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WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill Number

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1 A BILL to amend and reenact §11-13A-3 and §11-13A-3a of the Code of West Virginia, 1931, as
2 amended, and to amend said article by adding thereto a new section, designated §11-
3 13A-3f; to amend and reenact §11-15-2, §11-15-3, §11-15-8, §11-15-9, and §11-15-9h; to
4 amend and reenact §11-15A-2; to amend and reenact §11-16-13; to amend and reenact
5 §11-17-3 and §11-17-4b; to amend said code by adding thereto a new article, designated
6 §11-18-1, §11-18-2, §11-18-3, §11-18-4, §11-18-5, §11-18-6, §11-18-7, and §11-18-8; to
7 amend and reenact §11-19-2; to amend and reenact §11-21-77, and to amend said article
8 by adding thereto new sections, designated §11-21-4g and §11-21-25; to amend and
9 reenact §60-3A-17, and to amend and reenact §60-8-4, all relating to optimizing economic
10 efficiency and revenue efficiency of the West Virginia tax structure, across multiple facets
11 of the tax system, and to modernize State taxation to reflect best practices, and standards
12 for an integrated tax system; relating to the severance tax imposed on the privilege of
13 severing coal, oil, natural gas and natural gas liquids, for sale, profit or commercial use;
14 specifying classifications of certain natural resources; specifying tiered rates for certain
15 classifications of natural resources; imposing tax on natural gas liquids; specifying tax rate
16 on severance of natural gas liquids; increasing the excise tax on bottled soft drinks, and
17 dry mixtures; changing the rate of the consumer sales and service tax and use tax; relating
18 to the imposition of the consumers sales and service and the use tax upon the provision
19 of professional services; exempting from tax the provision of professional medical services
20 and professional veterinary services; relating to the imposition of the consumer sales and
21 service and use tax on advertising services, lottery tickets, electronic data processing,
22 personalized fitness services, and certain high technology services and equipment;
23 relating to increasing the rate of the beer barrel tax; relating to increasing the excise tax
24 on cigarettes, other tobacco products, and e-cigarette liquid; relating to imposition of a tax
25 on luxury items sold, used or delivered into West Virginia; imposing tax on certain luxury
26 items; specifying rates, specifying aggregation of sales; specifying incidence of tax;

27 specifying economic nexus; specifying tax in addition to other taxes; specifying tax returns
 28 and payment and combined return; specifying application of West Virginia Tax Procedure
 29 and Administration Act; specifying application of West Virginia Tax Crimes and Penalties
 30 Act; providing an increase in the rate of the wine liter tax; reducing the personal income
 31 tax rates on nonbusiness income beginning after December 31, 2021; similar rate
 32 reductions are provided for married taxpayers filing separately; providing for separate
 33 rates, modifications, credits, and method for calculation personal income tax for certain
 34 types of unearned and business income, providing a tax credit for low income households
 35 to offset the sales tax increase; providing for early payment of the credit; setting a minimum
 36 wholesale markup percentage for liquor sales; making technical corrections; specifying
 37 effective dates; authorizing promulgation of rules; and defining terms.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.

1 (a) Imposition of tax. — Upon every person exercising the privilege of engaging or
 2 continuing within this state in the business of severing, extracting, reducing to possession and
 3 producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of
 4 furnishing certain health care services, there is hereby levied and shall be collected from every
 5 person exercising such privilege an annual privilege tax.

6 (b) Rate and measure of tax. —

7 (1) Subject to the provisions of subsection (h) of this section, the tax imposed in subsection
 8 (a) of this section is five percent of the gross value of the natural resource produced or the health

9 care service provided, as shown by the gross income derived from the sale or furnishing thereof
 10 by the producer or the provider of the health care service, except as otherwise provided in this
 11 article: *Provided*, That effective July 1, 2019, the tax rate imposed by this subsection on the gross
 12 value of thermal or steam coal produced shall be reduced incrementally over the next three tax
 13 years for a total reduction of two percent by July 1, 2021. That on July 1, 2019, the reduction shall
 14 occur at the rate of 35 percent of the two percent reduction, on July 1, 2020, the reduction shall
 15 occur at the rate of 65 percent of the two percent reduction, and on July 1, 2021, at the rate of
 16 100 percent of the two percent reduction. In the case of coal, the rate of tax includes the thirty-
 17 five one hundredths of one percent additional severance tax on coal imposed by the state for the
 18 benefit of counties and municipalities as provided in §11-13A-6 of this code and the additional
 19 severance tax on coal imposed by the state for the benefit of coal-producing counties as provided
 20 in §11-13A-6a of this code.

21 (2) On and after January 1, 2022, and notwithstanding any other provision of this article,
 22 or this code, the rate of tax on the privilege of engaging or continuing within this state in the
 23 business of severing, extracting, reducing to possession and producing for sale, profit or
 24 commercial use coal, shall be imposed and paid as follows. In the case of coal, the rate of tax
 25 includes the thirty-five one hundredths of one percent additional severance tax on coal imposed
 26 by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code
 27 and the additional severance tax on coal imposed by the state for the benefit of coal-producing
 28 counties as provided in §11-13A-6a of this code.

29 **(A) For Metallurgical Coal and Coal not elsewhere classified:**

<u>When the annualized gross</u>	<u>The rate of tax on the gross value</u>
<u>value of coal per ton is:</u>	<u>of the coal is:</u>
32 <u>Less than \$65</u>	<u>4.0%</u>
33 <u>\$65 to \$84.99</u>	<u>5.0%</u>
34 <u>\$85 to \$104.99</u>	<u>5.5%</u>

35	<u>\$105 to \$124.99</u>	<u>6.0%</u>
36	<u>\$125 to \$175</u>	<u>6.5%</u>
37	<u>Above \$175</u>	<u>7.0%</u>

38 **(B) For Steam Coal:**

39	<u>When the annualized gross</u>	<u>The rate of tax on the gross value</u>
40	<u>value of coal per ton is:</u>	<u>of the coal is:</u>

41	<u>Less than \$35</u>	<u>2.0%</u>
42	<u>\$35 to \$52.99</u>	<u>3.0%</u>
43	<u>\$53 to \$59.99</u>	<u>3.5%</u>
44	<u>\$60 to \$69.99</u>	<u>4.0%</u>
45	<u>\$70 to \$79.99</u>	<u>5.0%</u>
46	<u>\$80 to \$90</u>	<u>6.0%</u>
47	<u>Above \$90</u>	<u>7.0%</u>

48 **(C) For coal mined by underground methods from seams with an average thickness**

49 **of 37 inches to 45 inches:**

50	<u>When the annualized gross</u>	<u>The rate of tax on the gross value</u>
51	<u>value of coal per ton is:</u>	<u>of the coal is:</u>

52	<u>Less than \$65</u>	<u>1.5%</u>
53	<u>\$65 to \$84.99</u>	<u>2.0%</u>
54	<u>\$85 to \$104.99</u>	<u>2.5%</u>
55	<u>\$105 to \$124.99</u>	<u>3.0%</u>
56	<u>\$125 to \$175</u>	<u>4.0%</u>
57	<u>Above \$175</u>	<u>5.0%</u>

58 **(D) For coal mined by underground methods from seams with an average thickness**

59 **of less than 37 inches:**

60	<u>When the annualized gross</u>	<u>The rate of tax on the gross value</u>
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<u>value of coal per ton is:</u>	<u>of the coal is:</u>
Less than \$65	0.75%
\$65 to \$84.99	1.0%
\$85 to \$104.99	1.5%
\$105 to \$124.99	2.0%
\$125 to \$175	3.0%
Above \$175	4.0%

(c) "Metallurgical coal" means bituminous coal suitable for the manufacture of coke used or useable for the manufacture of iron or steel, or both.

(d) "Thermal or steam coal" defined. - For purposes of this section the term "thermal or steam coal" means coal sold for the purpose of generating electricity.

~~(d)~~ (e) "Certain health care services" defined. — For purposes of this section, the term "certain health care services" means, and is limited to, behavioral health services.

(f) "Annualized gross value" defined. – For purposes of this section, the term "annualized gross value" means, and is limited to, the average price of coal for a particular category provided in subdivision (2), subsection (b) of this section for the taxable year of the taxpayer derived by dividing the gross proceeds for the particular category by the amount of tons produced within that category.

~~(e)~~ (g) Tax in addition to other taxes. — The tax imposed by this section applies to all persons severing or processing, or both severing and processing, in this state natural resources enumerated in subsection (a) of this section and to all persons providing certain health care services in this state as enumerated in subsection (d) of this section and shall be in addition to all other taxes imposed by law.

~~(f)~~ (h) Effective date. — This section, as amended in 1993, shall apply to gross proceeds derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall

86 apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds,
87 shall be fully and completely preserved.

88 ~~(g)~~ (i) Reduction of severance tax rate. — For tax years beginning after the effective date
89 of this subsection, any person exercising the privilege of engaging within this state in the business
90 of severing coal for the purposes provided in subsection (a) of this section shall be allowed a
91 reduced rate of tax on coal mined by underground methods in accordance with the following:

92 (1) For coal mined by underground methods from seams with an average thickness of 37
93 inches to 45 inches, the tax imposed in subsection (a) of this section shall be two percent of the
94 gross value of the coal produced. For coal mined by underground methods from seams with an
95 average thickness of less than 37 inches, the tax imposed in subsection (a) of this section shall
96 be one percent of the gross value of the coal produced. Gross value is determined from the sale
97 of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one
98 percent additional severance tax imposed by the state for the benefit of counties and
99 municipalities as provided in §11-13A-6 of this code.

100 (2) This reduced rate of tax applies to any new underground mine producing coal after the
101 effective date of this subsection, from seams of less than 45 inches in average thickness or any
102 existing mine that has not produced coal from seams 45 inches or less in thickness in the 180
103 days immediately preceding the effective date of this subsection.

104 (3) The seam thickness shall be based on the weighted average isopach mapping of
105 actual coal thickness by mine as certified by a professional engineer.

106 ~~(h)~~ (j)(1) Termination and expiration of the behavioral health severance and business
107 privilege tax. — The tax imposed upon providers of health care services under the provisions of
108 this article shall expire, terminate and cease to be imposed with respect to privileges exercised
109 on or after July 1, 2016. Expiration of the tax as provided in this subsection does not relieve any
110 person from payment of any tax imposed with respect to privileges exercised before the expiration
111 date.

112 (2) Refunds made. — The Tax Commissioner shall issue a requisition on the Treasury for
113 any amount finally, administratively or judicially determined to be an overpayment of the tax
114 terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any
115 refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the
116 Treasurer shall pay the warrant out of the fund into which the amount refunded was originally
117 paid.

118 (†) (k) Termination and expiration of the privilege tax on limestone or sandstone. — The
119 taxes imposed under this section for persons exercising the privilege of engaging or continuing
120 within this state in the business of severing, extracting, reducing to possession and producing for
121 sale, profit or commercial use limestone or sandstone shall cease, terminate and be of no further
122 force or effect on and after July 1, 2019. Termination of the taxes imposed under this section do
123 not relieve any person of any liability or duty to pay tax imposed under this article with respect to
124 privileges exercised before the effective date of the termination.

**§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil Tax Commissioner
to develop a uniform reporting form.**

1 (a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the
2 business of severing natural gas or oil for sale, profit or commercial use, there is levied and shall
3 be collected from every person exercising the privilege an annual privilege tax at the rate and
4 measure provided in subsection (b) of this section: *Provided*, That effective for all taxable periods
5 beginning on or after January 1, 2000, there is an exemption from the imposition of the tax
6 provided in this article on the following: (1) Free natural gas provided to any surface owner; (2)
7 natural gas produced from any well which produced an average of less than 5,000 cubic feet of
8 natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil
9 produced from any oil well which produced an average of less than one-half barrel of oil per day
10 during the calendar year immediately preceding a given taxable period; and (4) for a maximum
11 period of 10 years, all natural gas or oil produced from any well which has not produced

12 marketable quantities of natural gas or oil for five consecutive years immediately preceding the
13 year in which a well is placed back into production and thereafter produces marketable quantities
14 of natural gas or oil.

