

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 552**

By Senator Jeffries

[Introduced January 25, 2024; referred  
to the Committee on Economic Development; and  
then to the Committee on Finance]

1 A BILL to amend and reenact §11-15-9n of the Code of West Virginia, 1931, as amended, relating  
 2 to the consumers sales and service tax and use tax exemption for qualified purchases of  
 3 computers and computer software, primary material handling equipment, racking and  
 4 racking systems, and components, building materials and certain tangible personal  
 5 property to be incorporated into a qualified, new or expanded warehouse or distribution  
 6 facility; changing threshold jobs creation number from 300 to 50; and making stylistic  
 7 changes.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

**§11-15-9n. Exemption of qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and components, building materials and certain tangible personal property.**

1 (a) Definitions. — For purposes of this section:

2 (1) "Building materials" means all tangible personal property, including any device or  
 3 appliance used by builders, contractors or landowners in making improvements, additions, or  
 4 alterations to a building or other structure or to real property in such a way that such tangible  
 5 personal property becomes a part of the building or other structure or the realty, which is installed  
 6 into or directly used or consumed in the construction, addition, alteration, repair or improvement of  
 7 a qualified, new or expanded warehouse or distribution facility. "Building materials" does not  
 8 include tools, construction equipment or any property or device which does not become a  
 9 permanent part of the realty when construction is completed. A device or appliance becomes a  
 10 fixture and a part of the building or other structure or the real property to which it is connected when  
 11 it is built into or is attached to the property in such a way that its removal would substantially  
 12 damage or deface such property.

13 (2) "Computers and computer software" as defined in §11-15B-2 of this code means  
 14 computer equipment and related software directly and primarily used to control automated

15 machinery in the facility and the movement of goods within the facility, to facilitate customer  
16 delivery operations including shipment, preparation for shipment, order tracking and delivery  
17 inventory control, printing of packing lists and labels and any other customer order fulfillment  
18 functions.

19 (3) "Distribution facility" means a warehouse, facility, structure, or enclosed area which is  
20 used primarily for the storage, shipment, preparation for shipment, or any combination of such  
21 activities, of finished goods, consumer ready wares, and consumer ready merchandise.

22 (4) "Expansion period" means the period of time beginning one year prior to the start of  
23 the construction or expansion of the qualified, new or expanded warehouse or distribution facility,  
24 and ending one year after the substantial completion of the construction or expansion of the  
25 facility. In no event shall the expansion period exceed five years.

26 (5) "Full-time employment" for purposes of determining a full-time employee or a full-time  
27 equivalent employee, means employment for at least ~~one hundred forty~~ 140 hours per month at a  
28 wage not less than the prevailing state or federal minimum wage, depending on which minimum  
29 wage provision is applicable to the business.

30 (A) For purposes of this definition, any employee paid less than state or federal minimum  
31 wage, depending on which minimum wage provision is applicable, shall be excluded from the  
32 count of employees for the purpose of determining the ~~three hundred~~ 50 jobs requirement of this  
33 section.

34 (B) For purposes of this definition, seasonal employees and part-time employees may be  
35 converted into full-time equivalent employees if the part-time or seasonal employee is customarily  
36 performing job duties not less than ~~twenty~~ 20 hours per week for at least six months during the tax  
37 year. Persons who have worked less than ~~twenty~~ 20 hours per week or who have worked less than  
38 six months during the tax year do not qualify as part-time employees or as seasonal employees.

39 (6) "Primary material handling equipment" means the principal machinery and equipment  
40 used directly and primarily for the handling and movement of tangible personal property in a  
41 qualified, new or expanded warehouse or distribution facility.

42 (A) The following items may be considered primary material handling equipment:

43 (i) Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists,  
44 mechanical arms and robots;

45 (ii) Mechanized systems, including containers which are an integral part thereof, whose  
46 purpose is to lift or move tangible personal property;

47 (iii) Automated storage and retrieval systems, including computers and software which  
48 control them, whose purpose is to lift or move tangible personal property; and

49 (iv) Forklifts and other off-the-road vehicles which are used to lift or move tangible  
50 personal property and which cannot be legally operated on roads and streets.

