

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 125

FISCAL  
NOTE

BY SENATOR KARNES

[Introduced January 10, 2018; Referred  
to the Committee on Tax Reform; and then to the  
Committee on Finance]

1 A BILL to repeal §11-8-6e and §11-8-6g of the Code of West Virginia, 1931, as amended; to  
 2 amend and reenact §11-8-6f of said code; to amend said code by adding thereto a new  
 3 section, designated §11-13A-26; to amend said code by adding thereto a new article,  
 4 designated §11-13EE-1, §11-13EE-2, §11-13EE-3, and §11-13EE-4; to amend and  
 5 reenact §11-15-3, §11-15-3a, §11-15-8, and §11-15-9 of said code; to amend and reenact  
 6 §11-15A-2 of said code; and to amend said code by adding thereto a new section,  
 7 designated §11-21-4g, all relating generally to the 2018 Tax Reform Act; repealing certain  
 8 procedures relating to increased tax assessments; reducing the rate of the severance tax  
 9 on certain coal; providing a refundable credit based on the fixed income of low-income  
 10 senior citizens; increasing the rate of the consumers sales and service tax; eliminating  
 11 certain exemptions from the consumers sales and service tax; increasing the rate of the  
 12 use tax; reducing the rate of the personal income tax; and establishing effective dates.

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

## **ARTICLE 8. LEVIES.**

### **§11-8-6e. Effect on regular levy rate when appraisal results in tax increase; public hearings.**

1 [Repealed.]

### **§11-8-6f. ~~Regular school board levy rate; creation and implementation of Growth County School Facilities Act; creation of Growth County School Facilities Act Fund.~~**

2 ~~(a) Notwithstanding any other provision of law, where any annual appraisal, triennial~~  
 3 ~~appraisal or general valuation of property would produce a statewide aggregate assessment that~~  
 4 ~~would cause an increase of two percent or more in the total property tax revenues that would be~~  
 5 ~~realized were the then current regular levy rates of the county boards of education to be imposed,~~  
 6 ~~the rate of levy for county boards of education shall be reduced uniformly statewide and~~  
 7 ~~proportionately for all classes of property for the forthcoming tax year so as to cause the rate of~~  
 8 ~~levy to produce no more than one hundred two percent of the previous year's projected statewide~~  
 9 ~~aggregate property tax revenues from extending the county board of education levy rate, unless~~

10 subsection (b) of this section is complied with. The reduced rates of levy shall be calculated in the  
11 following manner: (1) The total assessed value of each class of property as it is defined by section  
12 five of this article for the assessment period just concluded shall be reduced by deducting the  
13 total assessed value of newly created properties not assessed in the previous year's tax book for  
14 each class of property; (2) the resulting net assessed value of Class I property shall be multiplied  
15 by .01; the value of Class II by .02; and the values of Classes III and IV, each by .04; (3) total the  
16 current year's property tax revenue resulting from regular levies for the boards of education  
17 throughout this state and multiply the resulting sum by one hundred two percent: *Provided, That*  
18 the one hundred two percent figure shall be increased by the amount the boards of education's  
19 increased levy provided for in subsection (b), section eight, article one-c of this chapter; (4) divide  
20 the total regular levy tax revenues, thus increased in subdivision (3) of this subsection, by the  
21 total weighted net assessed value as calculated in subdivision (2) of this subsection and multiply  
22 the resulting product by one hundred; the resulting number is the Class I regular levy rate, stated  
23 as cents per one hundred dollars of assessed value; and (5) the Class II rate is two times the  
24 Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding  
25 subdivision.

26 An additional appraisal or valuation due to new construction or improvements, including  
27 beginning recovery of natural resources, to existing real property or newly acquired personal  
28 property shall not be an annual appraisal or general valuation within the meaning of this section,  
29 nor shall the assessed value of the improvements be included in calculating the new tax levy for  
30 purposes of this section. Special levies shall not be included in any calculations under this section.

31 (b) After conducting a public hearing, the Legislature may, by act, increase the rate above  
32 the reduced rate required in subsection (a) of this section if an increase is determined to be  
33 necessary.

