

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4608

BY DELEGATE HAMRICK

[Introduced February 13, 2018; Referred
to the Committee on Small Business, Entrepreneurship
and Economic Development then Finance.]

1 A BILL to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating
2 to creating a consumers sales and service tax exemption for motion pictures and other
3 commercial film or audiovisual projects in West Virginia.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9. Exemptions.

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

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

11 (2) Sales of textbooks required to be used in any of the schools of this state or in any
12 institution in this state which qualifies as a nonprofit or educational institution subject to the West
13 Virginia Department of Education and the Arts, the Board of Trustees of the University System of
14 West Virginia or the Board of Directors for colleges located in this state;

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

20 (4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are

21 subject to the tax imposed by §17A-3-4 of this code or like tax;

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

26 (6) Sales of tangible personal property or services to a corporation or organization which
27 has a current registration certificate issued under §11-12 1 *et seq.* of this code, which is exempt
28 from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
29 as amended, and which is:

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

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

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

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

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

47 (F) For purposes of this subsection:

48 (i) The term “support” includes, but is not limited to:

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

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

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

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

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

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

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

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

71 (G) The exemption allowed by this subdivision does not apply to sales of gasoline or
72 special fuel or to sales of tangible personal property or services to be used or consumed in the

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

78 (7) An isolated transaction in which any taxable service or any tangible personal property
79 is sold, transferred, offered for sale or delivered by the owner of the property or by his or her
80 representative for the owner's account, the sale, transfer, offer for sale or delivery not being made
81 in the ordinary course of repeated and successive transactions of like character by the owner or
82 on his or her account by the representative: *Provided*, That nothing contained in this subdivision
83 may be construed to prevent an owner who sells, transfers or offers for sale tangible personal
84 property in an isolated transaction through an auctioneer from availing himself or herself of the
85 exemption provided in this subdivision, regardless of where the isolated sale takes place. The
86 Tax Commissioner may propose a legislative rule for promulgation pursuant to §29A-3-1 *et seq.*
87 of this code which he or she considers necessary for the efficient administration of this exemption;

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

95 (9) Sales of tangible personal property to a person for the purpose of resale in the form of
96 tangible personal property: *Provided*, That sales of gasoline and special fuel by distributors and
97 importers is taxable except when the sale is to another distributor for resale: *Provided, however*,
98 That sales of building materials or building supplies or other property to any person engaging in

99 the activity of contracting, as defined in this article, which is to be installed in, affixed to or
100 incorporated by that person or his or her agent into any real property, building or structure is not
101 exempt under this subdivision;

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

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

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

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

109 (14) Casual and occasional sales of property or services not conducted in a repeated
110 manner or in the ordinary course of repetitive and successive transactions of like character by a
111 corporation or organization which is exempt from tax under subdivision (6) of this subsection on
112 its purchases of tangible personal property or services. For purposes of this subdivision, the term
113 “casual and occasional sales not conducted in a repeated manner or in the ordinary course of
114 repetitive and successive transactions of like character” means sales of tangible personal property
115 or services at fundraisers sponsored by a corporation or organization which is exempt, under
116 subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases
117 when the fundraisers are of limited duration and are held no more than six times during any 12 -
118 month period and “limited duration” means no more than 84 consecutive hours: *Provided*, That
119 sales for volunteer fire departments and volunteer school support groups, with duration of events
120 being no more than 84 consecutive hours at a time, which are held no more than 18 times in a 12
121 -month period for the purposes of this subdivision are considered “casual and occasional sales
122 not conducted in a repeated manner or in the ordinary course of repetitive and successive
123 transactions of a like character”;

124 (15) Sales of property or services to a school which has approval from the Board of

125 Trustees of the University System of West Virginia or the Board of Directors of the state college
126 system to award degrees, which has its principal campus in this state and which is exempt from
127 federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as
128 amended: *Provided*, That sales of gasoline and special fuel are taxable;

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

132 (17) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 *et seq.* of this
133 code to lessees for a period of 30 or more consecutive days;

134 (18) Notwithstanding the provisions of §11-9-18 or §11-9-18b of this code or any other
135 provision of this article to the contrary, sales of propane to consumers for poultry house heating
136 purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to
137 not pass on the same to the consumer, but to make application and receive refund of the tax from
138 the Tax Commissioner pursuant to rules which are promulgated after being proposed for
139 legislative approval in accordance with §29A-1-1 *et seq.* of this code by the Tax Commissioner;

