

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4398

FISCAL
NOTE

BY DELEGATES SKAFF, YOUNG, BARACH, BOGGS,

FLUHARTY, AND ZUKOFF

[Introduced January 26, 2022; Referred to the

Committee on Finance]

1 A BILL to amend and reenact §11-15-3 and §11B-2-20 of the Code of West Virginia, 1931, as
 2 amended, all relating to the consumer sales and service tax; reducing the consumer sales
 3 and service tax; providing for tax liabilities that existed prior to elimination of consumer
 4 sales and service tax; requiring notification to taxpayers of changes to the consumer sales
 5 and service tax; requiring reporting to the Legislature; and requiring funds to be transferred
 6 from the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve
 7 Fund – Part B upon certain conditions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3. Amount of tax; allocation of tax and transfers.

1 (a) *Vendor to collect.* — Unless otherwise provided in this article or provided in §11-15A-
 2 1 *et seq.* of this code, for the privilege of selling tangible personal property or custom software
 3 and for the privilege of furnishing certain selected services defined in §11-15-2 and §11-15-8 of
 4 this code, the vendor shall collect from the purchaser the tax as provided under this article
 5 and §11-15B-1 *et seq.* of this code, and shall pay the amount of tax to the Tax Commissioner in
 6 accordance with the provisions of this article or §11-15B-1 *et seq.* of this code.

7 (b) *Amount of tax.* — ~~The (1) Except as otherwise provided under this subsection and after~~
 8 December 31, 2022, the general consumers sales and service tax imposed by this article shall be
 9 at the rate of ~~six~~ four and three-fourths cents on the dollar of sales or services, excluding gasoline
 10 and special fuel sales, which remain taxable at the rate of five cents on the dollar of sales.

11 (2) After June 30, 2022, and annually every year thereafter and in accordance with §11B-
 12 2-20 of this code, the consumer sales and service tax imposed by this article shall be reduced by
 13 a rate of one-quarter cent on the dollar of sales or services, excluding gasoline and special fuel
 14 sales, which remain at the rate of five cents on the dollar of sales, if the combined balance of

15 funds in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve
16 Fund – Part B established in §11B-2-20 of this code exceeds \$1,100,000,000: *Provided*, That the
17 effective date of this reduction shall be after December 31 of that year.

18 (3) When the rate of taxation set forth in this section has been reduced pursuant to the
19 provisions of this section, that rate shall not again be raised without further action of the
20 Legislature.

21 (4) Tax liabilities, if any, arising for taxable periods prior to the date the tax is repealed
22 shall be determined, administered, assessed, and collected as if the tax imposed by this article
23 had not been repealed, and the rights and duties of taxpayers and the state shall be fully and
24 completely preserved.

25 ~~(c) Calculation tax on fractional parts of a dollar until January 1, 2004. — There shall be~~
26 ~~no tax on sales where the monetary consideration is five cents or less. The amount of the tax~~
27 ~~shall be computed as follows:~~

28 ~~(1) On each sale, where the monetary consideration is from six cents to 16 cents, both~~
29 ~~inclusive, one cent.~~

30 ~~(2) On each sale, where the monetary consideration is from 17 cents to 33 cents, both~~
31 ~~inclusive, two cents.~~

32 ~~(3) On each sale, where the monetary consideration is from 34 cents to 50 cents, both~~
33 ~~inclusive, three cents.~~

34 ~~(4) On each sale, where the monetary consideration is from 51 cents to 67 cents, both~~
35 ~~inclusive, four cents.~~

36 ~~(5) On each sale, where the monetary consideration is from 68 cents to 84 cents, both~~
37 ~~inclusive, five cents.~~

38 ~~(6) On each sale, where the monetary consideration is from 85 cents to \$1, both inclusive,~~
39 ~~six cents.~~

40 ~~(7) If the sale price is in excess of \$1, six cents on each whole dollar of sale price, and~~

41 ~~upon any fractional part of a dollar in excess of whole dollars as follows: One cent on the fractional~~
42 ~~part of the dollar if less than 17 cents; two cents on the fractional part of the dollar if in excess of~~
43 ~~16 cents but less than 34 cents; three cents on the fractional part of the dollar if in excess of 33~~
44 ~~cents but less than 51 cents; four cents on the fractional part of the dollar if in excess of 50 cents~~
45 ~~but less than 68 cents; five cents on the fractional part of the dollar if in excess of 67 cents but~~
46 ~~less than 85 cents; and six cents on the fractional part of the dollar if in excess of 84 cents. For~~
47 ~~example, the tax on sales from \$1.01 to \$1.16, both inclusive, seven cents; on sales from \$1.17~~
48 ~~to \$1.33, both inclusive, eight cents; on sales from \$1.34 to \$1.50, both inclusive, nine cents; on~~
49 ~~sales from \$1.51 to \$1.67, both inclusive, 10 cents; on sales from \$1.68 to \$1.84, both inclusive,~~
50 ~~11 cents; and on sales from \$1.85 to \$2, both inclusive, 12 cents. Provided, That beginning~~
51 ~~January 1, 2004, tax due under this article shall be calculated as provided in this subsection and~~
52 ~~subsection (d) of this section does not apply to sales made after December 31, 2003~~