34 (c) The State Tax Commissioner shall report to the Joint Committee on Government and  
35 Finance and the Legislative Oversight Commission on Education Accountability by March 1 of

36 ~~each year on the progress of assessors in each county in assessing properties at the~~  
 37 ~~Constitutionally required sixty percent of market value and the effects of increasing the limit on~~  
 38 ~~the increase in total property tax revenues set forth in this section to two percent~~

39 ~~(d) Growth County School Facilities Act. — Legislative findings. —~~

40 (a) The Legislature finds and declares that there has been, overall, a statewide decline in  
 41 enrollment in the public schools of this state; due to this decline, most public schools have ample  
 42 space for students, teachers and administrators; however, some counties of this state have  
 43 experienced significant increases in enrollment due to significant growth in those counties; that  
 44 those counties experiencing significant increases do not have adequate facilities to accommodate  
 45 students, teachers and administrators. Therefore, the Legislature finds that county boards of  
 46 education in those high-growth counties should have the authority to designate revenues  
 47 generated from the application of the regular school board levy due to new construction or  
 48 improvements placed in a Growth County School Facilities Act Fund be used for school facilities  
 49 in those counties to promote the best interests of this state's students.

50 ~~(1)~~ (b) For the purposes of this ~~subsection~~ section "growth county" means any county that  
 51 has experienced an increase in second month net enrollment of fifty or more during any three of  
 52 the last five years, as determined by the state Department of Education.

53 ~~(2)~~ (c) The provisions of this ~~subsection shall~~ section only apply to any growth county, as  
 54 defined in ~~subdivision (1) of this subsection~~ this section, that, by resolution of its county board of  
 55 education, chooses to use the provisions of this ~~subsection~~ section.

56 ~~(3)~~ (d) For any growth county, as defined in ~~subdivision (1) of this subsection~~ this section  
 57 that adopts a resolution choosing to use the provisions of this ~~subsection, pursuant to subdivision~~  
 58 ~~(2) of this subsection~~ section, assessed values resulting from additional appraisal or valuation  
 59 due to new construction or improvements to existing real property shall be designated as new  
 60 property values and identified by the county assessor. The statewide regular school board levy  
 61 rate as established by the Legislature shall be applied to the assessed value designated as new

62 property values and the resulting property tax revenues collected from application of the regular  
 63 school board levy rate shall be placed in a separate account designated as the Growth County  
 64 School Facilities Act Fund. Revenues deposited in the Growth County School Facilities Act Fund  
 65 shall be appropriated by the county board of education for construction, maintenance or repair of  
 66 school facilities. Revenues in the fund may be carried over for an indefinite length of time and  
 67 may be used as matching funds for the purpose of obtaining funds from the School Building  
 68 Authority or for the payment of bonded indebtedness incurred for school facilities. For any growth  
 69 county choosing to use the provisions of this section, estimated school board revenues generated  
 70 from application of the regular school board levy rate to new property values are not to be  
 71 considered as local funds for purposes of the computation of local share under ~~the provisions of~~  
 72 §18-9A-11 of this code.

73 ~~(e) This section, as amended during the legislative session in the year 2004, shall be~~  
 74 ~~effective as to any regular levy rate imposed for the county boards of education for taxes due and~~  
 75 ~~payable on or after July 1, 2004. If any provision of this section is held invalid, the invalidity shall~~  
 76 ~~not affect other provisions or applications of this section which can be given effect without the~~  
 77 ~~invalid provision or its application and to this end the provisions of this section are declared to be~~  
 78 ~~severable~~

**§11-8-6g. Effect on special levy rates when appraisal results in tax revenue increase; public  
 hearings.**

1 [Repealed.]

**ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

**§11-13A-26. Prospective balancing of tax rate on coal production.**

1 (a) Notwithstanding anything contained in this article to the contrary, the tax on the  
 2 production of coal under §11-13A-3 of this code shall, from the effective date of this section, be  
 3 imposed at the following rates: All coal production taxed at five percent under section §11-13A-3

4 of this code shall be reduced by five equal parts annually beginning on July 1, 2018, until the coal  
5 production is taxed at two and five tenths percent under that section.

