



**WEST VIRGINIA
TAX EXPENDITURE
STUDY**

Consumers Sales and Service Tax
and Use Tax
Expenditures

January 2013

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Expenditures
for
Consumers Sales and Service Tax
and Use Tax

Prepared by:
Research and Development Division
State Tax Department
January 2013

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EXECUTIVE SUMMARY

This report updates the West Virginia Expenditure Study--Consumers Sales and Use Tax Expenditures released in 2010. All Consumers Sales and Service Tax and Use 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

1. apply to all consumption expenditures at a uniform rate;
2. apply only to consumption expenditures and not to inputs of production;
3. conform to accepted equity standards of the society;
4. have minimal compliance and administration problems, and
5. 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.

This report categorizes the various Consumers Sales and Service Tax and Use Tax exclusions, exemptions and deductions into seven separate groups. 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 Consumers Sales and Service Tax and Use Tax provisions. The following group summaries provide some analysis of the scope of this study.

GROUP EXEMPTIONS

While most Consumers Sales and Service 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. Some of the commodity expenditures (e.g., the sale/lease of motion picture films to exhibitors) exist in most states, while some other commodity expenditures (e.g., the exemption for sales of video arcade machines to those providing such machines to the public for a charge) do not exist in most other states.

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 Consumers Sales and Service 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 from one state to the next. 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. Educational exemptions presumably exist as additional government subsidies for education.

MISCELLANEOUS EXPENDITURES

Several miscellaneous deductions, exclusions and exemptions exist in West Virginia and other states. Some of these provisions include deductions for trade-ins; returns and allowances, cash discounts, and finance and carrying charges; 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 which 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, revenue transfer mechanisms, and items that most if not all other states exempt.

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 **Consumers Sales and Service Tax** and the **Use 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 Consumers Sales and Service Tax and Use Tax is the second largest source of revenue for the State of West Virginia. At a rate of 6 percent (1 percent rate on food for home consumption), this tax accounts for nearly one-third of the total General Revenue Fund receipts (\$1,197.0 million projected in Fiscal Year 2013). For purposes of this report, the Consumers Sales and Service Tax and the 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 Consumers Sales and Service Tax and Use 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 Consumers Sales and Service Tax and Use Tax expenditures using available resources.

This report supplies some information about exclusions and exemptions from the West Virginia Consumers Sales and Service Tax and Use 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.

ESTIMATING COSTS OF TAX EXPENDITURES

This study provides estimates of the value of Consumers Sales and Service Tax and Use 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:

1. tax return data;
2. surveys;
3. alternative tax data;
4. United States Department of Agriculture;
5. United States Bureau of the Census;
6. West Virginia Department of Education;
7. West Virginia Department of Health and Human Resources;
8. West Virginia Division of Cultural and History;
9. West Virginia Division of Motor Vehicles;
10. West Virginia Division of Natural Resources;
11. West Virginia Lottery Commission, and
12. 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 become 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. The Department relied solely upon its experience to formulate the 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 major groups:

- Group Exemptions
- Commodity Expenditures
- Service Exemptions
- Community Exemptions
- Educational Exemptions
- Miscellaneous Expenditures
- Provisions That Are Not True Expenditures

Provisions within the last group 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 Consumers Sales and Use 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 and Service Tax and Use Tax on their purchases.

Group exemptions may be split into the following major categories:

1. sales to governments;
2. sales to educational groups, and
3. sales to nonprofit groups.

Although the rationale behind these group exemptions varies from one 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 Consumers Sales and Service Tax and Use Tax for certain groups:

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

An analysis of these exemptions follows.

SALES TO GOVERNMENTAL UNITS

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 States¹, including agencies of federal, state or local governments for distribution in public welfare or relief work

VALUE:	Counties	\$11.7 million
	Municipalities	12.3 million
	State	26.1 million
	Total	\$50.1 million

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 Consumers Sales and Service Tax and Use Tax revenue.

¹Information on the exemption for purchases by the United States government can be found in the section on “Group IX--Federally Mandated Exemptions”.

SALES TO VARIOUS NONPROFIT ORGANIZATIONS

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

- (1) a church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended
- (2) 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
- (3) 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
- (4) 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: \$58.9 million per year

Rationale

The Consumers Sales and Service Tax and Use 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.

SALES TO EDUCATIONAL INSTITUTIONS

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: \$47.1 million per year

Rationale

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

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

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 [W. Va. Code §11-15-9] had it purchased the services, machinery, supplies or material are exempt

VALUE: \$4.0 million per year²

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.

