemption set forth in subdivision (9) of  
319 this subsection relating to purchases of tangible personal property for resale and then collect the  
320 tax imposed by this article on those items from its member;

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

323 (43) Direct or subscription sales by the Division of Natural Resources of the magazine  
324 currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the  
325 magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

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

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

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

336 (47) Sales of tangible personal property and services by volunteer fire departments and  
337 rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the  
338 Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue

339 for the functions and activities of the organization and the revenue obtained is exempt from federal  
340 income tax and actually expended for that purpose;

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

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

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

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

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

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

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

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

375 ~~(6) Sales of construction and maintenance materials acquired by a second party for use  
376 in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or  
377 credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to  
378 the Division of Highways for deposit into the State Road Fund of the state reimbursement for the  
379 tax in the amount estimated under the provisions of this subdivision: *Provided*, however, That by  
380 the fifteenth day of June of each fiscal year, the division shall provide to the Tax Department an  
381 itemized listing of highways projects with the amount of funds expended for highway construction  
382 and maintenance. The Commissioner of Highways shall request reimbursement of the tax based  
383 on an estimate that forty percent of the total gross funds expended by the agency during the fiscal  
384 period were for the acquisition of materials used for highway construction and maintenance. The  
385 amount of the reimbursement shall be calculated at six percent of the forty percent.~~

386 (c) *Effective date.* – The amendment to subsection (b) of this section enacted in 2017 shall  
387 take effect May 1, 2017, and shall be construed to prohibit all future transfers to the State Road  
388 Fund established in the State Treasury pursuant to section fifty-two, article six of the Constitution,  
389 under this section of taxes imposed by this article and article fifteen-a of this chapter.

**ARTICLE 16. NONINTOXICATING BEER.**

**§11-16-13. Barrel tax on nonintoxicating beer.**

1 (a) There is hereby levied and imposed, in addition to the license taxes provided for in this  
2 article, a tax of \$5.50 on each barrel of thirty-one gallons and in like ratio on each part barrel of  
3 nonintoxicating beer manufactured in this state for sale within this state, whether contained or  
4 sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all  
5 nonintoxicating beer manufactured outside of this state and brought into this state for sale within  
6 this state: Provided, That on and after July 1, 2017, the tax imposed by this section shall be \$8.00  
7 on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer  
8 manufactured in this state for sale within this state, whether contained or sold in barrels, bottles  
9 or other containers, and a like tax is hereby levied and imposed upon all nonintoxicating beer  
10 manufactured outside of this state and brought into this state for sale within this state; but no  
11 nonintoxicating beer manufactured, sold or distributed in this state is subject to more than one  
12 barrel tax. The brewer manufacturing or producing nonintoxicating beer within this state for sale  
13 within this state shall pay the barrel tax on such nonintoxicating beer, and, except as provided  
14 otherwise, the distributor who is the original consignee of nonintoxicating beer manufactured or  
15 produced outside of this state, or who brings such nonintoxicating beer into this state, shall pay  
16 the barrel tax on such nonintoxicating beer manufactured or produced outside of this state:  
17 *Provided, That the barrel tax imposed by this section shall not apply to nonintoxicating beer*  
18 *manufactured by a brewpub.*

19 (b) On or before the tenth day of each month during the license period, every brewer or  
20 operator of a brewpub who manufactures or produces nonintoxicating beer within this state shall  
21 file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax  
22 Commissioner, stating its total sales, or in the case of a brewpub, its total estimated production  
23 of nonintoxicating beer within this state during that month, and at the same time shall pay the tax  
24 levied by this article on such production. On or before the tenth day of each month during the

25 license period, every distributor who is the original consignee of nonintoxicating beer  
26 manufactured or produced outside this state or who brings such beer into this state for sale shall  
27 file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax  
28 Commissioner, stating its total estimated purchases of such nonintoxicating beer during that  
29 month, and at the same time shall pay the tax thereon levied by this article for such estimated  
30 monthly purchase: *Provided*, That the Tax Commissioner may allow, or require, a brewer who  
31 manufactures or produces nonintoxicating beer outside this state to file the required report and  
32 pay the required tax on behalf of its distributor or distributors. Any brewer or distributor or operator  
33 of a brewpub who files a report under this subsection may adjust its monthly estimated sales or  
34 purchases or production report or reports by filing amended reports by the twenty-fifth day of the  
35 reporting month.

36 (c) Every brewer or distributor or operator of a brewpub who files a report under subsection  
37 (b) of this section shall file a final monthly report of said sales or purchases or production, in a  
38 form and at a time prescribed by the Tax Commissioner, stating actual nonintoxicating beer sales,  
39 purchases, or production and other information which the Tax Commissioner may require, and  
40 shall include a remittance for any barrel tax owed for actual sales or purchases or production  
41 made in excess of the amount estimated for that month.

42 (d) Any brewer or distributor or operator of a brewpub who files a report pursuant to  
43 subsection (b) of this section reflecting an underestimation of twenty-five percent or more of actual  
44 sales or purchases or production of nonintoxicating beer as shown by the report filed pursuant to  
45 subsection (c) of this section shall be assessed a penalty of one percent of the total taxes due in  
46 such prior month.

47 (e) Brewers and distributors and operators of brewpubs shall keep all records which relate  
48 to the sale or purchase in this state of nonintoxicating beer for a period of three years unless  
49 written approval for earlier disposal is granted by the Tax Commissioner.

50           (f) Brewpubs shall keep such records as required by the federal government and may, in  
51 lieu of the recordkeeping and reporting requirements contained in subsections (a) through (e) of  
52 this section, file copies of the federal reports contemporaneously with the Tax Commissioner at  
53 the time of such filings with the federal government. The filing of duplicate copies of the federal  
54 reports with the State Tax Commissioner shall be deemed as compliance with subsections (a)  
55 through (e) of this section.