

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **Senate Bill 484**

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

PREZIOSO

(BY REQUEST OF THE EXECUTIVE)

[Introduced February 28, 2017; Referred  
to the Committee on Finance]

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 §11-15-3, §11-15-8 and §11-15-9 of said code; to amend  
3 and reenact §11-15A-2 of said code; to amend and reenact §11-16-13 of said code; to  
4 amend said code by adding thereto a new section, designated §11-21-97; and to amend  
5 said code by adding thereto a new article, designated §11-28-1, §11-28-2, §11-28-3, §11-  
6 28-4, §11-28-5, §11-28-6, §11-28-7, §11-28-8, §11-28-9, §11-28-10, §11-28-11, §11-28-  
7 12, §11-28-13, §11-28-14 and §11-28-15, all relating generally to taxation; eliminating new  
8 film tax credits but preserving credit for taxpayers authorized to claim credit prior to  
9 specified date; increasing rate of consumers sales and service tax and use tax to 6.5  
10 percent; providing for rate of tax to revert to six percent on and after July 1, 2020, as long  
11 as certain parameters are met with respect to the revenue shortfall reserve funds; limiting  
12 the exemption or exception of certain professional services from consumers sales and  
13 service tax and use tax; terminating exemption from consumers sales and service tax and  
14 use tax for certain advertising services; eliminating exemption from consumers sales and  
15 service tax for certain purchases of materials acquired for use in state highway projects;  
16 increasing rate of barrel tax on nonintoxicating beer; creating the West Virginia Personal  
17 Income Tax Study Commission to study the feasibility of eliminating the West Virginia  
18 personal income tax; providing for the members and operation of the commission;  
19 requiring the commission to submit a report by specified date; permitting certain  
20 confidential information to be disclosed to the commission; prohibiting further disclosure  
21 of confidential information received by the commission; exempting certain information  
22 received by the commission from the West Virginia Freedom of Information Act; providing  
23 criminal and civil penalties for unauthorized disclosure; imposing new tax on privilege of  
24 engaging in commercial activity in this state; defining terms; specifying measure of  
25 commercial activity tax; providing for administration of commercial activity tax; exempting  
26 certain entities from commercial activity tax; providing credit against commercial activity

27 tax for payment of certain gross receipts' taxes to state; imposing criminal penalties for  
 28 noncompliance; providing for severability; specifying effective date; and providing sunset  
 29 date of July 1, 2020, for elimination of the commercial activity tax as long as certain  
 30 parameters are met with respect to the revenue shortfall reserve funds.

*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 §11-15-3, §11-15-8 and §11-15-9 of said code be amended and  
 3 reenacted; that §11-15A-2 of said code be amended and reenacted; that §11-16-13 of said code  
 4 be amended and reenacted; that said code be amended by adding thereto a new section,  
 5 designated §11-21-97; and that said code be amended by adding thereto a new article,  
 6 designated §11-28-1, §11-28-2, §11-28-3, §11-28-4, §11-28-5, §11-28-6, §11-28-7, §11-28-8,  
 7 §11-28-9, §11-28-10, §11-28-11, §11-28-12, §11-28-13, §11-28-14 and §11-28-15, all to read as  
 8 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 but prior to July 1, 201,7 in accordance with the termination of the West  
 3 Virginia Film Industry Investment Act set forth in section four of this article.

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

**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 six cents on the dollar percent of the sales price of sales tangible personal  
 8 property, custom software or taxable services purchased, excluding gasoline and special fuel

9 sales, which remain taxable at the rate of five cents percent: ~~on the dollar of sales~~ Provided, That  
 10 on and after July 1, 2017, the tax imposed by this article shall be six and one-half percent of the  
 11 purchase price, excluding sales of motor fuels, which remain taxable at the rate of five percent of  
 12 the average wholesale selling price of motor fuel: Provided, however, That this increase in the  
 13 rate of tax adopted pursuant to the reenactment of this section during the 2017 Regular Session  
 14 of the Legislature shall expire on June 30, 2020, so long as the balance of funds as of June 30,  
 15 2019, in the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B,  
 16 established in section twenty, article two, chapter eleven-b of this code equals or exceeds fifteen  
 17 percent of the general revenue fund budgeted for the fiscal year commencing on July 1, 2019.

18 ~~(c) Calculation tax on fractional parts of a dollar until January 1, 2004. B There shall be~~  
 19 ~~no tax on sales where the monetary consideration is 54 or less. The amount of the tax shall be~~  
 20 ~~computed as follows:~~

21 ~~(1) On each sale, where the monetary consideration is from 64 to 164, both inclusive, 14.~~

22 ~~(2) On each sale, where the monetary consideration is from 174 to 334, both inclusive,~~  
 23 ~~24.~~

24 ~~(3) On each sale, where the monetary consideration is from 344 to 504, both inclusive,~~  
 25 ~~34.~~

26 ~~(4) On each sale, where the monetary consideration is from 514 to 674, both inclusive,~~  
 27 ~~44.~~

28 ~~(5) On each sale, where the monetary consideration is from 684 to 844, both inclusive,~~  
 29 ~~54.~~

30 ~~(6) On each sale, where the monetary consideration is from 854 to \$1, both inclusive, 64.~~

31 ~~(7) If the sale price is in excess of \$1, 64 on each whole dollar of sale price, and upon any~~  
 32 ~~fractional part of a dollar in excess of whole dollars as follows: 14 on the fractional part of the~~  
 33 ~~dollar if less than 174; 24 on the fractional part of the dollar if in excess of 164 but less than 344;~~

