



**West Virginia**

**Tax Expenditure**

**Study**

Consumers Sales and Service Tax  
And Use Tax  
Expenditures

January 2016



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# EXECUTIVE SUMMARY

This report updates the West Virginia Expenditure Study—Consumers Sales and Service Tax and Use Tax Expenditures released in 2013. All Consumers Sales and Service Tax and Use Tax (Sales Tax) provisions involving exclusions, exemptions, or deductions are analyzed in this report. While several of these provisions constitute government expenditure programs, some provisions are presumably part of a model sales tax structure, and certain others are integral components of a basic sales tax structure. In a tax expenditure study, it is important to differentiate expenditure programs from basic structural components through comparison with a model tax structure. A model sales tax should:

- Apply to all consumption expenditures at a uniform rate;
- Apply only to consumption expenditures and not to inputs of production;
- Conform to accepted equity standards of the society;
- Have minimal compliance and administration problems; and
- Provide a stable and growing tax base for the taxing authority.

These criteria suggest taxation of all consumer expenditures at the same rate of tax unless such taxation substantially hinders economic efficiency, equity standards, or tax compliance and administration.

The various Sales Tax exclusions, exemptions, and deductions can be separated into two core components—entity-based or commodity-based. Appendix A provides a detailed list of each entity-based and commodity-based expenditure. This report categorizes these expenditures into seven separate groups, based on the function of the exemption. The study generally provides a description, expenditure value, and probable rationale for each sales tax provision. Where applicable, a revenue analysis is given. This analysis provides an idea of the complexity associated with revenue estimates based upon proposals to remove or modify existing Sales Tax provisions. The following group summaries provide some analysis of the scope of this study.

## GROUP EXEMPTIONS

While most Sales Tax exemptions are tied to specific goods and services, these exemptions are tied to purchases by specific groups of taxpayers. In West Virginia, governments, governmental subdivisions, schools, churches, and qualified charitable or nonprofit organizations are generally exempt from tax on all purchases.

Most states provide exemptions for purchases by governmental units, including schools. Although the scope of exemptions varies significantly, all states provide some exemptions for purchases by charitable, religious, or nonprofit organizations. In some cases, the activities of these organizations may complement government programs. West Virginia's exemptions for these groups are collectively among the broadest in the nation.

## **COMMODITY EXPENDITURES**

This category encompasses exemptions for specific goods, such as food for home consumption and computer hardware and software. Electronically transferring digital data (e.g., video, audio, and eBooks) has increased in popularity, therefore sales of digital goods has been added to this section.

West Virginia's commodity exemptions are generally narrower in scope than exemptions in other states. However, states with numerous commodity exemptions (e.g., Minnesota and Rhode Island) generally have higher than average combined state and local sales tax rates to compensate for their narrow tax base.

## **SERVICE EXEMPTIONS**

This category encompasses exemptions or exclusions for services, such as advertising, electronic data processing, and professional services. This group also includes services subject to regulation by the Public Service Commission.

All of West Virginia's service exemptions and exclusions, except the exclusion for public utility services, exist in nearly all other states because most impose little or no sales tax upon service transactions. Besides West Virginia, other states with a broad level of taxation on services include Hawaii, Iowa, New Mexico, South Dakota, and Washington.

Public utility services are subject to either a sales tax or a gross receipts tax in most states. Some states even impose both types of tax upon the same service. West Virginia generally imposes gross receipts-type taxes on public utility services in lieu of the Sales Tax.

## **COMMUNITY EXEMPTIONS**

This group includes exemptions for both sales of selected items to community groups (e.g., sales of station house equipment to volunteer fire departments) and sales of selected items or services by community groups (e.g., food sold by religious organizations). All states have special exemptions for community groups. However, the scope of such exemptions varies significantly. These exemptions presumably exist because these community groups may provide services that benefit society and often complement government programs.

## **EDUCATIONAL EXEMPTIONS**

This category includes exemptions for sales of textbooks to students, sales of tickets to school-sponsored events, and tuition charges at educational summer camps. This category also includes sales of food to students during normal school hours or by colleges on a contract basis, room and board charges at fraternity and sorority houses, and fund-raising events held by schools. Most of these exemptions are generally found in nearly all states and typically apply to

both public and private institutions. However, some states apply their exemptions only to public schools. These exemptions presumably exist as additional government subsidies for education.

## **MISCELLANEOUS EXPENDITURES**

Several miscellaneous deductions, credits, exclusions, and exemptions exist in West Virginia and other states. Some of these provisions include deductions for monetary allowances, voucher exemptions, local government agency exemptions, state sales tax credits; exclusions for sales of real property and intangible property; and exemptions for isolated transactions and lottery tickets.

## **PROVISIONS THAT ARE NOT TRUE EXPENDITURES**

The West Virginia Consumers Sales and Service Tax Law contains a number of citations that arguably are not true expenditures but have been implicitly codified to improve clarification of the Law. This category includes sub-groups of federally mandated exemptions, model sales tax components, provisions to avoid double taxation, and business input exemptions.

# INTRODUCTION

West Virginia Code §11-10-5s(c) requires a tax expenditure report to be submitted to the Legislature by January 15 of each year. In three-year cycles, these reports are intended to analyze tax expenditures for most major State taxes. The law defines the term “tax expenditure” as a provision in the tax laws designed to encourage certain kinds of activities or to aid taxpayers in special circumstances. Such provisions generally include exclusions, exemptions, deductions, credits, and deferrals from tax. This report covers the Sales Tax. Other reports cover all other taxes administered by the State Tax Department.

## OVERVIEW OF THE WEST VIRGINIA CONSUMERS SALES AND SERVICE TAX AND USE TAX EXPENDITURE STUDY

The Sales Tax is the second largest source of revenue for the State of West Virginia. At a rate of 6 percent, this tax accounts for roughly 30 percent of the total General Revenue Fund receipts (\$1,269.8 million projected in Fiscal Year 2016). For purposes of this report, the Consumers Sales and Services Tax and Use Tax have been combined because the taxes are complementary and exemptions are identical for both taxes.

Some exclusions, exemptions, and deductions associated with the Sales Tax may be viewed as tax expenditures. Such tax expenditures tend to escape the usual legislative scrutiny afforded other expenditures in the annual budget approval process because provisions in the tax law often remain intact indefinitely. Programs funded through tax expenditures in effect receive priority funding over all other programs. The goal of this report is to facilitate an examination of Sales Tax expenditures using available resources.

This report supplies some information about exclusions and exemptions from the Sales Tax that goes beyond estimates of revenue losses due to tax expenditures. The additional information is intended to provide a resource to reach conclusions within differing conceptions of a normal tax base. Values represent estimates of state sales and use taxes only. A local option of up to 1 percent is available at the municipal level in West Virginia, which increases total sales and use taxes in a small portion of municipalities to 7 percent. This local option comprises only a small portion of total sales tax collections in the State; in Fiscal Year 2015, local sales tax collections from seven municipalities<sup>1</sup> comprised approximately 1.3 percent of total sales tax collections statewide. It is important to note the estimates provided in this report are considered on the state level only and do not include local level estimates.

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<sup>1</sup> Effective July 1, 2015, a total of 16 municipalities levy a local sales tax in West Virginia.



## ESTIMATING COSTS OF TAX EXPENDITURES

This study provides estimates of the value of Sales Tax expenditures and certain exemptions considered necessary to define the normal tax base. Except where otherwise noted, each expenditure within the study is examined independently from all other expenditures. Following the establishment of a value in isolation, the influence of outside factors (i.e., other expenditures and taxpayer behavior) is discussed. Expenditure values less than \$10,000 are reported as “minimal.”

Several sources of information were used in the construction of exemption valuations. These include among others:

- Tax return data;
- Surveys;
- Alternative tax data;
- United States Department of Agriculture;
- United States Bureau of the Census;
- West Virginia Department of Education;
- West Virginia Department of Health and Human Resources;
- West Virginia Division of Cultural and History;
- West Virginia Division of Motor Vehicles;
- West Virginia Division of Natural Resources;
- West Virginia Lottery Commission; and
- West Virginia Public Service Commission.

**CAUTION MUST BE EXERCISED WHEN USING VALUES FROM THIS REPORT AS ESTIMATES OF TAX REVENUE ATTRIBUTABLE TO POTENTIAL TAX LAW CHANGES, ESPECIALLY DUE TO THE IMPACT OF OVERLAPPING EXEMPTIONS.** In most cases, the revenue impact attributable to the repeal of a tax expenditure is less than the value of that expenditure. This occurs because tax expenditures tend to overlap one another and taxpayers tend to alter their behavior whenever items are taxed for the first time. Also, the additional tax tends to increase the price and decrease the demand of the taxed item. Therefore, expenditure costs generally exceed the potential State tax revenue amounts to be gained through the repeal of the expenditure. For example, the exclusion for sales of services subject to Public Service Commission regulation overlaps significantly with the exemption for sales of electricity. Therefore, both exemptions would have to be repealed before the State would derive any significant revenue from a tax on electricity. However, even if both expenditures would be repealed, certain consumers (e.g., churches, natural resource producers, and manufacturers) would still be exempt from taxation due to other provisions within the West Virginia Code (e.g., direct use in manufacturing exemption). The values given generally represent the value of the item in isolation of all other exemptions. Revenue impacts, representing the potential net revenue gain attributable to the repeal of certain provisions, are presented in the revenue analysis sections for a few items within this study.

## **RATIONALE SUPPORTING TAX EXPENDITURES**

This report also attempts to briefly articulate the rationale for the exclusions, exemptions, and deductions evaluated. The rationales set forth in this report are not intended to be all inclusive. The reader may identify other rationales for the various expenditures in the law. Given that statutory language does not often specify the rationale in much, if any, detail, the Department relied solely upon its experience to formulate the assumed rationales set forth in this report. The reader is left to judge the extent to which a particular rationale is appropriate and the extent to which a particular exemption furthers the preferred activity.

## **ORGANIZATION AND ANALYSIS**

The study divides sales and use tax expenditures into seven groups:

- Group Exemptions;
- Commodity Expenditures;
- Service Exemptions;
- Community Exemptions;
- Educational Exemptions;
- Miscellaneous Expenditures, and
- Statutory Provisions That Are Not True Expenditures.

Statutory provisions that are not true expenditures do not qualify as tax expenditures, but are instead integral parts of the tax structure. For the purposes of this report, the remaining provisions have been determined to be tax expenditures. However, depending upon the reader's interpretation of tax expenditures, some of the included provisions may not be tax expenditures. It is left up to the reader to decide which of the remaining items are tax expenditures. Such a decision should be aided by both the analysis of a model sales tax and the analysis accompanying each individual exemption, exclusion, deduction, or credit. The analysis includes a rationale for each item and the item's cost to the State.

# **GROUP I GROUP EXEMPTIONS**

The West Virginia Code provides for several purchaser exemptions from sales taxes. While most exemptions relate to the sale of specific goods or services, these exemptions relate to purchases by specific groups of taxpayers. Unlike the average taxpayer, these groups are generally not subject to Consumers Sales Tax on their purchases.

Although the rationale behind these group exemptions varies from one group exemption to the next, there are certain common characteristics. Taxpayers in these groups may be viewed as providing socially desirable services not otherwise available to the public. Many of those services are at least partially funded through direct expenditures. Failure to exempt purchases made by these groups in providing services would make such services more expensive and arguably less abundant for the public. In certain cases, a tax on purchases would result in a reallocation of public resources away from the service provided by the taxed entity.