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

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

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

148 (A) The processing of another's data, including all processes incident to processing of data
149 such as keypunching, keystroke verification, rearranging or sorting of previously documented data
150 for the purpose of data entry or automatic processing and changing the medium on which data is

151 sorted, whether these processes are done by the same person or several persons; and

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

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

155 (23) Dispensing of services performed by one corporation, partnership or limited liability
156 company for another corporation, partnership or limited liability company when the entities are
157 members of the same controlled group or are related taxpayers as defined in Section 267 of the
158 Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity interests
159 or membership interests possessing 50 percent or more of the total combined voting power of all
160 classes of the stock of a corporation, equity interests of a partnership or membership interests of
161 a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity
162 interests or membership interests possessing 50 percent or more of the value of the corporation,
163 partnership or limited liability company;

164 (24) Food for the following are exempt:

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

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

175 (C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit
176 organization or a governmental agency under a program to provide food to low-income persons

177 at or below cost;

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

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

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

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

196 (25) Sales of food by little leagues, midget football leagues, youth football or soccer
197 leagues, band boosters or other school or athletic booster organizations supporting activities for
198 grades kindergarten through 12 and similar types of organizations, including scouting groups and
199 church youth groups, if the purpose in selling the food is to obtain revenue for the functions and
200 activities of the organization and the revenues obtained from selling the food is actually used in
201 supporting or carrying on functions and activities of the groups: *Provided*, That the purchases
202 made by the organizations are not exempt as a purchase for resale;

203 (26) Charges for room and meals by fraternities and sororities to their members: *Provided*,
204 That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;
205 (27) Sales of or charges for the transportation of passengers in interstate commerce;
206 (28) Sales of tangible personal property or services to any person which this state is
207 prohibited from taxing under the laws of the United States or under the Constitution of this state;
208 (29) Sales of tangible personal property or services to any person who claims exemption
209 from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provision of
210 any other chapter of this code;
211 (30) Charges for the services of opening and closing a burial lot;
212 (31) Sales of livestock, poultry or other farm products in their original state by the producer
213 of the livestock, poultry or other farm products or a member of the producer's immediate family
214 who is not otherwise engaged in making retail sales of tangible personal property; and sales of
215 livestock sold at public sales sponsored by breeders or registry associations or livestock auction
216 markets: *Provided*, That the exemptions allowed by this subdivision may be claimed without
217 presenting or obtaining exemption certificates provided the farmer maintains adequate records;
218 (32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of
219 tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by
220 this article and sales of coin-operated video arcade machines or video arcade games to a person
221 engaged in the business of providing the machines to the public for a charge upon which the tax
222 imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption
223 provided in this subdivision may be claimed by presenting to the seller a properly executed
224 exemption certificate;
225 (33) Sales of aircraft repair, remodeling and maintenance services when the services are
226 to an aircraft operated by a certified or licensed carrier of persons or property, or by a
227 governmental entity, or to an engine or other component part of an aircraft operated by a
228 certificated or licensed carrier of persons or property, or by a governmental entity and sales of

229 tangible personal property that is permanently affixed or permanently attached as a component
230 part of an aircraft owned or operated by a certificated or licensed carrier of persons or property,
231 or by a governmental entity, as part of the repair, remodeling or maintenance service and sales
232 of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling
233 or maintenance of aircraft, aircraft engines or aircraft component parts for a certificated or licensed
234 carrier of persons or property or for a governmental entity;

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

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

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

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

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

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

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

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

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

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

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

- 265 (A) Lumber into furniture, toys, collectibles and home furnishings;
- 266 (B) Fruits into wine;
- 267 (C) Honey into wine;
- 268 (D) Wool into fabric;
- 269 (E) Raw hides into semi-finished or finished leather products;
- 270 (F) Milk into cheese;
- 271 (G) Fruits or vegetables into a dried, canned or frozen product;
- 272 (H) Feeder cattle into commonly accepted slaughter weights;
- 273 (I) Aquatic animals into a dried, canned, cooked or frozen product; and
- 274 (J) Poultry into a dried, canned, cooked or frozen product;