34 ~~34 on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 44 on the fractional~~  
35 ~~part of the dollar if in excess of 50¢ but less than 68¢; 54 on the fractional part of the dollar if in~~  
36 ~~excess of 67¢ but less than 85¢; and 64 on the fractional part of the dollar if in excess of 84¢. For~~  
37 ~~example,~~  
38 ~~the tax on sales from \$1.01 to \$1.16, both inclusive, 74; on sales from \$1.17 to \$1.33, both~~  
39 ~~inclusive, 84; on sales from \$1.34 to \$1.50, both inclusive, 94; on sales from \$1.51 to \$1.67, both~~  
40 ~~inclusive, 104; on sales from \$1.68 to \$1.84, both inclusive, 114 and on sales from \$1.85 to \$2,~~  
41 ~~both inclusive, 124: *Provided*, That beginning January 1, 2004, tax due under this article shall be~~  
42 ~~calculated as provided in subsection (d) of this subsection and this subsection (c) does not apply~~  
43 ~~to sales made after December 31, 2003.~~

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

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

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

59 equal to six percent of fifty percent of the sales price: Provided, That on and after July 1, 2017,  
 60 notwithstanding any provision of this article to the contrary, the tax levied on sales of mobile  
 61 homes to be used by the owner thereof as his or her principal year-round residence and dwelling  
 62 shall be an amount equal to six and one-half percent of fifty percent of the sales price: *Provided,*  
 63 *however, That should the rate of tax imposed in subsection (b) of this section revert to six percent*  
 64 *as of a specified date, the tax imposed on sales of certain mobile homes shall similarly revert to*  
 65 *six percent of fifty percent of the sales price.*

66 ~~(g)~~ (f) *Construction; custom software.* – ~~After December 31, 2003, whenever~~ Whenever  
 67 the words "tangible personal property" or "property" appear in this article, the same shall also  
 68 include the words "custom software".

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

71 (h) Notwithstanding any provision of this code to the contrary, on and after July 1, 2017,  
 72 when the words "six percent" appear in this article or article fifteen of this chapter they shall mean  
 73 the rate of the tax specified in subsection (b) of this section.

#### **§11-15-8. Furnishing of services included; exception.**

1 The provisions of this article apply not only to selling tangible personal property and  
 2 custom software, but also to the furnishing of all services, except professional and personal  
 3 services, and except those services furnished by businesses subject to the control of the Public  
 4 Service Commission when the service or the manner in which it is delivered is subject to regulation  
 5 by the Public Service Commission: Provided, That on July 1, 2017, the furnishing of professional  
 6 services are subject to the tax imposed under this article, with the exception of professional  
 7 services rendered by acupuncturists, audiologists, certified registered nurse anesthetists,  
 8 chiropractors, dentists, licensed occupational therapists, licensed physical therapists,  
 9 ophthalmologists, optometrists, osteopathic physicians and surgeons, pharmacists, physical  
 10 therapists, physicians, physicians' assistants, podiatrists, psychiatrists, psychoanalysts,

11 psychologists, registered professional nurses, school psychologists, speech pathologists, and  
 12 other professional medical practitioners designated by the commissioner, with the exception of  
 13 veterinarians.

**§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~~ Higher Education Policy  
 15 Commission or the Council for Community and Technical College Education for universities and  
 16 colleges located in this state;

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



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

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

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

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

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

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

41 (D) An organization which has no paid employees and its gross income from fundraisers,  
42 less reasonable and necessary expenses incurred to raise the gross income (or the tangible  
43 personal property or services purchased with the net income), is donated to an organization which  
44 is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of  
45 1986, as amended;

46 (E) A youth organization, such as the Girl Scouts of the United States of America, the Boy  
47 Scouts of America or the YMCA Indian Guide/Princess Program and the local affiliates thereof,

48 which is organized and operated exclusively for charitable purposes and has as its primary  
49 purpose the nonsectarian character development and citizenship training of its members;

50 (F) For purposes of this subsection:

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

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

53 (II) Gross receipts from fundraisers which include receipts from admissions, sales of  
54 merchandise, performance of services or furnishing of facilities in any activity which is not an  
55 unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of  
56 1986, as amended;

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

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

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

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

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

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

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

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

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

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

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

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

111 (12) Sales of radio and television broadcasting time, internet advertising, preprinted  
112 advertising circulars and newspaper and outdoor advertising space for the advertisement of  
113 goods or services: *Provided, That on and after July 1, 2017, advertising services, including, but*  
114 *not limited to, the sales of radio and television broadcasting time, preprinted advertising circulars*  
115 *and newspaper and outdoor advertising space for the advertisement of goods or services are*  
116 *taxable for purposes of this article and for purposes of article fifteen-a of this chapter.*

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

118 (14) Casual and occasional sales of property or services not conducted in a repeated  
119 manner or in the ordinary course of repetitive and successive transactions of like character by a  
120 corporation or organization which is exempt from tax under subdivision (6) of this subsection on  
121 its purchases of tangible personal property or services. For purposes of this subdivision, the term  
122 "casual and occasional sales not conducted in a repeated manner or in the ordinary course of  
123 repetitive and successive transactions of like character" means sales of tangible personal property  
124 or services at fundraisers sponsored by a corporation or organization which is exempt, under

125 subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases  
126 when the fundraisers are of limited duration and are held no more than six times during any  
127 twelve-month period and "limited duration" means no more than eighty-four consecutive hours:  
128 Provided, That sales for volunteer fire departments and volunteer school support groups, with  
129 duration of events being no more than eighty-four consecutive hours at a time, which are held no  
130 more than eighteen times in a twelve-month period for the purposes of this subdivision are  
131 considered "casual and occasional sales not conducted in a repeated manner or in the ordinary  
132 course of repetitive and successive transactions of a like character";

