

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 489

FISCAL
NOTE

BY SENATORS CLEMENTS, LINDSAY, SMITH, AND JEFFRIES

[Introduced March 1, 2021; referred
to the Committee on Transportation and
Infrastructure; and then to the Committee on Finance]

1 A BILL to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating
 2 to returning the refundable exemption for road construction contractors to the State Road
 3 Fund; transferring revenues collected from the state’s consumers sales and service tax
 4 and the state’s use tax to the State Road Fund; and specifying the effective date.

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 Higher Education Policy Commission, or the
 14 Council for Community and Technical College Education for universities and colleges located in
 15 this state;

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 §11-15-3c 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 which are taxable as provided in §11-14C-1 *et seq.* of this
79 code;

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

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

97 (9) Sales of tangible personal property to a person for the purpose of resale in the form of

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

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

105 (11) Sales of drugs, durable medical goods, mobility-enhancing equipment, and prosthetic
106 devices dispensed upon prescription and sales of insulin to consumers for medical purposes;

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

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

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

124 transactions of a like character”;

125 (15) Sales of property or services to a school which has approval from the Higher
126 Education Policy Commission or the Council for Community and Technical College Education to
127 award degrees, which has its principal campus in this state and which is exempt from federal and
128 state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended:
129 *Provided*, That sales of gasoline and special fuel are taxable as provided in §11-15-18, §11-15-
130 18b, and §11-14C-1 *et seq.* of this code;

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

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

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

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

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

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

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

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

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

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

167 (24) Food for the following are exempt:

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

172 (B) Food purchased or sold by a public or private college or university or by a student
173 organization officially recognized by the college or university to students enrolled at the college
174 or university when the sales are made on a contract basis so that a fixed price is paid for
175 consumption of food products for a specific period of time without respect to the amount of food

176 product actually consumed by the particular individual contracting for the sale and no money is
177 paid at the time the food product is served or consumed;

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

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

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

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

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

199 (25) Sales of food by little leagues, midget football leagues, youth football or soccer
200 leagues, band boosters, or other school, or athletic booster organizations supporting activities for
201 grades kindergarten through 12 and similar types of organizations, including scouting groups and

202 church youth groups, if the purpose in selling the food is to obtain revenue for the functions and
203 activities of the organization and the revenues obtained from selling the food is actually used in
204 supporting or carrying on functions and activities of the groups: *Provided*, That the purchases
205 made by the organizations are not exempt as a purchase for resale;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

269 (B) Fruits into wine;

270 (C) Honey into wine;

271 (D) Wool into fabric;

272 (E) Raw hides into semi-finished or finished leather products;

273 (F) Milk into cheese;

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

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

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

277 (J) Poultry into a dried, canned, cooked, or frozen product.

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

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

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

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

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

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

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

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

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

332 technical evaluations for compliance with federal and state environmental standards includes
333 those costs of tangible personal property directly used in providing such services that are
334 separately billed to the purchaser of such services and on which the tax imposed by this article
335 has previously been paid by the service provider;

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

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

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

346 (50) Sales of an aircraft sold in this state on or after July 1, 2020, as evidenced by a
347 Federal Aviation Administration Bill of Sale AC Form 8050-2 and registered outside of this state
348 as evidenced by Federal Aviation Administration Aircraft Registration AC Form 8050-1 shall be
349 exempt, so long as the aircraft is removed from this state within 60 days of the date of purchase
350 on the bill of sale. The time between the date of purchase and the removal of the aircraft shall not
351 be counted for purposes of determining whether the aircraft is subject to use tax.

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

357 (1) Sales of property or services to bona fide charitable organizations who make no charge

358 whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision
359 applies only to services, equipment, supplies, food, meals, and materials directly used or
360 consumed by these organizations and does not apply to purchases of gasoline or special fuel;

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

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

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

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

381 (6) Sales of construction and maintenance materials acquired by a second party for use
382 in the construction or maintenance of a Division of Highways road, highway, or bridge project:
383 *Provided*, That in lieu of any refund or credit to the person that paid the tax imposed by this article,

384 the Tax Commissioner shall pay to the Division of Highways, for deposit into the State Road Fund,
 385 reimbursement for the tax in the amount estimated under the provisions of this subdivision:
 386 Provided, however, That by June 15 of each fiscal year, the Division of Highways shall provide to
 387 the Tax Department an itemized listing of highways' contract projects with the amount of funds
 388 expended for construction and maintenance. The Commissioner of Highways shall request
 389 reimbursement on the tax based on an estimate that 40 percent of the total gross funds expended
 390 by the division during the fiscal period were for the acquisition of materials used by contractors
 391 for construction and maintenance of highways' projects. The amount of the reimbursement shall
 392 be calculated at six percent of the 40 percent.

393 (c) *Effective date.* – ~~The amendments to this section in 2018 shall take effect beginning~~
 394 ~~July 1, 2018, and apply to former sales made on and after that date: *Provided, That* The~~
 395 amendments to subdivision (6), subsection (b) of this section take effect upon passage of this act
 396 of the Legislature and shall be construed to ~~prohibit~~ require on and after January 1, ~~2018~~ 2021,
 397 all transfers to the State Road Fund established in the State Treasury pursuant to section 52,
 398 article VI of the Constitution of West Virginia, of the taxes imposed by §11-15-1 *et seq.* and §11-
 399 15A-1 *et seq.* of this code.

NOTE: The purpose of this bill is to return to the Division of Highways the sales tax collected from contractors for materials used in Highways construction and maintenance projects.

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