The following exemptions involve an exclusion from Sales Tax for certain groups:

- Sales to Governmental Units;
- Sales to Various Nonprofit Organizations;
- Sales to Educational Institutions; and
- Sales and Services Directly Used or Consumed in the Construction of Certain Youth Organization Facilities.

An analysis of these exemptions follows.

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## SALES TO GOVERNMENTAL UNITS

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**STATUTE:** West Virginia Code §11-15-9(a)(3)

**EXEMPTION:** Sales of property or services to this state, its institutions, or subdivisions, governmental units, institutions, or subdivisions of other states provided that the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States<sup>2</sup>, including agencies of federal, state, or local governments for distribution in public welfare or relief work.

<b>VALUE:</b>	<b>Counties</b>	<b>\$11.6 million</b>
	<b>Municipalities</b>	<b>\$13.8 million</b>
	<b><u>State</u></b>	<b><u>\$28.4 million</u></b>
	<b>Total</b>	<b>\$53.8 million</b>

### Rationale

Unlike the exemption for purchases made by the federal government and its agencies, taxation of purchases by state and local governments is not prohibited by constitutional restrictions. However, if a state sales tax were imposed on state, county, and municipal governments, the cost of governmental services would rise along with the taxes required to fund them. Such taxation would also result in a transfer of funds from certain activities (e.g., highway construction) to the General Revenue Fund, the depository fund for most Sales Tax revenue.

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<sup>2</sup>Information on the exemption for purchases by the United States government can be found in the section on “Group VII—Statutory Provisions That Are Not True Expenditures.”

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## SALES TO VARIOUS NONPROFIT ORGANIZATIONS

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**STATUTE:** West Virginia Code §§11-15-9(a)(5) and 11-15-9(a)(6)(A), (C), (D), (E)

**EXEMPTIONS:** Sales of property or services to churches which make no charge whatsoever for the services they render;

Sales of tangible property or services to a corporation or organization which has a current registration certificate issued under West Virginia Code §11-12 and is exempt from federal income taxes under Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, as amended. Such organizations may include the following:

- A church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended;
- A corporation or organization which annually receives more than one-half of its support from any combination of gifts, grants, direct or indirect charitable contributions, or membership fees;
- An organization which has no paid employees and its gross income from fundraisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (4) of the Internal Revenue Code of 1986, as amended;
- A youth organization, such as the Girl Scouts of the United States of America, the Boys Scouts of America, or the YMCA Indian Guide/Princess program, and local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members.

**VALUE:** \$14.2 million per year

### Rationale

The Sales Tax exemption for sales to churches was presumably enacted to avoid State interference with church activities. Also, the exemption for sales to churches and charitable organizations exists to promote the work of these organizations. Many of these organizations complement the efforts of government in the provision of social services. The social services

provided by youth organizations complement various federal, state, and local government programs designed to benefit youth.

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## **SALES TO EDUCATIONAL INSTITUTIONS**

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**STATUTE:** West Virginia Code §§11-15-9(a)(6)(B) and 11-15-9(a)(15)

**EXEMPTION:** Sales of tangible personal property or services to an elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its education activities are regularly carried on;

Sales of property or services to a school which has approval from the Board of Trustees of the University System of West Virginia or the Board of Directors of the State College System to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

**VALUE:** **\$55.3 million per year**

### **Rationale**

This exemption presumably exists to promote education in West Virginia. Public schools would also be exempt under West Virginia Code §11-15-9(a)(3), which applies to governmental entities.

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**SALES AND SERVICES DIRECTLY USED OR CONSUMED  
IN THE CONSTRUCTION OF CERTAIN YOUTH ORGANIZATION FACILITIES**

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**STATUTE:** West Virginia Code §11-15-8d(d)

**EXEMPTION:** Purchases of services, building materials and tangible personal property, except purchases of gasoline and special fuel, to be installed into a building or facility, or directly used or consumed in the construction, alteration, repair, or improvement of a new or existing building or structure by a person performing contracting if the purchaser of the contracting service is a nonprofit youth organization that would be entitled to claim the exemption under paragraph (E), subdivision (6), subsection (a) section nine (West Virginia Code §11-15-9) had it purchased the services, machinery, supplies, or material.

**VALUE:** **Cannot be disclosed<sup>3</sup>**

**Rationale**

For purposes of this exemption, the term “nonprofit youth organization” means a nonprofit organization that has been chartered by the United States Congress to help train young people to do things for themselves and others, and that has established an area of at least 6,000 contiguous acres within West Virginia in which to provide adventure and recreational activities for young people and others. This exemption was presumably enacted to encourage the development of a large youth-oriented adventure and recreational facility.

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<sup>3</sup> Due to taxpayer confidentiality.

## **GROUP II COMMODITY EXPENDITURES**

Certain commodities are exempt from the Sales Tax for a variety of reasons. Expenditures may exist for some commodities to reduce the overall regressiveness (i.e., tax as a percentage of income increases as income decreases) of the sales tax structure. Other expenditures may exist because collection and compliance costs are high in proportion to the potential revenue yield. In some cases, the commodity exemption may contain certain restrictions to limit the scope and cost of the exemption.

The following commodity expenditures, not otherwise classified, exist within the West Virginia Consumers Sales and Service Tax and Use Tax laws:

- Food for Home Consumption;
- Reduced Basis for Sales of Mobile Homes;
- Reduced Tax Rate on Sales and Leases of Motor Vehicles;
- Sales of Newspapers Delivered by Route Carriers;
- Sales of Prescription Drugs, Appliances, and Insulin;
- Purchases of Drugs, Durable Medical Equipment, Mobility-Enhancing Equipment, and Prosthetic Devices by Health Care Providers;
- Sales of Farm Products in Original State by the Producer and Sales of Livestock Sold at Public Auction Sales;
- Sales of Subscriptions to Magazines Published by State Agencies;
- Sales of United States and West Virginia Flags;
- Sales of Computer Hardware and Software; and
- Sales of Digital Goods.

An analysis of these tax expenditures follows.

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### **FOOD FOR HOME CONSUMPTION**

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**STATUTE:** West Virginia Code §11-15-3a(3)

**EXEMPTION:** Sales, purchases, and uses of food and food ingredients intended for human consumption, not including sales, purchases, and uses by consumers of prepared food, food sold through vending machines and soft drinks.

**VALUE:** **\$167.4 million per year**



### **Rationale**

The exemption for food and food ingredients intended for home consumption is designed to provide some tax relief to low-income individuals. However, any individual, low-income or not, receives the benefits of the exemption for the purchase of food and food ingredients.

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### **REDUCED BASIS FOR SALES OF MOBILE HOMES**

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**STATUTE:** West Virginia Code §11-15-3(f)

**EXEMPTION:** Sales of mobile homes to be utilized by purchasers as their principal year-round residence and dwelling provided that these mobile homes are subject to tax at the rate of 6 percent of 50 percent of the sales price.

**VALUE:** **\$5.0 million per year**

### **Rationale**

The Sales Tax applies to roughly one-half of the value of conventional housing construction. Materials used in construction are taxable while contractor labor is exempt. This exemption and its predecessor presumably exists to provide similar treatment for mobile homes as provided for conventional housing.

### **Revenue Analysis**

The revenue impact for this partial exemption was calculated in isolation from other exemptions. Therefore, the actual revenue to be gained by the repeal of the partial exemption for mobile homes would be less than stated above. Other exemptions providing overlapping coverage include purchases made by governments for emergency housing following natural disasters and sales to schools for student or custodial housing.

As stated above, the partial exemption for the sale of mobile homes applies only to those homes used as the purchaser's year-round home and dwelling. Self-propelled mobile homes purchased as recreation vehicles are subject to the 5 percent sales tax on motor vehicles.

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## REDUCED TAX RATE OF SALES AND LEASES OF MOTOR VEHICLES

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**STATUTE:** West Virginia Code §11-15-3c and §11-15-9(17)

**EXEMPTIONS:** Motor vehicle sales to West Virginia residents are subject to a tax rate of 5 percent versus 6 percent for other goods and services.

Leases of motor vehicles to West Virginia residents for a period of thirty or more consecutive days are subject to a tax rate of 5 percent versus 6 percent for other goods and services.

**VALUE:** **\$42.0 million per year**

### Rationale

The tax imposed by this section applies to all motor vehicles, within this state, regardless of whether the vehicle was purchased in a state other than West Virginia.

Legislation passed in 2008 subjecting all sales of motor vehicles to the Sales Tax at a rate of 5 percent of its sales price. A sale of a motor vehicle means any transfer or lease of the possession or ownership of a motor vehicle for consideration. This tax is collected by the Division of Motor Vehicles and deposited into the State Road Fund for design, maintenance, and construction of roads in the state highway system.

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## SALES OF NEWSPAPERS DELIVERED BY ROUTE CARRIERS

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**STATUTE:** West Virginia Code §11-15-9(a)(10)

**EXEMPTION:** Sales of newspapers when delivered to consumers by route carriers.

**VALUE:** **\$440,000 per year**

### Rationale

Imposing sales tax on carrier-delivered newspapers presents special problems with the collection and remittance of the tax generated. Therefore, this exemption presumably exists to reduce administrative and compliance costs.

### Revenue Analysis

The value of this exemption is lower than 2013 and is expected to decrease as more consumers move to reading the newspaper on-line.

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## SALES OF PRESCRIPTION DRUGS, APPLIANCES, AND INSULIN

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<b>STATUTE:</b>	West Virginia Code §11-15-9(a)(11)
<b>EXEMPTION:</b>	Sales of drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes.
<b>VALUE:</b>	<b>\$189.0 million per year</b>

### Rationale

The cost of prescription drugs, durable medical goods, mobility-enhancing equipment, and prosthetic devices tends to fall disproportionately upon those with physical disabilities or acute illnesses. Therefore, this exemption may presumably exist out of a concern over tax equity. This exemption also complements direct expenditure programs such as Medicare and Medicaid.

This expenditure is for sales to the consumer. An expenditure related to purchases by health care providers follows.

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## PURCHASES OF DRUGS, DURABLE MEDICAL EQUIPMENT, MOBILITY- ENHANCING EQUIPMENT, AND PROSTHETIC DEVICES BY HEALTH CARE PROVIDERS

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<b>STATUTE:</b>	West Virginia Code §11-15-9i
<b>EXEMPTION:</b>	Purchases of drugs, durable medical equipment, mobility enhancing equipment, and prosthetic devices to be dispensed upon prescription and intended for the use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease are exempt when purchased by hospitals, medical clinics, nursing homes, providers of inpatient hospital services, and providers of outpatient hospital services, physician services, nursing services, ambulance services, surgical services, or veterinary services.
<b>VALUE:</b>	<b>\$57.0 million per year<sup>4</sup></b>

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<sup>4</sup> This expenditure may include parallel estimates of prescription drugs and related medical materials considered elsewhere in this report.

### Rationale

This exemption exists in recognition that drugs, durable medical equipment, mobility-enhancing equipment, and prosthetic devices purchased by health care providers and dispensed upon a prescription are for the use of patients, not the health care provider. This exemption in combination with the previous exemption on the sales of prescription drugs and appliances lowers the cost of medically necessary items for the final consumer. Prescription drug purchases by a pharmacy are exempt as a purchase for resale.

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### SALES OF FARM PRODUCTS IN ORIGINAL STATE BY THE PRODUCER AND SALES OF LIVESTOCK SOLD AT PUBLIC AUCTION SALES

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**STATUTE:** West Virginia Code §11-15-9(a)(31)

**EXEMPTION:** Sales of livestock, poultry or other farm products in their original state by the producer thereof, or a member of the producer's immediate family who is not otherwise engaged in making retail sales of tangible personal property, and sales of livestock sold at public sales sponsored by breeders, or registry associations, or livestock auction markets.