6 (b) In the case of all coal production, the applicable rate of tax includes the thirty-five one  
7 hundredths of one percent additional severance tax on coal imposed by the state for the benefit  
8 of counties and municipalities as provided in §11-13A-6 of this code.

9 (c) Effective date. – Notwithstanding any other sections of this article, this section applies  
10 to gross proceeds derived from the production of coal beginning on July 1, 2018. The language  
11 of §11-13A-3 of this code, in effect on the passage of the bill enacting this section in the year  
12 2018, applies to gross proceeds derived from the production of coal prior to July 1, 2018, and,  
13 with respect to such gross proceeds, shall be fully and completely preserved.

#### **ARTICLE 13EE. FIXED INCOME CREDIT FOR LOW INCOME SENIOR CITIZENS.**

##### **§11-13EE-1 Fixed income credit for low income senior citizens.**

1 For the tax years beginning on and after January 1, 2018, any resident of this state who  
2 is a low income senior citizen shall be allowed a credit equal to the adjusted credit amount  
3 determined in this article.

##### **§11-13EE-2. Procedure for claiming credit; Limitation of amount paid.**

1 (a) The credit available under this article may be claimed each year, and payment of the  
2 same requested by a low-income senior citizen, by filing, within ninety days following the filing of  
3 his or her federal income tax return for the year, a claim for credit on forms furnished by the State  
4 Tax Commissioner who shall process a requisition for remittance by the State Treasurer of the  
5 correct amounts of credit shown on properly completed and filed claims within the same time and  
6 according to the same procedures, including the payment of applicable interest, as provided in  
7 §11-10-14c of this code for refunds of personal income tax.

8 (b) No person may receive a credit pursuant to this section in excess of \$200: *Provided,*  
9 That any person entitled to the credits against personal income tax authorized in §11-21-21 of  
10 this code, §11-21-22 of this code or §11-21-23 of this code, may also receive the credits

11 authorized by this article. The maximum amount of the credit authorized by this article shall be  
 12 reviewed annually by the Legislature to determine if an adjustment is necessary.

13 (c) Due to the administrative cost of processing, the credit authorized by this section may  
 14 not be paid if the amount of the credit is determined to be less than \$10.

**§11-13EE-3. Definitions.**

1 For the purposes of this article, the term:

2 “Adjusted credit amount” means the amount which is equal to one percent of the person’s  
 3 adjusted gross income for the year, reduced by four percent of that amount for every one  
 4 percentage point by which such person’s adjusted gross income exceeds one hundred twenty-  
 5 five percent of the federal poverty guideline applicable to such person as provided in this section.

6 “Adjusted gross income” has the meaning as used in the Internal Revenue Code.

7 "Low income" means adjusted gross income for the tax year that is one hundred fifty  
 8 percent or less of the federal poverty guideline, based upon the number of individuals in the family  
 9 unit of which the low income senior citizen is a member, all as determined annually by the United  
 10 States Secretary of Health and Human Services.

11 "Low income senior citizen" means a resident of this state whose federal adjusted gross  
 12 income for the tax year meets the definition of "low income" as defined in this section, and who  
 13 has attained the age of sixty-five years: *Provided*, That for all purposes of this article, the term  
 14 “low income senior citizen” also means and includes, as one person, those individuals who file  
 15 joint federal income tax returns with their spouses, whether one or both spouses is a low income  
 16 senior citizen, and whether either or both spouses have attained the age of sixty-five years.

**§11-13EE-4. Effective date.**

1 This article takes effect on January 1, 2018.

**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 §11-15-2 of this  
3 code and §11-15-8 of this code, the vendor shall collect from the purchaser the tax as provided  
4 under this article and §11-15B-1 *et seq.* of this code, and shall pay the amount of tax to the Tax  
5 Commissioner in accordance with the provisions of this article or §11-15B-1 *et seq.* of this code.