Revenue Analysis

The value of this expenditure, as stated above, is for the initial one to two years of construction. After the initial construction period, the value of this expenditure will be decidedly lower.

² The criteria to qualify for this exemption limits its application to a very small number of facilities. While the number of such qualifying facilities is below that which the State Tax Department releases information based on tax return information, the estimate of the value of this expenditure was made from widely available public information.

GROUP II COMMODITY EXPENDITURES

Certain commodities are exempt from the West Virginia Consumers Sales and Service Tax and Use 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:

- Reduced Tax Rate on Food for Home Consumption
- Reduced Basis for Sales of Mobile Homes
- Reduced Tax Rate on Sales of Motor Vehicles
- Sales of Prescription Drugs, Appliances and Insulin
- Purchases of Drugs, Durable Medical Equipment, Mobility Enhancing Equipment and Prosthetic Devices by Health Care Providers
- Qualified Purchases of Selected Property and Services for a New or Expanded Warehouse or Distribution Facility
- Sales of Motion Picture Films to Exhibitors
- Sales of Coin-Operated Video Arcade Machines to Businesses for Public Use
- Sales of Subscriptions to Magazines Published by State Agencies
- Sales of Soap Used at Car Wash Facilities
- Sales of United States and West Virginia Flags
- Sales of Computer Hardware and Software
- Sales of Propane to Consumers for Poultry House Heating Purposes
- Video Lottery Terminals and Games

An analysis of these tax expenditures follows.

REDUCED TAX RATE ON FOOD FOR HOME CONSUMPTION

STATUTE:	West Virginia Code §11-15-3a(a)(2)
EXEMPTION:	After June 30, 2012, the rate of tax on sales, purchases and uses of food and food ingredients . . . intended for human consumption shall be one percent ³ of its sales price. . . .
VALUE:	\$145.0 million per year at reduced rate of one percent \$174.0 million per year if the tax is terminated

Rationale

The reduced sales tax rate on 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 reduced tax rate upon the purchase of food and food ingredients.

REDUCED BASIS FOR SALES OF MOBILE HOMES

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 six percent of fifty percent of the sales price
VALUE:	\$4.7 million per year

Rationale

The Consumers Sales and Service Tax applies to roughly one-half of the value of conventional housing construction. Materials used in construction are taxable while contractor labor

³ W. Va. Code §11-15-3a(a)(3), as enacted in 2011, provides for the contingent termination of the tax on food for periods after June 30, 2013. However, the termination of the tax on food and food ingredients intended for home consumption will be suspended if the balance of funds, as of December 31, 2012, in the Revenue Shortfall Reserve Fund does not equal or exceed twelve and one-half percent of the General Revenue Fund budgeted for the fiscal year commencing July 1, 2012.

is exempt. This exemption and its predecessor⁴ 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.

REDUCED TAX RATE ON SALES OF MOTOR VEHICLES

STATUTES: West Virginia Code §11-15-3c

EXEMPTIONS: Beginning on the first day of July 2008, all motor vehicle sales to West Virginia residents shall be subject to the consumer sales and use tax

VALUE: **\$37.3 million per year**

Rationale

Prior to July 1, 2008, motor vehicles were subject to the Motor Vehicle Privilege Tax. The Privilege Tax was a tax on the certification of title of all vehicles in West Virginia. The tax rate was 5 percent of the value of the vehicle at the time of certification. If the vehicle was new, the purchase price was the value. If the vehicle was used, the present market value (book value) was the value. The Motor Vehicle Privilege Tax was a registration fee for all motorized and recreational vehicles in West Virginia.

Legislation passed in 2008 to repeal the Motor Vehicle Privilege Tax and subject all sales of motor vehicles to the Consumer Sales and Use Tax, but at the same rate as the previous Privilege Tax (i.e., 5 percent). 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

⁴ Previously, the tax benefit was stated as a reduction in the tax rate. The change to a reduced basis was made to conform to the Streamlined Sales Tax Agreement.

Vehicles and deposited into the State Road Fund for design, maintenance and construction of roads in the state highway system.

SALES OF PRESCRIPTION DRUGS, APPLIANCES AND INSULIN

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

EXEMPTION: Sales of drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes

VALUE: **\$102.7 million per year**

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.

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

STATUTE: West Virginia Code §11-15-9i

EXEMPTION: 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.

VALUE: **\$13.5 million per year**

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.

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

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 [W. Va. Code §11-15-9n], purchased during the expansion period are exempt from the tax imposed by this article [W. Va. Code §11-15-1 et seq.] and article fifteen-a [W. Va. Code §11-15A-1 et seq.]
...