**VALUE:** Minimal

### Rationale

Most farm products are sold at wholesale with Sales Tax collected on the sales to the consumer by the retailer. However, some farm products are sold directly from the farm to consumers. This exemption relieves farmers who are not in the retail business of the burden of collecting and remitting Sales Tax. Livestock sold at public auctions may be covered by overlapping exemptions if the sales are made for resale or are made to farmers for use in agricultural production.

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### SALES OF SUBSCRIPTIONS TO MAGAZINES PUBLISHED BY STATE AGENCIES

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**STATUTE:** West Virginia Code §11-15-9(a)(43)

**EXEMPTION:** Direct or subscription sales by the Division of Natural Resources of the magazine currently entitled *Wonderful West Virginia*, and by the Division of Culture and History of the magazine currently entitled *Goldenseal*, and the journal currently entitled *West Virginia History*.

**VALUE:** \$42,000 per year

### **Rationale**

This exemption largely exists because these subscriptions are sold by a unit of State government. Collection and remittance of sales tax may increase the cost of providing this government service to citizens.

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### **SALES OF UNITED STATES AND WEST VIRGINIA FLAGS**

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**STATUTE:** West Virginia Code §11-15-9(a)(49)

**EXEMPTION:** Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

**VALUE:** **Minimal**

### **Rationale**

This exemption presumably exists to promote patriotism.

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## SALES OF COMPUTER HARDWARE AND SOFTWARE

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**STATUTE:** West Virginia Code §11-15-9h

**EXEMPTION:** Sales of the following services are exempt:

- Computer hardware and software to be directly incorporated by a manufacturer into a manufactured product;
- Sales of computer hardware and software directly used in communication;
- Sales of electronic data processing services;
- Sales of educational software required to be used in any of the public schools of this state;
- Sales of internet advertising of goods and services;
- Sales of high technology business services to high technology businesses which enter into contracts with this state, its institutions and subdivisions, governmental units, institutions or subdivisions of other states, or with the United States, including agencies of federal state or local governments for direct use in fulfilling the government contract; and
- Sales of pre-written computer software, computers, computer hardware, servers and building materials and tangible personal property to be installed into a facility for direct use in a high technology business or an internet advertising business.

**VALUE:** \$7.0 million per year

### Rationale

This exemption was enacted in response to technological advances in computers and the expanded role of computers, the Internet, and global instant communications in business, and to encourage computer software developers, computer hardware designers, systems engineering firms, electronic data processing companies, and other high technology companies to locate and expand in West Virginia.

### Revenue Analysis

The above exemption value only includes sales of Internet advertising of goods and services and sales of high technology business services to high technology businesses that enter into contracts with this State or with the United States, including agencies of federal, state, or local governments for direct use in fulfilling the government contract. The other items listed are generally exempt elsewhere in the Code.

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## SALES OF DIGITAL GOODS

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<b>STATUTE:</b>	West Virginia Code §11-15-2(17)
<b>EXCLUSION:</b>	Sales of goods that are electronically transferred, such as digital audio, digital books.
<b>VALUE:</b>	<b>\$10.0 million per year</b>

### Rationale

This exclusion is for purchases of books, music, movies, and other digital goods that are downloaded electronically. The Consumer Sales Tax enacted in 1934 preceded the digital age. Legislation passed in 2003 for compliance with Streamlined Sales Tax Agreement did not include the definition of digital goods.

### Revenue Analysis

Online retail sales are projected to rise on average 8 percent per year. The above exclusion only includes sales of streamed or downloaded digital goods purchased using the Internet.

## **GROUP III SERVICE EXEMPTIONS**

Exclusions or exemptions from the Sales Tax exist for several broad categories of services rendered in West Virginia. These exemptions or exclusions may exist because of high compliance and collection costs, concern over equity (e.g., health care services), or concern over interstate tax competitiveness. Some tax exclusions may also be attributable to the evolution of sales tax policy in general.

The exclusion of services from taxation is the result of tradition as much as any other factor. Most modern-day retail sales tax structures, including West Virginia's, date back to the 1930's when services represented a significantly smaller portion of total consumer expenditures. Personal consumption expenditure data from the Federal Reserve Bank of St. Louis indicates a dramatic shift in personal spending habits between 1940 and the present. The percentage of total consumer spending attributable to services, excluding spending on housing, electricity, and natural gas, rose from 25.7 percent in 1940 to 46.0 percent by 2014.

States originally excluded most service transactions from sales tax because of simplicity since tangible property transactions were more easily identified for taxation. As retail sales taxation spread from state to state, lawmakers tended to copy each other. However, due to the gradual decline in consumer spending on taxable goods as a percentage of total consumer spending, more states have begun to target certain services for taxation.

West Virginia taxes services to a greater extent than most other states with the possible exceptions of Hawaii, Iowa, New Mexico, South Dakota, and Washington. Accordingly, West Virginia's tax base respecting services may be considered closer to the normal tax base (i.e., taxing more services) than most other states. However, the following services remain exempt from the Consumers Sales Tax in this State:

- Sales of Services Subject to Regulation by the Public Service Commission;
- Sales of Personal Services;
- Sales of Professional Services;
- Sales of Selected Advertising;
- Sales and Services Performed by Day Care Centers and Babysitters;
- Sales of Electronic Data Processing Services;
- Sales of Contracting Services Resulting in Capital Improvements;
- Sales of the Service of Opening and Closing a Burial Lot;
- Charges for Memberships or Services Provided by Health And Fitness Organizations;
- Artistic Performances by Entertainers; and
- Charges by Membership Organizations to Their Members.

An analysis of these tax expenditures follows.



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## SALES OF SERVICES SUBJECT TO REGULATION BY THE PUBLIC SERVICE COMMISSION

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<b>STATUTE:</b>	West Virginia Code §11-15-8
<b>EXCLUSION:</b>	Services furnished by corporations subject to control of the Public Service Commission.
<b>VALUE:</b>	<b>\$320.0 million per year</b>

### Rationale

Natural gas, water, telephone, and electric utility services provided by corporations subject to regulation by the West Virginia Public Service Commission were excluded from taxation at the time the Sales Tax was first implemented. Concerns over equity and double taxation were possible motivations behind this exclusion. Sales tax on items of necessity, such as public utility services, tends to fall most heavily upon those least able to pay. In any case, natural gas, water, and electric utility services are already subject to an alternative tax (i.e., Business and Occupation Tax). Therefore, a sales tax on the same gross receipts would have represented a form of double taxation.

Before July 1, 1987, transportation services provided by non-municipal providers were subject to the Carrier Income Tax. This alternative tax may have provided a reason to exempt transportation services from the Sales Tax. Since a significant portion of transportation services are provided for businesses, the exclusion may also exist to preclude tax pyramiding upon intermediate activities.

### Revenue Analysis

The value cited above was calculated in isolation from other possible applicable exemptions. Thus, the actual revenue impact resulting from the repeal of this exclusion by itself would not produce the total cited above. This exclusion encompasses the activities of natural gas, water, and electric utilities that are exempt under West Virginia Code §11-15-9(a)(1). That expenditure, listed later in this report, provides for the exemption of sales of natural gas, steam, or water delivered to consumers through mains or pipes and sales of electricity. Other exemptions—such as those for direct use, sales to governmental units, sales to schools, sales to churches, and sales to charitable organizations—would also reduce the stated revenue impact.

The provision of telecommunications services includes a substantial amount of interstate commerce upon which taxation by states is limited. In calculating the value, an attempt was made to separate interstate sales of telecommunications into taxable and nontaxable components. Also, network access charges were excluded from the calculation since these

charges could be considered sales for resale. With these noted exceptions, no other exclusions or exemptions were considered in the computation; therefore, caution should be used in adding the above value to any others that appear in this report. Other specific exemptions that would possibly provide overlapping exemption coverage, and thus reduce the stated revenue impact, include sales to governmental units, sales to schools, and sales to churches and charitable organizations.

As stated above, a significant portion of transportation services are provided for businesses. Subjecting transportation services to the Sales Tax may cause some businesses to do their own transporting which, in turn, would be exempt from the sales tax under the direct use exemption.

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### **SALES OF PERSONAL SERVICES**

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**STATUTE:** West Virginia Code §11-15-8

**EXCLUSION:** Sales of personal services done to or performed on the person of an Individual.

<b>VALUE:</b>	<b>Caregivers</b>	<b>\$16.6 million</b>
	<b><u>Other</u></b>	<b><u>\$9.0 million</u></b>
	<b>Total</b>	<b>\$25.6 million</b>

#### **Rationale**

The exclusion of personal services from sales taxation is part of a long tradition associated with the realities of the 1930's when the tax was first instituted. In those days, most personal services would have been difficult to tax because of the existence of numerous small scale providers who worked for cash. This exemption exists to avoid the administrative and compliance costs associated with numerous small scale personal service providers.

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## SALES OF PROFESSIONAL SERVICES

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**STATUTE:** West Virginia Code §11-15-8

**EXCLUSION:** Sales of professional services<sup>5</sup> performed by licensed professionals.

<b>VALUE:</b>	<b>Medical</b>	<b>\$750.0 million</b>
	<b>Legal</b>	<b>\$70.0 million</b>
	<b>Accounting</b>	<b>\$15.0 million</b>
	<b>Other</b>	<b><u>\$60.0 million</u></b>
	<b>Total</b>	<b>\$895.0 million</b>

### Rationale

Some professional service exclusions exist out of concern for tax equity while some others may exist out of concern over economic efficiency. The costs of medical services tend to fall disproportionately upon those with physical disabilities or acute illnesses. Therefore, a tax on such services would fall more heavily upon those individuals than upon the general populace. Tax equity is thus improved by a medical service exclusion. The medical service exclusion also complements direct government expenditure programs such as Medicaid and Medicare.

A significant portion of certain professional services (e.g., legal services and engineering services) are performed for businesses. There would be some concern that taxation of these services may lead some businesses to hire their own professional staffs to avoid taxation. Some loss of economic efficiency may result. Taxation of business services also results in some tax pyramiding for final consumer goods.

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## SALES OF SELECTED ADVERTISING

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**STATUTE:** West Virginia Code §11-15-9(a)(12)

**EXEMPTION:** Sales of radio and television broadcasting time, preprinted advertising circulars, and newspaper and outdoor advertising space for the advertisement of goods and services.

**VALUE:** **\$27.0 million per year**

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<sup>5</sup> Professional services are generally provided by those with both a specialized level of educational attainment and a license to perform the professional service activity. In this estimate, medical services include those provided by doctors and hospitals while other services include those provided by engineers, architects, and auctioneers.

### Rationale

The exemption for sales of radio and television broadcast time, preprinted advertising circulars, and newspaper and outdoor advertising space arguably allows local advertising to be treated the same as national advertising. It would be difficult to tax national advertising because the United States Constitution prohibits state interference with interstate commerce. It is also difficult to isolate intrastate transactions from interstate transactions.

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### SALES AND SERVICES PERFORMED BY DAY CARE CENTERS AND BABYSITTERS

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**STATUTE:** West Virginia Code §§11-15-9(a)(13) and 11-15-9(a)(35)

**EXEMPTIONS:** Sales and services performed by day-care centers;

Sales of services by individuals who babysit for a profit; provided that the gross receipts of the individual from the performance of babysitting services do not exceed five thousand dollars in a taxable year.