6 (b) *Amount of tax.* -- The general consumer sales and service tax imposed by this article  
7 shall be at the rate of 6¢ on the dollar of sales or services, excluding gasoline and special fuel  
8 sales, which remain taxable at the rate of 5¢ on the dollar of sales: Provided, That for periods  
9 beginning on and after October 1, 2018, the rate of the tax shall be 7¢ on the dollar of sale or  
10 services, excluding gasoline and special fuel sales.

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

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

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

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

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

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

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

20 (7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any  
21 fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the  
22 dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢;  
23 3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional  
24 part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in  
25 excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For  
26 example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33,  
27 both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67,



28 both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to  
29 \$2, both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall  
30 be calculated as provided in subsection (d) of this subsection and this subsection (c) does not  
31 apply to sales made after December 31, 2003.

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

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

44 (f) *Rate of tax on certain mobile homes.* -- Notwithstanding any provision of this article to  
45 the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the  
46 owner thereof as his or her principal year-round residence and dwelling shall be an amount equal  
47 to six percent of fifty percent of the sales price: *Provided*, That on and after October 1, 2018, the  
48 tax levied on sales of mobile homes, regardless of the use thereof by the purchaser, shall be  
49 imposed at the rate of 7¢ on each dollar of the sales price.

50 (g) *Construction; custom software.* -- After December 31, 2003, whenever the words  
51 "tangible personal property" or "property" appear in this article, the same shall also include the  
52 words "custom software".

53 (h) *Computation of tax on sales of gasoline and special fuel.* -- The method of computation

54 of tax provided in this section does not apply to sales of gasoline and special fuel.

**§11-15-3a. Rate of tax on food and food ingredients intended for human consumption; reductions and cessations of tax.**

1 (a) *Rate of tax on food and food ingredients.* -- Notwithstanding any provision of this article  
2 or §11-15A-1 *et seq.* of this code to the contrary:

3 (1) *Rate reduction.* -- The rate of tax on sales, purchases and uses of food and food  
4 ingredients intended for human consumption after June 30, 2008, shall be three percent of its  
5 sales price, as defined in §11-15B-2 of this code.

6 (2) *Additional rate reduction.* -- The rate of tax on sales, purchases and uses of food and  
7 food ingredients as defined in that section that is intended for human consumption after December  
8 31, 2011, shall be two percent of its sales price, as defined in that section. After June 30, 2012,  
9 the rate of tax on sales, purchases and uses of food and food ingredients as defined in that section  
10 that is intended for human consumption shall be one percent of its sales price, as defined in that  
11 section.

12 (3) *Contingent termination of tax on food.* -- The tax on sales, purchases and uses of food  
13 and food ingredients as defined in §11-15B-2 of this code that is intended for human consumption  
14 shall cease after June 30, 2013, and no such tax shall be imposed on sales, purchases and uses  
15 of food and food ingredients so defined: *Provided*, That the cessation of tax after June 30, 2013,  
16 authorized by this subsection shall be suspended if the balance of funds as of December 31,  
17 2012, in the Revenue Shortfall Reserve Fund established in §11B-2-20 of this code does not  
18 equal or exceed twelve and one-half percent of the General Revenue Fund budgeted for the fiscal  
19 year commencing July 1, 2012. Such suspension shall terminate, and the cessation of tax shall  
20 proceed, beginning on July 1 of any calendar year beginning after December 31, 2013, in which  
21 the balance of funds as of December 31 of the preceding fiscal year in ~~said~~ the Revenue Shortfall  
22 Reserve Fund equals or exceeds twelve and one-half percent of the General Revenue Fund  
23 budgeted for the immediately succeeding fiscal year: *Provided, however, That on and after*

24 October 1, 2018, the tax imposed under this article and under §11-15A-1 et seq. of this code,  
 25 shall apply to sales, purchases and uses of food and food ingredients intended for human  
 26 consumption at the rate of three and one-half percent.