VALUE: Cannot be disclosed⁵

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 five percent of total annual calendar year revenues of the facility during the same period.

⁵ Due to taxpayer confidentiality.

SALES OF MOTION PICTURE FILMS TO EXHIBITORS

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:	\$2.2 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 Consumers Sales and Service 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.

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

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.

SALES OF SUBSCRIPTIONS TO MAGAZINES PUBLISHED BY STATE AGENCIES

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: \$50,000 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.

SALES OF SOAP USED AT CAR WASH FACILITIES

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

EXEMPTION: Sales of soap to be used at car wash facilities

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.

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

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.

SALES OF COMPUTER HARDWARE AND SOFTWARE

STATUTE: West Virginia Code §11-15-9h

EXEMPTION: Sales of the following services are exempt:

- (1) computer hardware and software to be directly incorporated by a manufacturer into a manufactured product;
- (2) sales of computer hardware and software directly used in communication;
- (3) sales of electronic data processing services;
- (4) sales of educational software required to be used in any of the public schools of this state;
- (5) sales of internet advertising of goods and services;
- (6) 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
- (7) sales of prewritten 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: **\$7.5 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 which 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.

SALES OF PROPANE TO CONSUMERS FOR POULTRY HOUSE HEATING PURPOSES

STATUTE:	West Virginia Code §11-15-9(a)(18)
EXEMPTION:	Sales of propane to consumers for poultry house heating purposes
VALUE:	See Motor Fuel Tax Expenditures (Special Business Tax, Business License Tax, Excise Tax, and Property Tax Expenditures, January 2012)

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.

VIDEO LOTTERY TERMINALS AND GAMES

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 W.Va. 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.

GROUP III SERVICE EXEMPTIONS

Exclusions or exemptions from Consumers Sales and Service Tax and Use 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 United States Department of Commerce, Bureau of Economic Analysis, 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 21.1 percent in 1940 to 49.0 percent by 2011.

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 and Service Tax and Use Tax in this State:

- Sales of Contracting Services Resulting in Capital Improvements
- 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 the Service of Opening and Closing a Burial Lot
- Charges for Memberships or Services Provided by Health and Fitness Organizations
- Commissions Received by a Manufacturer's Representative
- Sales of Primary Opinion Research Services
- Artistic Performances by Entertainers

Charges by Membership Organizations to Their Members
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
Certain Charges by Mortgage Brokers, Lenders and Loan Originators

An analysis of these tax expenditures follows.

SALES OF CONTRACTING SERVICES RESULTING IN CAPITAL IMPROVEMENTS

STATUTE: West Virginia Code §§11-15-2(b)(3), 11-15-2(b)(18), 11-15-7a and 11-15-8a

EXCLUSION: Contracting services which result in capital improvements are excluded from the definition of taxable services for purposes of the Consumers Sales and Service Tax

VALUE: **\$164.3 million per year**

Rationale

An exclusion for all sales of contracting services was originally enacted at the time the Consumers Sales and Service Tax and Use 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 Consumers Sales and Service 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 services 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
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 Consumers Sales and Service Tax and Use Tax. Also, real property is not historically taxed under the Consumers Sales and Service Tax or the Use 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 §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.

SALES OF SERVICES SUBJECT TO REGULATION BY THE PUBLIC SERVICE COMMISSION

STATUTE:	West Virginia Code §11-15-8
EXCLUSION:	Services furnished by corporations subject to control of the Public Service Commission
VALUE:	\$365.1 million per year

Rationale

Natural gas, water, telephone and electricity utility services provided by corporations subject to regulation by the West Virginia Public Service Commission were excluded from taxation at the time the Consumers Sales and Service 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 electricity public 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 Consumers Sales and Service 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 earlier 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 Consumers Sales and Service 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.

SALES OF PERSONAL SERVICES

STATUTE: West Virginia Code §11-15-8

EXCLUSION: Sales of personal services done to or performed on the person of an individual

VALUE: **\$25.5 million per year**

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.

SALES OF PROFESSIONAL SERVICES

STATUTE:	West Virginia Code §11-15-8	
EXCLUSION:	Sales of professional services performed by licensed professionals	
VALUE:	Medical	\$589.9 million
	Legal	68.6 million
	Accounting	14.3 million
	Other	52.5 million
	Total	\$725.3 million

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 the chart above, medical services include services provided by doctors and hospitals while other services include services provided by engineers, architects and auctioneers.

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.

SALES OF SELECTED ADVERTISING

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:	\$26.6 million per year

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.

