

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 105

BY SENATORS CLEMENTS, JEFFRIES, BEACH, AND

LINDSAY

[Introduced January 12, 2022; 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
95 gasoline and special fuel are not exempt: *Provided, however*, That nails and fencing may not be
96 considered 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 documented
152 data for the purpose of data entry or automatic processing, and changing the medium on which
153 data is sorted, whether these processes are done by the same person or several persons; and

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

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

157 (23) (A) Dispensing of services performed by one corporation, partnership, or limited
158 liability company for another corporation, partnership, or limited liability company when the entities
159 are members of the same controlled group or are related taxpayers as defined in Section 267 of
160 the Internal Revenue Code of 1986, as amended. For purposes of this subdivision, "control"
161 means ownership, directly or indirectly, of stock, equity interests, or membership interests
162 possessing 50 percent or more of the total combined voting power of all classes of the stock of a
163 corporation, equity interests of a partnership, or membership interests of a limited liability
164 company entitled to vote or ownership, directly or indirectly, of stock, equity interests, or
165 membership interests possessing 50 percent or more of the value of the corporation, partnership,
166 or limited liability company;

167 (B) Leases of heavy equipment or machinery among corporations, partnerships, or limited
168 liability companies when the entities are members of the same control group or are related
169 taxpayers as defined in Section 267 of the Internal Revenue Code of 1986, as amended;

170 (24) Food for the following is exempt:

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

175 (B) Food purchased or sold by a public or private college or university or by a student

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

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

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

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

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

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

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

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

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

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

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

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

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

224 (32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of
225 tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by
226 this article and sales of coin-operated video arcade machines or video arcade games to a person
227 engaged in the business of providing the machines to the public for a charge upon which the tax

228 imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption
229 provided in this subdivision may be claimed by presenting to the seller a properly executed
230 exemption certificate;

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

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

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

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

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

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

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

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

254 and

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

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

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

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

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

272 (B) Fruits into wine;

273 (C) Honey into wine;

274 (D) Wool into fabric;

275 (E) Raw hides into semifinished or finished leather products;

276 (F) Milk into cheese;

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

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

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

280 (J) Poultry into a dried, canned, cooked, or frozen product;

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

304 (41) Charges to a member by a membership association or organization which is exempt
305 from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code

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

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

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

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

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

330 (46) The service of providing technical evaluations for compliance with federal and state
331 environmental standards provided by environmental and industrial consultants who have formal

332 certification through the West Virginia Department of Environmental Protection or the West
333 Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing
334 technical evaluations for compliance with federal and state environmental standards includes
335 those costs of tangible personal property directly used in providing such services that are
336 separately billed to the purchaser of such services and on which the tax imposed by this article
337 has previously been paid by the service provider;

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

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

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

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

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

357 (2) Sales of services, machinery, supplies, and materials directly used or consumed in the

358 activities of manufacturing, transportation, transmission, communication, production of natural
359 resources, gas storage, generation or production or selling electric power, provision of a public
360 utility service or the operation of a utility service or the operation of a utility business, in the
361 businesses or organizations named in this subdivision and does not apply to purchases of
362 gasoline or special fuel;

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

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

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

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

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

389 (c) *Effective date.* – ~~The amendments to this section in 2018 shall take effect beginning~~
390 ~~July 1, 2018, and apply to former sales made on and after that date: *Provided*, That The~~
391 ~~amendments to subdivision (6), subsection (b) of this section take effect upon passage of this act~~
392 ~~of the Legislature and shall be construed to prohibit~~ require ~~on and after January 1, 2018~~ 2022,
393 all transfers to the State Road Fund established in the State Treasury pursuant to section 52,
394 article VI of the Constitution of West Virginia, of the taxes imposed by §11-15-1 *et seq.* and §11-
395 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.