15 (b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five
16 percent of the gross value of the natural gas or oil produced by the producer as shown by the
17 gross proceeds derived from the sale thereof by the producer, except as otherwise provided in
18 this article: *Provided, That effective for taxable periods beginning on or after January 1, 2020:*

19 (1) For all natural gas produced from any well which produced an average in excess of
20 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given
21 taxable year, and for oil produced from any well which produced an average in excess of 10
22 barrels of oil per day, during the calendar year immediately preceding the beginning date of a
23 given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil
24 produced as shown by the gross proceeds derived from the sale thereof by the producer;
25 *Provided, That beginning on and after January 1, 2022, and notwithstanding any other provision*
26 *of this article or this code:*

27 *(A) All natural gas produced from any well which produced an average in excess of 60,000*
28 *cubic feet of natural gas per day, and all natural gas produced from any well utilizing horizontal*
29 *drilling techniques targeting shale formations which produced an average between 5,000 cubic*
30 *feet of natural gas per day and 60,000 cubic feet of natural gas per day, during the calendar year*
31 *immediately preceding a given taxable year, shall be subject to the following rate of tax on the*
32 *privilege of severing natural gas for sale, profit, or commercial use on wells:*

<u>When the annualized gross</u>	<u>The rate of tax on the gross value</u>
<u>value of natural gas per MCF is:</u>	<u>of the natural gas produced is:</u>
Less than \$0.85	4.0%
\$0.85 to \$1.29	5.0%
\$1.30 to \$1.79	6.0%

38 \$1.80 to \$2.506.5%

39 Above \$2.507.0%

40 (B) All oil produced from any well which produced an average in excess of 10 barrels of
41 oil per day, and all oil produced from any well utilizing horizontal drilling techniques targeting shale
42 formations which produced an average between one-half barrel per day and 10 barrels per day,
43 during the calendar year immediately preceding a given taxable year, shall be subject to the
44 following rate of tax on the privilege of severing oil for sale, profit, or commercial use on wells:

<u>When the annualized gross</u>	<u>The rate of tax on the gross value</u>
<u>value of oil per barrel is:</u>	<u>of the oil produced is:</u>
47 <u>Less than \$35</u>	<u>4.0%</u>
48 <u>\$35 to \$54.99</u>	<u>5.0%</u>
49 <u>\$55 to \$67.99</u>	<u>5.5%</u>
50 <u>\$68 to \$89.99.....</u>	<u>6.0%</u>
51 <u>\$90.00 and above</u>	<u>7.0%</u>

52 (2) For all natural gas produced from any well, excluding wells utilizing horizontal drilling
53 techniques targeting shale formations, which produced an average between 5,000 cubic feet of
54 natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year
55 immediately preceding the beginning date of a given taxable year, and for oil produced from any
56 well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which
57 produced an average between one-half barrel per day and 10 barrels per day, during the calendar
58 year immediately preceding the beginning date of a given taxable year, the rate of tax is two and
59 five tenths percent of the gross value of the natural gas or oil produced as shown by the gross
60 proceeds derived from the sale thereof by the producer; and

61 ~~(3) For all natural gas produced from wells utilizing horizontal drilling techniques targeting~~
62 ~~shale formations, which produced an average between 5,000 cubic feet of natural gas per day~~

63 ~~and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the~~
64 ~~beginning date of a given taxable year, and for oil produced from wells utilizing horizontal drilling~~
65 ~~techniques targeting shale formations, which produced an average between one-half barrel per~~
66 ~~day and 10 barrels per day, during the calendar year immediately preceding the beginning date~~
67 ~~of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil~~
68 ~~produced as shown by the gross proceeds derived from the sale thereof by the producer.~~

69 (c) *Tax in addition to other taxes.* — The tax imposed by this section applies to all persons
70 severing gas or oil in this state, and is in addition to all other taxes imposed by law.

71 (d) For purposes of this section, in determining the average amount of production of gas
72 and oil in any given calendar year, a taxpayer must calculate the actual production of such well
73 in the calendar year and divide the same by the number of days the well was in operation and
74 producing gas or oil in such calendar year.

75 (e) “Annualized gross value” defined. – For purposes of this section, the term “annualized
76 gross value” means, and is limited to:

77 (1) For natural gas, the total gross proceeds for sales of natural gas in the taxable year
78 divided by the number of MCF produced for the taxable year, taking into account all wells from
79 which natural gas was produced.

80 (2) For oil, the total gross proceeds for sales of oil in the taxable year divided by the number
81 of barrels produced for the taxable year, taking into account all wells from which oil was produced.

82 (e) (f) After the dedication in §11-13A-5a is made, the remaining proceeds collected from
83 the tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are
84 dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this
85 code: *Provided*, That if on June 1, 2023, or on June 1 of any year thereafter, there exists in the
86 Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of \$6
87 million then the special rate of tax imposed under subdivision (2), subsection (b) of this section is

88 reduced to zero for the taxable year beginning on and after the next succeeding January 1. The
89 Tax Commissioner shall issue an Administrative Notice by July 1 of each year indicating the
90 balance in the fund as of the immediately preceding June 1 and the rate of tax on wells pursuant
91 to this subsection.

92 (g) That beginning on and after January 1, 2022, and notwithstanding any other provision
93 of this article or this code, the provisions of this section shall apply to dry natural gas. "Dry natural
94 gas" means raw natural gas that is not wet natural gas as defined in §11-13A-3f of this code.

§11-13A-3f. Imposition of tax on privilege of severing natural gas liquids.

1 (a) Prior to January 1, 2022, tax is imposed on the privilege of severing natural gas liquids
2 as part of the tax imposed under §11-13A-3a hereof.

3 (b) On and after January 1, 2022, and notwithstanding any other provision of this article,
4 or this code, for the privilege of engaging or continuing within this state in the business of severing
5 natural gas liquids for sale, profit or commercial use, there is hereby levied and shall be collected
6 from every person exercising such privilege an annual privilege tax. The rate of tax on the privilege
7 of severing natural gas liquids for sale, profit, or commercial use shall be 6.5% on the gross value
8 of the natural gas liquids produced. For purposes of this article, severance of wet gas, as herein
9 defined, is classified as severing natural gas liquids.

10 (c) "Natural gas liquids" or "NGLs" means hydrocarbons removed or removable from a
11 hydrocarbon stream consisting primarily of natural gas (methane) by condensation, cryogenic
12 cooling or other method and maintained in a liquid state for storage, transportation, use in
13 manufacturing or consumption, including, but not limited to, ethane, propane, butane, isobutane
14 and pentanes, and derivatives thereof including, but not limited to, ethylene and propylene.

15 (d) "Wet gas" means raw natural gas that contains a relatively high proportion of
16 condensable hydrocarbon fractions in a given quantity of raw natural gas produced. Such
17 fractions may include, but are not limited to ethane, butane, iso-butane and propane. Natural gas
18 containing more than 0.1 U.S. gallons of total condensable hydrocarbon fractions per mcf at a

19 temperature of 15 degrees Celsius (59 degrees F) and a pressure of 750 millimeters of mercury,
20 is classified as wet gas for purposes of this article. For purposes of this definition, methane, water,
21 nitrogen, carbon dioxide, hydrogen sulfide and helium do not constitute condensable hydrocarbon
22 fractions.

23 (e) "Natural gas" means a gaseous fossil energy source that formed deep beneath the
24 earth's surface that is a combustible mixture of methane and other hydrocarbons.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX

§11-15-2. Definitions.

1 (a) General. -- When used in this article and article fifteen-a of this chapter, words defined
2 in subsection (b) of this section have the meanings ascribed to them in this section, except in
3 those instances where a different meaning is provided in this article or the context in which the
4 word is used clearly indicates that a different meaning is intended by the Legislature.

5 (b) Definitions. --

6 (1) "Business" includes all activities engaged in or caused to be engaged in with the object
7 of gain or economic benefit, direct or indirect, and all activities of the state and its political
8 subdivisions which involve sales of tangible personal property or the rendering of services when
9 those service activities compete with or may compete with the activities of other persons.

10 (2) "Communication" means all telephone, radio, light, light wave, radio telephone,
11 telegraph and other communication or means of communication, whether used for voice
12 communication, computer data transmission or other encoded symbolic information transfers and
13 includes commercial broadcast radio, commercial broadcast television and cable television.

14 (3) "Contracting":

15 (A) In general. -- "Contracting" means and includes the furnishing of work, or both
16 materials and work, for another (by a sole contractor, general contractor, prime contractor,
17 subcontractor or construction manager) in fulfillment of a contract for the construction, alteration,
18 repair, decoration or improvement of a new or existing building or structure, or any part thereof,

19 or for removal or demolition of a building or structure, or any part thereof, or for the alteration,
20 improvement or development of real property. Contracting also includes services provided by a
21 construction manager so long as the project for which the construction manager provides the
22 services results in a capital improvement to a building or structure or to real property.

23 (B) Form of contract not controlling. -- An activity that falls within the scope of the definition
24 of contracting constitutes contracting regardless of whether the contract governing the activity is
25 written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-
26 plus contract, a time and materials contract, whether or not open-ended, or any other kind of
27 construction contract.

28 (C) Special rules. -- For purposes of this definition:

29 (i) The term "structure" includes, but is not limited to, everything built up or composed of
30 parts joined together in some definite manner and attached or affixed to real property or which
31 adds utility to real property or any part thereof or which adds utility to a particular parcel of property
32 and is intended to remain there for an indefinite period of time;

33 (ii) The term "alteration" means, and is limited to, alterations which are capital
34 improvements to a building or structure or to real property;

35 (iii) The term "repair" means, and is limited to, repairs which are capital improvements to
36 a building or structure or to real property;

37 (iv) The term "decoration" means, and is limited to, decorations which are capital
38 improvements to a building or structure or to real property;

39 (v) The term "improvement" means, and is limited to, improvements which are capital
40 improvements to a building or structure or to real property;

41 (vi) The term "capital improvement" means improvements that are affixed to or attached
42 to and become a part of a building or structure or the real property or which add utility to real
43 property, or any part thereof, and that last or are intended to be relatively permanent. As used
44 herein, "relatively permanent" means lasting at least a year in duration without the necessity for

45 regularly scheduled recurring service to maintain the capital improvement. "Regular recurring
46 service" means regularly scheduled service intervals of less than one year;

47 (vii) Contracting does not include the furnishing of work, or both materials and work, in the
48 nature of hookup, connection, installation or other services if the service is incidental to the retail
49 sale of tangible personal property from the service provider's inventory: *Provided*, That the
50 hookup, connection or installation of the foregoing is incidental to the sale of the same and
51 performed by the seller thereof or performed in accordance with arrangements made by the seller
52 thereof. Examples of transactions that are excluded from the definition of contracting pursuant to
53 this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation
54 of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air
55 conditioning units, dishwashers, clothing washing machines or dryers, other household
56 appliances, drapery rods, window shades, venetian blinds, canvas awnings, free-standing
57 industrial or commercial equipment and other similar items of tangible personal property. Repairs
58 made to the foregoing are within the definition of contracting if the repairs involve permanently
59 affixing to or improving real property or something attached thereto which extends the life of the
60 real property or something affixed thereto or allows or intends to allow the real property or thing
61 permanently attached thereto to remain in service for a year or longer; and

62 (viii) The term "construction manager" means a person who enters into an agreement to
63 employ, direct, coordinate or manage design professionals and contractors who are hired and
64 paid directly by the owner or the construction manager. The business activities of a "construction
65 manager" as defined in this subdivision constitute contracting, so long as the project for which the
66 construction manager provides the services results in a capital improvement to a building or
67 structure or to real property.

68 (4) "Directly used or consumed" in the activities of manufacturing, transportation,
69 transmission, communication or the production of natural resources means used or consumed in
70 those activities or operations which constitute an integral and essential part of the activities, as

71 contrasted with and distinguished from those activities or operations which are simply incidental,
72 convenient or remote to the activities.

73 (A) Uses of property or consumption of services which constitute direct use or
74 consumption in the activities of manufacturing, transportation, transmission, communication or
75 the production of natural resources include only:

76 (i) In the case of tangible personal property, physical incorporation of property into a
77 finished product resulting from manufacturing production or the production of natural resources;

78 (ii) Causing a direct physical, chemical or other change upon property undergoing
79 manufacturing production or production of natural resources;

80 (iii) Transporting or storing property undergoing transportation, communication,
81 transmission, manufacturing production or production of natural resources;

82 (iv) Measuring or verifying a change in property directly used in transportation,
83 communication, transmission, manufacturing production or production of natural resources;

84 (v) Physically controlling or directing the physical movement or operation of property
85 directly used in transportation, communication, transmission, manufacturing production or
86 production of natural resources;

87 (vi) Directly and physically recording the flow of property undergoing transportation,
88 communication, transmission, manufacturing production or production of natural resources;

89 (vii) Producing energy for property directly used in transportation, communication,
90 transmission, manufacturing production or production of natural resources;

91 (viii) Facilitating the transmission of gas, water, steam or electricity from the point of their
92 diversion to property directly used in transportation, communication, transmission, manufacturing
93 production or production of natural resources;

94 (ix) Controlling or otherwise regulating atmospheric conditions required for transportation,
95 communication, transmission, manufacturing production or production of natural resources;

96 (x) Serving as an operating supply for property undergoing transmission, manufacturing

97 production or production of natural resources, or for property directly used in transportation,
98 communication, transmission, manufacturing production or production of natural resources;

99 (xi) Maintaining or repairing of property, including maintenance equipment, directly used
100 in transportation, communication, transmission, manufacturing production or production of natural
101 resources;

102 (xii) Storing, removal or transportation of economic waste resulting from the activities of
103 manufacturing, transportation, communication, transmission or the production of natural
104 resources;

105 (xiii) Engaging in pollution control or environmental quality or protection activity directly
106 relating to the activities of manufacturing, transportation, communication, transmission or the
107 production of natural resources and personnel, plant, product or community safety or security
108 activity directly relating to the activities of manufacturing, transportation, communication,
109 transmission or the production of natural resources; or

110 (xiv) Otherwise using as an integral and essential part of transportation, communication,
111 transmission, manufacturing production or production of natural resources.

112 (B) Uses of property or services which do not constitute direct use or consumption in the
113 activities of manufacturing, transportation, transmission, communication or the production of
114 natural resources include, but are not limited to:

115 (i) Heating and illumination of office buildings;

116 (ii) Janitorial or general cleaning activities;

117 (iii) Personal comfort of personnel;

118 (iv) Production planning, scheduling of work or inventory control;

119 (v) Marketing, general management, supervision, finance, training, accounting and
120 administration; or

121 (vi) An activity or function incidental or convenient to transportation, communication,
122 transmission, manufacturing production or production of natural resources, rather than an integral

123 and essential part of these activities.

