

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 383

BY SENATORS TRUMP AND PHILLIPS

[Originating in the Committee on Finance; reported on

March 4, 2021]

1 A BILL to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating
2 to exempt property from taxation used exclusively for divine worship and the operation of
3 a pre-K school, primary school, middle school, secondary school, daycare center, or
4 church camp for children, which school, daycare center, or church camp is operated by
5 the church which owns the property or is operated by another not-for-profit organization
6 or entity; and providing that motor vehicles subject to a lease for at least one year by the
7 United States, the state, any county, municipality, political subdivision, college or
8 university of this state and used for public purposes is deemed public property and exempt
9 from ad valorem taxation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

1 (a) All property, real and personal, described in this subsection, and to the extent limited
2 by this section, is exempt from taxation:

3 (1) Property belonging to the United States, other than property permitted by the United
4 States to be taxed under state law;

5 (2) Property belonging exclusively to the state;

6 (3) Property belonging exclusively to any county, district, city, village, or town in this state
7 and used for public purposes;

8 (4) Property located in this state belonging to any city, town, village, county, or any other
9 political subdivision of another state and used for public purposes;

10 (5) Property used exclusively for divine worship, or used exclusively for divine worship and
11 the operation of a pre-K school, primary school, middle school, secondary school, daycare center,
12 or church camp for children, which school, daycare center, or church camp is operated by the
13 church which owns the property or is operated by another not-for-profit organization or entity;

14 (6) Parsonages and the household goods and furniture pertaining thereto;

15 (7) Mortgages, bonds, and other evidence of indebtedness in the hands of bona fide
16 owners and holders hereafter issued and sold by churches and religious societies for the
17 purposes of securing money to be used in the erection of church buildings used exclusively for
18 divine worship or for the purpose of paying indebtedness thereon;

19 (8) Cemeteries;

20 (9) Property belonging to, or held in trust for, colleges, seminaries, academies, and free
21 schools, if used for educational, literary, or scientific purposes, including books, apparatus,
22 annuities, and furniture;

23 (10) Property belonging to, or held in trust for, colleges or universities located in West
24 Virginia, or any public or private nonprofit foundation or corporation which receives contributions
25 exclusively for such college or university, if the property or dividends, interest, rents, or royalties
26 derived therefrom are used or devoted to educational purposes of such college or university;

27 (11) Public and family libraries;

28 (12) Property used for charitable purposes and not held or leased out for profit;

29 (13) Property used for the public purposes of distributing electricity, water or natural gas
30 or providing sewer service by a duly chartered nonprofit corporation when such property is not
31 held, leased out, or used for profit;

32 (14) Property used for area economic development purposes by nonprofit corporations
33 when the property is not leased out for profit;

34 (15) All real estate not exceeding one acre in extent, and the buildings on the real estate,
35 used exclusively by any college or university society as a literary hall, or as a dormitory or
36 clubroom, if not used with a view to profit, including, but not limited to, property owned by a
37 fraternity or sorority organization affiliated with a university or college or property owned by a
38 nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization
39 affiliated with a university or college, when the property is used as residential accommodations or
40 as a dormitory for members of the organization;

41 (16) All property belonging to benevolent associations not conducted for private profit;

42 (17) Property belonging to any public institution for the education of the deaf, intellectually
43 disabled, or blind or any hospital not held or leased out for profit;

44 (18) Houses of refuge and mental health facility or orphanage;

45 (19) Homes for children or for the aged, friendless, or infirm not conducted for private
46 profit;

47 (20) Fire engines and implements for extinguishing fires, and property used exclusively
48 for the safekeeping thereof, and for the meeting of fire companies;

49 (21) All property on hand to be used in the subsistence of livestock on hand at the
50 commencement of the assessment year;

51 (22) Household goods to the value of \$200, whether or not held or used for profit;

52 (23) Bank deposits and money;

53 (24) Household goods, which for purposes of this section means only personal property
54 and household goods commonly found within the house and items used to care for the house and
55 its surrounding property, when not held or used for profit;

56 (25) Personal effects, which for purposes of this section means only articles and items of
57 personal property commonly worn on or about the human body or carried by a person and
58 normally thought to be associated with the person when not held or used for profit;

59 (26) Dead victuals laid away for family use;