133 (15) Sales of property or services to a school which has approval from the ~~Board of~~  
134 ~~Trustees of the University System of West Virginia or the Board of Directors of the State College~~  
135 ~~System~~ Higher Education Policy Commission or the Council for Community and Technical  
136 College Education to award degrees, which has its principal campus in this state and which is  
137 exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue  
138 Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel are taxable as  
139 provided in sections eighteen and eighteen-b of this article and article fourteen-c of this chapter;

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

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

145 (18) Notwithstanding the provisions of section eighteen or eighteen-b of this article or any  
146 other provision of this article to the contrary, sales of propane to consumers for poultry house  
147 heating purposes, with any seller to the consumer who may have prior paid the tax in his or her  
148 price, to not pass on the same to the consumer, but to make application and receive refund of the  
149 tax from the Tax Commissioner pursuant to rules which are promulgated after being proposed for

150 legislative approval in accordance with chapter twenty-nine-a of this code by the Tax  
151 Commissioner;

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

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

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

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

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

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

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

176 (24) Food for the following are exempt:

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

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

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

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

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

198 (F) Food sold by any religious organization at a social or other gathering conducted by it  
199 or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and  
200 activities of the organization and the revenue obtained from selling the food is actually used in  
201 carrying out those functions and activities: *Provided*, That purchases made by the organizations

202 are not exempt as a purchase for resale; or

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

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

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

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

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

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

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

224 (31) Sales of livestock, poultry or other farm products in their original state by the producer  
225 of the livestock, poultry or other farm products or a member of the producer's immediate family  
226 who is not otherwise engaged in making retail sales of tangible personal property; and sales of  
227 livestock sold at public sales sponsored by breeders or registry associations or livestock auction



228 markets: *Provided*, That the exemptions allowed by this subdivision may be claimed without  
229 presenting or obtaining exemption certificates provided the farmer maintains adequate records;

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

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

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

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

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

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

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

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

257 (B) The results of the service activities, including, but not limited to, reports, lists of focus

258 group recruits and compilation of data are transferred to the client across state lines by mail, wire

259 or other means of interstate commerce, for use by the client outside the State of West Virginia;

260 and

261 (C) The transfer of the results of the service activities is an indispensable part of the overall

262 service.

263 For the purpose of this subdivision, the term "primary opinion research" means original

264 research in the form of telephone surveys, mall intercept surveys, focus group research, direct

265 mail surveys, personal interviews and other data collection methods commonly used for

266 quantitative and qualitative opinion research studies;

267 (39) Sales of property or services to persons within the State when those sales are for the

268 purposes of the production of value-added products: *Provided*, That the exemption granted in this

269 subdivision applies only to services, equipment, supplies and materials directly used or consumed

270 by those persons engaged solely in the production of value-added products: *Provided*, however,

271 That this exemption may not be claimed by any one purchaser for more than five consecutive

272 years, except as otherwise permitted in this section.

273 For the purpose of this subdivision, the term "value-added product" means the following

274 products derived from processing a raw agricultural product, whether for human consumption or

275 for other use. For purposes of this subdivision, the following enterprises qualify as processing raw

276 agricultural products into value-added products: Those engaged in the conversion of:

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

278 (B) Fruits into wine;

279 (C) Honey into wine;

280 (D) Wool into fabric;

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

282 (F) Milk into cheese;

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

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

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

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

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

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

289 operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility

290 or any other business location in this State in which the public or a limited portion of the public

291 may assemble to hear or see musical works or other artistic works be performed for the enjoyment

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

293 the artistic service or artistic performance does not exceed \$3,000 dollars: *Provided*, That nothing

294 contained herein may be construed to deprive private social gatherings, weddings or other private

295 parties from asserting the exemption set forth in this subdivision. For the purposes of this

296 exemption, artistic performance or artistic service means and is limited to the conscious use of

297 creative power, imagination and skill in the creation of aesthetic experience for an audience

298 present and in attendance and includes, and is limited to, stage plays, musical performances,

299 poetry recitations and other readings, dance presentation, circuses and similar presentations and

300 does not include the showing of any film or moving picture, gallery presentations of sculptural or

301 pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio

302 or television shows or any video or audio taped presentations or the sale or leasing of video or

303 audio tapes, air shows or any other public meeting, display or show other than those specified

304 herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales

305 of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a

306 legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions  
307 and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set  
308 forth herein: *Provided further*, That nude dancers or strippers may not be considered as  
309 entertainers for the purposes of this exemption;

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

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

331 (43) Direct or subscription sales by the Division of Natural Resources of the magazine

332 currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the  
333 magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

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

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

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

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

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

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

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

358 personal property and services are exempt from tax as provided in this subsection:

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

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

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

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

375 (5) Sales of building materials or building supplies or other property to an organization  
376 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended,  
377 which are to be installed in, affixed to or incorporated by the organization or its agent into real  
378 property or into a building or structure which is or will be used as permanent low-income housing,  
379 transitional housing, an emergency homeless shelter, a domestic violence shelter or an  
380 emergency children and youth shelter if the shelter is owned, managed, developed or operated  
381 by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of  
382 1986, as amended; ~~and~~

383 ~~(6) Sales of construction and maintenance materials acquired by a second party for use~~