275 (40) Sales of music instructional services by a music teacher and artistic services or artistic
276 performances of an entertainer or performing artist pursuant to a contract with the owner or
277 operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility
278 or any other business location in this state in which the public or a limited portion of the public
279 may assemble to hear or see musical works or other artistic works be performed for the enjoyment
280 of the members of the public there assembled when the amount paid by the owner or operator for

281 the artistic service or artistic performance does not exceed \$3,000: *Provided*, That nothing
282 contained herein may be construed to deprive private social gatherings, weddings or other private
283 parties from asserting the exemption set forth in this subdivision. For the purposes of this
284 exemption, artistic performance or artistic service means and is limited to the conscious use of
285 creative power, imagination and skill in the creation of aesthetic experience for an audience
286 present and in attendance and includes, and is limited to, stage plays, musical performances,
287 poetry recitations and other readings, dance presentation, circuses and similar presentations and
288 does not include the showing of any film or moving picture, gallery presentations of sculptural or
289 pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio
290 or television shows or any video or audio taped presentations or the sale or leasing of video or
291 audio tapes, air shows or any other public meeting, display or show other than those specified
292 herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales
293 of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a
294 legislative rule pursuant to §29A-3-1 *et seq.* of this code establishing definitions and eligibility
295 criteria for asserting this exemption which is not inconsistent with the provisions set forth herein:
296 *Provided further*, That nude dancers or strippers may not be considered as entertainers for the
297 purposes of this exemption;

298 (41) Charges to a member by a membership association or organization which is exempt
299 from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
300 of 1986, as amended, for membership in the association or organization, including charges to
301 members for newsletters prepared by the association or organization for distribution primarily to
302 its members, charges to members for continuing education seminars, workshops, conventions,
303 lectures or courses put on or sponsored by the association or organization, including charges for
304 related course materials prepared by the association or organization or by the speaker or
305 speakers for use during the continuing education seminar, workshop, convention, lecture or
306 course, but not including any separate charge or separately stated charge for meals, lodging,

307 entertainment or transportation taxable under this article: *Provided*, That the association or
308 organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment
309 or transportation taxable under this article for which a separate or separately stated charge is not
310 made. A membership association or organization which is exempt from paying federal income
311 taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may
312 elect to pay the tax imposed under this article on the purchases for which a separate charge or
313 separately stated charge could apply and not charge its members the tax imposed by this article
314 or the association or organization may avail itself of the exemption set forth in subdivision (9) of
315 this subsection relating to purchases of tangible personal property for resale and then collect the
316 tax imposed by this article on those items from its member;

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

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

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

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

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

332 (47) Sales of tangible personal property and services by volunteer fire departments and

333 rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the
334 Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue
335 for the functions and activities of the organization and the revenue obtained is exempt from federal
336 income tax and actually expended for that purpose;

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

340 (49) Sales of the regulation size United States flag and the regulation size West Virginia
341 flag for display; and

342 (50) Sales and services related to the production of motion pictures and other commercial
343 film or audiovisual projects in this state: *Provided*, That the types of projects eligible for
344 consideration are feature films, children's programs, documentaries, television series or other
345 television programs designed to fit a 30-minute or longer time slot: *Provided, however*, That the
346 projects' total budget exceeds \$500,000 in overall cost: *Provided further*, That Projects not
347 eligible for consideration are industrial, or corporate projects, programs not intended for
348 broadcast, and news shows or reports, subject to rule making authority of the Tax Commissioner
349 in conjunction with the Division of Tourism.

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

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

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

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

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

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

379 (6) Sales of construction and maintenance materials acquired by a second party for use
380 in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or
381 credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to
382 the Division of Highways for deposit into the state Road Fund of the state reimbursement for the
383 tax in the amount estimated under the provisions of this subdivision: *Provided, however*, That by
384 June 15 of each fiscal year, the division shall provide to the Tax Department an itemized listing of

385 highways projects with the amount of funds expended for highway construction and maintenance.
386 The Commissioner of Highways shall request reimbursement of the tax based on an estimate that
387 40 percent of the total gross funds expended by the agency during the fiscal period were for the
388 acquisition of materials used for highway construction and maintenance. The amount of the
389 reimbursement shall be calculated at six percent of the 40 percent.

NOTE: The purpose of this bill is to create a consumers sales and service tax exemption for motion pictures and other commercial film or audiovisual projects in West Virginia.

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