60 (27) All property belonging to the state, any county, district, city, village, town, or other
61 political subdivision or any state college or university which is subject to a lease purchase
62 agreement and which provides that, during the term of the lease purchase agreement, title to the
63 leased property rests in the lessee so long as lessee is not in default or shall not have terminated
64 the lease as to the property;

65 (28) Motor vehicles subject to a lease for at least one year by the United States, the state,
66 any county, district, city, village, town, political subdivision, or any state college or university, and
67 used for a public purpose;

68 ~~(28)~~ (29) Personal property, including vehicles that qualify for a farm use exemption
69 certificate pursuant to §17A-3-2 of this code and livestock, employed exclusively in agriculture,
70 as defined in article X, section one of the West Virginia Constitution: *Provided*, That this exemption
71 only applies in the case of such personal property used on a farm or farming operation that
72 annually produces for sale agricultural products, as defined in rules of the Tax Commissioner;

73 ~~(29)~~ (30) Real property owned by a nonprofit organization whose primary purpose is youth
74 development by means of adventure, educational, or recreational activities for young people,
75 which real property contains a facility built with the expenditure of not less than \$100 million that
76 is capable of supporting additional activities within the region or the state and which is leased or
77 used to generate revenue for the nonprofit organization whether or not the property is used by
78 the nonprofit organization for its nonprofit purpose, subject to the requirements, limitations and
79 conditions set forth in ~~subsection (h)~~ §11-3-9(h) of this ~~section code~~; and

80 ~~(30)~~ (31) Any other property or security exempted by any other provision of law.

81 (b) Notwithstanding the provisions of ~~subsection (a)~~ §11-3-9(a) of this ~~section code~~, no
82 property is exempt from taxation which has been purchased or procured for the purpose of
83 evading taxation whether temporarily holding the same over the first day of the assessment year
84 or otherwise.

85 (c) Real property which is exempt from taxation by ~~subsection (a)~~ §11-3-9(a) of this ~~section~~
86 code shall be entered upon the assessor's books, together with the true and actual value thereof,
87 but no taxes may be levied upon the property or extended upon the assessor's books.

88 (d) Notwithstanding any other provisions of this section, this section does not exempt from
89 taxation any property owned by, or held in trust for, educational, literary, scientific, religious, or
90 other charitable corporations or organizations, including any public or private nonprofit foundation

91 or corporation existing for the support of any college or university located in West Virginia, unless
92 such property, or the dividends, interest, rents, or royalties derived therefrom, is used primarily
93 and immediately for the purposes of the corporations or organizations.

94 (e) The Tax Commissioner shall, by issuance of rules, provide each assessor with
95 guidelines to ensure uniform assessment practices statewide to effect the intent of this section.

96 (f) Inasmuch as there is litigation pending regarding application of this section to property
97 held by fraternities and sororities, amendments to this section enacted in the year 1998 shall apply
98 to all cases and controversies pending on the date of such enactment.

99 (g) The amendment to ~~subdivision (27), subsection (a) §11-3-9(a)(27)~~ of this ~~section code~~,
100 passed during the 2005 regular session of the Legislature, shall apply to all applicable lease
101 purchase agreements in existence upon the effective date of the amendment.

102 (h) Nonprofit youth organization exemption - limitations, conditions, collection, and
103 administration of one and one quarter percent fee, limitations, and distribution of monies.

104 (1) The exemption from ad valorem taxation provided pursuant to the provisions of
105 ~~subdivision (29), subsection (a) §11-3-9(a)(29)~~ of this ~~section code~~ does not apply to a property
106 owned by a nonprofit organization otherwise qualifying for the exemption but which property or
107 facilities are used for profit or outside the primary purpose of the owner which result in unrelated
108 business taxable income as defined by Section 512 of the Internal Revenue Code of 1986, as
109 amended, unless the income is generated by an activity upon which the one and one quarter
110 percent fee authorized by ~~subdivision (2) §11-3-9(h)(2)~~ of this ~~section code~~ is applied as provided
111 in ~~subdivision (3) §11-3-9(h)(3)~~ of this ~~subsection code~~.

112 (2) The owner of real property exempt from ad valorem taxation under ~~subdivision (29),~~
113 ~~subsection (a) §11-3-9(a)(29)~~ of this ~~section code~~ shall pay an amount equal to one and one
114 quarter percent of the gross revenues the owner receives in accordance with this subsection. For
115 purposes of this subsection, "gross revenues" means the gross amount received by the owner as
116 payment for use of the property or the facilities thereon.