384 ~~in the construction or maintenance of a highway project: Provided, That in lieu of any refund or~~  
 385 ~~credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to~~  
 386 ~~the Division of Highways for deposit into the State Road Fund of the state reimbursement for the~~  
 387 ~~tax in the amount estimated under the provisions of this subdivision: Provided, however, That by~~  
 388 ~~the fifteenth day of June of each fiscal year, the division shall provide to the Tax Department an~~  
 389 ~~itemized listing of highways projects with the amount of funds expended for highway construction~~  
 390 ~~and maintenance. The Commissioner of Highways shall request reimbursement of the tax based~~  
 391 ~~on an estimate that forty percent of the total gross funds expended by the agency during the fiscal~~  
 392 ~~period were for the acquisition of materials used for highway construction and maintenance. The~~  
 393 ~~amount of the reimbursement shall be calculated at six percent of the forty percent.~~

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

## **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 six and one-half percent of the purchase price of the  
 7 tangible personal property, custom software or taxable services, except as otherwise provided in  
 8 this article: Provided, however, That the one-half percent increase in the tax on the purchase price  
 9 adopted pursuant to the reenactment of this section during the 2017 Regular Session of the

10 Legislature shall expire on June 30, 2020, so long as the balance of funds as of June 30, 2019,  
11 in the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B,  
12 established in section twenty, article two, chapter eleven-b of this code equals or exceeds fifteen  
13 percent of the general revenue fund budgeted for the fiscal year commencing on July 1, 2019.

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

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

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

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



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

37 (g) Notwithstanding any provisions of this code to the contrary, on and after July 1, 2017,  
38 when the words “six percent” appear in subsection (c), section ten of this article, those words shall  
39 mean “a percentage equal to the use tax rate” specified in subsection (a) of this section.

## **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.

## **ARTICLE 21. PERSONAL INCOME TAX**

### **§11-21-97. Personal income tax study.**

1 (a) Creation of West Virginia Personal Income Tax Study Commission. – Effective July 1,  
 2 2017, there is hereby created a commission to be known as the West Virginia Personal Income  
 3 Tax Study Commission (the “Commission”) consisting of the following members:

4 (1) The Governor of the State of West Virginia, or his designee;

5 (2) Three (3) nonvoting members of the State Senate, designated by the Senate  
 6 President;

7 (3) Three (3) nonvoting members of the House of Delegates, designated by the Speaker  
 8 of the House of Delegates;

9 (4) The Secretary of the West Virginia Department of Revenue (the “Secretary of  
 10 Revenue”), or a designee;

11 (5) The Director of the West Virginia State Budget Office (the “Director of the State Budget  
 12 Office”);

13 (6) The Commissioner of the West Virginia State Tax Department (the “Tax  
 14 Commissioner”), or a designee;

15 (7) Two (2) representatives from the academic community who have extensive experience

16 in studying the state's taxation system; and

17 (8) Such other members as may hereafter be named by the Governor.

18 (b) *Personal income tax study.* – The commission shall study the feasibility of eliminating  
19 the West Virginia personal income tax and shall file a report with the Governor and the West  
20 Virginia State Legislature on or before December 1, 2018. The report shall recommend proposed  
21 amendments to the tax imposed under this article and shall include recommended legislation.  
22 The commission in its report shall examine the feasibility and fiscal implications eliminating the  
23 state personal income tax would have on affected governmental entities.

24 (c) The commission shall hold regular meetings, which meetings shall be scheduled and  
25 presided over by the chairperson designated by the Governor among the members of the  
26 Commission.

27 (d) The Commission may establish such subcommittees as it deems necessary and  
28 convenient to carry out the provisions of this section no later than December 1, 2018.

29 (e) *Disclosure and confidentiality.* –

30 (1) Witnesses, experts, government officials, consultants, and private or public sector  
31 representatives who provide data, information or statistics to the Office of the Governor, the  
32 Secretary of Revenue, the Director of the State Budget Office, or the Tax Commissioner or others  
33 engaged in the study mandated by this section shall not be treated as being subject to the  
34 confidentiality restrictions of section five-d, article ten of this chapter and shall not be treated as  
35 subject to the confidentiality requirements of subsection (e) of this section, solely by reason of  
36 having provided information to the study.

37 (2) Notwithstanding any provision of this code to the contrary, the Office of the Governor,  
38 the Secretary of Revenue, the Director of the State Budget Office, the Tax Commissioner or others  
39 engaged in the study mandated by this section, may share financial information and other data  
40 disclosed under this section, with each other, and with any employees of state agencies providing  
41 support services to the commission in conducting the study. It is unlawful for the Office of the

42 Governor, Secretary of Revenue, the Director of the State Budget Office, the Tax Commissioner  
43 or others engaged in the study mandated by this section, including employees of the Office of the  
44 Governor, the Secretary of Revenue, employees of the Director of the State Budget Office, and  
45 employees of the Tax Commissioner to disclose to any person not conducting the study any  
46 financial information and other data disclosed under this section.

47 (3) Notwithstanding any provision of this code to the contrary, it is unlawful for the Office  
48 of the Governor, the Secretary of Revenue, the Director of the State Budget Office, the Tax  
49 Commissioner or others engaged in the study mandated by this section, including employees of  
50 the Office of the Governor, employees of the Secretary of Revenue, employees of the Director of  
51 the State Budget Office, and employees of the Tax Commissioner to disclose to any person not  
52 conducting the study, any financial information and other data disclosed under this section. Such  
53 disclosure shall be a violation of the tax information confidentiality provisions of section five-d,  
54 article ten of this chapter.