124 (5) "Directly used or consumed" in the activities of gas storage, the generation or
125 production or sale of electric power, the provision of a public utility service or the operation of a
126 utility business means used or consumed in those activities or operations which constitute an
127 integral and essential part of those activities or operation, as contrasted with and distinguished
128 from activities or operations which are simply incidental, convenient or remote to those activities.

129 (A) Uses of property or consumption of services which constitute direct use or
130 consumption in the activities of gas storage, the generation or production or sale of electric power,
131 the provision of a public utility service or the operation of a utility business include only:

132 (i) Tangible personal property, custom software or services, including equipment,
133 machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in
134 production or generation activities and equipment, machinery, supplies, tools and repair parts
135 used to keep in operation exempt production or generation devices. For purposes of this
136 subsection, production or generation activities shall commence from the intake, receipt or storage
137 of raw materials at the production plant site;

138 (ii) Tangible personal property, custom software or services, including equipment,
139 machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are
140 used immediately in the transmission or distribution of gas, water and electricity to the public, and
141 equipment, machinery, tools, repair parts and supplies used to keep in operation exempt
142 transmission or distribution devices, and these vehicles and their equipment as are specifically
143 designed and equipped for those purposes are exempt from the tax when used to keep a
144 transmission or distribution system in operation or repair. For purposes of this subsection,
145 transmission or distribution activities shall commence from the close of production at a production
146 plant or wellhead when a product is ready for transmission or distribution to the public and shall
147 conclude at the point where the product is received by the public;

148 (iii) Tangible personal property, custom software or services, including equipment,

149 machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are
150 used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and
151 repair parts used to keep in operation exempt storage devices;

152 (iv) Tangible personal property, custom software or services used immediately in the
153 storage, removal or transportation of economic waste resulting from the activities of gas storage,
154 the generation or production or sale of electric power, the provision of a public utility service or
155 the operation of a utility business;

156 (v) Tangible personal property, custom software or services used immediately in pollution
157 control or environmental quality or protection activity or community safety or security directly
158 relating to the activities of gas storage, generation or production or sale of electric power, the
159 provision of a public utility service or the operation of a utility business.

160 (B) Uses of property or services which would not constitute direct use or consumption in
161 the activities of gas storage, generation or production or sale of electric power, the provision of a
162 public utility service or the operation of a utility business include, but are not limited to:

163 (i) Heating and illumination of office buildings;

164 (ii) Janitorial or general cleaning activities;

165 (iii) Personal comfort of personnel;

166 (iv) Production planning, scheduling of work or inventory control;

167 (v) Marketing, general management, supervision, finance, training, accounting and
168 administration; or

169 (vi) An activity or function incidental or convenient to the activities of gas storage,
170 generation or production or sale of electric power, the provision of public utility service or the
171 operation of a utility business.

172 (6) "Gas storage" means the injection of gas into a storage reservoir or the storage of gas
173 for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir
174 engaged in by businesses subject to the business and occupation tax imposed by sections two

175 and two-e, article thirteen of this chapter.

176 (7) "Generating or producing or selling of electric power" means the generation, production
177 or sale of electric power engaged in by businesses subject to the business and occupation tax
178 imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

179 (8) "Gross proceeds" means the amount received in money, credits, property or other
180 consideration from sales and services within this state, without deduction on account of the cost
181 of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses
182 may not be deducted, but any credit or refund made for goods returned may be deducted.

183 (9) "Includes" and "including", when used in a definition contained in this article, does not
184 exclude other things otherwise within the meaning of the term being defined.

185 (10) "Manufacturing" means a systematic operation or integrated series of systematic
186 operations engaged in as a business or segment of a business which transforms or converts
187 tangible personal property by physical, chemical or other means into a different form, composition
188 or character from that in which it originally existed.

189 (11) "Person" means any individual, partnership, association, corporation, limited liability
190 company, limited liability partnership or any other legal entity, including this state or its political
191 subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator
192 of any person.

193 (12) "Personal service" includes those: (A) Compensated by the payment of wages in the
194 ordinary course of employment; and (B) rendered to the person of an individual without, at the
195 same time, selling tangible personal property, such as nursing, barbering, shoe shining,
196 manicuring and similar services.

197 (13) "Prepaid wireless calling service" means a telecommunications service that provides
198 the right to utilize mobile wireless service as well as other nontelecommunications services,
199 including the download of digital products delivered electronically, content and ancillary services,
200 which must be paid for in advance that is sold in predetermined units or dollars of which the

201 number decline with use in a known amount.

202 (14) Production of natural resources.

203 (A) "Production of natural resources" means, except for oil and gas, the performance, by
204 either the owner of the natural resources or another, of the act or process of exploring, developing,
205 severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit
206 or commercial use of any natural resource products and any reclamation, waste disposal or
207 environmental activities associated therewith and the construction, installation or fabrication of
208 ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated
209 facilities and apparatus, by the producer or others, including contractors and subcontractors, at a
210 coal mine or coal production facility.

211 (B) For the natural resources oil and gas, "production of natural resources" means the
212 performance, by either the owner of the natural resources, a contractor or a subcontractor, of the
213 act or process of exploring, developing, drilling, well-stimulation activities such as logging,
214 perforating or fracturing, well-completion activities such as the installation of the casing, tubing
215 and other machinery and equipment and any reclamation, waste disposal or environmental
216 activities associated therewith, including the installation of the gathering system or other pipeline
217 to transport the oil and gas produced or environmental activities associated therewith and any
218 service work performed on the well or well site after production of the well has initially commenced.

219 (C) All work performed to install or maintain facilities up to the point of sale for severance
220 tax purposes is included in the "production of natural resources" and subject to the direct use
221 concept.

222 (D) "Production of natural resources" does not include the performance or furnishing of
223 work, or materials or work, in fulfillment of a contract for the construction, alteration, repair,
224 decoration or improvement of a new or existing building or structure, or any part thereof, or for
225 the alteration, improvement or development of real property, by persons other than those
226 otherwise directly engaged in the activities specifically set forth in this subdivision as "production

227 of natural resources".

228 (15) "Professional medical services" means and includes any activity or service described
229 in §11-27-1 et seq. of this code relating to the imposition of health care provider taxes, without
230 regard to whether such services are currently subject to the tax imposed by that article;

231 (16) "Professional veterinary services" means those services described in §30-10-9 of this
232 code relating to the scope of practice for a licensed veterinarian.

233 (17) "Professional services" means and includes any service not included under the
234 definition of "service" or "selected service" which involve the rendering of a service as
235 distinguished from the sale of tangible personal property or custom software, but does not include
236 contracting, personal services or the services rendered by an employee to his or her employer or
237 any service rendered for resale: *Provided*, That the term "professional service" does not include
238 payments received by a vendor of tangible personal property as an incentive to sell a greater
239 volume of such tangible personal property under a manufacturer's, distributor's or other third
240 party's marketing support program, sales incentive program, cooperative advertising agreement
241 or similar type of program or agreement, and these payments are not considered to be payments
242 for a "service" or "selected service" rendered, even though the vendor may engage in attendant
243 or ancillary activities associated with the sales of tangible personal property as required under the
244 programs or agreements.

245 ~~(15)~~ (18) "Providing a public service or the operating of a utility business" means the
246 providing of a public service or the operating of a utility by businesses subject to the business and
247 occupation tax imposed by sections two and two-d, article thirteen of this chapter.

248 ~~(16)~~ (19) "Purchaser" means a person who purchases tangible personal property, custom
249 software or a service taxed by this article.

250 ~~(17)~~ (20) "Sale", "sales" or "selling" includes any transfer of the possession or ownership
251 of tangible personal property or custom software for a consideration, including a lease or rental,
252 when the transfer or delivery is made in the ordinary course of the transferor's business and is

253 made to the transferee or his or her agent for consumption or use or any other purpose. "Sale"
254 also includes the furnishing of a service for consideration. Notwithstanding anything to the
255 contrary in this code, effective after June 30, 2008, "sale" also includes the furnishing of prepaid
256 wireless calling service for consideration.

257 ~~(18)~~ (21) "Service" or "selected service" includes all nonprofessional activities engaged in
258 for other persons for a consideration, which involve the rendering of a service as distinguished
259 from the sale of tangible personal property or custom software, but does not include contracting,
260 personal services or the services rendered by an employee to his or her employer or any service
261 rendered for resale: *Provided*, That the term "service" or "selected service" does not include
262 payments received by a vendor of tangible personal property as an incentive to sell a greater
263 volume of such tangible personal property under a manufacturer's, distributor's or other third
264 party's marketing support program, sales incentive program, cooperative advertising agreement
265 or similar type of program or agreement, and these payments are not considered to be payments
266 for a "service" or "selected service" rendered, even though the vendor may engage in attendant
267 or ancillary activities associated with the sales of tangible personal property as required under the
268 programs or agreements.

269 ~~(19)~~ (22) "Streamlined Sales and Use Tax Agreement" or "agreement", when used in this
270 article, has the same meaning as when used in article fifteen-b of this chapter, except when the
271 context in which the word "agreement" is used clearly indicates that a different meaning is
272 intended by the Legislature.

273 ~~(20)~~ (23) "Tax" includes all taxes, additions to tax, interest and penalties levied under this
274 article or article ten of this chapter.

275 ~~(24)~~ (24) "Tax Commissioner" means the State Tax Commissioner or his or her delegate.
276 The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax
277 Commissioner, means any officer or employee of the state Tax Division duly authorized by the
278 Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the

279 functions mentioned or described in this article or rules promulgated for this article.

280 ~~(22)~~ (25) "Taxpayer" means any person liable for the tax imposed by this article or
281 additions to tax, penalties and interest imposed by article ten of this chapter.

282 ~~(23)~~ (26) "Transmission" means the act or process of causing liquid, natural gas or
283 electricity to pass or be conveyed from one place or geographical location to another place or
284 geographical location through a pipeline or other medium for commercial purposes.

285 ~~(24)~~ (27) "Transportation" means the act or process of conveying, as a commercial
286 enterprise, passengers or goods from one place or geographical location to another place or
287 geographical location.

288 ~~(25)~~ (28) "Ultimate consumer" or "consumer" means a person who uses or consumes
289 services or personal property.

290 ~~(26)~~ (29) "Vendor" means any person engaged in this state in furnishing services taxed by
291 this article or making sales of tangible personal property or custom software. "Vendor" and "seller"
292 are used interchangeably in this article.

293 (c) Additional definitions. — Other terms used in this article are defined in article fifteen-b
294 of this chapter, which definitions are incorporated by reference into article fifteen of this chapter.
295 Additionally, other sections of this article may define terms primarily used in the section in which
296 the term is defined.

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

1 (a) Vendor to collect. -- For the privilege of selling tangible personal property or custom
2 software and for the privilege of furnishing certain selected services defined in sections two and
3 eight of this article, the vendor shall collect from the purchaser the tax as provided under this
4 article and article fifteen-b of this chapter, and shall pay the amount of tax to the Tax
5 Commissioner in accordance with the provisions of this article or article fifteen-b of this chapter.

6 (b) Amount of tax. -- The general consumer sales and service tax imposed by this article
7 shall be at the rate of 6¢ on the dollar of sales or services, excluding gasoline and special fuel

8 sales, which remain taxable at the rate of 5¢ on the dollar of sales: Provided, That beginning on
9 and after January 1, 2022, the general consumer sales and service tax imposed by this article
10 shall be at the rate of 7.9¢ on the dollar of sales or services, excluding gasoline and special fuel
11 sales, which remain taxable at the rate of 5¢ on the dollar of sales.

12 (c) Calculation tax on fractional parts of a dollar until January 1, 2004. -- There shall be no
13 tax on sales where the monetary consideration is 5¢ or less. The amount of the tax shall be
14 computed as follows:

15 (1) On each sale, where the monetary consideration is from 6¢ to 16¢, both inclusive, 1¢.

16 (2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.

17 (3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.

18 (4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.

19 (5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.

20 (6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.

21 (7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any

22 fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the

23 dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢;

24 3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional

25 part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in

26 excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For

27 example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33,

28 both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67,

29 both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to

30 \$2, both inclusive, 12¢: *Provided, That beginning January 1, 2004, tax due under this article shall*

31 *be calculated as provided in subsection (d) of this subsection and this subsection (c) does not*

32 *apply to sales made after December 31, 2003.*

33 (d) Calculation of tax on fractional parts of a dollar after December 31, 2003. -- Beginning

34 January 1, 2004, the tax computation under subsection (b) of this section shall be carried to the
35 third decimal place, and the tax rounded up to the next whole cent whenever the third decimal
36 place is greater than four and rounded down to the lower whole cent whenever the third decimal
37 place is four or less. The vendor may elect to compute the tax due on a transaction on a per item
38 basis or on an invoice basis provided the method used is consistently used during the reporting
39 period.

40 (e) No aggregation of separate sales transactions, exception for coin-operated devices. -
41 - Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of
42 computation of the tax even though the sales are aggregated in the billing or payment therefor.
43 Notwithstanding any other provision of this article, coin-operated amusement and vending
44 machine sales shall be aggregated for the purpose of computation of this tax.