117 (3) Gross revenues derived from the following facilities, uses, activities, and operations
118 are subject to a fee of one and one quarter percent of such gross revenues:

119 (A) Gross revenues derived from the use of lodging and campground facilities by persons
120 participating in meetings and multiday spectator sports or multiday recreational, celebratory, or
121 ceremonial events held onsite where onsite lodging or camping is offered as part of the program.
122 For purposes of this section the term "meeting" means, and is limited to, a gathering, assembly,
123 or conference of two or more persons who have deliberately convened at a single specific location
124 at a single specified time and date for a common specific purpose.

125 (B) Gross revenues derived from any retail store located at the facility that is open only to
126 those persons who are attending meetings, spectator sports, recreational, celebratory, or
127 ceremonial events held onsite at the facility.

128 (C) Gross revenues derived from operations of gift shops at a welcome or information
129 center located adjacent to a public highway operated by the nonprofit organization which is open
130 to the general public.

131 (D) Gross revenues derived from the leasing of zip-lines, canopy tours, wheeled sports,
132 and climbing facilities used by the general public on a for-profit basis: (i) Under a written
133 agreement with a licensed commercial outfitter operating a business utilizing zip-lines, canopy
134 tours, wheeled sports, or climbing areas of a similar nature in the same or an adjacent county
135 where the facilities are located; and (ii) When the property or facilities are used as part of a training
136 or advanced experience offered by the licensed commercial outfitter.

137 (E) Gross revenues derived from the use or operation of zip-lines, canopy tours, wheeled
138 sports facilities, or activities, climbing facilities or activities and the use or operation of other
139 sporting facilities on the exempt property that are leased on a for-profit basis for spectator events,
140 such as concerts, spectator sporting events, or exhibitions or similar mass gathering events.

141 (F) Gross revenues derived from leases or agreements for use of the property for meetings
142 and multiday spectator sports or events or multiday recreational, celebratory, or ceremonial
143 events, held onsite.

144 (4) Notwithstanding any other provision of this section to the contrary, programs or
145 activities occurring on the property or its facilities held in conjunction with a government
146 organization or sponsored by other nonprofit organizations serving youth, veterans, military
147 services, public service agencies including, fire, police, emergency, and search and rescue
148 services, government agencies, schools and universities, health care providers, and similar
149 organizations or groups which are designed to provide opportunities for learning or training in the
150 areas of leadership, character education, science, technology, engineering, arts, and
151 mathematics (STEAM) programs, physical challenges, sustainability, conservation, and outdoor
152 learning shall be considered a charitable or nonprofit use for the purposes of this section and not
153 subject to the one and one quarter percent fee.

154 (5) Notwithstanding any other provision of this section to the contrary, activities open to
155 the public through individual visitor passes allowing tours and access to the property and its
156 facilities for the purpose of viewing or participating in demonstrations, programs, and facilities
157 providing information and experiences consistent with the owner's nonprofit purposes where zip-
158 lines, canopy tours, wheeled sports, or climbing facilities are merely components of the
159 demonstrations, programs, and facilities used shall be considered a charitable or nonprofit use
160 for the purposes of this section and not subject to the one and one quarter percent fee: *Provided,*
161 That such individual visitor passes may not include the rental or use of onsite overnight lodging
162 or camping facilities.

163 (6) *Administration.* —

164 (A) The sheriff of the county wherein the majority of the acreage of the property is located
165 as specified in the deed to such property, shall collect, on a monthly basis, all monies derived
166 from the fee of one and one quarter percent of the gross revenues imposed under this subsection.

167 (B) The sheriff of the county wherein the majority of the acreage of the property is located
168 as specified in the deed to such property, shall prescribe such forms and schedules as may be
169 necessary for the efficient, accurate, and expeditious payment and reporting of the one and one
170 quarter percent fee specified in this subsection on gross revenues.

171 (C) The sheriff of the county wherein the majority of the acreage of the property is located
172 as specified in the deed to such property, shall administer the fee imposed under this subsection,
173 including refunds and adjustments.

174 (D) Payment, administration, and compliance of fee payers and administrators shall be
175 subject to audit by the Office of Chief Inspector.