55 (4) Financial information and other data disclosed to the Office of the Governor, the  
56 Secretary of Revenue, the Director of the State Budget Office, the Tax Commissioner or others  
57 engaged in the study mandated by this section, including employees of the Office of the Governor,  
58 employees of the Secretary of Revenue, employees of the Director of the State Budget Office,  
59 and employees of the Tax Commissioner shall have all of the confidentiality protections given to  
60 a “return” under section five-d of article ten of this chapter and any disclosure not authorized by  
61 that section, or this section, shall be subject to all of the penalties provided for unlawful disclosure  
62 of a “return.”

63 (5) Nothing in this section may be construed as prohibiting the publication or release of  
64 statistics so classified as to prevent the identification of a particular person or entity.

65 (6) Financial information and other data disclosed to the members of the commission  
66 under the provisions of this section shall be considered confidential and exempt from article one,  
67 chapter twenty-nine-b of this code.

68 (e) All members of the commission shall serve without salary.

69 (f) Staff support and facilitation for the commission shall be provided by the West Virginia  
70 Department of Revenue.

71 (g) The commission shall report the status of its efforts under this section and any  
72 proposed legislation to the Governor no later than December 1, 2018.

**ARTICLE 28. COMMERCIAL ACTIVITY TAX.**

**§11-28-1. Imposition of privilege tax.**

1 There is hereby levied and shall be collected an annual privilege tax on persons  
2 conducting any business or commercial activities in this state, in the amount of two tenths of  
3 one percent of the gross income of the business as defined by this article.

**§11-28-2. Definitions.**

1 (a) General. – When used in this article, words defined in subsection (b) of this section  
2 have the meanings ascribed to them in this section, except in those instances where a different  
3 meaning is provided in this article or the context in which the word is used clearly indicates that a  
4 different meaning is intended by the Legislature.

(b) Definitions:

6 (1) "Banking business" or "financial organization" shall mean any bank, banking  
7 association, trust company, industrial loan company, small loan company or licensee, building  
8 and loan association, savings and loan association, finance company, investment company,  
9 investment broker or dealer, and any other similar business organization whose assets consist  
10 primarily of intangible personal property and whose gross income consists primarily of  
11 dividends, interest and other charges derived from the use of money or credit.

12 (2) "Business" includes all activities engaged in or caused to be engaged in with the  
13 object of gain or economic benefit, either direct or indirect. "Business" does not include a casual  
14 sale by a person who is not engaged in the business of selling the type of property involved in  
15 such casual sale. "Business" includes the production of natural resources or manufactured

16 products which are used or consumed by the producer or manufacturer and includes the  
17 activities of a banking business or financial organization.

18 (3) (A) "Gross income" means the gross receipts of the taxpayer, other than a banking  
19 or financial business, received as compensation for personal services and the gross receipts of  
20 the taxpayer derived from trade, business, commerce or sales and the value proceeding or  
21 accruing from the sale of tangible property (real or personal), or service, or both, all receipts from  
22 the investment of the capital of the business, including rentals, royalties, fees, reimbursed  
23 costs or expenses or other emoluments however designated and including all interest, carrying  
24 charges, fees or other like income, however denominated, derived by the taxpayer from repetitive  
25 carrying of accounts, in the regular course and conduct of its business, and extension of  
26 credit in connection with the sale of any tangible personal property or service, and without  
27 any deductions on account of the cost of property sold, the cost of materials used, labor  
28 costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other  
29 expenses whatsoever: *Provided*, That gross income shall not include contributions to capital.

30 (B) (i) "Gross income of a banking or financial business" means the gross income received  
31 from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents  
32 from real or tangible personal property, however denominated, royalties, charges for bookkeeping  
33 or data processing, receipts from check sales, charges or fees, and receipts from the sale of  
34 tangible personal property.

35 (ii) "Gross income of a banking or financial business" does not include:

36 (I) Interest received on the obligations of the United States, its agencies and  
37 instrumentalities,

38 (II) Interest received on the obligations of this state, or any political subdivision of this  
39 state, or

40 (III) Interest received on investments or loans primarily secured by first mortgages or  
41 deeds of trust on residential property occupied by nontransients; however, all interest derived

42 from these activities shall be reported on the return of a person taxable under the provisions  
43 of this section.

44 (C) "Gross proceeds of sales" means the value, whether in money or other property,  
45 proceeding from the sale of tangible property, without any deduction for the cost of property sold  
46 or expenses of any kind: *Provided*, That bad debts shall be allowed as a deduction except that  
47 the amount of any bad debt recovery shall be included in gross proceeds of sale.

48 (D) The terms "gross income" and "gross proceeds of sales" do not include:

49 (i) Cash discounts allowed and taken on sales;

50 (ii) The proceeds of sale of goods, wares or merchandise returned by customers when  
51 the sale price is refunded either in cash or by credit;

52 (iii) The amount allowed as "trade-in value" for any article accepted as part payment for  
53 any article sold;

54 (iv) Excise taxes imposed by this state; or

55 (v) Money or other property received or held by a professional person for the sole use  
56 and benefit of a client or another person or money received by the taxpayer on behalf of a bank  
57 or other financial institution for the repayment of a debt of another.

58 (4) "Person" or "company," herein used interchangeably, includes any individual, firm,  
59 copartnership, partnership, limited liability company, joint adventure, association, corporation,  
60 trust or any other group or combination acting as a unit, and the plural as well as the singular  
61 number, unless the intention to give a more limited meaning is disclosed by the context.

62 (5) "Sale," "sales" or "selling" means any transfer of the ownership of or title to property,  
63 whether for money or in exchange for other property.