45 (f) Rate of tax on certain mobile homes. -- Notwithstanding any provision of this article to
46 the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the
47 owner thereof as his or her principal year-round residence and dwelling shall be an amount equal
48 to six percent of fifty percent of the sales price: Provided, That beginning on and after January 1,
49 2022, the tax levied on sales of mobile homes to be used by the owner thereof as his or her
50 principal year-round residence and dwelling shall be an amount equal to 7.9% of fifty percent of
51 the sales price.

52 (g) Construction; custom software. -- After December 31, 2003, whenever the words
53 "tangible personal property" or "property" appear in this article, the same shall also include the
54 words "custom software".

55 (h) Computation of tax on sales of gasoline and special fuel. -- The method of computation
56 of tax provided in this section does not apply to sales of gasoline and special fuel.

§11-15-8. Furnishing of services included; exceptions.

1 The provisions of this article apply not only to selling tangible personal property and
2 custom software, but also to the furnishing of all services, except professional and personal

3 services, and except those services furnished by businesses subject to the control of the Public
4 Service Commission when the service or the manner in which it is delivered is subject to regulation
5 by the Public Service Commission: Provided, That on and after January 1, 2022 the provisions of
6 this article also apply to the furnishing of professional services, except professional medical
7 services and professional veterinary services.

§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)~~ (12) Sales and services performed by day care centers;

110 ~~(14)~~ (13) 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)~~ (14) 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)~~ (15) 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)~~ (15) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 *et seq.* of
135 this code to lessees for a period of 30 or more consecutive days;

136 ~~(18)~~ (16) Notwithstanding the provisions of §11-15-18 or §11-15-18b of this code or any
137 other provision of this article to the contrary, sales of propane to consumers for poultry house
138 heating purposes, with any seller to the consumer who may have prior paid the tax in his or her
139 price, to not pass on the same to the consumer, but to make application and receive refund of the
140 tax from 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)~~ (17) Any sales of tangible personal property or services purchased and lawfully paid
143 for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, *et*
144 *seq.*, as amended, or with drafts issued through the West Virginia special supplement food
145 program for women, infants, and children codified in 42 U. S. C. §1786;

146 ~~(20)~~ (18) Sales of tickets for activities sponsored by elementary and secondary schools
147 located within this state;

148 ~~(21)~~ (18) 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)~~ (19) Tuition charged for attending educational summer camps;

158 ~~(23)~~ (20) Dispensing of services performed by one corporation, partnership, or limited
159 liability company for another corporation, partnership, or limited liability company when the entities
160 are members of the same controlled group or are related taxpayers as defined in Section 267 of
161 the 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)~~ (21) 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)~~ (22) 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)~~(23) Charges for room and meals by fraternities and sororities to their members:
207 *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for
208 resale;

209 ~~(27)~~(24) Sales of or charges for the transportation of passengers in interstate commerce;

210 ~~(28)~~(25) Sales of tangible personal property or services to any person which this state is
211 prohibited from taxing under the laws of the United States or under the Constitution of this state;

212 ~~(29)~~(26) Sales of tangible personal property or services to any person who claims
213 exemption from the tax imposed by this article or §11-15A-1 *et seq.* of this code, or pursuant to
214 the provision of any other chapter of this code;

215 ~~(30)~~(27) Charges for the services of opening and closing a burial lot;

216 ~~(31)~~(28) Sales of livestock, poultry, or other farm products in their original state by the
217 producer of the livestock, poultry, or other farm products or a member of the producer's immediate
218 family who is not otherwise engaged in making retail sales of tangible personal property; and
219 sales of livestock sold at public sales sponsored by breeders or registry associations or livestock
220 auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed
221 without presenting or obtaining exemption certificates provided the farmer maintains adequate
222 records;

223 ~~(32)~~(29) Sales of motion picture films to motion picture exhibitors for exhibition if the sale
224 of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by
225 this article and sales of coin-operated video arcade machines or video arcade games to a person
226 engaged in the business of providing the machines to the public for a charge upon which the tax
227 imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption
228 provided in this subdivision may be claimed by presenting to the seller a properly executed

229 exemption certificate;

230 ~~(33)~~(30) Sales of aircraft repair, remodeling, and maintenance services when the services
231 are to an aircraft operated by a certified or licensed carrier of persons or property, or by a
232 governmental entity, or to an engine or other component part of an aircraft operated by a
233 certificated or licensed carrier of persons or property, or by a governmental entity and sales of
234 tangible personal property that is permanently affixed or permanently attached as a component
235 part of an aircraft owned or operated by a certificated or licensed carrier of persons or property,
236 or by a governmental entity, as part of the repair, remodeling, or maintenance service and sales
237 of machinery, tools, or equipment directly used or consumed exclusively in the repair, remodeling,
238 or maintenance of aircraft, aircraft engines, or aircraft component parts for a certificated or
239 licensed carrier of persons or property or for a governmental entity;

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

242 ~~(35)~~(31) Sales of services by individuals who babysit for a profit: *Provided*, That the gross
243 receipts of the individual from the performance of baby-sitting services do not exceed \$5,000 in a
244 taxable year;

245 ~~(36)~~(32) Sales of services by public libraries or by libraries at academic institutions or by
246 libraries at institutions of higher learning;

247 ~~(37)~~(33) Commissions received by a manufacturer's representative;

248 ~~(38)~~(34) Sales of primary opinion research services when:

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

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

254 (C) The transfer of the results of the service activities is an indispensable part of the overall

255 service.

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

260 ~~(39)~~(35) Sales of property or services to persons within the state when those sales are for
261 the purposes of the production of value-added products: *Provided*, That the exemption granted in
262 this subdivision applies only to services, equipment, supplies, and materials directly used or
263 consumed by those persons engaged solely in the production of value-added products: *Provided*,
264 *however*, That this exemption may not be claimed by any one purchaser for more than five
265 consecutive years, except as otherwise permitted in this section.

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

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

271 (B) Fruits into wine;

272 (C) Honey into wine;

273 (D) Wool into fabric;

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

275 (F) Milk into cheese;

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

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

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

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

280 ~~(40)~~(36) Sales of music instructional services by a music teacher and artistic services or

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

303 (44)(37) Charges to a member by a membership association or organization which is
304 exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal
305 Revenue Code of 1986, as amended, for membership in the association or organization, including
306 charges to members for newsletters prepared by the association or organization for distribution

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

322 ~~(42)~~(38) Sales of governmental services or governmental materials by county assessors,
323 county sheriffs, county clerks, or circuit clerks in the normal course of local government
324 operations;

325 ~~(43)~~(39) 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)~~(40) Sales of soap to be used at car wash facilities;

329 ~~(45)~~(41) Commissions received by a travel agency from an out-of-state vendor;

330 ~~(46)~~(42) The service of providing technical evaluations for compliance with federal and
331 state environmental standards provided by environmental and industrial consultants who have
332 formal 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)~~(43) Sales of tangible personal property and services by volunteer fire departments
339 and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4)
340 of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain
341 revenue for the functions and activities of the organization and the revenue obtained is exempt
342 from federal income tax and actually expended for that purpose;

343 ~~(48)~~(44) Lodging franchise fees, including royalties, marketing fees, reservation system
344 fees, or other fees assessed that have been or may be imposed by a lodging franchiser as a
345 condition of the franchise agreement;

346 ~~(49)~~(45) Sales of the regulation size United States flag and the regulation size West
347 Virginia flag for display; and

348 ~~(50)~~(46) Sales of an aircraft sold in this state on or after July 1, 2020, as evidenced by a
349 Federal Aviation Administration Bill of Sale AC Form 8050-2 and registered outside of this state
350 as evidenced by Federal Aviation Administration Aircraft Registration AC Form 8050-1 shall be
351 exempt, so long as the aircraft is removed from this state within 60 days of the date of purchase
352 on the bill of sale. The time between the date of purchase and the removal of the aircraft shall not
353 be counted for purposes of determining whether the aircraft is subject to use tax.

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

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

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

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

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

375 (5) Sales of building materials or building supplies or other property to an organization
376 qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended,
377 which are to be installed in, affixed to, or incorporated by, the organization or its agent into real
378 property or into a building or structure which is or will be used as permanent low-income housing,
379 transitional housing, an emergency homeless shelter, a domestic violence shelter, or an
380 emergency children and youth shelter if the shelter is owned, managed, developed, or operated
381 by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of
382 1986, as amended.

383 (c) *Effective date.* –

384 (1) The amendments to this section made in 2018 shall take effect beginning July 1, 2018,

385 and apply to former sales made on and after that date: *Provided*, That the amendments to
386 subdivision (6), subsection (b) of this section take effect upon passage of this act of the Legislature
387 and shall be construed to prohibit on and after January 1, 2018, all transfers to the State Road
388 Fund established in the State Treasury pursuant to section 52, article VI of the Constitution of
389 West Virginia, of the taxes imposed by §11-15-1 *et seq.* and §11-15A-1 *et seq.* of this code.

390 (2) The amendments to this section made in 2021 shall take effect beginning January 1,
391 2022, and apply to sales made on and after that date.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of Internet advertising; sales of high-technology business services directly used in fulfillment of a government contract; sales of tangible personal property for direct use in a high-technology business or Internet advertising business; definitions.

1 (a) In order to modernize the exemptions from tax contained in this article as a result of
2 technological advances in computers and the expanded role of computers, the Internet and global
3 instant communications in business and to encourage computer software developers, computer
4 hardware designers, systems engineering firms, electronic data processing companies and other
5 high-technology companies to locate and expand their businesses in West Virginia, the following
6 sales of tangible personal property and software are exempt:

7 (1) Sales of computer hardware or software (including custom designed software) to be
8 directly incorporated by a manufacturer into a manufactured product. For purposes of this
9 subsection, the payment of licensing fees for the right to incorporate hardware or software
10 developed by persons other than the manufacturer into a manufactured product is exempt from
11 the tax imposed by this article;

12 (2) Sales of computer hardware or software (including custom designed software) directly

13 used in communication as defined in this article;

14 (3) Sales of electronic data processing services;

15 (4) Sales of educational software required to be used in any of the public schools of this
16 state or in any institution in this state which qualifies as a nonprofit or educational institution
17 subject to administration, regulation, certification or approval of the Department of Education, the
18 Department of Education and the Arts or the Higher Education Policy Commission;

19 (5) Sales of Internet advertising of goods and services;

20 (6) Sales of high-technology business services to high-technology businesses which enter
21 into contracts with this state, its institutions and subdivisions, governmental units, institutions or
22 subdivisions of other states, or with the United States, including agencies of federal, state or local
23 governments for direct use in fulfilling the government contract; and

24 (7) Sales of prewritten computer software, computers, computer hardware, servers and
25 building materials and tangible personal property to be installed into a building or facility for direct
26 use in a high-technology business or an Internet advertising business.

27 (b) Definitions. --

28 As used in this article, the following terms have the following meanings:

29 (1) "Computer hardware" means a computer, as defined in article fifteen-b of this chapter,
30 and the directly and immediately connected physical equipment involved in the performance of
31 data processing or communications functions, including data input, data output, data processing,
32 data storage, and data communication apparatus that is directly and immediately connected to
33 the computer. The term "computer hardware" does not include computer software.

34 (2) "High-technology business" means and is limited to businesses primarily engaged in
35 the following activities: Computer hardware design and development; computer software design,
36 development, customization and upgrade; computer systems design and development; website
37 design and development; network design and development; design and development of new

38 manufactured products which incorporate computer hardware and software; electronic data
39 processing; network management, maintenance, engineering, administration and security
40 services; website management, maintenance, engineering, administration and security services
41 and computer systems management, maintenance, engineering, administration and security
42 services. High-technology business as defined herein is intended to include businesses which
43 engage in the activities enumerated in this definition as their primary business activity, and not as
44 a secondary or incidental activity and not as an activity in support of or incidental to business
45 activity not specifically enumerated in this definition.

46 (3) "High-technology business services" means and is limited to computer hardware
47 design and development; computer software design, development, customization and upgrade;
48 computer systems design and development; website design and development; network design
49 and development; electronic data processing; computer systems management; computer
50 systems maintenance; computer systems engineering; computer systems administration and
51 computer systems security services.

52 (4) "Internet advertising business" means a for-profit business that is engaged, for
53 monetary remuneration, in the primary business activity of announcing, or calling public attention
54 to, goods or services in order to induce the public to purchase those goods or services, and which
55 uses the Internet as its sole advertising communications medium. For purposes of this definition,
56 Internet advertising must be the primary business activity of the business and not a secondary or
57 incidental activity and not an activity in support of or incidental to other business activity.

58 (5) "Network" means a group of two or more computer systems linked together.

59 (6) "Server" means a computer or device on a network that manages network resources.

60 (c) The amendments to this section made in the first extraordinary session of the
61 Legislature in 2009 shall apply to purchases made on and after July 1, 2009.

62 (d) Termination – The provisions of this section shall terminate and not apply to any sales

63 made on or after January 1, 2022.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; ~~six~~ 7.9 percent tax rate; inclusion of services as taxable; transition rules; allocation of tax and transfers.

1 (a) An excise tax is hereby levied and imposed on the use in this state of tangible personal
2 property, custom software or taxable services, to be collected and paid as provided in this article
3 or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the property
4 or taxable services, except as otherwise provided in this article: Provided, That beginning on and
5 after January 1, 2022, the tax is hereby levied and imposed at the rate of 7.9% of the purchase
6 price of the property or taxable services, except as otherwise provided in this article.