176 (E) All monies so collected, net of refunds and adjustments, shall be paid into a special
177 account in the State Treasury, which is hereby created, and the amount thereof shall be
178 distributed and paid annually, by the State Treasurer, on October 1 of each year, into the funds
179 and to the distributees specified in ~~subdivision (7)~~§11-3-9(h)(7) of this ~~subsection-code~~ in the
180 amounts specified therein.

181 (7) *Distribution.* —

182 (A) Twenty-five percent of monies so collected, net of refunds and adjustments, shall be
183 paid annually to the Tourism Promotion Fund established pursuant to §5B-2-12- of this code.

184 (B) Twenty-five percent of monies so collected, net of refunds and adjustments, shall be
185 paid annually to the sheriff of the county where the property is located which, but for the exemption
186 provided in ~~subdivision (29), subsection (a)~~ §11-3-9(a)(29) of this ~~section-code~~, would be entitled
187 to receive ad valorem taxes on the property. The sheriff shall treat all such payments in the same
188 manner as payments in lieu of taxes, and such payments are subject to the adjustment mandated
189 under §18-9A-12 of this code. For properties located in more than one county, the amount paid
190 to the sheriff of the county shall be in proportion to the total number of acres located in each
191 county at the close of the fiscal year, as specified in the deed to such property.

192 (C) Fifty percent of monies so collected, net of refunds and adjustments, shall be divided
193 equally and paid annually into separate accounts established and maintained by the sheriffs of
194 the county or counties wherein the property is located and the sheriffs of any other county that is
195 within the jurisdiction of the same economic development authority as the county or counties
196 wherein the property is located to be used solely for the establishment and delivery of a science,
197 technology, engineering, art, and math (STEAM) program in conjunction with the owner of the
198 exempt property. The funds shall be divided equally for use in each county and the programs
199 must be approved by the respective county superintendents of schools. Expenditures from the
200 accounts shall be authorized by the county superintendent of schools.

201 (8) If lodging is furnished as part of a retreat, meeting, or multiday spectator sport or event
202 being held onsite wherein onsite lodging or camping is offered as part of the program, any
203 applicable hotel occupancy tax and state and local consumers sales and service tax and use tax
204 shall be paid based upon the actual location of such lodging.

205 (9) If merchants are allowed to do business on the property, the owner or lessee of the
206 property shall offer space to local merchants on terms at least as favorable as are offered to other
207 merchants.

208 (10) For the purposes of this subsection, owner includes the owner holding record title to
209 the property and its affiliates to the extent they are commonly owned, controlled or have the power
210 to appoint the governing body of the affiliate.

211 (11) The Tourism Commission shall include in its annual report submitted to the Governor
212 and the Legislature a summary of funds paid into the Tourism Promotion Fund and
213 recommendations pertaining to the administration of this section.

214 (12) This subsection may not be construed to prohibit the owner of property otherwise
215 subject to this section from having portions of the property severed from the remainder of the
216 property, assessed and taxed as if nonexempt and thereafter conducting business on such
217 property the same as any other nonexempt property: *Provided*, That the area of property to be

218 severed shall be approved by the county commission wherein the property lies so as to include
219 in the severance all property substantially supporting the for-profit or business activity giving rise
220 to the specific purpose of the severance and excluding all property entitled to the continued
221 benefits of this act.

222 (i) To assure the implementation of ~~subsection (h) §11-3-9(h)~~ of this ~~section~~ code does
223 not harm local and regionally located businesses by use of the tax-exempt facility in a manner
224 that cause unfair competition and unreasonable loss of revenue to those businesses, studies shall
225 be periodically conducted to assure that further legislation is in order regarding the uses of the
226 tax exempt facility. The county commission of any county where such a property is located shall
227 report to the Joint Committee on Government and Finance by the first day of January every five
228 years after the effective date of this section. The report shall include information on any unfair
229 business competition resulting from the establishment of the nonprofit status, and include a report
230 of the costs and benefits to its county of the tax exemption and associated fee, including an audit
231 of that county's use of the net revenues. The West Virginia University Bureau of Business and
232 Economic Research in coordination of the Center for Business and Economic Research at
233 Marshall University, by January 1, 2020, shall undertake a study and report to the committee, the
234 economic impact of this tax exemption and fee to the county and that region of the state, and
235 make any recommendations regarding the benefits and disadvantages for continuing the
236 provision of this tax exemption and fee, included, but not limited to, the impacts to other small and
237 large businesses in the county, the costs to the county has incurred as a result of use of the
238 facility, and any other relevant data that the universities may deem relevant.