**VALUE:** **\$9.7 million per year**

### Rationale

The day care service exemption presumably promotes the provision of such services to consumers at the least possible cost. The exemption for sales of babysitting services was enacted because most babysitters were not collecting and remitting the tax. Also, most babysitters are not licensed by any State agency and therefore would be difficult to locate to enforce remittance of the Sales Tax.

### Revenue Analysis

The above exemption value only includes sales and services by day-care centers. An accurate measure of the exemption value for sales of babysitting services is not possible because such services often involve small cash transactions.

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### SALES OF ELECTRONIC DATA PROCESSING SERVICES

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**STATUTE:** West Virginia Code §11-15-9(a)(21)

**EXEMPTION:** Sales of electronic data processing services and related software.

**VALUE:** **\$5.0 million per year**

## Rationale

The exemption for electronic data processing services is generally broad in nature and is loosely defined. Because the exemption is vague, it is difficult to quantify. Also, the language of the exemption has not kept up with technological advances. The recent addition of Internet service providers to the growing list of exempt data processing services illustrates the broad scope of this exemption. This makes it difficult to estimate the value of this exemption because there is no clear definition of the exact services exempted.

A temporary one-year extension of the Internet Tax Freedom Act (ITFA) was approved in December 2015. First passed in 1998, the Act prohibits against multiple and discriminatory taxes on electronic commerce. The bill prevents federal, state and local governments from taxing Internet access and from imposing discriminatory Internet-only taxes, such as bit taxes, bandwidth taxes and email taxes. It also bars multiple taxes on electronic commerce. However, it does not prohibit the imposition of sales tax or use tax on goods and services provided over the Internet; nor does it relieve in-State vendors from their duty to collect and remit sales tax on Internet sales to in-State residents and businesses.

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### **SALES OF CONTRACTING SERVICES RESULTING IN CAPITAL IMPROVEMENTS**

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<b>STATUTE:</b>	West Virginia Code §§11-15-2(b)(3), 11-15-2(b)(18), 11-15-7a, and 11-15-8a
<b>EXCLUSION:</b>	Contracting services which result in capital improvements are excluded from the definition of taxable services for purposes of the Consumers Sales and Service Tax.
<b>VALUE:</b>	<b>\$164.0 million per year</b>

## Rationale

An exclusion for all sales of contracting services was originally enacted at the time the Sales Tax was implemented. A modification in 1989 essentially retained the exclusion for contracting services resulting in capital improvements while other contracting services became subject to the tax. For purposes of the Sales Tax, a “capital improvement” is any addition or alteration to real property which meets all three of the following requirements:

1. It substantially adds to the value of real property or appreciably prolongs the useful life of the real property;
2. It becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and
3. It is intended to become a permanent installation or to remain there for an indefinite period of time.

Additional information on exempt and taxable contracting service may be found in the following publications at <http://www.wva.state.wv.us/wvtax/tsdPublications.aspx>:

- TSD-310—The Capital Improvement Rule: Sales and Use Tax and the Construction Trades;
- TSD-315—Changes Affecting Factory-Built Home Dealers;
- TSD-325—The Incidental Installation Rule: Sales and Use Changes Affecting Sellers of Wall to Wall Carpet, Household Appliances, and Other Household Improvements; and
- TSD-355—The Integrated Manufacturer/Contractor Rule.

Before July 1, 1987, contracting activity was subject to the Business and Occupation Tax. Thus, the exemption originally existed to preclude the double taxation of contracting, once under the Business and Occupation Tax and a second time under the Sales Tax. Also, real property is not historically taxed under the Sales Tax, and the provision of contracting services generally involves real property. The exclusion of capital improvements exists because contracting services resulting in capital improvements generally add to the value of real property. Real property transactions are excluded from sales and use taxes. Contractors are treated as final consumers and must pay tax on their purchases of materials, tools, and equipment for use in capital improvement projects. However, purchases by a contractor directly consumed in the construction, alteration, repair, or improvement of a new or existing building or structure to be used primarily for manufacturing (and certain other activities) are exempt if the purchaser of the contracting services would be entitled to claim the exemption under West Virginia Code §11-15-9(b)(2).

West Virginia Code §11-15-7a clarified the tax treatment on the manufacture, sale, and installation of modular dwellings. Similar to traditional construction of residential dwellings, persons engaged in the manufacture of modular dwellings must pay tax only on the value of the building supplies and materials used in the manufacture of the modular dwelling. Also, building supplies and materials used in the preparation of the site for permanent installation of the modular dwelling are subject to tax.

### **Revenue Analysis**

The revenue impact cited above was calculated without consideration of any other applicable exemptions. Thus, the repeal of this exemption would not necessarily yield the amount shown. Other exemptions (e.g., sales to governmental agencies and manufacturers' direct use purchases) may overlap this type of activity.

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## SALES OF THE SERVICE OF OPENING AND CLOSING A BURIAL LOT

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**STATUTE:** West Virginia Code §11-15-9(a)(30)

**EXEMPTION:** Charges for the services of opening and closing a burial lot.

**VALUE:** **\$500,000 per year**

### Rationale

The service of opening and closing a burial lot may be considered an extension of the personal services offered by funeral service providers.

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## CHARGES FOR MEMBERSHIPS OR SERVICES PROVIDED BY HEALTH AND FITNESS ORGANIZATIONS

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**STATUTE:** West Virginia Code §11-15-9(a)(34)

**EXEMPTION:** Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs.

**VALUE:** **\$2.0 million per year**

### Rationale

Originally, the exemption for charges for memberships to health and fitness organizations was presumably enacted to support the community-based activities of YMCAs, YWCAs, and other similar types of organizations. However, the statement of exemption is actually much broader in scope. As written, it includes other for-profit exercise facilities (e.g., Nautilus fitness centers) that do not necessarily support local community-based activities in the same manner as the YMCAs and YWCAs.

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## ARTISTIC PERFORMANCES BY ENTERTAINERS

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**STATUTE:** West Virginia Code §11-15-9(a)(40)

**EXEMPTION:** Sales of artistic services or artistic performances of an entertainer or performing artist pursuant to a contract are exempt if the contract amount does not exceed \$3,000.

**VALUE:** **\$420,000 per year**

### **Rationale**

This exemption exists to remove a tax burden on performances by entertainers and musicians if the contract for each individual performance does not exceed \$3,000.

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### **CHARGES BY MEMBERSHIP ORGANIZATIONS TO THEIR MEMBERS**

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**STATUTE:** West Virginia Code §11-15-9(a)(41)

**EXEMPTION:** Charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization.

**VALUE:** **Minimal**

### **Rationale**

The exemption for charges by a membership organization for membership and other services to its members was presumably enacted because of the difficulty in valuing and enforcing a tax on such transactions. Also, this exemption only applies to those organizations or associations that are exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code.



## **GROUP IV COMMUNITY EXEMPTIONS**

Several exemptions exist for community and social service activities. These exemptions generally involve organizations providing socially desirable services, often for low-income individuals. The community-related tax expenditures generally exist to promote the activities of the organization. In some cases, collections and compliance costs may be high compared with the potential yield of these tax expenditures. The following exemptions involve a community-related activity:

- Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by churches, grant organizations, youth organizations, and organizations donating income to a nonprofit organization (West Virginia Code §11-15-9(a)(14));
- Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization, or a governmental agency under a program to provide meals to low-income persons at or below cost (West Virginia Code §11-15-9(a)(24)(C));
- Food sold by a charitable or private nonprofit organization, a nonprofit organization, or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours community service for each unit of food purchased from the organization (West Virginia Code §11-15-9(a)(24)(D));
- Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is expended for that purpose (West Virginia Code §11-15-9(a)(24)(E));
- Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually used in carrying on those functions and activities (West Virginia Code §11-15-9(a)(24)(F));
- Food sold by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue is exempt from federal income tax and expended for that purpose (West Virginia Code §11-15-9(a)(24)(G));
- Sales of food by little leagues, midget football leagues, youth football, or soccer leagues, band boosters, or other school or athletic booster organizations supporting activities for grades kindergarten through twelve and similar types of

organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups (West Virginia Code §11-15-9(a)(25));

- Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning (West Virginia Code §11-15-9(a)(36));
- Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose (West Virginia Code §11-15-9(a)(47));
- Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render (West Virginia Code §11-15-9(b)(1));
- Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work (West Virginia Code §11-15-9(b)(3));
- Sales and services, firefighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the State (West Virginia Code §11-15-9(b)(4));
- Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization into real property or into a building or structure to be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter, or an emergency children and youth shelter if the shelter is owned, managed, developed, or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended (West Virginia Code §11-15-9(b)(5));
- Sales of clothing and clothing accessories by organizations that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and that have annual revenue obtained from the sales of less than \$40,000 (West Virginia Code §11-15-9I); and
- Sales of taxable services by a corporation or organization that are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (West Virginia Code §11-15-11).

**VALUE: \$14.6 million per year**

## **GROUP V EDUCATIONAL EXEMPTIONS**

West Virginia Code provides for several exemptions relating to education or educational organizations. These tax expenditures generally exist to promote education in West Virginia. Educational institutions in West Virginia and their students benefit from these exemptions. The following exemptions relate to education:

- Sales of textbooks required to be used in the schools of this State or in any institution in this State which qualifies as a nonprofit or educational institution subject to the West Virginia Department of Education and the Arts, the Board of Trustees of the University System of West Virginia or the Board of Directors for colleges located in this State (West Virginia Code §11-15-9(a)(2));
- Casual and occasional sales of property or services by elementary and secondary schools (West Virginia Code §11-15-9(a)(14));
- Sales of tickets for activities sponsored by elementary and secondary schools located within this State (West Virginia Code §11-15-9(a)(20));
- Tuition charged for attending educational summer camps (West Virginia Code §11-15-9(a)(22));
- Food purchased or sold by a public or private school, school-sponsored student organizations, or school-sponsored parent-teacher associations to students enrolled in such school or to employees of such school during normal school hours (West Virginia Code §11-15-9(a)(24)(A));
- Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis (West Virginia Code §11-15-9(a)(24)(B))
- Food sold by band boosters or other school or athletic booster organizations supporting activities for grades kindergarten through twelve (West Virginia Code §11-15-9(a)(25));
- Charges for room and meals by fraternities and sororities to their members (West Virginia Code §11-15-9(a)(26)), and
- Sales of music instructional services by a music teacher (West Virginia Code §11-15-9(a)(40)).

**VALUE: \$17.6 million per year**

## **GROUP VI MISCELLANEOUS EXPENDITURES**

The West Virginia Code concerning the Consumers Sales and Service Tax provides for several miscellaneous deductions, exclusions, and exemptions not classified under any of the previous five categories. Most of these provisions are unique to West Virginia. The following is a list of several miscellaneous expenditures not previously discussed:

- Sales of Lottery Tickets by Licensed Lottery Agents;
- Sales by Local Governmental Units;
- Various Miscellaneous Exemptions;
- Sales of Highway Project Materials ;
- Qualified Purchases of Selected Property and Services for a New or Expanded Warehouse or Distribution Facility;
- West Virginia Tourism Development Credit;
- Monetary Allowances from Streamlined Sales ; and
- Clothing Vouchers.

An analysis of these tax expenditures follows.

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### **SALES OF LOTTERY TICKETS BY LICENSED LOTTERY AGENTS**

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**STATUTE:** West Virginia Code §11-15-9(a)(16)

**EXEMPTION:** Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the State Lottery Commission.

**VALUE:** **\$11.3 million per year**

#### **Rationale**

The exemption for sales of lottery tickets and materials exists because the lottery is run by State government. All lottery ticket money, net of costs and prizes, is deposited in the State treasury.