51 (B) "Primary material handling equipment" does not include:

52 (i) Motor vehicles licensed for operation on the roads and highways of this state or any  
53 other state of the United States or any other political jurisdiction;

54 (ii) Parts or equipment used to repair, refurbish, or recondition other equipment; or

55 (iii) Equipment which replaces, in whole or in part, primary material handling equipment.

56 (7) "Qualified, new or expanded warehouse or distribution facility" means a new or  
57 expanded facility, subject to the following:

58 (A) Qualification criteria. "Qualified, new or expanded warehouse or distribution facility"  
59 means a new or expanded facility located in this state, that is a warehouse or distribution facility  
60 that will employ ~~three hundred~~ 50 or more West Virginia domiciled, West Virginia residents, as full-  
61 time employees in the warehouse or distribution facility once the expansion period is complete and  
62 which is either:

63 (i) An existing warehouse or distribution facility that will be expanded over the expansion  
64 period where the total value of all real and personal property purchased or acquired over the  
65 expansion period as direct investment in the facility is \$50 million or more; or

66 (ii) A new warehouse or distribution facility where the total value of all real and personal  
67 property purchased or acquired over the expansion period as direct investment in the facility is \$50  
68 million or more.

69 (B) Exclusions and disqualifications.

70 (i) Subject to the limitations and restrictions set forth in this section, "qualified, new or  
71 expanded warehouse or distribution facility" does not include a building or facility where tangible  
72 personal property is manufactured, fabricated or assembled.

73 (ii) Subject to the limitations and restrictions set forth in this section, "qualified, new or  
74 expanded warehouse or distribution facility" does not include a building or facility where annual  
75 calendar year retail sales of tangible personal property are made over-the-counter from such  
76 building or facility to the general public, if such sales exceed five percent of the total annual  
77 calendar year revenues of the warehouse or distribution facility during the same calendar year.

78 (iii) Subject to the limitations and restrictions set forth in this section, "qualified, new or  
79 expanded warehouse or distribution facility" does not include a building or facility where the  
80 average monthly full-time employment (determined by including full-time equivalent employees)  
81 for each calendar year at the facility is less than ~~three hundred~~ 50 West Virginia domiciled, West  
82 Virginia residents. For purposes of determining average monthly employment for the calendar  
83 year, the taxpayer shall divide the sum of the ~~twelve~~ 12 monthly averages of qualified full-time and  
84 full-time equivalent West Virginia employees at the qualified, new or expanded warehouse or  
85 distribution facility by ~~twelve~~ 12. Each monthly average is computed as the average of West  
86 Virginia employment at the beginning of each calendar month and at the end of each calendar  
87 month. *Provided*, That the State Tax Commissioner may specify a different method for

88 computation of average monthly full-time employment, on a state-wide basis or on a case-by-case  
89 basis, or both, as the State Tax Commissioner may prescribe.

90 (8) "Qualified West Virginia employee" means a full-time employee or full-time equivalent  
91 employee who is a West Virginia domiciled West Virginia resident.

92 (9) "Racking and racking systems" means any system of machinery, equipment, fixtures,  
93 or portable devices whose function is to store, organize, or move tangible personal property within  
94 a warehouse or distribution facility, including, but not limited to, conveying systems, chutes,  
95 shelves, racks, bins, drawers, pallets, and other containers and storage devices which form a  
96 necessary part of the facility's storage system, and which is used directly and primarily for the  
97 storage, handling and movement of tangible personal property in a qualified, new or expanded  
98 warehouse or distribution facility.

99 (10) "Tangible personal property" means tangible personal property as defined in §11-  
100 15B-2 *et seq.* of this code.

101 (11) "Warehouse" means a facility, structure, or enclosed area which is used primarily for  
102 the storage of finished goods, consumer ready wares, and consumer ready merchandise.

103 (b) Exemption. — Qualified purchases of computers and computer software, primary  
104 material handling equipment, racking and racking systems, and components thereof, building  
105 materials and tangible personal property installed into or directly used or consumed in the  
106 construction, addition, alteration or improvement of a qualified, new or expanded warehouse or  
107 distribution facility, as such terms are defined in this section, purchased during the expansion  
108 period are exempt from the tax imposed by this article and §11-15A-1 *et seq.* of this code. This  
109 exemption may apply either to qualified purchases made by a person or entity which will be the  
110 owner and operator of the qualified, new or expanded warehouse or distribution facility or to  
111 qualified purchases made by a lessor or lessee of the qualified, new or expanded warehouse or  
112 distribution facility. A purchase of computers and computer software, primary material handling  
113 equipment, racking and racking systems, and components thereof, building materials and tangible

114 personal property is a qualified purchase if all requirements for exemption set forth in this section  
115 are met with relation to the purchase.