27 (b) *Calculation of tax on fractional parts of a dollar.* -- The tax computation under this  
 28 section shall be carried to the third decimal place and the tax rounded up to the next whole cent  
 29 whenever the third decimal place is greater than four and rounded down to the lower whole cent  
 30 whenever the third decimal place is four or less. The seller may elect to compute the tax due on  
 31 a transaction on a per item basis or on an invoice basis provided the method used is consistently  
 32 used during the reporting period.

33 (c) *Federal Food Stamp and Women, Infants and Children programs, other exemptions.* -  
 34 - Nothing in this section affects application of the exemption from tax provided in §11-15-9 of this  
 35 code for food purchased by an eligible person using food stamps, electronic benefits transfer  
 36 cards or vouchers issued by or pursuant to authorization of the United States Department of  
 37 Agriculture to individuals participating in the Federal Food Stamp Program, by whatever name  
 38 called, or the Women, Infants and Children (WIC) program, or application of any other exemption  
 39 from tax set forth in this article or §11-15A-1 et seq. of this code.

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

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 notwithstanding anything in this code to the  
 6 contrary, on and after October 1, 2018, the regulated service of solid waste disposal, the licensed  
 7 services of barbering, manicuring, cosmetology, embalming and funeral directing, non-medical  
 8 personal care services and the providing of telecommunications services as defined in §11-15B-  
 9 1 et seq. of this code, are subject to the tax imposed under this article. Provided, however, That

10 for the purpose of this section “non-medical personal care services” does not mean any services  
11 funded or reimbursed by Medicaid or Medicare.

**§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 West Virginia Council for Community and Technical College Education;

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

21 (4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are  
22 subject to the tax imposed by §17A-3-4 of this code or like 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 §11-12-1 *et seq.* of this code, 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 §29A-3-1 *et seq.*  
88 of this code which he or she considers necessary for the efficient administration of this exemption;

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

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

102 exempt under this subdivision;

103 ~~(10) Sales of newspapers when delivered to consumers by route carriers~~

104 ~~(11)~~ (10) Sales of drugs, durable medical goods, mobility-enhancing equipment and  
105 prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical  
106 purposes. The amendment to this subdivision ~~shall apply~~ applies to sales made after December  
107 31, 2003;

108 ~~(12)~~ (11) Sales of radio and television broadcasting time, preprinted advertising circulars  
109 and newspaper and outdoor advertising space for the advertisement of goods or services;

110 ~~(13)~~ (12) Sales and services performed by day care centers;

111 ~~(14)~~ (13) Casual and occasional sales of property or services not conducted in a repeated  
112 manner or in the ordinary course of repetitive and successive transactions of like character by a  
113 corporation or organization which is exempt from tax under subdivision (6) of this subsection on  
114 its purchases of tangible personal property or services. For purposes of this subdivision, the term  
115 "casual and occasional sales not conducted in a repeated manner or in the ordinary course of  
116 repetitive and successive transactions of like character" means sales of tangible personal property  
117 or services at fundraisers sponsored by a corporation or organization which is exempt, under  
118 subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases  
119 when the fundraisers are of limited duration and are held no more than six times during any  
120 twelve-month period and "limited duration" means no more than eighty-four consecutive hours:  
121 *Provided*, That sales for volunteer fire departments and volunteer school support groups, with  
122 duration of events being no more than eighty-four consecutive hours at a time, which are held no  
123 more than eighteen times in a twelve-month period for the purposes of this subdivision are  
124 considered "casual and occasional sales not conducted in a repeated manner or in the ordinary  
125 course of repetitive and successive transactions of a like character";

126 ~~(15)~~ (14) Sales of property or services to a school which has approval from the ~~board of~~  
127 ~~Trustees of the University System of West Virginia or the board of Directors of the state College~~



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

133 ~~(16)~~ (15) Sales of lottery tickets and materials by licensed lottery sales agents and lottery  
134 retailers authorized by the State Lottery Commission, under the provisions of §29-22-1 *et seq.* of  
135 this code;