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## SALES BY LOCAL GOVERNMENTAL UNITS

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<b>STATUTE:</b>	West Virginia Code §11-15-9(a)(42)
<b>EXEMPTION:</b>	Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks, or circuit clerks in the normal course of local government operations.
<b>VALUE:</b>	<b>\$490,000 per year</b>

### Rationale

The imposition of sales tax on sales of products sold by local governmental units in the course of their normal operations would reduce the accessibility of those products to the general public.

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## VARIOUS MISCELLANEOUS EXEMPTIONS

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<b>STATUTE:</b>	West Virginia Code §11-15-9(a)(29)
<b>EXEMPTION:</b>	Sales of tangible personal property or services to any person who claims exemption from the Consumers Sales and Service Tax pursuant to the provisions of any other chapter of the West Virginia Code.
<b>VALUE:</b>	<b>Not available</b>

### Rationale

Although the rationale behind these miscellaneous expenditures may vary from one exemption to the next, alternative taxation (e.g., race tracks) or special service promotion (e.g., ambulance service) are presumably the predominant reasons for these exemptions. Several of these exemptions (i.e., sales to Housing Development Fund) overlap with the sales to governmental entities exemption (West Virginia Code §11-15-9(a)(3)). Listed below are the various miscellaneous exemptions:

- Sales to Ambulance Authorities (West Virginia Code §7-15-13);
- Sales to Urban Mass Transportation Authorities (West Virginia Code §8-27-20);
- Sales of Goods at a State Military Training Facility on a State Reservation Under Adjutant General's Jurisdiction (West Virginia Code §15-1H-5) ;
- Sales to Parkways Authority (West Virginia Code §17-16A-16);
- Sales to Horse and Dog Racing Associations Subject to License Tax (West Virginia Code §19-23-12);
- Purchases for Park Development Projects (West Virginia Code §20-5-6);

- Sales to Solid Waste Management Board (West Virginia Code §22C-3-19);
- Sales to Economic Development Authority (West Virginia Code §31-15-17);
- Sales to Housing Development Fund (West Virginia Code §31-18-18);
- Sales to Jail Authority (West Virginia Code §31-20-19);
- Sales to Credit Unions (West Virginia Code §31C-2-8);
- Sales to Hospital Service Corporations (West Virginia Code §33-24-4); and
- Sales to Homes and Asylums of Fraternal Orders (West Virginia Code §35-3-1).

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## SALES OF HIGHWAY PROJECT MATERIALS

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**STATUTE:** West Virginia Code §11-15-9(b)(6)

**EXEMPTION:** Sales of construction and maintenance materials acquired by a second party for use in the construction or maintenance of a highway project.

**VALUE:** **\$9.5 million in 2015**

### Rationale

Although this provision is included in the exemption section of the Consumers Sales and Service Tax Statute, this provision is not a tax expenditure, but rather a mechanism to transfer General Revenue funds to the State Road Fund.

In lieu of refunds or credits to the person that actually paid the tax on the materials, the State Tax Commissioner reimburses the Division of Highways an amount equal to 6 percent of 40 percent of the total funds expended for highway construction and maintenance during a fiscal year. The reimbursement is deposited into the State Road Fund as a transfer from the General Revenue Fund. Absent this provision, some Division of Highways payments from the State Road Fund for highway projects would flow through to the General Revenue Fund from the sales tax paid by contractors on construction and maintenance materials. The State Road Fund is to be used solely for the construction, reconstruction, repair, and maintenance of public highways; the payment of the interest and principal on all road bonds; and the administrative expenses of the Division of Highways and the Division of Motor Vehicles. The reimbursement provision presumably exists so that more State Road Fund revenue can be dedicated to the Fund's sole purpose.

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**QUALIFIED PURCHASES OF SELECTED PROPERTY AND SERVICES FOR A NEW  
OR EXPANDED WAREHOUSE OR DISTRIBUTION FACILITY**

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**STATUTE:** West Virginia Code §11-15-9n

**EXEMPTION:** Qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and components thereof, building materials and tangible personal property installed into or directly used or consumed in the construction, addition, alteration, or improvement of a qualified, new or expanded warehouse or distribution facility, as such terms are defined in this section (West Virginia Code §11-15-9n), purchased during the expansion period are exempt from the tax imposed by this article (West Virginia Code §11-15-1 et seq.) and article fifteen-a (West Virginia Code §11-15A-1 et seq.) ...

**VALUE:** **Cannot be disclosed<sup>6</sup>**

**Rationale**

This exemption presumably exists to encourage the location of large warehouses or distribution facilities in West Virginia that create additional direct and indirect jobs. To qualify for the exemption, the new or expanded warehouse or distribution facility must employ 300 or more West Virginia domiciled, West Virginia residents as full-time employees in the warehouse or distribution facility once the expansion (i.e., construction, addition, alteration or improvement) period is complete. Additionally, to qualify for the exemption, the investment in real and personal property for the new or expanded warehouse or distribution facility must be \$50 million or more. For purposes of the exemption, the qualified, new or expanded warehouse or distribution facility does not include a building or facility where tangible personal property is manufactured, fabricated, or assembled, or a building or facility where annual calendar year retail sales of tangible personal property are made over-the-counter from the facility to the general public if such sales exceed 5 percent of total annual calendar year revenues of the facility during the same period.

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<sup>6</sup> Due to taxpayer confidentiality.

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## WEST VIRGINIA TOURISM DEVELOPMENT CREDIT

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<b>STATUTE:</b>	West Virginia Code §§5B-2E-7 and 11-15-34
<b>EXEMPTION:</b>	Approved companies are allowed a credit against the Consumers Sales and Service Tax on sales generated by or derived from the operations of the tourism development project.
<b>VALUE:</b>	<b>\$3.0 million per year</b>

### Rationale

As stated in the enabling legislation, the credit was enacted “to induce the creation of new, or the expansion of existing, tourism development projects within the State in order to advance the public purposes of relieving unemployment by preserving and creating jobs and by preserving and creating new and greater sources of revenues for the support of public services provided by the state.”

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## MONETARY ALLOWANCES FROM STREAMLINED SALES TAX

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<b>STATUTE:</b>	West Virginia Code §11-15B-30
<b>EXEMPTION:</b>	Monetary allowances for sales tax collection to certified service providers and to sellers registered under the Streamlined Sales and Use Tax Agreement.
<b>VALUE:</b>	<b>\$45,000 per year</b>

### Rationale

The monetary allowance cited in the Streamlined Sales and Use Tax Agreement presumably exists to provide reasonable compensation for the incremental expenses incurred in establishing or maintaining a uniform system for administering, collecting, and remitting sales and use taxes. A monetary allowance has been permitted following the 2006 completion of the “cost of collection study” required by the Streamlined Sales and Use Tax Agreement.



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## CLOTHING VOUCHERS

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<b>STATUTE:</b>	West Virginia Code §§11-15-9(3) and 9-9-5
<b>EXEMPTION:</b>	Purchases made with the clothing vouchers issued by West Virginia Department of Health & Human Resources for low-income, school-aged children.
<b>VALUE:</b>	<b>\$1.1 million per year</b>

### Rationale

A School Clothing Allowance Program is available to assist parents and/or caretaker relatives to keep children in school. West Virginia Code §9-9-5 allows for some expenditures from the WV WORKS program fund, a special account within the state treasury, to finance temporary assistance to needy families, including clothing vouchers. WV WORKS school children are automatically eligible to receive a clothing voucher for each eligible child. Families with income below 100 percent of the Federal Poverty Level are also eligible to receive a clothing voucher for each eligible school-aged child in the home. The family is not required to apply or receive a WV WORKS check to be eligible for the clothing vouchers. This program is offered one time per year and is not considered as WV WORKS cash assistance in West Virginia. Purchases made with these clothing vouchers are exempt from Sales Tax in West Virginia. Each eligible child will receive a \$200 clothing voucher.

## **GROUP VII STATUTORY PROVISIONS THAT ARE NOT TRUE EXPENDITURES**

The West Virginia Consumers Sales and Service Tax Law contains a number of citations which arguably are not true expenditures but have been implicitly codified to improve clarification of the Law. The expenditures in this section are classified in sub-groups as follows: federally mandated exemptions, model sales tax components, provisions to avoid double taxation, and a final sub-group that includes items that most, if not all, other states exempt and a special revenue transfer mechanism.

### **FEDERALLY MANDATED EXEMPTIONS**

The following exemptions are not tax expenditures because they are excluded from state taxation by a federal law or a federal constitutional amendment:

- Sales to the United States Government;
- Food Stamp and WIC Exemption;
- Transportation of Passengers in Interstate Commerce; and
- Sales to Persons Exempt Under Laws of the United States.

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#### **SALES TO THE UNITED STATES GOVERNMENT**

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**STATUTE:** West Virginia Code §11-15-9(a)(3)

**EXEMPTION:** Sales of goods and services to the United States government.

**VALUE:** **\$45.0 million per year**

#### **Rationale**

The exemption for sales of tangible property and services to the United States government is required by the federal supremacy clause in the United States Constitution. Since state and local governmental units are prohibited from levying direct taxes upon the United States government, this exemption is not a tax expenditure.

The United States government may effectively pay some Sales Tax in West Virginia. In cases where a contractor or supplier is charged tax on their purchases of intermediate goods or services incorporated into final goods, the sales tax may be included in the final contract price. For example, building materials incorporated into a federal project are subject to Sales Tax whenever purchased by a contractor. However, the United States government may never be held legally liable for direct payment of a state sales tax.

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## FOOD STAMP AND WIC EXEMPTION

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**STATUTE:** West Virginia Code §11-15-9(a)(19)

**EXEMPTION:** Sales of tangible personal property or services purchased and lawfully paid for with food stamps pursuant to the federal food stamp program or with drafts issued through the West Virginia special supplement food program for women, infants and children.

**VALUE:** **\$32.0 million per year**

### Rationale

Exemption for food purchased under the federal Supplemental Nutrition Assistance Program (SNAP; formerly the Food Stamp Program) or under the Special Supplemental Nutrition Program for Women, Infants, and Children (generally known as the WIC program) is required by federal law. Accordingly, it is not considered a tax expenditure. However, even without the federal prohibition, it could be justified as a tax expenditure enacted to reduce the absolute burden of the Sales Tax upon the poor. Food and food ingredients purchased through the SNAP and WIC programs represent roughly 15 percent of total West Virginia food purchases for home consumption.

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## TRANSPORTATION OF PASSENGERS IN INTERSTATE COMMERCE

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**STATUTE:** West Virginia Code §11-15-9(a)(27)

**EXEMPTION:** Sales of or charges for the transportation of passengers in interstate commerce.

**VALUE:** **Not available**

### Rationale

This exemption is an affirmation of federal law restricting the taxation of interstate commerce activities and therefore does not constitute a tax expenditure. A tax on interstate transportation services may place a burden on interstate commerce unless such tax would be apportioned to the amount of service occurring within West Virginia. Any tax placing a burden on interstate commerce could be in violation of the Commerce Clause of the United States Constitution if determined to be effectively discriminatory.

The exemption does not apply to intrastate transportation services. However, as noted elsewhere, transportation services subject to regulation by the West Virginia Public Service Commission are exempt from taxation regardless of origin or destination.

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## SALES TO PERSONS EXEMPT UNDER LAWS OF THE UNITED STATES

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**STATUTE:** West Virginia Code §11-15-9(a)(28)

**EXEMPTION:** Sales of tangible personal property or services to any person which this State is prohibited from taxing under the laws of the United States or under the constitution of this State.