7 (b) Calculation of tax on fractional parts of a dollar. — The tax computation under
8 subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to
9 the next whole cent whenever the third decimal place is greater than four and rounded down to
10 the lower whole cent whenever the third decimal place is four or less. The vendor may elect to
11 compute the tax due on a transaction on a per item basis or on an invoice basis provided the
12 method used is consistently used during the reporting period.

13 (c) "Taxable services," for the purposes of this article, means services of the nature that
14 are subject to the tax imposed by article fifteen of this chapter. In this article, wherever the words
15 "tangible personal property" or "property" appear, the same shall include the words "or taxable
16 services," where the context so requires.

17 (d) Use tax is hereby imposed upon every person using tangible personal property, custom
18 software or taxable service within this state. That person's liability is not extinguished until the tax
19 has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in
20 business in this state, or by a foreign retailer who is authorized by the Tax Commissioner to collect

21 the tax imposed by this article, relieves the purchaser from further liability for the tax to which the
22 receipt refers.

23 (e) Purchases of tangible personal property or taxable services made for the government
24 of the United States or any of its agencies by ultimate consumers is subject to the tax imposed
25 by this section. Industrial materials and equipment owned by the federal government within the
26 State of West Virginia of a character not ordinarily readily obtainable within the state, is not subject
27 to use tax when sold, if the industrial materials and equipment would not be subject to use taxes
28 if sold outside of the state for use in West Virginia.

29 (f) This article does not apply to purchases made by counties or municipal corporations

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13. Barrel tax on nonintoxicating beer.

1 (a) There is hereby levied and imposed, in addition to the license taxes provided for in this
2 article, a tax of \$5.50 on each barrel of thirty-one gallons and in like ratio on each part barrel of
3 nonintoxicating beer manufactured in this state for sale within this state, whether contained or
4 sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all
5 nonintoxicating beer manufactured outside of this state and brought into this state for sale within
6 this state; but no nonintoxicating beer manufactured, sold or distributed in this state is subject to
7 more than one barrel tax: Provided, That beginning on and after January 1, 2022, the tax is hereby
8 levied and imposed at \$29.25 on each barrel of thirty-one gallons and in like ratio on each part
9 barrel of nonintoxicating beer manufactured in this state for sale within this state, whether
10 contained or sold in barrels, bottles or other containers, and a like tax is hereby levied and
11 imposed upon all nonintoxicating beer manufactured outside of this state and brought into this
12 state for sale within this state; but no nonintoxicating beer manufactured, sold or distributed in this
13 state is subject to more than one barrel tax. The brewer manufacturing or producing

14 nonintoxicating beer within this state for sale within this state shall pay the barrel tax on such
15 nonintoxicating beer, and, except as provided otherwise, the distributor who is the original
16 consignee of nonintoxicating beer manufactured or produced outside of this state, or who brings
17 such nonintoxicating beer into this state, shall pay the barrel tax on such nonintoxicating beer
18 manufactured or produced outside of this state: *Provided*, That the barrel tax imposed by this
19 section shall not apply to nonintoxicating beer manufactured by a brewpub.

20 (b) On or before the tenth day of each month during the license period, every brewer or
21 operator of a brewpub who manufactures or produces nonintoxicating beer within this state shall
22 file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax
23 Commissioner, stating its total sales, or in the case of a brewpub, its total estimated production
24 of nonintoxicating beer within this state during that month, and at the same time shall pay the tax
25 levied by this article on such production. On or before the tenth day of each month during the
26 license period, every distributor who is the original consignee of nonintoxicating beer
27 manufactured or produced outside this state or who brings such beer into this state for sale shall
28 file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax
29 Commissioner, stating its total estimated purchases of such nonintoxicating beer during that
30 month, and at the same time shall pay the tax thereon levied by this article for such estimated
31 monthly purchase: *Provided*, That the Tax Commissioner may allow, or require, a brewer who
32 manufactures or produces nonintoxicating beer outside this state to file the required report and
33 pay the required tax on behalf of its distributor or distributors. Any brewer or distributor or operator
34 of a brewpub who files a report under this subsection may adjust its monthly estimated sales or
35 purchases or production report or reports by filing amended reports by the twenty-fifth day of the
36 reporting month.

37 (c) Every brewer or distributor or operator of a brewpub who files a report under subsection
38 (b) of this section shall file a final monthly report of said sales or purchases or production, in a

39 form and at a time prescribed by the Tax Commissioner, stating actual nonintoxicating beer sales,
40 purchases, or production and other information which the Tax Commissioner may require, and
41 shall include a remittance for any barrel tax owed for actual sales or purchases or production
42 made in excess of the amount estimated for that month.

43 (d) Any brewer or distributor or operator of a brewpub who files a report pursuant to
44 subsection (b) of this section reflecting an underestimation of twenty-five percent or more of actual
45 sales or purchases or production of nonintoxicating beer as shown by the report filed pursuant to
46 subsection (c) of this section shall be assessed a penalty of one percent of the total taxes due in
47 such prior month.

48 (e) Brewers and distributors and operators of brewpubs shall keep all records which relate
49 to the sale or purchase in this state of nonintoxicating beer for a period of three years unless
50 written approval for earlier disposal is granted by the Tax Commissioner.

51 (f) Brewpubs shall keep such records as required by the federal government and may, in
52 lieu of the recordkeeping and reporting requirements contained in subsections (a) through (e) of
53 this section, file copies of the federal reports contemporaneously with the Tax Commissioner at
54 the time of such filings with the federal government. The filing of duplicate copies of the federal
55 reports with the State Tax Commissioner shall be deemed as compliance with subsections (a)
56 through (e) of this section.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

1 (a) *Tax on cigarettes and tobacco products other than cigarettes.* — For the purpose of
2 providing revenue for the General Revenue Fund of the state, an excise tax is hereby levied and
3 imposed on sales of cigarettes and tobacco products other than cigarettes.

4 (b) *Tax rate on cigarettes.* — Effective May 1, 2003, the excise tax rate levied and imposed

5 on the sale of cigarettes is 55 cents on each twenty cigarettes or in like ratio on any part thereof:
6 *Provided*, That on and after July 1, 2016, the excise tax rate levied and imposed on the sale of
7 cigarettes is \$1.20 on each twenty cigarettes or in like ratio on any part thereof: *Provided*,
8 *however*, That effective January 1, 2022, the excise tax rate levied and imposed on the sale of
9 cigarettes is \$2.25 on each twenty cigarettes or in like ratio on any part thereof. Only one sale of
10 the same article shall be used in computing the amount of tax due under this subsection.

11 (c) *Tax on tobacco products other than cigarettes.* — Effective January 1, 2002, the excise
12 tax levied and imposed on the sales or use of tobacco products other than cigarettes at the rate
13 equal to seven percent of the wholesale price of each article or item of tobacco products other
14 than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if
15 not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided*, That on and
16 after July 1, 2016, the excise tax rate levied and imposed on the sales or use of tobacco products
17 other than cigarettes is at the rate equal to twelve percent of the wholesale price of each article
18 or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer,
19 whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the
20 wholesaler or dealer: *Provided, however*, That on and after January 1, 2022, the excise tax rate
21 levied and imposed on the sales or use of tobacco products other than cigarettes is at the rate
22 equal to 19.5% of the wholesale price of each article or item of tobacco products other than
23 cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not
24 sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same
25 article shall be used in computing the amount of tax due under this subsection.

26 (d) *Effective date of amendments.* — Amendments to this section enacted in the year 2003
27 apply in determining tax imposed under this article from May 1, 2003, through June 30, 2016.
28 Amendments to this section enacted in the year 2016 apply in determining tax imposed under this
29 article effective on and after July 1, 2016.

§11-17-4b. Levy of tax on e-cigarette liquid; definitions; rate; invoice; report; payment; authority of the Tax Commissioner to inspect and examine witnesses; presumption; bond.

1 (a) *Definitions.* — When used in this section, words, terms and phrases defined in this
2 subsection, and any variations thereof required by the context, have the meaning ascribed to
3 them in this subsection, except where the context indicates a different meaning is intended.

4 (1) “E-cigarette” means an electrical or electronic device that provides a smoke, vapor,
5 fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled,
6 simulates the activity of smoking. The term e-cigarette includes, but is not limited to, a device that
7 is composed of a heating element, battery or electrical or electronic circuit, or a combination of
8 heating element, battery and electrical or electronic circuit, which works in combination with e-
9 liquid to produce an inhalable product. The term e-cigarette includes, but is not limited to, any so
10 designed, or similarly designed, product that is manufactured, distributed, marketed or sold as an
11 e-cigarette, e-cigar, e-pipe or under any other name or descriptor. The term “simulates the activity
12 of smoking”, in the context of this definition, means replicating, mimicking or reproducing an
13 experience similar to inhaling, or otherwise drawing into the mouth or nose, or exhaling the smoke
14 or combustion product of burning tobacco or any other product or material that can be used in a
15 similar fashion.

16 (2) “E-cigarette liquid” means any of the liquids or liquid mixtures used in e-cigarettes and
17 is also known as e-juice, e-fluid, e-liquid or e-liquid product. E-cigarette liquid includes e-cigarette
18 liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-
19 cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-
20 cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin,
21 nicotine from any source or flavorings.

22 (b) *Levy of tax; rate.* —

23 (1) On and after July 1, 2016, an excise tax is levied and imposed on sales of e-cigarette
24 liquid at the rate of 7.5 cents per milliliter or fraction thereof, or if not sold, then at the same rate
25 upon the use by the wholesaler or dealer: Provided, That on and after January 1, 2022, the excise
26 tax levied and imposed on the sales of e-cigarette liquid is at the rate of 75¢ per milliliter or fraction
27 thereof, or if not sold, then at the same rate upon the use by the wholesaler or dealer. For
28 purposes of this article, any distributor, dealer, subjobber, subjobber dealer, retailer or any other
29 person that imports or transports e-cigarette liquids into this state, or that causes e-cigarette
30 liquids to be imported or transported into this state, is hereby deemed to be a wholesaler for
31 purposes of this section and is liable for the tax imposed under this article. No wholesaler or other
32 person may purchase e-cigarette liquids from any seller not approved by the Tax Commissioner.
33 E-cigarette liquid mixing kits and e-cigarette liquid mixing kit components shall be taxed in
34 accordance with the amount of e-cigarette liquid, in milliliters, that can be produced by or from the
35 kit or components thereof, as determined by the Tax Commissioner.

36 (2) Only one sale of e-cigarette liquid shall be used in computing the amount of tax due
37 under this section.

38 (c) *How tax paid; invoice required; reports required; due date; records to be kept.* —

39 (1) The tax imposed in this section on e-cigarette liquid shall be paid using an invoice
40 method prescribed by the Tax Commissioner.

41 (2) The tax will be paid on any and all e-cigarette liquid coming into the state for the
42 purpose of sale or use in this state on and after July 1, 2016.

43 (3) *Contents of delivery ticket or invoice.* — Unless otherwise permitted in writing by the
44 Tax Commissioner, each delivery ticket or invoice for each purchase or sale of e-cigarette liquid
45 must be recorded upon a serially numbered invoice showing:

46 (A) The name and address of the seller and the purchaser;

47 (B) The point of delivery;

48 (C) The date;

49 (D) (i) The number of e-cigarette cartridges, apparatus, containers or other devices; (ii)
50 the quantity in milliliters of each cartridge, apparatus, container or other device; (iii) the wholesale
51 price of each e-cigarette cartridge, apparatus, container or other device delivered in this state; or
52 (iv) if sold outside of a cartridge or other device or container, the total quantity in milliliters of e-
53 cigarette liquid not in cartridges, apparatus or other device or container delivered in this state and
54 the wholesale price of the e-cigarette liquid;

55 (E) The invoice must either set out the amount of tax imposed by this article separately on
56 the invoice or the invoice may instead indicate that the tax imposed under this article is included
57 in the total price; and

58 (F) Any other information required by the Tax Commissioner.

59 (4) *Reports and payments due date.* — On or before the fifteenth day of each month,
60 manufacturers, importers, every place of business as defined in this article, retail dealers,
61 subjobbers, vending machine operators and wholesale dealers and their agents, shall file a report
62 covering the business transacted in the previous month providing any information the Tax
63 Commissioner determines necessary for the ascertainment or assessment of the taxes imposed
64 by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by
65 the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be
66 remitted on or before the due date of the monthly report. The first report due for e-liquid sales is
67 August 15, 2016, for the sales completed in July 2016.

68 (5) *Reports required.* — The reports prescribed in this article are required, although a tax
69 may not be due or no business transacted, for the period covered by the report. In the case of
70 any failure to file a report on the date prescribed for filing when no tax is due, unless it is shown
71 that the failure was due to reasonable cause, there is hereby imposed a penalty of \$25 for each
72 month or fraction of a month that such report is delinquent, until the report is filed, in addition to

73 any penalties imposed under section nineteen-a of this article.

74 (6) *Records.* — Each person required to file a report shall make and keep the records
75 necessary to substantiate the accuracy of the reports required by this section including, but not
76 limited to, records of inventories, receipts, disbursements and sales. Records shall be retained
77 for a period of time not less than three years from the time the report is due or the time when the
78 report is filed, whichever is later.

79 (d) *Inspection of records and stocks; examination of witnesses; registration of e-cigarette*
80 *sellers; presumption of nontax paid.* —

81 (1) The Tax Commissioner has the authority to inspect or examine the records, books and
82 papers, and any equipment or e-cigarette apparatus, and any stock of e-cigarette liquid kept in or
83 upon the premises of persons who sell, possess or store e-cigarette liquid, for the purpose of
84 determining the quantity and value of e-cigarette liquid acquired, on hand or disbursed, to verify
85 the truth and accuracy of any statement, return, form or report and to ascertain whether the tax
86 imposed by this article has been properly paid.