136 ~~(17)~~ (16) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 *et seq.* of  
137 this code to lessees for a period of thirty or more consecutive days;

138 ~~(18)~~ (17) Notwithstanding §11-15-18 of this code or §11-15-18b of this code, or any other  
139 provision of this article to the contrary, sales of propane to consumers for poultry house heating  
140 purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to  
141 not pass on the same to the consumer, but to make application and receive refund of the tax from  
142 the Tax Commissioner pursuant to rules which are promulgated after being proposed for  
143 legislative approval in accordance with §29A-1-1 through §29A-7-4 of this code by the Tax  
144 Commissioner;

145 ~~(19)~~ (18) Any sales of tangible personal property or services purchased and lawfully paid  
146 for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, *et*  
147 *seq.*, as amended, or with drafts issued through the West Virginia special supplement food  
148 program for women, infants and children codified in 42 U. S. C. §1786;

149 ~~(20)~~ (19) Sales of tickets for activities sponsored by elementary and secondary schools  
150 located within this state;

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

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

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

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

159 ~~(22) Tuition charged for attending educational summer camps~~

160 ~~(23)~~ (20) Dispensing of services performed by one corporation, partnership or limited  
161 liability company for another corporation, partnership or limited liability company when the entities  
162 are members of the same controlled group or are related taxpayers as defined in Section 267 of  
163 the Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity  
164 interests or membership interests possessing fifty percent or more of the total combined voting  
165 power of all classes of the stock of a corporation, equity interests of a partnership or membership  
166 interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock,  
167 equity interests or membership interests possessing fifty percent or more of the value of the  
168 corporation, partnership or limited liability company;

169 ~~(24)~~ (21) Food for the following are exempt:

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

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

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

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

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

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

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

201 ~~(25)~~ (22) Sales of food by little leagues, midget football leagues, youth football or soccer  
202 leagues, band boosters or other school or athletic booster organizations supporting activities for  
203 grades kindergarten through twelve and similar types of organizations, including scouting groups  
204 and church youth groups, if the purpose in selling the food is to obtain revenue for the functions  
205 and activities of the organization and the revenues obtained from selling the food is actually used

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

208 ~~(26)~~ (23) Charges for room and meals by fraternities and sororities to their members:  
209 *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for  
210 resale;

211 ~~(27)~~ ~~Sales of or charges for the transportation of passengers in interstate commerce~~

212 ~~(28)~~ (24) Sales of tangible personal property or services to any person which this state is  
213 prohibited from taxing under the laws of the United States or under the Constitution of this state;

214 ~~(29)~~ (25) Sales of tangible personal property or services to any person who claims  
215 exemption from the tax imposed by this article or §11-15A 1 *et seq.* of this code pursuant to the  
216 provision of any other chapter of this code;

217 ~~(30)~~ (26) Charges for the services of opening and closing a burial lot;

218 ~~(34)~~ (27) Sales of livestock, poultry or other farm products in their original state by the  
219 producer of the livestock, poultry or other farm products or a member of the producer's immediate  
220 family who is not otherwise engaged in making retail sales of tangible personal property; and  
221 sales of livestock sold at public sales sponsored by breeders or registry associations or livestock  
222 auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed  
223 without presenting or obtaining exemption certificates provided the farmer maintains adequate  
224 records;

225 ~~(32)~~ (28) Sales of motion picture films to motion picture exhibitors for exhibition if the sale  
226 of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by  
227 this article and sales of coin-operated video arcade machines or video arcade games to a person  
228 engaged in the business of providing the machines to the public for a charge upon which the tax  
229 imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption  
230 provided in this subdivision may be claimed by presenting to the seller a properly executed  
231 exemption certificate;

232 ~~(33)~~ (29) Sales of aircraft repair, remodeling and maintenance services when the services  
233 are to an aircraft operated by a certified or licensed carrier of persons or property, or by a  
234 governmental entity, or to an engine or other component part of an aircraft operated by a  
235 certificated or licensed carrier of persons or property, or by a governmental entity and sales of  
236 tangible personal property that is permanently affixed or permanently attached as a component  
237 part of an aircraft owned or operated by a certificated or licensed carrier of persons or property,  
238 or by a governmental entity, as part of the repair, remodeling or maintenance service and sales  
239 of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling  
240 or maintenance of aircraft, aircraft engines or aircraft component parts for a certificated or licensed  
241 carrier of persons or property or for a governmental entity;