64 (6) "Selling at wholesale" or "wholesale sales" means and includes:

65 (A) Sales of any tangible personal property for the purpose of resale in the form of  
66 tangible personal property;

67 (B) Sales of machinery, supplies or materials which are to be directly consumed or used



68 by the purchaser in the conduct of any business or activity which is subject to the tax imposed  
69 by this article; and

70 (C) Sales of any tangible personal property to the United States of America, its agencies  
71 and instrumentalities or to the State of West Virginia, its institutions or political subdivisions.

72 (7) "Service business or calling" means all activities engaged in by a person for other  
73 persons for a consideration which involve the rendering of a service as distinguished from the  
74 sale of tangible property, but does not include the services rendered by an employee to his or  
75 her employer. This term includes, but is not limited to:

76 (A) Persons engaged in manufacturing, compounding or preparing for sale, profit or  
77 commercial use, articles, substances or commodities which are owned by another or others;

78 (B) Persons engaged as independent contractors in producing natural resource products  
79 which are owned by another or others, as personal property, immediately after the same are  
80 severed, extracted, reduced to possession and produced;

81 (C) The repetitive carrying of accounts, in the regular course and conduct of business,  
82 and extension of credit in connection with the sale of any tangible personal property or service.

83 (8) "Taxpayer" means any person liable for the tax imposed by this article;

84 (9) "Tax year" or "taxable year" means the calendar year, unless permission is obtained  
85 from the Tax Commissioner to use the taxpayer's fiscal year as the tax period;

86 (10) "Electronic filing" or "e-filing" means filing using electronic technology such as  
87 computer modem, magnetic media, optical disk, facsimile machine, telephone or other technology  
88 approved by the Tax Commissioner, in such manner as he or she deems acceptable. Any return  
89 required to be filed electronically under this article may contain an electronic signature, if a  
90 signature is required.

**§11-28-3. Rules for determining measure of tax.**

1 (a) If any person liable for the tax ships or transports its products or any part thereof out  
2 of the state without making sale of such products, the value of the products in the condition or

3 form in which they exist immediately before transportation out of the state shall be the basis for  
4 the assessment of the tax. The tax commissioner may prescribe rules for ascertaining such value.

5 (b) In determining value, however, of sales between affiliated companies or persons, or  
6 under other circumstances where the relation between the buyer and seller is such that the gross  
7 proceeds from the sale do not reflect the true value of the subject matter of the sale, the tax  
8 commissioner may prescribe rules for determining the value on which the privilege tax shall be  
9 levied, corresponding as nearly as possible to the gross proceeds from the sale of products where  
10 no common interest exists between the buyer and seller but the circumstances and conditions  
11 are otherwise similar.

12 (c) Upon every person engaging or continuing within this state in the business of  
13 manufacturing, compounding or preparing for sale, profit, or commercial use, either directly or  
14 through the activity of others in whole or in part, any article or articles, substance or substances,  
15 commodity or commodities, or newspaper publishing (including all gross income or proceeds of  
16 sale from circulation and advertising), the measure of this tax is the value of the entire product  
17 manufactured, compounded or prepared in the state for sale, profit or commercial use, regardless  
18 of the place of sale or the fact that deliveries may be made to points outside the state.

19 (d) In those instances in which the same person partially manufactures, compounds or  
20 prepares products within this state and partially manufactures, compounds or prepares such  
21 products outside of this state, the measure of the tax shall be that proportion of the sale price of  
22 the product that the payroll cost of manufacturing within this state bears to the entire payroll cost  
23 of manufacturing the product; or, at the option of the taxpayer, the measure of his or her tax under  
24 this section shall be the proportion of the sales value of the articles that the cost of operations in  
25 West Virginia bears to the full cost of manufacture of the articles.

**§11-28-4. Exemptions.**

1 The provisions of this article do not apply to:

2 (a) Insurance companies which pay the State of West Virginia a tax on premiums.

3 However, this exemption does not apply to portions of the gross income of insurance companies  
4 received for the use of real property, other than property in this state in which the insurance  
5 company maintains its office or offices, whether that income is in the form of rentals or royalties;

6 (b) Nonprofit cemetery companies organized and operated for the exclusive benefit of their  
7 members;

8 (c) Fraternal societies, organizations and associations organized and operated for the  
9 exclusive benefit of their members and not for profit. This exemption does not apply to gross  
10 income arising from the sale of alcoholic liquor, food and related services of such fraternal  
11 societies, organizations and associations which are licensed as private clubs under the provisions  
12 of article seven, chapter sixty of this code, except that funds derived from the licensed charitable  
13 gaming activities of such organizations are exempt;

14 (d) Corporations, associations and societies organized and operated exclusively for  
15 religious or charitable purposes: *Provided*, That this exemption does not apply to gross income  
16 derived from engaging in unrelated business activity as defined for federal income tax purposes;

17 (e) Production credit associations, organized under the provisions of the federal "Farm  
18 Credit Act of 1933"; or

19 (f) Any credit union organized under the provisions of chapter thirty-one or any other  
20 chapter of this code: Except, that the exemptions of this section shall not apply to corporations or  
21 cooperative associations organized under the provisions of article four, chapter nineteen of this  
22 code.

**§11-28-5. Computation of tax; payment.**

1 The tax imposed by this article is due and payable as follows:

2 (a) For taxpayers whose estimated tax under this article exceeds \$1,000 per month, the  
3 tax shall be due and payable in monthly installments on or before the last day of the month  
4 following the month in which the tax accrued. Each such taxpayer shall, on or before the last day  
5 of each month, make out an estimate of the tax for which it is liable for the preceding month and

6 submit it with a remittance in the form prescribed by the Tax Commissioner, of the amount of tax  
7 to the office of the commissioner.

