

**WEST VIRGINIA LEGISLATURE**  
**EIGHTIETH LEGISLATURE**  
**FIRST EXTRAORDINARY SESSION, 2011**



**E N R O L L E D**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 1001**

(BY SENATORS KESSLER (ACTING PRESIDENT) AND HALL,  
BY REQUEST OF THE EXECUTIVE)

[PASSED AUGUST 5, 2011; IN EFFECT FROM PASSAGE.]

**ENROLLED**

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AN ACT to amend and reenact §11-15-3a of the Code of West Virginia, 1931, as amended; and to amend and reenact §11B-2-20 of said code, all relating generally to the consumers sales and service tax and the Revenue Shortfall Reserve Fund; specifying reduction in consumers sales and service tax on sales, purchases and uses of food and food ingredients intended for human consumption; specifying contingent elimination of the consumers sales and service tax on sales, purchases and uses of food and food ingredients intended for human consumption bases on specified levels of funding in the Revenue Shortfall Reserve Fund; and specifying maximum aggregate funding amount for the Revenue Shortfall Reserve Fund.

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

That §11-15-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11B-2-20 of said code be amended and reenacted, all to read as follows:

**CHAPTER 11. TAXATION.****ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.****§11-15-3a. Rate of tax on food and food ingredients intended for human consumption; reductions and cessations of tax.**

1 (a) *Rate of tax on food and food ingredients.* — Notwith-  
2 standing any provision of this article or article fifteen-a of  
3 this chapter to the contrary:

4 (1) *Rate reduction.* — The rate of tax on sales, purchases  
5 and uses of food and food ingredients intended for human  
6 consumption after June 30, 2008, shall be three percent of its  
7 sales price, as defined in section two, article fifteen-b of this  
8 chapter.

9 (2) *Additional rate reduction.* — The rate of tax on sales,  
10 purchases and uses of food and food ingredients as defined  
11 in that section that is intended for human consumption after  
12 December 31, 2011, shall be two percent of its sales price, as  
13 defined in that section. After June 30, 2012, the rate of tax on  
14 sales, purchases and uses of food and food ingredients as  
15 defined in that section that is intended for human consump-  
16 tion shall be one percent of its sales price, as defined in that  
17 section.

18 (3) *Contingent termination of tax on food.* — The tax on  
19 sales, purchases and uses of food and food ingredients as  
20 defined in section two, article fifteen-b of this chapter that  
21 is intended for human consumption shall cease after June 30,  
22 2013, and no such tax shall be imposed on sales, purchases  
23 and uses of food and food ingredients so defined: *Provided,*  
24 That the cessation of tax after June 30, 2013, authorized by  
25 this subsection shall be suspended if the balance of funds as  
26 of December 31, 2012, in the Revenue Shortfall Reserve Fund  
27 established in section twenty, article two, chapter eleven-b  
28 of this code does not equal or exceed twelve and one-half  
29 percent of the General Revenue Fund budgeted for the fiscal  
30 year commencing July 1, 2012. Such suspension shall  
31 terminate, and the cessation of tax shall proceed, beginning

32 on July 1 of any calendar year beginning after December 31,  
 33 2013, in which the balance of funds as of December 31 of the  
 34 preceding fiscal year in said Revenue Shortfall Reserve Fund  
 35 equals or exceeds twelve and one-half percent of the General  
 36 Revenue Fund budgeted for the immediately succeeding  
 37 fiscal year.

38 (b) *Calculation of tax on fractional parts of a dollar.* — The  
 39 tax computation under this section shall be carried to the  
 40 third decimal place and the tax rounded up to the next whole  
 41 cent whenever the third decimal place is greater than four  
 42 and rounded down to the lower whole cent whenever the  
 43 third decimal place is four or less. The seller may elect to  
 44 compute the tax due on a transaction on a per item basis or  
 45 on an invoice basis provided the method used is consistently  
 46 used during the reporting period.

47 (c) *Federal Food Stamp and Women, Infants and Children*  
 48 *programs, other exemptions.* — Nothing in this section  
 49 affects application of the exemption from tax provided in  
 50 section nine of this article for food purchased by an eligible  
 51 person using food stamps, electronic benefits transfer cards  
 52 or vouchers issued by or pursuant to authorization of the  
 53 United States Department of Agriculture to individuals  
 54 participating in the Federal Food Stamp Program, by  
 55 whatever name called, or the Women, Infants and Children  
 56 (WIC) program, or application of any other exemption from  
 57 tax set forth in this article or article fifteen-a of this chapter.