**VALUE:** **Minimal**

### Rationale

Examples of person exempt under laws of the United States include:

- Sales to federally chartered credit unions (12 U.S.C. 1768 and 122);
- Sales to foreign diplomatic and consular personnel (22 U.S.C. 288 et. seq. et. al.); and
- Sales placing burdens on interstate commerce or foreign commerce, and transactions beyond the borders of West Virginia (Commerce Clause of the United States Constitution and Federal Export and Import Clause).

The rationale behind these exemptions varies significantly from one exemption to the next. For example, the promotion of credit unions and international relations is a possible explanation of the exemptions for purchases by credit unions and diplomats, respectively. Exemptions attributable to federal laws, court decisions and international treaties are not tax expenditures because state lawmakers have no authority to tax such transactions.

## MODEL SALES TAX COMPONENTS

Three broad-based exclusions from sales and use tax exist in all states. Real property, intangible property, and services of an employee for the employer are universally exempt from retail sales taxation. In addition, the Consumers Sales and Service Tax Law (West Virginia Code §11-15-1 et seq.) and the West Virginia Consumers Sales and Service Tax and Use Tax Regulations (110 C.S.R. 15) provide deductions for trade-ins, bad debts, returns and allowances, cash discounts, and finance and carrying charges to vendors remitting the tax to the State. These deductions represent adjustments to total taxable gross receipts. Without the benefit of such deductions (excluding finance and carrying charges), taxable gross receipts would tend to be overstated resulting in an effective tax greater than the statutory rate. The deduction for finance and carrying charges is in line with an overall exclusion for intangible items. Further discussion of the sales of real or intangible property, the services of an employee and the various deductions cited in this paragraph is not presented because they are an integral part of the Sales Tax.

Other specific expenditures included in this sub-group that are also considered to be integral parts of the Sales Tax include the following:

- Sales of Property in Isolated Transactions;
- Sale for Resale; and
- Credit for Sales Tax Paid to Other States.

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### SALES OF PROPERTY IN ISOLATED TRANSACTIONS

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**STATUTE:** West Virginia Code §11-15-9(a)(7)

**EXEMPTION:** An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or by the owner's representative on the owner's account is exempt.

#### Rationale

The exemption for isolated transactions presumably exists because it would be extremely difficult to collect such tax. Most individuals selling items in isolated transactions are not registered to collect sales and use taxes on behalf of the State because they are not generally engaged in business activities. To qualify for exemption, no isolated sale may last for a period exceeding 48 hours in duration, and no individual may have more than four isolated transactions within any 12-month period. Any revenue loss associated with this expenditure is negligible transactions.

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## SALE FOR RESALE

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**STATUTE:** West Virginia Code §11-15-9(a)(9)

**EXEMPTION:** Sales of tangible property to a person for the purpose of resale in the form of tangible personal property.

### Rationale

The desired intent of a sales and use tax is to levy the tax on the ultimate consumer, not on the intermediate purchaser. This exemption applies to wholesale goods purchased for resale without any product modification other than repackaging. This provision eliminates the potential pyramid effect of a tax imposed on wholesale goods and services before sale to the ultimate consumer. The exemption also removes the possibility of double taxation for the same goods and services sold more than once.

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## CREDIT FOR SALES TAX PAID TO OTHER STATES

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**STATUTE:** West Virginia Code §11-15A-10a

**EXEMPTION:** A credit is allowed against a taxpayer's Use Tax liability for sales tax lawfully paid to another state provided that the amount of the credit allowed shall not exceed the amount of tax imposed on the use of property in West Virginia.

### Rationale

Any tangible personal property purchased in another state for use within West Virginia is taxable under the Use Tax law. If the sales tax is lawfully paid to another state, then the purchaser is given a credit against West Virginia Use Tax liability. This credit does not include any local taxes. Even before enactment of the credit, the general policy was not to impose double taxation in cases where the taxpayer had paid sales tax to another state. Although double taxation is not specifically barred by the Constitution, the double imposition of a sales tax is not favored. This credit is an integral part of the tax structure designed to eliminate double taxation and is therefore not considered a tax expenditure.

## PROVISIONS TO AVOID DOUBLE TAXATION

Exemptions exist for several commodities and services subject to alternative taxation. The alternative tax is often very similar to the Sales Tax both in terms of rate and base. Therefore, these exemptions tend to eliminate the possibility of double taxation (i.e., a sales tax based on sales price plus an alternative tax based on sales price). To the extent double taxation is avoided, these exemptions may be considered as integral components of the model tax structure and not as tax expenditures. The following exemptions cover certain sales subject to alternative taxation:

- Sales of Natural Gas Delivered Through Mains or Pipes;
- Sales of Steam and Water Delivered Through Mains or Pipes;
- Sales of Electricity; and
- Sales and Services Subject to Special District Excise Tax.

An analysis of these exemptions follows, along with a brief description of the alternative tax.

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### SALES OF NATURAL GAS DELIVERED THROUGH MAINS OR PIPES

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**STATUTE:** West Virginia Code §11-15-9(a)(1)

**EXEMPTION:** Sales of natural gas delivered to consumers through mains or pipes.

**VALUE:** **\$39.3 million per year**

#### Rationale

Prior to the deregulation of the natural gas industry, sales of natural gas through mains or pipes were primarily made by companies classified as public utilities. Sales of natural gas by public utilities are subject to the Business and Occupation Tax. Thus, this exemption exists to preclude double taxation (i.e., once under the Business and Occupation Tax and a second time under the Sales Tax) of sales of natural gas. However, companies that are not classified as public utilities currently make substantial sales of natural gas, particularly to large consumers. These non-utility sales are not subject to either the Sales Tax or the Business and Occupation Tax.

#### Revenue Analysis

The repeal of this exemption would not necessarily result in any increase in Sales Tax revenue. Some sales of natural gas delivered through mains or pipes are made by public utilities subject to the control of the Public Service Commission. West Virginia Code §11-15-8 excludes services provided by businesses regulated by the Public Service Commission from the

Consumers Sales and Service Tax. Additionally, most sales by non-utilities would likely qualify for the exemption provided for the sales of services directly used in manufacturing, transportation, transmission, communications, or the production of natural resources. Some natural gas sales would be exempt from the Sales Tax due to other applicable exemptions. These exemptions include sales to governmental units, schools, churches, and charitable organizations under certain conditions. Due to overlapping exemptions for natural gas sales, caution is necessary in adding this exemption value and the stated exemption values elsewhere in this report.

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## **SALES OF STEAM AND WATER DELIVERED THROUGH MAINS OR PIPES**

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**STATUTE:** West Virginia Code §11-15-9(a)(1)

**EXEMPTION:** Sales of steam and water delivered to consumers through mains or pipes.

**VALUE:** **\$20.0 million per year**

### **Rationale**

This exemption was enacted at the time the Consumers Sales and Service Tax was first implemented. Steam and water delivered through pipes or mains by businesses are subject to the Business and Occupation Tax. This exemption exists to prevent the taxation of the sale of this commodity under both the Business and Occupation Tax and the Consumers Sales and Service Tax.

### **Revenue Analysis**

The value of this exemption has been calculated in isolation from other applicable exemptions. As with other public utility sales tax exemptions, this exemption is a subset of other expenditures in this report. The providers of water delivered through mains or pipes are utilities subject to regulation by the Public Service Commission. West Virginia Code §11-15-8 provides for an exclusion from Consumers Sales and Service Tax for services provided by corporations that are subject to regulation by the Public Service Commission. Thus, this exemption could, in essence, be repealed and there would be no change in Sales Tax revenue. In addition, the exemption for the sales of services directly used in manufacturing, transportation, transmission, communication, or the production of natural resources would exclude large quantities from taxation. Also exempt are sales to government units, sales to schools, and sales to churches and charitable organizations under certain conditions.



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## SALES OF ELECTRICITY

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**STATUTE:** West Virginia Code §11-15-9(a)(1)

**EXEMPTION:** Sales of electricity.

**VALUE:** **\$150.0 million per year**

### Rationale

Sales of electricity are exempt from the Sales Tax due to the Business and Occupation Tax on businesses providing electricity. This exemption exists to avoid double taxation of electricity sales under both the Sales Tax and the alternative Business and Occupation Tax.

### Revenue Analysis

The calculation of this exemption was made without computing the effect of other applicable exemptions. The Public Service Commission regulates companies that sell electricity in West Virginia. Companies subject to regulation by the Public Service Commission are granted an exclusion from the Sales Tax by West Virginia Code §11-15-8 on sales of electric power. Due to such overlapping exemptions, the removal of electricity sales from the exemption provided by West Virginia Code §11-15-9(a)(1) would not result in any increase in Sales Tax revenue. Additionally, other exemptions in this report applying to certain sales, or certain groups, would exclude significant amounts of potential revenue from the Sales Tax. Due to the extensive overlapping exemption coverage for the sales of electricity, caution should be used in adding the stated value of this exemption with the stated value of other expenditures in this report.

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## SALES AND SERVICES SUBJECT TO SPECIAL DISTRICT EXCISE TAX

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**STATUTE:** West Virginia Code §11-15-9f

**EXEMPTION:** Any sale or service upon which a special district excise tax is paid ... is exempt.

**VALUE:** **\$14.9 million per year**

### Rationale

West Virginia Code §§7-22-12 and 8-38-12 permit counties and municipalities, respectively, to levy a special district excise tax upon sales and services within a defined economic opportunity development district. The special district excise tax must be authorized by the Legislature. Generally, the special district excise tax acts as a “sales tax increment

financing” tool for the benefit of economic opportunity development districts. Since the base and rate of the special district excise tax are the same as the Sales Tax, this exemption exists to preclude the double taxation of sales and services within the defined district. The special district excise tax generally serves to allocate tax to specific local areas.

## **BUSINESS INPUT EXEMPTIONS**

Exemptions exist for several goods and services that are business inputs. The purpose of a Sales Tax is to place the burden of payment of the tax on the final consumer of a good or service, not on the intermediate processes of production. Therefore, these exemptions tend to eliminate the possibility of “cascading” or “pyramiding” that would increase business costs and thus increase the costs of goods and services for the consumer. The following exemptions cover specific business inputs:

- Sales to Agricultural Producers;
- Sales of Propane to Consumers for Poultry House Heating Purposes;
- Sales of Services Between Members of the Same Controlled Group;
- Sales of Motion Picture Groups to Exhibitors;
- Sales of Coin-operated Video Arcade Machines to Businesses for Public Use;
- Sales of Aircraft Repair Services to Aircraft Operated by Certified or Licensed Carriers;
- Commissions Received by a Manufacturer’s Representative;
- Sales of Primary Opinion Research Services;
- Sales for Use in the Production of Value-added Products;
- Sales of Soap Used at Car Wash Facilities;
- Commissions Received by a Travel Agency;
- Technical Evaluations Provided by Environmental and Industrial Consultants;
- Lodging Franchise Fees;
- Payments as Part of a Sales Incentive Program;
- Sales and Services Directly Used or Consumed in Certain Business Activities;
- Certain Charges by Mortgage Brokers, Lenders, and Loan Originators; and
- Video Lottery Terminals and Games.

For purposes of this report, these exemptions are considered a basic part of the Sales Tax structure because State lawmakers have no authority to tax such transactions. A brief description and analysis of these exemptions follows. Exemption values are presented although additional revenue would not be realized through legislative action.