8 (b) For taxpayers whose estimated tax under this article does not exceed \$1,000 per  
9 month, the tax shall be due and payable in quarterly installments within one month from the  
10 expiration of each quarter in which the tax accrued. Each such taxpayer shall, within one month  
11 from the expiration of each quarter, make out an estimate of the tax for which he or she is liable  
12 for such quarter, sign the same and mail it together with a remittance, in the form prescribed by  
13 the Tax Commissioner, of the amount of tax to the office of the commissioner.

14 (c) When the total tax for which any person is liable under this article does not exceed  
15 \$200 in any year, the taxpayer may pay the same quarterly as described in subsection (b) of this  
16 section or, with the consent in writing of the Tax Commissioner, at the end of the month next  
17 following the close of the tax year.

18 (d) The Tax Commissioner may require the return and payment for periods of shorter  
19 duration than those prescribed above if it is deemed necessary to ensure payment of the tax.

20 (e) The forms shall be filed electronically, in accordance with the procedures set forth in  
21 the Tax Commissioner's rule on use and acceptance of electronic records. Any taxpayer required  
22 to file and pay electronically who fails to do so, shall be required to pay a money penalty in an  
23 amount equal to five percent of the tax due.

**§11-28-6. Return and remittance by taxpayer.**

1 On or before the expiration of one month after the end of the tax year, each taxpayer shall  
2 make a return for the entire tax year showing the gross proceeds of sales or gross income of  
3 business, trade or calling, and compute the amount of tax chargeable in accordance with the  
4 provisions of this article and deduct the amount of monthly or quarterly payments (as hereinbefore  
5 provided), if any, and transmit with its report a remittance in the form prescribed by the Tax  
6 Commissioner covering the residue of the tax chargeable against the taxpayer to the office of the  
7 Tax Commissioner; such return shall be signed by the taxpayer if made by an individual, or by

8 the president, vice president, secretary or treasurer of a corporation if made on behalf of a  
 9 corporation. If made on behalf of a partnership, joint adventure, association, trust, or any other  
 10 group or combination acting as a unit, any individual delegated by such firm, copartnership, joint  
 11 adventure, association, trust or any other group or combination acting as a unit shall sign the  
 12 return on behalf of the taxpayer. The Tax Commissioner may extend the time for making the  
 13 annual return on the application of any taxpayer and grant such reasonable additional time within  
 14 which to make the same, for good cause shown. Annual returns must be filed, and payments  
 15 remitted, electronically, as provided in section four of this article, unless the taxpayer first obtains  
 16 a waiver in writing from the Tax Commissioner.

**§11-28-7. Tax year.**

1 The assessment of taxes and the returns required under the provisions of this article shall  
 2 be on a calendar year basis, unless permission is obtained from the Tax Commissioner to use  
 3 the taxpayer's fiscal year as the tax period.

**§11-28-8. Tax cumulative.**

1 The tax imposed by this article is in addition to all other licenses and taxes levied by law  
 2 as a condition precedent to engaging in any business, trade or calling in this state. A person  
 3 exercising a privilege taxable under this article, subject to the payment of all licenses and charges  
 4 which are condition precedent to exercising the privilege taxed, may exercise the privilege for the  
 5 current tax year upon the condition that he or she shall pay the tax accruing under this article.

**§11-28-9. Receivership or insolvency proceedings.**

1 In the event a business subject to the tax imposed by this article is being operated in  
 2 connection with a receivership or insolvency proceeding, the court under whose direction the  
 3 business is operated shall, by the entry of a proper order in the cause, make provision for the  
 4 regular payment of the taxes imposed by this article as they become due.

**§11-28-10. Priority in distribution in receivership, etc.; personal liability of administrator.**

1 In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of

2 the estate of any person, firm or corporation, all taxes due and unpaid under this article shall be  
3 paid from the first money available for distribution in priority to all claims, except taxes and debts  
4 due the United States which under federal law are given priority over the debts and liens created  
5 by this article. Any person charged with the administration of an estate who shall violate the  
6 provisions of this section shall be personally liable for any taxes accrued and unpaid under this  
7 article, which are chargeable against the person, firm or corporation whose estate is in  
8 administration.

**§11-28-11. Credit for taxes paid.**

1 (a) A credit shall be allowed against the tax imposed by this article for the following taxes  
2 paid to the State of West Virginia:

3 (1) The severance and business privilege tax imposed by article thirteen-a of this chapter.

4 (2) The health care provider tax imposed by article twenty-seven of this chapter.

5 (3) The acute care hospital tax imposed by article twenty-seven of this chapter.

6 (4) The business and occupation tax imposed by article thirteen of this chapter.

7 (b) No credit may be taken for the following taxes paid within this state:

8 (1) The municipal business and occupation tax imposed by a municipality pursuant to  
9 article thirteen, chapter eight of this code.

10 (2) The municipal public utilities tax imposed by a municipality pursuant to article thirteen,  
11 chapter eight of this code.

12 (c) In no case may the credit allowed under this section reduce a taxpayer's liability for the  
13 tax imposed by this article below zero dollars.

14 (d) No unused credit under this section may be carried forward or carried back to another  
15 tax year.