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

244 ~~(35)~~ (30) Sales of services by individuals who babysit for a profit: *Provided*, That the gross  
245 receipts of the individual from the performance of baby-sitting services do not exceed \$5,000 in a  
246 taxable year;

247 ~~(36)~~ (31) Sales of services by public libraries or by libraries at academic institutions or by  
248 libraries at institutions of higher learning;

249 ~~(37)~~ (32) Commissions received by a manufacturer's representative;

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

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

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

256 ~~(C) The transfer of the results of the service activities is an indispensable part of the overall~~  
257 ~~service.~~

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

262 ~~(39) (33)~~ Sales of property or services to persons within the state when those sales are  
263 for the purposes of the production of value-added products: *Provided*, That the exemption granted  
264 in this subdivision applies only to services, equipment, supplies and materials directly used or  
265 consumed by those persons engaged solely in the production of value-added products: *Provided*,  
266 *however*, That this exemption may not be claimed by any one purchaser for more than five  
267 consecutive years, except as otherwise permitted in this section.

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

- 272 (A) Lumber into furniture, toys, collectibles and home furnishings;
- 273 (B) Fruits into wine;
- 274 (C) Honey into wine;
- 275 (D) Wool into fabric;
- 276 (E) Raw hides into semifinished or finished leather products;
- 277 (F) Milk into cheese;
- 278 (G) Fruits or vegetables into a dried, canned or frozen product;
- 279 (H) Feeder cattle into commonly accepted slaughter weights;
- 280 (I) Aquatic animals into a dried, canned, cooked or frozen product; and
- 281 (J) Poultry into a dried, canned, cooked or frozen product;

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

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

305 (41) (34) Charges to a member by a membership association or organization which is  
306 exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal  
307 Revenue Code of 1986, as amended, for membership in the association or organization, including  
308 charges to members for newsletters prepared by the association or organization for distribution  
309 primarily to its members, charges to members for continuing education seminars, workshops,

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

324 ~~(42)~~ (35) Sales of governmental services or governmental materials by county assessors,  
325 county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

326 ~~(43)~~ (36) Direct or subscription sales by the Division of Natural Resources of the magazine  
327 currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the  
328 magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

329 ~~(44)~~ (37) Sales of soap to be used at car wash facilities;

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

331 ~~(46)~~ (38) The service of providing technical evaluations for compliance with federal and  
332 state environmental standards provided by environmental and industrial consultants who have  
333 formal certification through the West Virginia Department of Environmental Protection or the West  
334 Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing  
335 technical evaluations for compliance with federal and state environmental standards includes



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

339 ~~(47)~~ (39) Sales of tangible personal property and services by volunteer fire departments  
340 and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4)  
341 of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain  
342 revenue for the functions and activities of the organization and the revenue obtained is exempt  
343 from federal income tax and actually expended for that purpose;

344 ~~(48)~~ (40) Lodging franchise fees, including royalties, marketing fees, reservation system  
345 fees or other fees assessed after December 1, 1997, that have been or may be imposed by a  
346 lodging franchiser as a condition of the franchise agreement; and

347 ~~(49)~~ (41) Sales of the regulation size United States flag and the regulation size West  
348 Virginia flag for display.

349 (b) *Refundable exemptions.* -- Any person having a right or claim to any exemption set  
350 forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply  
351 to the Tax Commissioner for a refund or credit, or as provided in §11-15-9d of this code, give to  
352 the vendor his or her West Virginia direct pay permit number. The following sales of tangible  
353 personal property and services are exempt from tax as provided in this subsection:

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

358 (2) Sales of services, machinery, supplies and materials directly used or consumed in the  
359 activities of manufacturing, transportation, transmission, communication, production of natural  
360 resources, gas storage, generation or production or selling electric power, provision of a public  
361 utility service or the operation of a utility service or the operation of a utility business, in the

362 businesses or organizations named in this subdivision and does not apply to purchases of  
363 gasoline or special fuel;

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

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

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

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

388 reimbursement shall be calculated at six percent of the forty percent.