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

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

65 ~~(f)~~ ~~(e)~~ *Rate of tax on certain mobile homes.* — Notwithstanding any provision of this article
66 to the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by

67 the owner thereof as his or her principal year-round residence and dwelling shall be an amount
68 equal to ~~six~~ five percent of 50 percent of the sales price.

69 ~~(g)~~(f) *Construction; custom software.* — After December 31, 2003, whenever the words
70 “tangible personal property” or “property” appear in this article, the same shall also include the
71 words “custom software”.

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

74 (h) Reporting. — The Tax Department shall prepare and provide an annual report to the
75 Joint Committee on Government and Finance detailing any changes to the consumer sales and
76 service tax.

77 (i) Notification. — The Tax Department shall at least annually notify taxpayers of any
78 changes in the consumers sales and service tax structure.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve

Fund and permissible expenditures therefrom.

1 (a) Notwithstanding any provision of this section, the Governor may reduce appropriations
2 according to any of the methods set forth in sections 21 [§ 11B-2-21] and 22 [§ 11B-2-22] of this
3 article. The Governor may, in lieu of imposing a reduction in appropriations, request an
4 appropriation by the Legislature from the Revenue Shortfall Reserve Fund established in this
5 section.

6 (b) The Revenue Shortfall Reserve Fund is continued within the State Treasury. The
7 Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in
8 accordance with this subsection up to an aggregate amount not to exceed thirteen percent of the
9 total appropriations from the State Fund, General Revenue, for the fiscal year just ended. The

10 Revenue Shortfall Reserve Fund shall be funded as set forth in this subsection from surplus
11 revenues, if any, in the State Fund, General Revenue, as the surplus revenues may accrue from
12 time to time.

13 Within 60 days of the end of each fiscal year, the secretary shall cause to be deposited
14 into the Revenue Shortfall Reserve Fund such amount of the first 50 percent of all surplus
15 revenues, if any, determined to have accrued during the fiscal year just ended, as may be
16 necessary to bring the balance of the Revenue Shortfall Reserve Fund to thirteen percent of the
17 total appropriations from the State Fund, General Revenue, for the fiscal year just ended. If at the
18 end of any fiscal year the Revenue Shortfall Reserve Fund is funded at an amount equal to or
19 exceeding 13 percent of the state's General Revenue Fund budget for the fiscal year just ended,
20 then there shall be no further deposit by the secretary under the provisions of this section of any
21 surplus revenues as set forth in this subsection until that time the Revenue Shortfall Reserve
22 Fund balance is less than 13 percent of the total appropriations from the State Fund, General
23 Revenue.

24 (c) Not earlier than November 1 of each calendar year, if the state's fiscal circumstances
25 are such as to otherwise trigger the authority of the Governor to reduce appropriations under this
26 section or section 21 [§ 11B-2-21] or 22 [§ 11B-2-22] of this article, then in that event the Governor
27 may notify the presiding officers of both houses of the Legislature in writing of his or her intention
28 to convene the Legislature pursuant to section nineteen, article VI of the Constitution of West
29 Virginia for the purpose of requesting the introduction of a supplementary appropriation bill or to
30 request a supplementary appropriation bill at the next preceding regular session of the Legislature
31 to draw money from the surplus Revenue Shortfall Reserve Fund to meet any anticipated revenue
32 shortfall. If the Legislature fails to enact a supplementary appropriation from the Revenue Shortfall
33 Reserve Fund during any special legislative session called for the purposes set forth in this section
34 or during the next preceding regular session of the Legislature, then the Governor may proceed
35 with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article.

36 Should any amount drawn from the Revenue Shortfall Reserve Fund pursuant to an appropriation
37 made by the Legislature prove insufficient to address any anticipated shortfall, then the Governor
38 may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-
39 two of this article.

40 (d) Upon the creation of the fund, the Legislature is authorized and may make an
41 appropriation from the Revenue Shortfall Reserve Fund for revenue shortfalls, for emergency
42 revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined
43 solely by the Legislature.