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## SALES TO AGRICULTURAL PRODUCERS

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<b>STATUTE:</b>	West Virginia Code §11-15-9(a)(8)
<b>EXEMPTION:</b>	Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the Consumers Sales and Service Tax.
<b>VALUE:</b>	<b>\$24.6 million per year</b>

### Rationale

As previously mentioned in this report, one of the components of a model sales tax is that the tax should only apply to consumption expenditures and not to units of production. This exemption allows commercial farmers to make tax-exempt purchases of equipment, seeds, feed, fertilizer, pesticides, and other items used in the commercial production of an agricultural product. A tax on these intermediary goods used or consumed in producing agricultural products would lead to some pyramiding of tax on final consumer goods. The final goods are ultimately taxable to the final consumer unless exempt under another tax expenditure.

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## SALES OF PROPANE TO CONSUMERS FOR POULTRY HOUSE HEATING PURPOSES

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<b>STATUTE:</b>	West Virginia Code §11-15-9(a)(18)
<b>EXEMPTION:</b>	Sales of propane to consumers for poultry house heating purposes.
<b>VALUE:</b>	<b>See Motor Fuel Tax Expenditures (Special Business Tax, Business License Tax, Excise Tax, and Property Tax Expenditures, January 2015)</b>

### Rationale

This refundable exemption from the variable rate component of the Motor Fuel Excise Tax for sales of propane to consumers to heat poultry houses presumably exists to promote the poultry industry in West Virginia.

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**SALES OF SERVICES BETWEEN MEMBERS  
OF THE SAME CONTROLLED GROUP**

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**STATUTE:** West Virginia Code §11-15-9(a)(23)

**EXEMPTION:** Dispensing of services by one corporation, partnership, or limited liability company to another when both entities are members of the same controlled group.

**VALUE:** **Not available**

**Rationale**

The exemption for the dispensing of services between members of the same controlled group was presumably enacted because of the difficulty of valuing such transactions. Also, enforcing a tax on such transactions would be difficult.

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**SALES OF MOTION PICTURE FILMS TO EXHIBITORS**

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**STATUTE:** West Virginia Code §11-15-9(a)(32)

**EXEMPTION:** Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to tax.

**VALUE:** **\$1.5 million per year**

**Rationale**

Motion picture films are usually leased from distributors for a period and shown to the patrons of theaters for an admission charge. In West Virginia, the admission charge is subject to the Sales Tax. Although motion picture films are generally leased rather than purchased, West Virginia Code §11-15-2(b)(17) includes leasing or renting in the definition of sales.

In transactions where the sale or lease of motion picture films is followed by the exhibition of the film for an admission charge, the exhibitor is not the final consumer. Thus, this exemption presumably exists due to the possible consideration of leasing of motion picture films subject to subsequent admission charges as a sale for resale.

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**SALES OF COIN-OPERATED VIDEO ARCADE MACHINES  
TO BUSINESSES FOR PUBLIC USE**

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**STATUTE:** West Virginia Code §11-15-9(a)(32)

**EXEMPTION:** Sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing such machines to the public for a charge upon which the tax is imposed.

**VALUE:** **Not available**

**Rationale**

A possible rationale for this exemption is that such sales are to some extent sales for resale. The machines are leased to businesses leasing the machines to players depositing coins for each use. However, the sale of coin-operated washers and dryers to self-service laundromats is taxable as is the use of the machines. Additionally, other retailers and service providers generally do not have a similar direct use exemption from taxation.

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**SALES OF AIRCRAFT REPAIR SERVICES TO  
AIRCRAFT OPERATED BY CERTIFIED OR LICENSED CARRIERS**

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**STATUTE:** West Virginia Code §11-15-9(a)(33)

**EXEMPTION:** Sales of aircraft repair, remodeling, and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity, and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools or equipment, directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts, for a certificated or licensed carrier of persons or property, or for a governmental entity.

**VALUE:** **\$3.9 million per year**

### Rationale

The exemption for sales of aircraft repair, remodeling, and maintenance services and tangible personal property incidental to such services apparently exists to lure aircraft maintenance facilities to West Virginia. Purchases of tangible personal property and taxable services for direct use in the business of air transportation are also exempt under West Virginia Code §11-15-9(b)(2). Few aircraft maintenance facilities within West Virginia currently service the airplanes of commercial airlines. However, the aircraft maintenance expenditure may become more significant over time as future aircraft maintenance facilities are developed within the State. The exemption would cover certain purchases not qualifying under the direct use in transportation exemption (i.e., remodeling expense).

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### COMMISSIONS RECEIVED BY A MANUFACTURER'S REPRESENTATIVE

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**STATUTE:** West Virginia Code §11-15-9(a)(37)

**EXEMPTION:** Commissions received by a manufacturer's representative.

**VALUE:** **Minimal**

### Rationale

The imposition of sales tax on commissions received by manufacturer's representatives would place West Virginia at a competitive disadvantage with those states that do not impose sales tax on these services.

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### SALES OF PRIMARY OPINION RESEARCH SERVICES

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**STATUTE:** West Virginia Code §11-15-9(a)(38)

**EXEMPTION:** Sales of primary opinion research services when:

- The services are provided to an out-of-state client;
- The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire, or other means of interstate commerce, for use by the client outside the State of West Virginia; and
- The transfer of the results of the services activities is an indispensable part of the overall service.

**VALUE:** **\$560,000 per year**

## Rationale

The imposition of sales tax on sales of primary opinion research services provided to out-of- state clients would place those West Virginia businesses that provide these services at a competitive disadvantage with businesses in those states that do not impose sales tax on these services.

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### SALES FOR USE IN THE PRODUCTION OF VALUE-ADDED PRODUCTS

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**STATUTE:** West Virginia Code §11-15-9(a)(39)

**EXEMPTION:** Sales of property or services to persons within the State when those sales are for the purposes of the production of value-added products. Value-added products means the following products derived from processing a raw agricultural product:

- Lumber into furniture, toys, collectibles, and home furnishings;
- Fruits into wine;
- Honey into wine;
- Wool into fabric;
- Raw hides into semi-finished or finished leather products;
- Milk into cheese;
- Fruits or vegetables into a dried, canned, or frozen product;
- Feeder cattle into commonly accepted slaughter weights;
- Aquatic animals into a dried, canned, cooked, or frozen product; and
- Poultry into a dried, canned, cooked, or frozen product.

**VALUE:** Minimal

## Rationale

The items included in this expenditure are inputs for the production of products that will be sold to final consumers. Thus, this expenditure is considered to be part of a model sales tax. This expenditure presumably exists to encourage the production of these products and ensure that a greater proportion of the value attributable to these activities remains in the State.

## Revenue Analysis

Virtually all of the expenditure value created by this provision would already be exempt from sales tax collection because of one or more other provisions of the sales tax law.



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### SALES OF SOAP USED AT CAR WASH FACILITIES

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**STATUTE:** West Virginia Code §11-15-9(a)(44)

**EXEMPTION:** Sales of soap to be used at car wash.

**VALUE:** **Minimal**

#### Rationale

The exemption for sales of soap used at car wash facilities was presumably enacted to minimize the effects of pyramiding, since the cost of the soap is included in the total price of the car wash.

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### COMMISSIONS RECEIVED BY A TRAVEL AGENCY

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**STATUTE:** West Virginia Code §11-15-9(a)(45)

**EXEMPTION:** Commissions received by a travel agency from an out-of-state vendor.

**VALUE:** **\$30,000 per year**

#### Rationale

The imposition of sales tax on commissions received by travel agencies would place West Virginia at a competitive disadvantage with those states that do not impose sales tax on these services.

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### TECHNICAL EVALUATIONS PROVIDED BY ENVIRONMENTAL AND INDUSTRIAL CONSULTANTS

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**STATUTE:** West Virginia Code §§11-15-9(a)(46) and 11-15-9c

**EXEMPTION:** Service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia department of environmental protection or the West Virginia Bureau for Public Health or both.

**VALUE:** **\$1.5 million per year**

### Rationale

The imposition of sales tax on environmental testing laboratories would place West Virginia at a competitive disadvantage with those states that do not impose sales tax on these services.

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### LODGING FRANCHISE FEES

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**STATUTE:** West Virginia Code §11-15-9(a)(48)

**EXEMPTION:** Lodging franchise fees, including royalties, marketing fees, reservation system fees, or other fees assessed after December 1, 1997 that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement.

**VALUE:** \$3.7 million per year

### Rationale

The imposition of sales tax on lodging franchise fees would place West Virginia at a competitive disadvantage with those states that do not impose sales tax on these services.

### Revenue Analysis

This exemption is broad in nature, including royalties, marketing fees, reservation system fees, and other fees assessed.

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### PAYMENTS AS PART OF A SALES INCENTIVE PROGRAM

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**STATUTE:** West Virginia Code §11-15-2(b)(18)

**EXEMPTION:** Payments received by a vendor of tangible personal property as part of a sales incentive program, cooperative advertising agreement, or similar type of program.

**VALUE:** \$2.1 million per year

### Rationale

The imposition of sales tax on payments received as part of a sales incentive program would place West Virginia at a competitive disadvantage with those states that do not impose sales tax on these services.

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## SALES AND SERVICES DIRECTLY USED OR CONSUMED IN CERTAIN BUSINESS ACTIVITIES

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**STATUTE:** West Virginia Code §§11-15-8d(b), 11-15-8d(c), 11-15-9(b)(2), and 11-15-9b

**EXEMPTION:** The following sales of tangible personal property and services are exempt from tax<sup>7</sup>:

- Sales of services, machinery, supplies, and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation, or production, or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business (West Virginia Code §11-15-9(b)(2));
- Sales of tangible personal property and services directly used or consumed in the activity of research and development (West Virginia Code §11-15-9b). Purchases of services, machinery, supplies, or materials to be directly used or consumed in the construction, alteration, repair, or improvement of a new or existing building or structure by a person performing “contracting” if the purchaser of the “contracting” services would be entitled to claim the exemption provided by West Virginia Code §11-15-9(b)(2) (West Virginia Code §11-15- 8d(b));
- Purchases of services, computers, servers, building materials, and tangible personal property to be installed into a building or facility or directly used or consumed in the construction, alteration, repair, or improvement of a new or existing building or structure by a person performing “contracting” if the purchaser of the “contracting” services would be entitled to claim the exemption provided by West Virginia Code §11-15-9h(a)(7)<sup>8</sup> (West Virginia Code §11-15- 8d(b)); and

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<sup>7</sup> Purchases of gasoline and special fuel are excluded from the exemption.

<sup>8</sup> West Virginia Code §11-15-9h(a)(7) provides an exemption for the “Sales of prewritten computer software, computers, computer hardware, servers, and building materials and tangible personal property to be installed into a building or facility for direct use in a high-technology business or an internet advertising business.” This exemption is included in the Commodity Expenditure section of this report under the Sales of Computer Hardware and Software expenditure.

- Qualified purchases of computers and computer software, primary material handling equipment, racking and racking systems, and their components, or to qualified purchases of building materials and certain tangible personal property as such terms are defined in this section nine-n of this article (West Virginia Code §11-15-9n), by a person performing “contracting” if the purchaser of the “contracting” services would be entitled to claim the exemption provided by West Virginia Code §11-15-9n<sup>9</sup> (West Virginia Code §11-15-8d(b)). Purchases of services, machinery, supplies or materials to be directly used or consumed in the construction, alteration, repair, or improvement of a new or existing natural gas compressor station or gas transmission line having a diameter of twenty inches or more by a person performing “contracting” (West Virginia Code §11-15-8d(c)).