87 (2) In addition to the Tax Commissioner's powers set forth in article ten of this chapter, the
88 Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in order
89 to ascertain the amount of taxes and reports due under this article. If a witness or person fails or
90 refuses to testify or grant access to records, books, papers, equipment or e-cigarette apparatus,
91 or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes and reports
92 due under this article, the Tax Commissioner shall certify the facts and names to the circuit court
93 of the county having jurisdiction of the party and the court shall issue a summons to the party to
94 appear before the Tax Commissioner at a place designated within the jurisdiction of the court, on
95 a day fixed, to be continued as the occasion may require for good cause shown, to testify and
96 give evidence and to produce for inspection any books, records and papers that may be required
97 and to grant access to records, books, papers, equipment or e-cigarette apparatus, or any stock

98 of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports due, if any.

99 (3) Each wholesale dealer of e-cigarette liquid must register with the Tax Commissioner
100 and maintain a business registration certificate, showing the wholesale dealer of e-cigarette liquid
101 to be registered as a seller of tobacco products or seller of both cigarettes and tobacco products
102 prior to the sale or delivery of e-cigarette liquid to any retail dealer or subjobber in this state. A
103 wholesale dealer may sell tax-paid e-cigarette liquid only to another wholesaler or a retail dealer
104 or subjobber in this state. No person may purchase nontaxed e-cigarette liquid from any seller
105 not approved by the Tax Commissioner.

106 (4) Whenever e-cigarette liquid is found in the place of business of any retail dealer,
107 without evidence that the tax imposed by this section has been paid, it shall be presumed that the
108 e-cigarette liquid is kept on the premises in violation of this article.

109 (e) *Bond.* — The Tax Commissioner may require wholesalers, subjobbers or retail dealers
110 to file a continuous surety bond in an amount to be fixed by the Tax Commissioner but no less
111 than \$1,000. The bond shall be conditioned upon faithfully complying with the provisions of this
112 article including the filing of the returns and payment of all taxes prescribed by this article.

113 (f) *Administration and enforcement.* — The provisions of this article and articles nine and
114 ten of this chapter apply to administration and enforcement of the excise tax on e-cigarette liquid
115 in the same manner and to the same extent as they apply to administration and enforcement of
116 the excise tax on tobacco products, as imposed under this article.

117 (g) *Criminal sanctions.* — The criminal sanctions imposed in section nineteen-a of this
118 article are hereby imposed with equal force and application with relation to actions, transactions
119 and responsibilities prescribed under this section and under this article. For the purpose of
120 applying and interpreting the provisions of section nineteen-a of this article, the words “container
121 of tobacco products” shall be interpreted to mean and include the words “container of tobacco
122 products or e-cigarette liquid”.

ARTICLE 18. EXCISE TAX ON LUXURY ITEMS

§11-18-1. Excise tax on luxury item sales, purchases and acquisitions.

1 There is hereby imposed an excise tax on sales of luxury items sold, used or delivered into West
2 Virginia. The tax imposed by this article is due and payable for sales and purchases made on and
3 after January 1, 2022. For purposes of this article, leases of luxury items are taxable, and are
4 subject to the requirements of this article.

§11-18-2. Definitions.

1 (a) General. — When used in this article, words defined in subsection (b) of this section
2 have the meanings ascribed to them in this section, except in those instances where a different
3 meaning is provided in this article or the context in which the word is used clearly indicates that
4 a different meaning is intended by the Legislature.

5 (b) Definitions.

6 (1) “Alter ego” means, and includes persons, entities, nominees, and instrumentalities
7 that would constitute an alter ego business or entity as defined in § 11-12-5 of this code.

8 (2) “Collection” means a group of objects or tangible personal property assembled or
9 accumulated, typically in one location, for a purpose typically related to artistic, intellectual,
10 scientific, historical, or aesthetic interest. A collection may include, but not be limited to, stamp
11 collections, book collections, art collections, sculpture collections, collections of historic objects
12 such as military uniforms, ancient weapons or armor, or automobiles or motorcycles.

13 (3) “Gross proceeds” means the amount received in money, credits, property or other
14 consideration from sales of luxury items within this state, without deduction on account of the
15 cost of property sold, amounts paid for interest or discounts or other expenses whatsoever.
16 Losses may not be deducted, but any credit or refund made for goods returned may be deducted.

17 (4) “Luxury item” means jewelry, including watches, and timepieces, clothing, including
18 fur garments and millinery items, art work, furniture, including clocks and electronic equipment
19 and appliances, motor boats, snowmobiles, ATV’s, yachts, and airplanes, and collections, as
20 herein defined. The term luxury item includes aggregated sales of luxury items.

21 (5) “Marketplace” includes any means by which any marketplace seller sells or offers for
22 sale tangible personal property, for delivery into this state, regardless of whether the marketplace
23 seller has a physical presence in this state;

24 (6) “Marketplace facilitator” means a person that contracts with one or more sellers to
25 facilitate for consideration, regardless of whether deducted as fees from the transaction, the sale
26 of the seller’s products through a physical or electronic marketplace operated by the person, and
27 engages:

28 (A) Directly, or indirectly, through one or more affiliated persons, in any of the following:

29 (i) Transmitting or otherwise communicating the offer or acceptance between the buyer
30 and seller;

31 (ii) Owning or operating the infrastructure, electronic or physical, or technology that
32 brings buyers and sellers together;

33 (iii) Providing a virtual currency that buyers are allowed or required to use to purchase
34 products from the seller; or

35 (iv) Software development or research and development activities related to any of the
36 activities described in §11-15A-1(b)(7)(B) of this code, if such activities are directly related to a
37 physical or electronic marketplace operated by the person or an affiliated person; and

38 (B) In any of the following activities with respect to the seller’s products:

39 (i) Payment processing services;

40 (ii) Fulfillment or storage services;

41 (iii) Listing products for sale;

42 (iv) Setting prices;

43 (v) Branding sales as those of the marketplace facilitator;

44 (vi) Order taking;

45 (vii) Advertising or promotion; or

46 (viii) Providing customer service or accepting or assisting with returns or exchanges.

47 (C) This term does not include a payment processor business appointed by a merchant
48 to handle payment transactions from various channels, such as credit cards and debit cards, and
49 whose sole activity with respect to marketplace sales is to handle payment transactions between
50 two parties.

51 (5) "Marketplace seller" means a seller that makes retail sales through any physical or
52 electronic marketplaces operated by a marketplace facilitator or directly resulting from a referral
53 by a referrer, regardless of whether the seller is required to be registered with the Tax
54 Commissioner as provided in §11-12-1 et seq. of this code.

55 (6) "Referral" means the transfer by a referrer of a potential customer to a marketplace
56 seller who advertises or lists products for sale on the referrer's platform.

57 (7) "Referrer" -- (A) "Referrer" means a person, other than a person engaging in the
58 business of printing a newspaper or publishing a newspaper as defined in §11-15A-1(b)(10) of
59 this code, who contracts or otherwise agrees with a seller to list or advertise for sale one or more
60 items in any medium, including a website or catalog; receives a commission, fee, or other
61 consideration from the seller for the listing or advertisement; transfers, via telephone, internet

62 link, or other means, a purchaser to a seller or an affiliated person to complete the sale; and
63 does not collect receipts from the purchasers for the transaction.

64 (B) “Referrer” does not include a person that:

65 (i) Provides internet advertising services; and

66 (ii) Does not ever provide either the marketplace seller’s shipping terms or advertise
67 whether a marketplace seller charges sales and use taxes.

68 (8) “Related person” has the same meaning prescribed by section 267 or 707(b) of the
69 Internal Revenue Code, as defined in §11-21-9 of this code.

70 (9) “Remote seller” means any seller, other than a marketplace facilitator or referrer, who
71 does not have a physical presence in this state that, through a platform, sells tangible personal
72 property or services to persons in this state, the acquisition or transfer of which is subject to the
73 tax imposed by this article.

74 (10) “Retailer” means and includes every person engaging in the business of selling, a
75 luxury item or other tangible personal property owned by the person or others for enjoyment, use
76 or possession of the luxury item or tangible personal property by the purchaser or transferee in
77 this state.

78 (11) “Retailer engaging in business in this state” or any like term, unless otherwise limited
79 by federal statute, means and includes, but is not limited to:

80 (A) Any retailer having or maintaining, occupying or using, within this state, directly or by
81 a subsidiary, an office, distribution house, sales house, warehouse, or other place of business,
82 or any agent (by whatever name called) operating within this state under the authority of the
83 retailer or its subsidiary, irrespective of whether the place of business or agent is located here

84 permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within
85 this state pursuant §31D-15-1 et seq. of this code or §31E-14-1 et seq. of this code; or

86 (B) Any retailer that is related to, or part of a unitary business with, a person, entity or
87 business that, without regard to whether the retailer is admitted to do business in this state
88 pursuant to §31D-15-1 et seq. of this code or §31E-14-1 et seq. of this code, is a subsidiary of
89 the retailer, or is related to, or unitary with, the retailer as a related entity, a related member or
90 part of a unitary business, all as defined in §11-24-3a of this code;

91 (i) That, pursuant to an agreement with or in cooperation with the related retailer,
92 maintains an office, distribution house, sales house, warehouse or other place of business in this
93 state;

94 (ii) That performs services in this state in connection with tangible personal property or
95 services sold by the retailer, or any related entity, related member or part of the unitary business;

96 (iii) That, by any agent, or representative (by whatever name called), or employee,
97 performs services in this state in connection with tangible personal property or services sold by
98 the retailer, or any related entity, related member or part of the unitary business; or

99 (iv) That directly, or through or by an agent, representative or employee located in, or
100 present in, this state, solicits business in this state for or on behalf of the retailer, or any related
101 entity, related member or part of the unitary business.

102 (C) For purposes of paragraph (B) of this subdivision, the term “service” means and
103 includes, but is not limited to, customer support services, help desk services, call center services,
104 repair services, engineering services, installation service, assembly service, delivery service by
105 means other than common carrier or the United States Postal Service, technical assistance
106 services, the service of investigating, handling or otherwise assisting in resolving customer
107 issues or complaints while in this state, the service of operating a mail order business or

108 telephone, Internet or other remote order business from facilities located within this state, the
 109 service of operating a website or Internet-based business from a location within the state, or any
 110 other service.

111 (12) "Sale" means any transaction resulting in the purchase or lease of tangible personal
 112 property from a retailer;

113 (13) "Seller" means a retailer, and includes every person selling or leasing tangible
 114 personal property in a transaction that is subject to the tax imposed by this article;

§11-18-3. Rate of tax, aggregate sales.

1 (a) The tax is imposed upon purchase, acquisition or transfer of any luxury item at the
 2 stated percentage rate multiplied by the gross proceeds paid for the luxury item at the following
 3 rates.

<u>Gross proceeds:</u>	<u>The rate of tax on gross proceeds:</u>
5 <u>Less than \$5,000</u>	<u>0.00%</u>
6 <u>\$5,000 to \$10,000</u>	<u>3.00%</u>
7 <u>More than \$10,000 to \$30,000.....</u>	<u>2.75%</u>
8 <u>More than \$30,000 to \$100,000.....</u>	<u>2.50%</u>
9 <u>More than \$100,000 to \$500,000.....</u>	<u>2.25%</u>
10 <u>More than \$500,000 to \$1,000,000</u>	<u>1.75%</u>
11 <u>More than \$1,000,000.....</u>	<u>1.00%</u>

12 (b) Aggregate sales. – The tax imposed by this article applies to sales of a single luxury
 13 item based upon the bracketed rates and amounts set forth in subsection (a) of this section. In
 14 order to prevent tax evasion or tax avoidance, in the determination of the Commissioner, sales
 15 of luxury items may be aggregated for purposes of this tax so that sales of multiple items may
 16 not be parsed out, separated, separately bill or separately invoiced in such a way as to

17 individually appear to fall under the taxable threshold, but in the aggregate constitute a sale
18 subject to tax. The Tax Commissioner may cause sales of luxury items to be aggregated for
19 purposes of imposing this tax, based upon such criteria as the Tax Commissioner may apply,
20 including, but not limited to, time frame of sales, sales of like items, including but not limited to,
21 items comprising parts of a collection as herein defined, sales between the same seller and the
22 same purchaser, sales by related sellers, purchases by related purchasers, and sales that are in
23 substance comprised of one coherent purchase, but made through different sellers, different
24 remote sellers, or different marketplace facilitators so as to falsely represent a substantive single
25 purchase as having been made from two or more sellers, retailers, brokers or marketplace
26 facilitators, or having been made through multiple transactions. For purposes of this article, sales
27 to alter ego entities or from alter ego entities, may be aggregated. Sales to related persons may
28 be aggregated. And sales from related persons may be aggregated.

29 (c) Leases of luxury items are taxable under this article if annual lease payments equal
30 or exceed the thresholds specified in this article and at the rates specified in this article as applied
31 to each annual rent amount. Periodic leases may be aggregated to determine the taxable annual
32 rent amount.

§11-18-4. Payment of tax, incidence of tax, economic nexus.