44 (e) Prior to October 31 in any fiscal year in which revenues are inadequate to make timely
45 payments of the state's obligations, the Governor may, by executive order, after first notifying the
46 presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue
47 Shortfall Reserve Fund: *Provided*, That for the fiscal year 2014, pursuant to this subsection and
48 subject to all other conditions, requirements and limitations set forth in this section, the Governor
49 may borrow funds from the Revenue Shortfall Reserve Fund prior to the first day of April. The
50 amount of funds borrowed under this subsection shall not exceed one and one-half percent of the
51 general revenue estimate for the fiscal year in which the funds are to be borrowed, or the amount
52 the Governor determines is necessary to make timely payment of the state's obligations,
53 whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without
54 interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within 90 days of
55 their withdrawal.

56 (f) The Revenue Shortfall Reserve Fund - Part B is continued within the State Treasury.
57 The Revenue Shortfall Reserve Fund - Part B shall consist of moneys transferred from the West
58 Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of §4-11A-2 of this
59 code, repayments made of the loan from the West Virginia Tobacco Settlement Medical Trust
60 Fund to the Physician's Mutual Insurance Company pursuant to the provisions of article 20-f [§§
61 33-20F-1 et seq.], chapter 33 [§§ 33-1-1 et seq.] of this code and all interest and other return

62 earned on the moneys in the Revenue Shortfall Reserve Fund - Part B. Moneys in the Revenue
63 Shortfall Reserve Fund - Part B may be expended solely for the purposes set forth in subsection
64 (d) of this section, subject to the following conditions:

65 (1) No moneys in the Revenue Shortfall Reserve Fund - Part B nor any interest or other
66 return earned thereon may be expended for any purpose unless all moneys in the Revenue
67 Shortfall Reserve Fund described in subsection (b) of this section have first been expended,
68 except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund
69 - Part B may be expended as provided in subdivision (2) of this subsection;

70 (2) Notwithstanding any other provision of this section to the contrary, the Legislature may
71 appropriate any interest and other return earned thereon that may accrue on the moneys in the
72 Revenue Shortfall Reserve Fund - Part B after June 30, 2025, for expenditure for the purposes
73 set forth in section three [§ 4-11A-3], article 11-a, chapter four of this code; and

74 (3) Any appropriation made from Revenue Shortfall Reserve Fund - Part B shall be made
75 only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

76 (g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund
77 - Part B prescribed in subsection (f) of this section, in appropriating moneys pursuant to the
78 provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue
79 Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund - Part B a total amount up to,
80 but not exceeding, ten percent of the total appropriations from the State Fund, General Revenue,
81 for the fiscal year just ended.

82 (h) (1) Of the moneys in the Revenue Shortfall Reserve Fund, \$100 million, or such greater
83 amount as may be certified as necessary by the Director of the Budget Office for the purposes of
84 subsection (e) of this section, shall be made available to the West Virginia Board of Treasury
85 Investments for management and investment of the moneys in accordance with the provisions of
86 article six-c [§§12-6C-1 *et seq.*], chapter 12 of this code. All other moneys in the Revenue Shortfall
87 Reserve Fund shall be made available to the West Virginia Investment Management Board for

88 management and investment of the moneys in accordance with the provisions of article six,
89 chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund, including
90 accrued interest and other return earned thereon at the end of any fiscal year, does not revert to
91 the General Fund but shall remain in the Revenue Shortfall Reserve Fund for the purposes set
92 forth in this section.

93 (2) All of the moneys in the Revenue Shortfall Reserve Fund - Part B shall be made
94 available to the West Virginia Investment Management Board for management and investment of
95 the moneys in accordance with the provisions of article six [§§ 12-6-1 et seq.], chapter 12 of this
96 code. Any balance of the Revenue Shortfall Reserve Fund - Part B, including accrued interest
97 and other return earned thereon at the end of any fiscal year, shall not revert to the General Fund
98 but shall remain in the Revenue Shortfall Reserve Fund - Part B for the purposes set forth in this
99 section.

100 (i) Notwithstanding any other provision to the contrary and effective June 30, 2022, if the
101 combined balance of funds in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund
102 Shortfall Reserve Fund – Part B as set forth in this article is at or above \$1,100,000,000 at the
103 end of any fiscal year, then \$62,500,000 shall be transferred to the General Revenue Fund until
104 the balance in the fund is equal to or more than \$1,037,500,000 but less than \$1,100,000,000
105 and the consumer sales and service tax shall be reduced in accordance with §11-15-3 of this
106 code.

NOTE: The purpose of this bill is to reduce the consumer sales and service tax, as well as establish a process which continues to gradually reduce the consumer sales and service tax every time the combined balance of the Rainy Day Fund reaches \$1,100,000,000.

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