**VALUE:                   \$600.0 million per year**

### **Rationale**

This exemption, commonly referred to as the direct use exemption, has a two-prong effect. First, the exemption encourages investment in equipment and facilities by qualified industries without a tax penalty on such investment. Second, the exemption eliminates the pyramid effect of a tax imposed first on intermediate goods and services and again on the final goods and services. Additionally, most states have direct use exemptions.

In general, direct use means those commodities consumed or services used which are integral and essential components in the activities cited in the exemption. Commodities or services which are merely incidental or convenient to the listed activities are not exempt.

For manufacturers, the exemption covers three separate categories of goods: raw materials, such as steel and heavy metals; capital equipment and machinery used in the manufacturing process, and consumable supplies and processing materials incorporated into the final manufactured product. The manufacturing industry generally consumes raw materials and intermediary goods in the production of other intermediary goods or final goods for the wholesale market or for transfer to other industrial users. The final goods are ultimately taxable to the final consumer unless subject to another exemption.

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<sup>9</sup> The exemption provided via West Virginia Code §11-15-9n pertains to qualified purchases for a new or expanded warehouse or distribution facility and is included in the Commodity Expenditure section of this Report.

In order for the direct use provision to be applied to a transportation business, the commercial business activity must include the conveyance of passengers or goods from one geographical location to another. It does not include the conveyance of goods by the owner of the goods. The transportation activity begins with the gathering of the passengers or goods to be transported and ends with the delivery of the same. The transportation activity does not include storage of the tangible personal property unless it is for temporary storage while in transit.

The transmission industry includes commercial pipelines, wires, or other mediums used to convey liquid, natural gas, or electricity from one geographical location to another. It does not encompass tank trucks, rail cars, or barges. The commercial activity begins with the receipt or intake of the liquid, natural gas, or electricity into the system and ends with the delivery of the product to the customer.

For purposes of the Sales Tax, communication activities include voice communication, computer data transmission, or other encoded symbolic information transfers by telephone, radio, light, light wave, radio telephone, telegraph, or other means of communication. Commercial broadcast radio, commercial broadcast television, and cable television are also included.

Items included in the direct use exemption for producers of natural resources include purchases used for exploring, developing, severing, extracting, and loading for shipment any natural resource product for sale, profit, or commercial use. Reclamation, waste disposal, or environmental activities are also included in the exemption. Additionally, for coal mines or coal production facilities, construction, installation, or fabrication of ventilation structures, mine shafts, slopes, boreholes, and dewatering structures are included in the definition of production of natural resources and the purchases related to these items qualify for the exemption.

Equipment, machinery, fuel, power, pipes, wires, and mains used for gas storage, generation of electric power, or provision of a public utility service are included in the direct use exemption for these activities. The exemption includes tangible personal property or services used in pollution control, environmental quality, or community safety.

In order to qualify for the research and development direct use exemption, the tangible personal property or services used or consumed must be an integral and essential part of the research and development activities or operations. Qualified sales of tangible personal property or services directly used or consumed in research and development are eligible for the exemption.

Generally, "contractors" may not assert any exemption to which the purchaser of such contracting services would be entitled. However, contractors may assert the exemption for purchases of services, machinery, supplies, or materials, except gasoline and special fuel, that are to be directly used or consumed in the construction, alteration, repair, or improvement of a new or existing building or structure that will primarily be used for manufacturing, including the

generation of electric power, for certain high-technology businesses, and certain distribution facilities. The contractor may assert the exemption if the purchaser of the contracting services (e.g., manufacturers, certain high-technology businesses, certain distribution facilities) would be entitled to claim an exemption on the direct purchase of the services, machinery, supplies, or materials.

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### **CERTAIN CHARGES BY MORTGAGE BROKERS, LENDERS, AND LOAN ORIGINATORS**

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**STATUTE:** West Virginia Code §31-17-2(c)

**EXEMPTION:** Brokerage fees, additional charges, and finance charges charged by brokers, lenders, or loan originators licensed by the West Virginia Division of Banking under article 17, chapter 31 of the Code.

**VALUE:** **\$3.0 million per year**

#### **Rationale**

Brokerage fees collected by a bank are exempt as sales of professional services. Licensed mortgage brokers and loan originators are not considered to be professionals. This exemption presumably exists to provide similar treatment for brokerage fees collected by mortgage brokers, lenders, and loan originators as provided for those collected by banks.

#### **Revenue Analysis**

Finance charges and most additional charges as defined in West Virginia Code §31-17-1 are exempt from sales tax elsewhere in the Code and are not considered in the revenue impact for this exemption.

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### **VIDEO LOTTERY TERMINALS AND GAMES**

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**STATUTE:** West Virginia Code §29-22B-1901

**EXEMPTION:** Purchases of video lottery terminals and video lottery games by persons holding a current operator's license or a current limited video lottery operator's license issued under West Virginia Code §29-22-1 et. seq. and consideration paid by a patron of a restricted access adult-only facility to play video lottery games.

**VALUE:** **Minimal**

## **Rationale**

The exemption for sales of video lottery terminals and games exists because the lottery is run by State government. A certain percentage of video lottery money is retained and deposited in the State treasury.





## Appendix A—Entity-Based and Use-Based Exemptions

<b>Group I—Group Exemptions</b>			
	Entity	Commodity	Notes
Sales to Governmental Units	X		
Sales to Various Nonprofit Organizations	X		
Sales to Educational Institutions	X		
Sales and Services Directly Used or Consumed in the Construction of Certain Youth Organization Facilities	X		
<b>Group II—Commodity Expenditures</b>			
	Entity	Commodity	Notes
Food for Home Consumption		X	
Reduced Basis for Sales of Mobile Homes		X	
Reduced Tax Rate of Sales and Leases of Motor Vehicles		X	
Sales of Newspapers Delivered by Route Carriers		X	
Sales of Prescription Drugs, Appliances, and Insulin		X	
Purchases of Drugs, Medical Equipment, Mobility-Enhancing Equipment, and Prosthetic Devices by Health Care Providers		X	
Sales of Farm Products in Original State by the Producer and Sales of Livestock Sold at Public Auction Sales		X	
Sales of Subscriptions to Magazines Published by State Agencies		X	
Sales of United States and West Virginia Flags		X	
Sales of Computer Hardware and Software		X	
Sales of Digital Goods		X	
<b>Group III—Service Exemptions</b>			
	Entity	Commodity	Notes
Sales of Services Subject to Regulation by the Public Service Commission		X	
Sales of Personal Services		X	
Sales of Professional Services		X	
Sales of Selected Advertising		X	
Sales and Services Performed by Day Care Centers and Babysitters		X	
Sales of Electronic Data Processing Services		X	
Sales of Contracting Services Resulting in Capital Improvements		X	
Sales of the Services of Opening and Closing a Burial Lot		X	
Charges for Memberships or Services Provided by Health and Fitness Organizations		X	
Artistic Performances by Entertainers		X	
Charges by Membership Organizations to Their Members		X	

<b>Group IV—Community Exemptions</b>			
	<b>Entity</b>	<b>Commodity</b>	<b>Notes</b>
Casual and Occasional Sales by Churches and Nonprofit Organizations		X	
Food Purchased by Nonprofit Organizations or Government Entities for Meals to Low-Income Persons	X		
Meals Sold by Nonprofit Organizations or Government Entities to Low-Income Persons		X	
Food Sold in Occasional Sales by Nonprofit Organizations, Including Volunteer Fire Departments		X	
Sales of Food by Churches		X	
Sales of Food by Youth Organizations and Booster Organizations		X	
Sales of Services by Libraries		X	
Sales of Property by Volunteer Fire Departments		X	
Sales to Charitable Organizations Who Make No Charges for Their Services	X		
Sales of Property or Services to Fraternal or Social Organizations for Free Distribution in Public Welfare or Relief Work	X		
Sales to Volunteer Fire Departments	X		
Sales of Building Materials and Supplies to Organizations for Installation in Low-Income Housing or Shelters	X		
Sales of Clothing by Nonprofit Organizations		X	
Sales of Services by Nonprofit Organizations		X	

<b>Group V—Educational Exemptions</b>			
	<b>Entity</b>	<b>Commodity</b>	<b>Notes</b>
Sales of Textbooks		X	
Casual and Occasional Sales by Elementary and Secondary Schools		X	
Sales of Tickets for Activities Sponsored by Elementary and Secondary Schools		X	
Tuition for Educational Summer Camps		X	
Food Purchased by Public or Private Schools	X		
Food Sold by Public or Private Schools or School-Sponsored Organizations to Students and Employees During Normal School Hours		X	
Food Sold to Public or Private Universities or Student Organizations for Sales to Students on a Contract Basis	X		
Food Sold by Public or Private Universities or Student Organizations to Students on a Contract Basis		X	
Food Sold by School Booster Organizations		X	
Charges for Room Rental and Meals by Fraternities and Sororities		X	
Sales of Music Instructional Services		X	

<b>Group VI—Miscellaneous Expenditures</b>	<b>Entity</b>	<b>Commodity</b>	<b>Notes</b>
Sales of Lottery Tickets by Licensed Lottery Agents		X	
Sales by Local Governmental Units		X	
Various Miscellaneous Exemptions	X		Revenue Transfer
Sales of Highway Project Materials		X	
Qualified Purchases of Selected Property and Services for a New or Expanded Warehouse or Distribution Facility			
West Virginia Tourism Development Credit			Credit
Monetary Allowances from Streamlined Sales Tax			Collection Allowance
Clothing Vouchers		X	

<b>Group VII—Statutory Provisions That Are Not True Expenditures</b>	<b>Entity</b>	<b>Commodity</b>	<b>Notes</b>
<u>Federally-Mandated Exemptions</u>			
Sales to the U.S. Government	X		
Food Stamp and WIC Exemption		X	
Transportation of Passengers in Interstate Commerce		X	
Sales to Persons Exempt under Laws of the U.S.	X		
<u>Model Sales Tax Components</u>			
Sales of Property in Isolated Transactions		X	
Sale for Resale		X	
Credit for Sales Tax Paid to Other States			Credit
<u>Provisions to Avoid Double Taxation</u>			
Sales of Natural Gas Delivered Through Mains or Pipes		X	
Sales of Steam and Water Delivered Through Mains or Pipes		X	
Sales of Electricity		X	
Sales of Motor Vehicles, Recreational Vehicles and Leases of Motor Vehicles		X	
Sales and Services Subject to Special District Excise Tax			To avoid double taxation
<u>Business Input Exemptions</u>			
Sales to Agricultural Producers	X		
Sales of Propane to Consumers for Poultry House Heating Purposes		X	
Sales of Services Between Members of the Same Controlled Group	X		
Sales of Motion Picture Films to Exhibitors		X	
Sales of Coin-Operated Video Arcade Machines to Businesses for Public Use		X	
Sales of Aircraft Repair Services to Aircraft Operated by Certified or Licensed Carriers		X	
Commissions Received by a Manufacturer's Representative		X	
Sales of Primary Opinion Research Services		X	
Sales for Use in the Production of Value-Added Products		X	
Sales of Soap Used at Car Wash Facilities		X	

Group VII—Statutory Provisions That Are Not True Expenditures (cont.)	Entity	Commodity	Notes
Commissions Received by a Travel Agency		X	
Technical Evaluations Provided by Environmental and Industrial Consultants		X	
Lodging Franchise Fees		X	
Payments as Part of a Sales Incentive Program		X	
Sales and Services Directly Used or Consumed in Certain Business Activities		X	
Certain Charges by Mortgage Brokers, Lenders and Loan Originators		X	
Video Lottery Terminals and Games		X	