116 (c) Application for certification of exemption and plan describing investment to be made.

117 (1) In order to qualify for the exemption authorized by this section, a taxpayer must submit  
118 an application for certification of the exemption to the State Tax Commissioner, together with a  
119 plan describing the investment to be made in the qualified, new or expanded warehouse or  
120 distribution facility. The application and plan shall be submitted on forms prescribed by the State  
121 Tax Commissioner. The plan shall demonstrate that the requirements of the law will be met.

122 (2) Filing date. The application for certification of the exemption and plan describing the  
123 investment to be made must be filed on or before the start of the construction or expansion of the  
124 proposed qualified, new or expanded warehouse or distribution facility.

125 (3) Late filing. If the taxpayer fails to timely file the application for certification of the  
126 exemption with the State Tax Commissioner, together with a plan describing the investment to be  
127 made, on or before the start of the construction or expansion of the proposed qualified, new or  
128 expanded warehouse or distribution facility, the exemption allowed by this section shall not be  
129 available for any purchases of computer and computer software, primary material handling  
130 equipment, racking and racking systems, and components thereof, building materials and tangible  
131 personal property otherwise exempt under this section that were made prior to the filing date of the  
132 application for certification of the exemption, and no refund shall be issued for any such purchase.

133 (4) Exemption in cases of untimely filing. Notwithstanding the untimely filing of the  
134 application for certification of the exemption and plan describing the investment to be made, if  
135 certification of the exemption and plan is issued by the State Tax Commissioner of an untimely  
136 filed application and plan, the exemption shall be available for qualified purchases of computers  
137 and computer software, primary material handling equipment, racking and racking systems, and  
138 components thereof, building materials and tangible personal property made subsequent to the  
139 filing date of the application and plan and before the end of the expansion period.

140 (5) Exemption limited to expansion period purchases.

141 (A) Upon approval of the application and certification of the exemption, qualified  
142 purchases of computers and computer software, primary material handling equipment, racking  
143 and racking systems, and components thereof, building materials and tangible personal property  
144 shall be exempt from the tax imposed by this article and §11-15A-1, *et seq.* of this code. However,  
145 if the requisite investment is not made within the expansion period, or if the terms and  
146 requirements of this section are not satisfied, the taxpayer shall be subject to assessment for any  
147 tax, penalty or interest that would otherwise have been due.

148 (B) Limitations. Any statute of limitations set forth in §11-10-1 *et seq.* of this code for  
149 assessment made under this subsection for any such tax, penalty or interest shall not close until  
150 five years subsequent to the end of the expansion period.

151 (d) Any person having a right or claim to any exemption set forth in this section shall first  
152 pay to the vendor the tax imposed by this article and then apply to the State Tax Commissioner for  
153 a refund or credit or, as provided in §11-15-9d of this code, give to the vendor his or her West  
154 Virginia direct pay permit number.

155 (e) Additional Restrictions, Assessments and Statutes of Limitations. —

156 (1) Over-the-counter sales restrictions.

157 (A) If within ten years after the end of the expansion period, over-the-counter sales are  
158 made in any one calendar year, from a warehouse or distribution facility for which qualification for  
159 exemption under this section was originally established, which over-the-counter sales, in the  
160 aggregate, exceed five percent of the total revenues of the warehouse or distribution facility during  
161 the same calendar year, the taxpayer will be disqualified from receiving the exemption under this  
162 section as of the close of the calendar year in which over-the-counter sales first exceed five  
163 percent of the total revenues of the warehouse or distribution facility during the same calendar  
164 year; and the taxpayer shall be subject to assessment for any tax, penalty or interest that would  
165 otherwise have been due had the exemption set forth in this section never been applied. This over-

166 the-counter sales restriction shall not apply to any year subsequent to the end of the tenth year  
167 after the end of the expansion period.