## 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  
 2 Governor may reduce appropriations according to any of the  
 3 methods set forth in sections twenty-one and twenty-two of  
 4 this article. The Governor may, in lieu of imposing a reduc-  
 5 tion in appropriations, request an appropriation by the

6 Legislature from the Revenue Shortfall Reserve Fund  
7 established in this section.

8 (b) A Revenue Shortfall Reserve Fund is hereby continued  
9 within the State Treasury. The Revenue Shortfall Reserve  
10 Fund shall be funded continuously and on a revolving basis  
11 in accordance with this subsection up to an aggregate  
12 amount not to exceed thirteen percent of the total appropria-  
13 tions from the State Fund, General Revenue, for the fiscal  
14 year just ended. The Revenue Shortfall Reserve Fund shall be  
15 funded as set forth in this subsection from surplus revenues,  
16 if any, in the State Fund, General Revenue, as the surplus  
17 revenues may accrue from time to time. Within sixty days of  
18 the end of each fiscal year, the secretary shall cause to be  
19 deposited into the Revenue Shortfall Reserve Fund such  
20 amount of the first fifty percent of all surplus revenues, if  
21 any, determined to have accrued during the fiscal year just  
22 ended, as may be necessary to bring the balance of the  
23 Revenue Shortfall Reserve Fund to thirteen percent of the  
24 total appropriations from the State Fund, General Revenue,  
25 for the fiscal year just ended. If at the end of any fiscal year  
26 the Revenue Shortfall Reserve Fund is funded at an amount  
27 equal to or exceeding thirteen percent of the State's General  
28 Revenue Fund budget for the fiscal year just ended, then  
29 there shall be no further deposit by the secretary under the  
30 provisions of this section of any surplus revenues as set forth  
31 in this subsection until that time the Revenue Shortfall  
32 Reserve Fund balance is less than thirteen percent of the  
33 total appropriations from the State Fund, General Revenue.

34 (c) Not earlier than November 1 of each calendar year, if  
35 the state's fiscal circumstances are such as to otherwise  
36 trigger the authority of the Governor to reduce appropria-  
37 tions under this section or section twenty-one or twenty-two  
38 of this article, then in that event the Governor may notify the  
39 presiding officers of both houses of the Legislature in writing  
40 of his or her intention to convene the Legislature pursuant to  
41 section nineteen, article VI of the Constitution of West  
42 Virginia for the purpose of requesting the introduction of a  
43 supplementary appropriation bill or to request a supplemen-

44 tary appropriation bill at the next preceding regular session  
45 of the Legislature to draw money from the surplus Revenue  
46 Shortfall Reserve Fund to meet any anticipated revenue  
47 shortfall. If the Legislature fails to enact a supplementary  
48 appropriation from the Revenue Shortfall Reserve Fund  
49 during any special legislative session called for the purposes  
50 set forth in this section or during the next preceding regular  
51 session of the Legislature, then the Governor may proceed  
52 with a reduction of appropriations pursuant to sections  
53 twenty-one and twenty-two of this article. Should any  
54 amount drawn from the Revenue Shortfall Reserve Fund  
55 pursuant to an appropriation made by the Legislature prove  
56 insufficient to address any anticipated shortfall, then the  
57 Governor may also proceed with a reduction of appropria-  
58 tions pursuant to sections twenty-one and twenty-two of this  
59 article.

60 (d) Upon the creation of the fund, the Legislature is  
61 authorized and may make an appropriation from the Reve-  
62 nue Shortfall Reserve Fund for revenue shortfalls, for  
63 emergency revenue needs caused by acts of God or natural  
64 disasters or for other fiscal needs as determined solely by the  
65 Legislature.

66 (e) Prior to the thirty-first day of October in any fiscal year  
67 in which revenues are inadequate to make timely payments  
68 of the state's obligations, the Governor may by executive  
69 order, after first notifying the presiding officers of both  
70 houses of the Legislature in writing, borrow funds from the  
71 Revenue Shortfall Reserve Fund. The amount of funds  
72 borrowed under this subsection shall not exceed one and  
73 one-half percent of the general revenue estimate for the  
74 fiscal year in which the funds are to be borrowed, or the  
75 amount the Governor determines is necessary to make timely  
76 payment of the state's obligations, whichever is less. Any  
77 funds borrowed pursuant to this subsection shall be repaid,  
78 without interest, and redeposited to the credit of the Revenue  
79 Shortfall Reserve Fund within ninety days of their with-  
80 drawal.