## 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 §11-15B-1 *et seq.* of this code, 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 for sales occurring  
5 and services provided on and after October 1, 2018, the rate of tax imposed by this article is  
6 seven percent of the purchase price of the property or taxable services, except as otherwise  
7 provided in this article.

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

14 (c) "Taxable services," for the purposes of this article, means services of the nature that  
15 are subject to the tax imposed by §11-15-1 *et seq.* of this code. In this article, wherever the words  
16 "tangible personal property" or "property" appear, the same shall include the words "or taxable  
17 services," where the context so requires.

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

23 for the tax to which the receipt refers.

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

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

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-4g. Rate of tax — Taxable years beginning on or after January 1, 2019.**

1 (a) Rate of tax on individuals (except married individuals filing separate returns),  
2 individuals filing joint returns, heads of households, estates and trusts. For tax years beginning  
3 on and after January 1, 2019, the tax imposed by §11-21-3 of this code on the West Virginia  
4 taxable income of every individual (except married individuals filing separate returns); every  
5 individual who is a head of a household in the determination of his or her federal income tax for  
6 the taxable year; every husband and wife who file a joint return under this article; every individual  
7 who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse;  
8 and every estate and trust shall be determined in accordance with the following table:

9 <u>If the West Virginia taxable income is:</u>	The tax is:
10 <u>Not over \$20,000</u>	1.85% of the taxable income
11 <u>Over \$20,000 but not over \$35,000</u>	\$370.00 plus 3.65% of excess
12 <u>Over \$35,000</u>	\$917.50 plus 5.45% of excess.

13 (b) Rate of tax on married individuals filing separate returns. -- For tax years beginning on  
14 and after January 1, 2019, in the case of husband and wife filing separate returns under this article  
15 for the taxable year, the tax imposed by §11-21-3 of this code on the West Virginia taxable income  
16 of each spouse shall be determined in accordance with the following table:

17	<u>If the West Virginia taxable income is:</u>	<u>The tax is:</u>
18	<u>Not over \$10,000</u>	<u>1.85% of the taxable income</u>
19	<u>Over \$10,000 but not over \$17,500</u>	<u>\$185.00 plus 3.65% of excess</u>
20	<u>Over \$17,500</u>	<u>\$458.75 plus 5.45% of excess.</u>

21           (c) For the tax years beginning on and after January 1, 2020, the rates of tax imposed by  
 22 this article, in each of the income brackets shown in subsections (a) and (b) of this section, shall  
 23 be reduced by one-tenth of one percentage point for each \$50 million by which the actual  
 24 combined collections of the consumers sales and service tax imposed under §11-15-1 et seq. of  
 25 this code and of the use tax, imposed under §11-15A-1 et seq. of this code, exceed \$1.8 billion  
 26 for the fiscal year ending six months prior to January 1 of each tax year, until the rates of the tax  
 27 imposed by this article are each zero percent: *Provided*, That once the rate of the tax imposed by  
 28 this article has been reduced pursuant to this subsection, that rate shall not again be raised:  
 29 *Provided, however*, That each and every provision of this article is repealed for all tax periods  
 30 beginning on and after January 1 of the first year in which the rate of the tax in each of the income  
 31 brackets shown in subsections (a) and (b) of this section is zero percent: *Provided, further*, That  
 32 tax liabilities, if any, arising for taxable periods prior to the date the tax is thus repealed, shall be  
 33 determined, administered, assessed and collected as if the tax imposed by this article had not  
 34 been repealed, and the rights and duties of taxpayers and the state shall be fully and completely  
 35 preserved.

NOTE: The purpose of this bill is to enact the 2018 Tax Reform Act.

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