168 (B) Limitations. Notwithstanding any other provision of this code pertaining to statute of  
169 limitations to the contrary, any statute of limitations set forth in §11-10-1 *et seq.* of this code for  
170 assessment for any such tax, penalty or interest shall not close until five years subsequent to the  
171 end of the calendar year in which over-the-counter sales first exceed five percent of the total  
172 revenues of the warehouse or distribution facility during the same period.

173 (2) Fabrication and Assembly Restriction.

174 (A) Subject to the restriction and limitations set forth in this subsection, a qualified new or  
175 expanded warehouse or distribution facility does not include a building or facility where tangible  
176 personal property is manufactured, fabricated or assembled. If during any calendar year within ten  
177 years after the end of the expansion period, the building or facility for which qualification for  
178 exemption under this section was originally established, is used for manufacturing, fabrication or  
179 assembly of tangible personal property, the taxpayer will be disqualified from receiving the  
180 exemption set forth in this section as of the date such manufacturing, fabrication or assembly first  
181 occurs, and the taxpayer shall be subject to assessment for any tax, penalty or interest that would  
182 otherwise have been due had the exemption set forth in this section never been applied. This  
183 restriction against manufacturing, fabrication and assembly shall not apply to any year subsequent  
184 to the tenth year after the end of the expansion period.

185 (B) Limitations. Notwithstanding any other provision of this code pertaining to statute of  
186 limitations to the contrary, any statute of limitations set forth in §11-10-1 *et seq.* of this code for  
187 assessment for any such tax, penalty or interest shall not close until five years subsequent to the  
188 end of the calendar year during which such manufacturing, fabrication or assembly first occurs.

189 (3) Minimum employment restriction.

190 (A) Subject to the limitations and restrictions set forth in this section, "qualified, new or  
191 expanded warehouse or distribution facility" does not include a building or facility where the

192 average monthly full-time employment (determined including full-time equivalent employees) for  
193 each calendar year at the facility is less than ~~three hundred~~ 50 West Virginia domiciled, West  
194 Virginia residents. If during any calendar year within ten years after the end of the expansion  
195 period, the average monthly full-time employment at the building or facility for which qualification  
196 for exemption under this section was originally established, is fewer than ~~three hundred~~ 50  
197 qualified West Virginia employees, then the taxpayer will be disqualified from receiving the  
198 exemption under this section as of the close of the first calendar year in which the average monthly  
199 full-time employment at the facility is less than ~~three hundred~~ 50 West Virginia domiciled, West  
200 Virginia residents, and the taxpayer shall be subject to assessment for any tax, penalty or interest  
201 that would otherwise have been due had the exemption set forth in this section never been  
202 applied. This restriction against having fewer than ~~three hundred~~ 50 qualified West Virginia  
203 employees shall not apply to any year subsequent to the tenth year after the end of the expansion  
204 period.

205 (B) Limitations. Notwithstanding any other provision of this code pertaining to statute of  
206 limitations to the contrary, any statute of limitations set forth in §11-10-1 *et seq.* of this code for  
207 assessment for any such tax, penalty or interest shall not close until five years subsequent to the  
208 end of the first calendar year in which the average monthly full-time employment at the facility is  
209 less than ~~three hundred~~ 50 qualified West Virginia employees.

210 (f) Assessments Against Taxpayer. — In circumstances where the exemption authorized  
211 under this section has been asserted by a contractor pursuant to the provisions of §11-15-8d of  
212 this code for purchases of computers and computer software, primary material handling  
213 equipment, racking and racking systems, and components thereof, building materials and tangible  
214 personal property, the assessment of such tax, interest and penalties shall issue against, and  
215 liability is hereby imposed upon, the purchaser of the contracting services, which is the taxpayer  
216 entitled to the exemption set forth in this section, and not against the contractor who relied in good

217 faith upon the validity of the exemption available under this section to the purchaser of the  
218 contracting services.

219 (g) The amendments made to this section in the 2024 Regular Legislative Session are  
220 effective for purchases of tangible personal property and services made in taxable years  
221 beginning on and after January 1, 2024.

NOTE: The purpose of this bill is to change the threshold jobs creation number from 300 to 50; and to making stylistic changes, which authorizes an exemption for qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and components, building materials and certain tangible personal property to be incorporated into a qualified, new or expanded warehouse or distribution facility.

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