81 (f) There is hereby created in the State Treasury the  
82 Revenue Shortfall Reserve Fund – Part B. The Revenue  
83 Shortfall Reserve Fund – Part B shall consist of moneys  
84 transferred from the West Virginia Tobacco Settlement  
85 Medical Trust Fund pursuant to the provisions of section  
86 two, article eleven-a, chapter four of this code, repayments  
87 made of the loan from the West Virginia Tobacco Settlement  
88 Medical Trust Fund to the Physician’s Mutual Insurance  
89 Company pursuant to the provisions of article twenty-f,  
90 chapter thirty-three of this code, and all interest and other  
91 return earned on the moneys in the Revenue Shortfall  
92 Reserve Fund – Part B. Moneys in the Revenue Shortfall  
93 Reserve Fund – Part B may be expended solely for the  
94 purposes set forth in subsection (d) of this section, subject to  
95 the following conditions:

96 (1) No moneys in the Revenue Shortfall Reserve Fund –  
97 Part B nor any interest or other return earned thereon may  
98 be expended for any purpose unless all moneys in the  
99 Revenue Shortfall Reserve Fund described in subsection (b)  
100 of this section have first been expended, except that the  
101 interest or other return earned on moneys in the Revenue  
102 Shortfall Reserve Fund – Part B may be expended as pro-  
103 vided in subdivision (2) of this subsection; and

104 (2) Notwithstanding any other provision of this section to  
105 the contrary, the Legislature may appropriate any interest  
106 and other return earned thereon that may accrue on the  
107 moneys in the Revenue Shortfall Reserve Fund – Part B after  
108 June 30, 2025, for expenditure for the purposes set forth in  
109 section three, article eleven-a, chapter four of this code; and

110 (3) Any appropriation made from Revenue Shortfall  
111 Reserve Fund – Part B shall be made only in instances of  
112 revenue shortfalls or fiscal emergencies of an extraordinary  
113 nature.

114 (g) Subject to the conditions upon expenditures from the  
115 Revenue Shortfall Reserve Fund – Part B prescribed in  
116 subsection (f) of this section, in appropriating moneys  
117 pursuant to the provisions of this section, the Legislature

118 may in any fiscal year appropriate from the Revenue Short-  
119 fall Reserve Fund and the Revenue Shortfall Reserve Fund –  
120 Part B a total amount up to, but not exceeding, ten percent  
121 of the total appropriations from the State Fund, General  
122 Revenue, for the fiscal year just ended.

123 (h)(1) Of the moneys in the Revenue Shortfall Reserve  
124 Fund, \$100 million, or such greater amount as may be  
125 certified as necessary by the director of the budget for the  
126 purposes of subsection (e) of this section, shall be made  
127 available to the West Virginia Board of Treasury Investments  
128 for management and investment of the moneys in accordance  
129 with the provisions of article six-c, chapter twelve of this  
130 code. All other moneys in the Revenue Shortfall Reserve  
131 Fund shall be made available to the West Virginia Invest-  
132 ment Management Board for management and investment of  
133 the moneys in accordance with the provisions of article six,  
134 chapter twelve of this code. Any balance of the Revenue  
135 Shortfall Reserve Fund including accrued interest and other  
136 return earned thereon at the end of any fiscal year shall not  
137 revert to the General Fund but shall remain in the Revenue  
138 Shortfall Reserve Fund for the purposes set forth in this  
139 section.

140 (2) All of the moneys in the Revenue Shortfall Reserve  
141 Fund – Part B shall be made available to the West Virginia  
142 Investment Management Board for management and invest-  
143 ment of the moneys in accordance with the provisions of  
144 article six, chapter twelve of this code. Any balance of the  
145 Revenue Shortfall Reserve Fund – Part B, including accrued  
146 interest and other return earned thereon at the end of any  
147 fiscal year, shall not revert to the General Fund but shall  
148 remain in the Revenue Shortfall Reserve Fund – Part B for  
149 the purposes set forth in this section.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman Senate Committee*

.....  
*Chairman House Committee*

Originated in the Senate.

In effect from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*Acting President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....  
Day of ....., 2011.

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*Governor*