**§11-28-12. Offenses; penalties.**

1 It shall be unlawful for any person to refuse to make the return required by section six of  
2 this article; or to make any false or fraudulent return or false statement in any return, with intent

3 to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this article;  
4 or for any person to aid or abet another in any attempt to evade the payment of the tax, or any  
5 part thereof, imposed by this article; or for the president, vice president, secretary or treasurer of  
6 any corporation to make or permit to be made for any corporation or association any false return,  
7 or any false statement in any return required in this article, with the intent to evade the payment  
8 of any tax hereunder. Any person violating any of the provisions of this section shall be guilty of  
9 a misdemeanor and, on conviction thereof, shall be fined not more than \$10,000 or imprisoned  
10 not exceeding one year in the regional jail or punished by both fine and imprisonment, at the  
11 discretion of the court, within the limitations aforesaid. In addition to the foregoing penalties, any  
12 person who shall knowingly swear to or verify any false or fraudulent return, or any return  
13 containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense  
14 of false swearing, and, on conviction thereof, shall be punished in the manner provided by law.  
15 Any corporation for which a false return, or a return containing a false statement, as aforesaid,  
16 shall be made, shall be guilty of a misdemeanor and shall be punished by a fine of not more than  
17 \$10,000. The circuit and criminal courts of the county in which the offender resides, or, if a  
18 corporation, in which it carries on business, shall have concurrent jurisdiction to enforce this  
19 section.

**§11-28-13. Severability; effective date.**

1 (a) Severability – If any provision of this article or the application thereof shall for any  
2 reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not  
3 affect, impair or invalidate the remainder of said article, but shall be confined in its operation to  
4 the provision thereof directly involved in the controversy in which such judgment shall have been  
5 rendered, and the applicability of such provision to other persons or circumstances shall not be  
6 affected thereby.

7 (b) Effective date – The provisions of this article take effect July 1, 2017 and shall apply  
8 to gross income from business activity engaged in, on or after that date.

**§11-28-14. Termination date; short taxable years for taxpayers on calendar or fiscal year and cash or accrual accounting methods.**

1       (a) Each and every provision of this article is repealed for all tax periods beginning on and  
2 after July 1, 2020: *Provided*, That the provisions of this article shall remain in effect on and after  
3 July 1, 2020, so long as the combined balance of funds as of June 30, 2019, or any subsequent  
4 June 30, in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve  
5 Fund - Part B established in section twenty, article two, chapter eleven-b of this code is less than  
6 fifteen percent of the General Revenue Fund budgeted for the fiscal year of the state commencing  
7 July 1, 2019 or any fiscal year commencing thereafter. However, tax liabilities, if any, arising for  
8 taxable years or portions thereof ending prior to a July 1 termination date shall be determined,  
9 administered, assessed and collected as if the taxes imposed by this article had terminated; and  
10 the rights and duties of the taxpayer and the State of West Virginia shall be fully and completely  
11 preserved.

12       (b) Persons who are calendar year taxpayers under this article shall file their annual return  
13 for the calendar year of the termination date, on or before July 31 of that calendar year, and remit  
14 the amount of any taxes shown thereon to be due, unless an extension of time for filing is  
15 authorized by the Tax Commissioner.

16       (c) Persons who are fiscal year taxpayers shall similarly file an annual return on or before  
17 July 31 of the termination year, for their short taxable year which ended June 30 of that year, and  
18 remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is  
19 authorized by the Tax Commissioner.

20       (d) Persons who keep their records using the accrual method of accounting shall file their  
21 annual return for the full or short taxable year ending June 30 of the termination year, computing  
22 their tax liability under that method of accounting. A taxpayer shall file an amended return for the  
23 termination year and pay any additional taxes due within thirty days after determining that gross  
24 income was under-reported on the annual return.



25 (e) Persons who keep their records using the cash method of accounting may file their  
26 annual return for the full or short taxable year ending June 30 of the termination year, computing  
27 their tax liability under the cash method of accounting: *Provided*, That the taxpayer shall file a  
28 supplemental return for the termination year within one month after the close of each calendar  
29 quarter during each ensuing year in which the taxpayer receives gross income for any activity or  
30 portion thereof completed prior to July 1 of the termination year, and pay any additional taxes  
31 shown on the supplemental return to be due. The purpose of this requirement is to minimize the  
32 advantage or disadvantage associated with the different methods of accounting when the  
33 commercial activity tax is repealed.

**§11-28-15. General procedure and administration.**

1 Each and every provision of the "West Virginia Tax Procedure and Administration Act" set  
2 forth in article ten of this chapter, and the "West Virginia Tax Crimes and Penalties Act" set forth  
3 in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said  
4 acts were applicable only to the tax imposed by this article and were set forth in extenso in this  
5 article.

NOTE: The purpose of this bill is to solve the immediate fiscal crisis and stabilize the budget of the State of West Virginia. This bill increases the sales and service tax and use tax rates by one-half cent from 6% to 6.5%, with an expiration date of June 30, 2020, if certain parameters are met with respect to the revenue shortfall reserve funds. The bill also limits the exemption or exception of certain professional services and advertising services from the sales and services tax and use tax, and eliminates the exemption from sales tax for certain sales of materials acquired for use in state highway projects. This bill creates and provides for the operation of an annual privilege tax of two tenths of 1% on the gross income of entities engaging in commercial activity in this state, exempting certain entities from the tax, and providing for an expiration date of June 30, 2020 if certain parameters are met with respect to revenue shortfall reserve funds. In addition, this bill increases the rate of the barrel tax on nonintoxicating beer and eliminates the film industry tax credit. Finally, this bill establishes a commission to study feasibility of eliminating West Virginia personal income tax.

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