1 (a) Incidence of tax. -- The tax imposed by this article is due and owing and payable at
2 the time of transfer by the seller, retailer, remote seller or marketplace facilitator through or by
3 whom the sale of the luxury item is made. However, if the seller, retailer, remote seller or
4 marketplace facilitator fails to pay the tax imposed, or fails to pay because the seller is not subject
5 to tax nexus with this state, then the tax imposed under this article is due and owing and payable
6 by the purchaser of the luxury item at the time of purchase. Notwithstanding payment of the tax

7 by the seller, retailer, remote seller or marketplace facilitator, the retailer may include the tax as
8 a separately stated listing on the billing or invoice rendered to the purchaser.

9 (b) Economic nexus. — A marketplace facilitator, referrer, or remote seller shall pay the
10 tax imposed by this article when:

11 (1) The marketplace facilitator, referrer, or remote seller makes or facilitates West
12 Virginia sales on its own behalf or on behalf of one or more marketplace sellers equal to or
13 exceeding \$100,000 in gross revenue for an immediately preceding calendar year, or a current
14 calendar year; or

15 (2) The marketplace facilitator, referrer, or remote seller makes or facilitates West
16 Virginia sales on its own behalf or on behalf of one or more marketplace sellers in 200 or more
17 separate transactions for an immediately preceding calendar year or a current calendar year.

18 (c) Every person liable for payment of the tax imposed by this article shall file a tax return
19 as required by this article and timely pay the tax due.

§11-18-5. Tax in addition to other taxes.

1 The tax imposed by this article is separate from and imposed in addition to other excise
2 taxes imposed under this code, including but not limited to, the taxes imposed under articles §§
3 11-15-1 et seq. and §§ 11-15A-1 et seq. of this chapter, special district excise taxes imposed
4 pursuant to articles §§ 7-22-1 et seq. and §§ 8-38-1 et seq. and municipal consumers sales and
5 service tax and use tax imposed pursuant to articles §§ 8-13C-1 et seq. and §§ 8-1-1 et seq.

§11-18-6. Tax return and payment; combined return.

1 (a) Payment of tax. — The taxes levied by this article are due and payable in monthly
2 installments, on or before the twentieth day of the month next succeeding the month in which the
3 tax accrued, except as otherwise provided in this article.

4 (1) Each person required to file a return required by this article, shall complete and file
5 the return required by the Tax Commissioner.

6 (2) The Tax Commissioner may promulgate rules pursuant to § 29A-3-1 et seq. of this
7 code and otherwise use any combination of notices, forms and instructions he or she determines
8 necessary to implement the administration, collection and payment of the tax imposed by this
9 article.

10 (b) Tax return. — The taxpayer shall, on or before the twentieth day of each month, make
11 out and mail to the Tax Commissioner a return for the preceding month, in the form prescribed
12 by the Tax Commissioner, showing:

13 (1) The gross proceeds of the vendor's business for the preceding month upon which the
14 tax is based;

15 (2) The amount of the tax for which the vendor is liable; and

16 (3) Any further information necessary in the computation and collection of the tax which
17 the Tax Commissioner may require.

18 (c) Remittance to accompany return. — Except as otherwise provided in this article, a
19 remittance for the amount of the tax shall accompany the return.

20 (d) Deposit of collected tax. — Tax collected by the Tax Commissioner shall be deposited
21 as provided by law.

22 (e) The Tax Commissioner may prescribe electronic digital means for filing or payment
23 of the tax imposed by this article, or both in lieu of paper filings and manual processing.

24 (f) Return to be signed. — A return shall be signed by the taxpayer or the taxpayer's duly
25 authorized agent, when a paper return is prepared and filed. When the return is filed
26 electronically, the return shall include the digital mark or digital signature, as defined in article §§

27 39A-3-1 et seq. of this code, or the personal identification number of the taxpayer, or the
28 taxpayer's duly authorized agent, made in accordance with any procedural rule that may be
29 promulgated by the Tax Commissioner.

§11-18-7. Application of West Virginia Tax Procedure and Administration Act.

1 Every provision of the West Virginia Tax Procedure and Administration Act set forth in
2 article §11-10-1 et seq. of this code, and as amended from time to time by the Legislature, applies
3 to the taxes imposed pursuant to this article, except as otherwise expressly provided in this
4 article, with like effect as if that act were applicable only to the taxes imposed by this article and
5 were set forth in extenso in this article or the order entered by the county commission imposing
6 the taxes pursuant to this article.

§ 11-18-8. Application of West Virginia Tax Crimes and Penalties Act.

1 Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in
2 §§11-9-1 et seq. of this code applies to the tax imposed pursuant to this article, with like effect
3 as if that act were applicable only to the tax imposed by this article and were set forth in extenso
4 in this article.

ARTICLE 19. SOFT DRINKS TAX

§11-19-2. Excise tax on bottled soft drinks, syrups and dry mixtures; disposition thereof.

1 (a) Tax on or before December 31, 2021 - For the purpose of providing revenue for the
2 construction, maintenance and operation of a four-year school of medicine, dentistry and nursing
3 of West Virginia University, an excise tax is hereby levied and imposed on and after midnight of
4 June 30, 1951, upon the sale, use, handling or distribution of all bottled soft drinks and all soft
5 drink syrups, whether manufactured within or without this state until December 31, 2021, as
6 follows:

7 (1) On each bottled soft drink, a tax of 1¢ on each sixteen and nine-tenths fluid ounces, or

8 fraction thereof, or on each one-half liter, or fraction thereof contained therein.

9 (2) On each gallon of soft drink syrup, a tax of 80¢, and in like ratio on each part gallon
10 thereof, or on each four liters of soft drink syrup a tax of 84¢, and in like ratio on each part four
11 liters thereof.

12 (3) On each ounce by weight of dry mixture or fraction thereof used for making soft drinks,
13 a tax of 1¢ or on each 28.35 grams, or fraction thereof, a tax of 1¢.

14 (b) Tax on or after January 1, 2022 - For the purpose of providing general revenue to the
15 State of West Virginia, along with the construction, maintenance and operation of a four-year
16 school of medicine, dentistry and nursing of West Virginia University, an excise tax is hereby
17 levied and imposed on and after January 1, 2022, upon the sale, use, handling or distribution of
18 all bottled soft drinks and all soft drink syrups, whether manufactured within or without this state
19 as follows:

20 (1) On each bottled soft drink, a tax of 6¢ on each sixteen and nine-tenths fluid ounces, or
21 fraction thereof, or on each one-half liter, or fraction thereof contained therein.

22 (2) On each gallon of soft drink syrup, a tax of \$4.80, and in like ratio on each part gallon
23 thereof, or on each four liters of soft drink syrup a tax of \$5.04, and in like ratio on each part four
24 liters thereof.

25 (3) On each ounce by weight of dry mixture or fraction thereof used for making soft drinks,
26 a tax of 6¢ or on each 28.35 grams, or fraction thereof, a tax of 6¢.

27 (b) Any person manufacturing or producing within this state any bottled soft drink or soft
28 drink syrup for sale within this state and any distributor, wholesale dealer or retail dealer or any
29 other person who is the original consignee of any bottled soft drink or soft drink syrup
30 manufactured or produced outside this state, or who brings such drinks or syrups into this state,
31 shall be liable for the excise tax hereby imposed. The excise tax hereby imposed shall not be
32 collected more than once in respect to any bottled soft drink or soft drink syrup manufactured,

33 sold, used or distributed in this state.

34 (c) Dedication of revenue- All revenue collected by the commissioner under the provisions
35 of this article, less such costs of administration as are hereinafter provided for, shall be paid by
36 him or her into a special medical school fund, which is hereby created in the State Treasury, to
37 be used solely for the construction, maintenance and operation of a four-year school of medicine,
38 dentistry and nursing, as otherwise provided by law: Provided, That, for all periods beginning on
39 and after January 1, 2022:

40 (1) The proceeds of the tax imposed by this article shall be deposited into the General
41 Revenue Fund of the state;

42 (2) On or about the fifteenth day of each month following the imposition of the tax at the
43 rates prescribed in subsection (b) of this section, the commissioner shall deposit 1/6 of the
44 revenue collected pursuant to this section, less any lawful refunds, credits, and costs of
45 administration as provided in §11-10-27 of this code, into the special fund provided in this
46 subsection.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4g. Rate of tax -- Taxable years beginning on or after January 1, 2022.

1 (a) Notwithstanding any provision of this code to the contrary, on and after January 1,
2 2022, the West Virginia taxable income of every individual, estate, and trust will be determined
3 as set forth in this section.

4 (b) West Virginia Taxable Nonbusiness Personal Income:

5 (1) West Virginia taxable nonbusiness personal income means the West Virginia adjusted
6 gross income from wages, salaries, pensions, retirement benefits, annuities, IRAs, social security
7 benefits and unemployment benefits, less West Virginia personal exemptions

8 (2) The tax imposed by §11-21-3 of this code on the West Virginia taxable nonbusiness
9 personal income of every individual (except married individuals filing separate returns); every

10 individual who is a head of a household in the determination of his or her federal income tax for
 11 the taxable year; every spouse and spouse who file a joint return under this article; every individual
 12 who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse;
 13 and every estate and trust shall be determined in accordance with the following table:

14 **If the West Virginia taxable**

15 <u>nonbusiness personal income is:</u>	<u>The tax is:</u>
16 <u>Not over \$10,000</u>	<u>1.2% of the taxable income</u>
17 <u>Over \$10,000 but not over \$25,000</u>	<u>\$120 plus 1.6% of excess over \$10,000</u>
18 <u>Over \$25,000 but not over \$40,000</u>	<u>\$360 plus 1.8% of excess over \$25,000</u>
19 <u>Over \$40,000 but not over \$60,000</u>	<u>\$630 plus 2.4% of excess over \$40,000</u>
20 <u>Over \$60,000</u>	<u>\$1,110 plus 2.6% of excess over \$60,000</u>

21 (3) Rate of tax on West Virginia taxable nonbusiness personal income on married
 22 individuals filing separate returns. -- In the case of husband and wife filing separate returns under
 23 this article for the taxable year, the tax imposed §11-21-3 of this code of this article on the West
 24 Virginia taxable nonbusiness personal income of each spouse shall be determined in accordance
 25 with the following table:

26 **If the West Virginia taxable**

27 <u>nonbusiness personal income is:</u>	<u>The tax is:</u>
28 <u>Not over \$5,000</u>	<u>1.2% of the taxable income</u>
29 <u>Over \$5,000 but not over \$12,500</u>	<u>\$60 plus 1.6% of excess over \$5,000</u>
30 <u>Over \$12,500 but not over \$20,000</u>	<u>\$180 plus 1.8% of excess over \$12,500</u>
31 <u>Over \$20,000 but not over \$30,000</u>	<u>\$315 plus 2.4% of excess over \$20,000</u>
32 <u>Over \$30,000</u>	<u>\$555 plus 2.6% of excess over \$30,000</u>

33 (c) West Virginia Taxable Unearned and Business Personal Income:

34 (1) West Virginia taxable unearned and business personal income is the sum of the

35 federal adjusted gross income from interest, dividends, capital gains, supplemental gains and
36 losses, profit from a business as reported on the federal Schedule C, Form 1040, farm income as
37 reported on federal Schedule F, Form 1040, income related to rental real estate, royalties,
38 partnerships, S Corporations, estates, trusts, and residual interest in Real Estate Mortgage
39 Investment Conduits that are reported on the federal Schedule E, Form 1040, and any other
40 miscellaneous income not taxed under §11-21-4g(b).

41 (2) Notwithstanding any provision of this code to the contrary, the tax imposed by this
42 subsection on West Virginia taxable unearned and business personal income shall not be entitled
43 to or offset by any tax credits set forth in Chapter 11 of this code except for the credit for taxes
44 paid to other states as set forth in §11-21-20 and §11-21-40 of this code, the Economic
45 Opportunity Tax Credit in §11-13Q-1, et seq. of this code, the Environmental Agricultural
46 Equipment Credit in §11-13K-1, et seq. of this code, the Neighborhood Investment Program Credit
47 in §11-13J-1, et seq. of this code, the Apprenticeship Training Tax Credit §11-13W-1 et seq., the
48 Farm to Food Bank Tax Credit in §11-13DD-1, et seq., the Downstream Natural Gas
49 Manufacturing Investment Tax Credit in §11-13GG-1, et seq. of this code and the Post Coal Mine
50 Business Credit in §11-28-1, et seq. of this code.

51 (3) The tax imposed by §11-21-3 of this code on West Virginia taxable unearned and
52 business personal income of every individual (except married individuals filing separate returns);
53 every individual who is a head of a household in the determination of his or her federal income
54 tax for the taxable year; every spouse and spouse who file a joint return under this article; every
55 individual who is entitled to file his or her federal income tax return for the taxable year as a
56 surviving spouse; and every estate and trust shall be determined in accordance with the following
57 table:

58 **If the West Virginia taxable**

59 **unearned and business**

<u>personal income is:</u>	<u>The tax is:</u>
Not over \$10,000	3% of the taxable income
Over \$10,000 but not over \$25,000	\$300 plus 4% of excess over \$10,000
Over \$25,000 but not over \$40,000	\$900 plus 4.5% of excess over \$25,000
Over \$40,000 but not over \$60,000	\$1,575 plus 6% of excess over \$40,000
Over \$60,000	\$2,775 plus 6.5% of excess over \$60,000

(4) Rate of tax on married individuals filing separate returns. -- In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-3 of this code on West Virginia taxable unearned and business personal income of each spouse shall be determined in accordance with the following table:

<u>If the West Virginia taxable unearned and business personal income is:</u>		<u>The tax is:</u>
Not over \$5,000		3% of the taxable income
Over \$5,000 but not over \$12,500		\$150 plus 4% of excess over \$5,000
Over \$12,500 but not over \$20,000		\$450 plus 4.5% of excess over \$12,500
Over \$20,000 but not over \$30,000		\$787.50 plus 6% of excess over \$20,000
Over \$30,000		\$1,387.50 plus 6.5% of excess over \$30,000

(d) Emergency Rules – Notwithstanding any provision of this code to the contrary, the Commissioner may promulgate legislative rules explaining and implementing this section, which rules may be promulgated under the provisions of §29-3-1, et seq. of this code and may include an explanation as to the methodology under which modifications provided for by this article apply to West Virginia taxable nonbusiness personal income and West Virginia Taxable unearned and business personal income. In the absence of rules, a taxpayer that has both West Virginia taxable nonbusiness personal income and West Virginia taxable unearned and business personal income

85 on their West Virginia return shall apply all increasing modifications set forth in §11-21-1, et seq.
86 of this code to the West Virginia taxable unearned and business personal income, and all
87 decreasing modifications set forth in §11-21-1, et seq. of this code to the West Virginia taxable
88 nonbusiness personal income.

89 (e) Applicability of this section. -- The provisions of this section, as amended by this act,
90 shall be applicable in determining the rate of tax imposed by this article for all taxable years
91 beginning after December 31, 2021, and shall be in lieu of the rates of tax specified in §11-21-
92 4e of this code.

§11-21-25. Sales Tax Relief Credit.

1 (a) Definitions – As used in this section, the following terms shall have the meaning
2 ascribed to them in this subsection, unless the context in which the term is used clearly requires
3 a different meaning or a specific different definition is provided:

4 (1) "Household" means the claimant and his or her spouse, if any, living in the same
5 residence, as well any dependent children that may be claimed on the taxpayer's federal income
6 tax return. The household also includes any persons living in the same dwelling as the claimant
7 and sharing its furnishings, facilities, and accommodation, but does not include bona fide lessees,
8 tenants, or roomers and boarders on contract;

9 (2) "Household income" means all income received by all persons of a household while
10 members of the household;

11 (3) "Income" means the sum of adjusted gross income as defined in the United States
12 Internal Revenue Code, the modifications in §11-21-12(b), §11-21-12f and §11-21-12g of this
13 Code increasing federal adjusted gross income, and all nontaxable income, including the amount
14 of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike
15 benefits, cash public assistance and relief, not including relief granted under this chapter, the
16 gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans'

17 disability pensions, all payments received under the federal social security and state
18 reemployment assistance or unemployment insurance laws, nontaxable interest received from
19 the federal government or any of its instrumentalities, workers' compensation, and the gross
20 amount of loss of time insurance, but not including gifts from nongovernmental sources, food
21 stamps, or surplus foods, or other relief in kind provided by a public agency;

22 (4) "Tax year" or "taxable year" means the calendar year used for computing household
23 income under this chapter. A claimant's tax year is the same period as is covered by his federal
24 income tax return.

25 (b) **Refundable Credit** – Subject to the requirements and limitations of this section, for
26 tax years beginning on and after January 1, 2022, any resident having a gross household income
27 equal to or less than \$35,000 for the tax year, shall be allowed a refundable credit against the
28 taxes imposed by this article equal to the following amounts:

29 (1) For all residents having a household income of less than \$10,000, the amount of
30 refundable credit shall be \$350.

31 (2) For all residents having a household income between \$10,001 and \$20,000, the
32 amount of refundable credit shall be \$200.

33 (3) For all residents having a household income between \$20,001 and \$30,000, the
34 amount of refundable credit shall be \$100.

35 (4) For all residents having a household income between \$30,001 and \$35,000, the
36 amount of refundable credit shall be \$50.

37 (c) **One claim per household** - Notwithstanding any other provision of this section to the
38 contrary, only one claimant per household per tax year shall be entitled to relief under this section.

39 (d) **Advance Refunds of Credit** – The amount of credit which would (but for this
40 subsection) be allowable under this section shall be reduced (but not below zero) by the aggregate
41 refunds and credits made or allowed to the taxpayer under this subsection.

42 (1) In General – Each claimant who would have been an eligible resident based upon their
43 household income in the year preceding the taxable year shall be allowed a prepayment of the
44 credit: Provided, That any claim for prepayment of the credit must be made on or before April 15
45 of the tax year to which it relates.

46 (2) Advanced refund amount – For the 2022 calendar year, for purposes of subdivision (1)
47 of this subsection, the advanced refund amount is the amount that would have been allowed as
48 a credit under this section for the 2020 taxable year if this section had applied to such taxable
49 year.

50 (3) Timing and manner of payments – The Commissioner shall, subject to the provisions
51 of this article, pay any advance refund of credit under the following guidelines:

52 (i) 25% of the amount of prepayment by June 15 of the taxable year;

53 (ii) 25% of the amount of prepayment by September 15 of the taxable year;

54 (iii) 25% of the amount of prepayment by December 15 of the taxable year; and

55 (iv) 25% of the amount of prepayment by March 15 of the year following the taxable year.

56 (4) Interest not accruable - No interest shall be allowed on any prepayment attributable to
57 this subsection.

58 (5) Delivery of payments – Notwithstanding any provision of this Code to the contrary, the
59 Commissioner may certify and disburse refunds using any reasonable commercial means
60 necessary.

61 (e) The Commissioner may prescribe such rules as may be necessary to carry out the
62 purposes of this section.

§11-21-77. Extension of withholding to certain lottery winnings; lottery winnings source income.

1 (a) Lottery winnings subject to withholding. — Gross prizes, as defined in §29-22-15a of
2 this code, of more than \$5,000 from any lottery prize awarded by the West Virginia State Lottery

3 Commission are subject to withholding under §11-21-1 et seq. of this code. The West Virginia
4 State Lottery Commission in making any lump sum payment, annuity payment or installment
5 payment of a lottery prize subject to withholding shall deduct and withhold from the payment a tax
6 in an amount equal to six and one-half percent of the payment.

7 (b) Statement by recipient. — Every person who is to receive payment of a lottery prize
8 subject to withholding shall furnish to the person making the payment, a statement made under
9 the penalties of perjury, containing the name, address, and taxpayer identification number of the
10 person receiving the payment and each person entitled to any portion of the payment.

11 (c) Coordination with other sections. — For the purposes of determining liability for
12 payment of taxes and filing of returns, payments of a lottery prize subject to withholding shall be
13 treated as if they were ~~wages paid by an employer to an employee, but shall not be treated as~~
14 ~~compensation for personal services performed within this state for purposes of §11-21-40 and~~
15 ~~§11-21-41 of this code~~ unearned income subject to tax under §11-21-4g(c) of this code.

16 (d) Source Income. — (1) All lottery prizes awarded by the West Virginia State Lottery
17 Commission shall be taxed as West Virginia source income and shall be subject to all state and
18 federal income tax laws and rules and regulations. Pursuant to this section, state income taxes
19 shall be withheld from prizes paid whenever federal income taxes are required to be withheld
20 under the Internal Revenue Code.

21 (2) All prizes awarded by the West Virginia State Lottery Commission shall be taxed as
22 West Virginia source income and taxable to nonresidents in accordance with §11-21-32 and §11-
23 21-44 of this code and shall be subject to withholding in accordance with this section.

24 (3) The sourcing provisions of this section shall apply to all prizes awarded by the West

25 Virginia State Lottery Commission, without regard to the form of payment or the period of time
26 over which payments are made. Lump sum payments, installment payments, annuity payments,
27 and winnings payments that are sold, assigned, transferred, or otherwise split, shared, or
28 conveyed to or among parties other than the original prize winner retain their identity as prizes
29 awarded by the West Virginia State Lottery Commission, and retain their character as West
30 Virginia source income.

31 (e) Backup withholding. — Beginning July 1, 2012, every person who is required to file
32 Internal Revenue Service Form W-2G, and who is subject to backup withholding under federal
33 law, is subject to West Virginia backup withholding. The payor in making any payment of a
34 gambling prize subject to backup withholding shall deduct and withhold from the payment a tax in
35 an amount equal to six and one half percent of the payment.

36 (f) The changes made to this section during the 2019 regular session of the Legislature
37 shall take effect immediately upon the effective date of this section.

38 (g) This section as amended in the year 2021 shall apply for all taxable years beginning
39 after December 31, 2021.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.

1 (a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to
2 retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according
3 to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor

4 requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to
5 section three, article four of this chapter.

6 (b) Wholesale prices shall be established in order to yield a net profit for the General
7 Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to
8 the average for the past three years. The net revenue derived from the sale of alcoholic liquors
9 shall be deposited into the General Revenue Fund in the manner provided in section seventeen,
10 article three of this chapter.

11 (c) Notwithstanding any provision of this code to the contrary, the commissioner shall
12 specify the maximum wholesale markup percentage which may be applied to the prices paid by
13 the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor,
14 other than wine, will be sold to retail licensees: Provided, That beginning on and after January 1,
15 2022, and notwithstanding any provision of this code to the contrary, the wholesale markup
16 percentage will be at least 39.25%. A retail licensee shall purchase all liquor, other than wine, for
17 resale in this state only from the commissioner, and the provisions of sections twelve and thirteen,
18 article six of this chapter shall not apply to the transportation of the liquor: Provided, however,
19 That a retail licensee shall purchase wine from a wine distributor who is duly licensed under article
20 eight of this chapter. All liquor, other than wine, purchased by retail licensees shall be stored in
21 the state at the retail outlet or outlets operated by the retail licensee: ~~Provided, however~~ further,
22 That the commissioner, in his or her discretion, may upon written request permit a retail licensee
23 to store liquor at a site other than the retail outlet or outlets.

24 (d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic
25 funds transfer which shall be initiated by the commissioner on the business day following the retail

26 licensees order or by money order, certified check or cashier's check which shall be received by
27 the commissioner at least twenty-four hours prior to the shipping of the alcoholic liquors: *Provided,*
28 That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with
29 surety acceptable to the commissioner from a financial institution acceptable to the commissioner
30 guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks
31 in an amount up to the amount of the letter of credit.

32 (e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of
33 article seven of this chapter at less than one hundred ten percent of the retail licensee's cost as
34 defined in section six, article eleven-a, chapter forty-seven of this code.

35 (2) A retail licensee may not sell liquor to the general public at less than one hundred ten
36 percent of the retail licensee's cost as defined in section six, article eleven-a, chapter forty-seven
37 of this code

ARTICLE 8. SALE OF WINES.

§60-8-4. Liter tax.

1 There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to
2 distributors, and including all wine sold and sent to West Virginia adult residents from direct
3 shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-
4 thousandths cents per liter: *Provided, That beginning on and after January 1, 2022, the tax is*
5 *hereby levied and imposed a rate of \$1.0567 per liter on all wine sold by suppliers to distributors,*
6 *and including all wine sold and sent to West Virginia adult residents from direct shippers, except*
7 *wine sold to the commissioner.*

8 Before the sixteenth day of each month thereafter, every supplier, distributor and direct

9 shipper shall make a written report under oath to the Tax Commissioner and the commissioner
10 showing the identity of the purchaser, the quantity, label and alcoholic content of wine sold by the
11 supplier to West Virginia distributors or the direct shipper to West Virginia adult residents during
12 the preceding month and at the same time shall pay the tax imposed by this article on the wine
13 sold to the distributor or the West Virginia adult residents during the preceding month to the Tax
14 Commissioner.

15 The reports shall contain other information and be in the form the Tax Commissioner may
16 require. For purposes of this article, the reports required by this section shall be considered tax
17 returns covered by the provisions of article ten, chapter eleven of this code. Failure to timely file
18 the tax returns within five calendar days of the sixteenth day of each month will also subject a
19 supplier, distributor and direct shipper to penalties under section eighteen of this article.

20 No wine imported, sold or distributed in this state or sold and shipped to this state by a
21 direct shipper shall be subject to more than one liter tax.

NOTE: The purpose of this bill is to optimize economic efficiency and revenue efficiency of the West Virginia tax structure, across multiple facets of the tax system, and to modernize State taxation to reflect best practices, and standards for an integrated tax system. The bill reduces the personal income tax rates on nonbusiness income. The bill also reflects the new personal income tax rates in the withholding rates. The bill provides for separate rates and method for calculation personal income tax for certain types of business income. It also providing a tax credit for low-income households to offset the sales tax increase. The bill imposes tiered severance tax rates on the privilege of producing natural gas, and oil and on the privilege of producing coal based upon certain classifications as to type of coal and imposing the severance tax on the production of natural gas liquids, based on the gross value taxpayer of the severed natural resource. The bill increases the excise tax on bottled soft drinks, and dry mixtures. The bill increases the excise tax on cigarettes, other tobacco products, and e-cigarette liquid. The bill increases the sales tax and use tax rate. The bill imposes the consumers sales and service and use tax onto the provision of professional services, except professional medical services and professional veterinary services. The bill imposes the consumers sales and service tax on sales of advertising services and lottery tickets. The bill imposes a tax on certain luxury items. The bill increases the wine liter tax, beer barrel tax, and also sets a minimum wholesale markup

percentage for liquor.

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