SALES AND SERVICES PERFORMED BY DAY CARE CENTERS AND BABYSITTERS

STATUTE:	W. Va. 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:	\$6.9 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.

SALES OF ELECTRONIC DATA PROCESSING SERVICES

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

EXEMPTION: Sales of electronic data processing services and related software

VALUE: Not available

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.

The Internet Tax Freedom Act Amendment (previously known as the Internet Tax Nondiscrimination Act) was passed in 2007, which extends until 2014 the prohibitions 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.

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

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

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

VALUE: **\$670,000 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.

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

STATUTE: W. Va. Code §11-15-9(a)(34)

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

VALUE: **\$1.8 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.

**COMMISSIONS RECEIVED BY A
MANUFACTURER'S REPRESENTATIVE**

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.

SALES OF PRIMARY OPINION RESEARCH SERVICES

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

EXEMPTION: Sales of primary opinion research services when:

- (A) The services are provided to an out-of-state client;
- (B) 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
- (C) The transfer of the results of the services activities is an indispensable part of the overall service

VALUE: **\$870,000 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.

ARTISTIC PERFORMANCES BY ENTERTAINERS

- 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.

CHARGES BY MEMBERSHIP ORGANIZATIONS TO THEIR MEMBERS

- STATUTE:** West Virginia Code §11-15-9(a)(41)
- EXEMPTION:** Charges by a membership association or organization for memberships and other services provided to members
- 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.

COMMISSIONS RECEIVED BY A TRAVEL AGENCY

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

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

VALUE: **Minimal**

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.

TECHNICAL EVALUATIONS PROVIDED BY ENVIRONMENTAL AND INDUSTRIAL CONSULTANTS

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: **\$2.4 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.

LODGING FRANCHISE FEES

- 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:** **\$3.6 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.

PAYMENTS AS PART OF A SALES INCENTIVE PROGRAM

- 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:** **\$2.3 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.

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

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: **\$1.0 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 §31-17-1 are exempt from sales tax elsewhere in the Code and are not considered in the revenue impact for this exemption.

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 (W. Va. 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 (W. Va. 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 (W. Va. 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 (W. Va. 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 (W. Va. 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 (W. Va. 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 (W. Va. 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 (W. Va. 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 (W. Va. 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 (W. Va. 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 (W. Va. Code §11-15-9(b)(3))
- Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the State (W. Va. 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 such qualified organization (W. Va. 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 (W. Va. Code §11-15-91)

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 (W. Va. Code §11-15-11)

VALUE: \$22.1 million per year

GROUP V EDUCATIONAL EXEMPTIONS

The 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 (W.Va. Code §11-15-9(a)(2))
- Casual and occasional sales of property or services by elementary and secondary schools (W. Va. Code §11-15-9(a)(14))
- Sales of tickets for activities sponsored by elementary and secondary schools located within this State (W. Va. Code §11-15-9(a)(20))
- Tuition charged for attending educational summer camps (W. Va. 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 (W. Va. 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 (W. Va. 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 (W. Va. Code §11-15-9(a)(25))
- Charges for room and meals by fraternities and sororities to their members (W. Va. Code §11-15-9(a)(26))
- Sales of music instructional services by a music teacher (W. Va. Code §11-15-9(a)(40))

VALUE: \$19.8 million per year

GROUP VI MISCELLANEOUS EXPENDITURES

The West Virginia Code concerning the Consumers Sales and Service Tax and Use 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 of Aircraft Repair Services to Aircraft Operated by Certified or Licensed Carriers
- Sales by Local Governmental Units
- Various Miscellaneous Exemptions
- West Virginia Tourism Development Credit
- Monetary Allowances from Streamlined Sales

An analysis of these tax expenditures follows.

SALES OF LOTTERY TICKETS BY LICENSED LOTTERY AGENTS

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: **\$12.1 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.

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

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: \$1.2 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 W. Va. 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).

SALES BY LOCAL GOVERNMENTAL UNITS

STATUTE:	West Virginia Code §11-15-9(a)(42)
EXEMPTION:	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
VALUE:	\$380,000 per year

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.

VARIOUS MISCELLANEOUS EXEMPTIONS

STATUTE:	West Virginia Code §11-15-9(a)(29)
EXEMPTION:	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
VALUE:	Not available

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 predominate 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 (W. Va. Code §7-15-13)
- Sales to Urban Mass Transportation Authorities (W. Va. Code §8-27-20)
- Sales of Goods at a State Military Training Facility on a State Reservation
Under Adjutant General's Jurisdiction (W. Va. Code §15-1H-5)
- Sales to Parkways Authority (W. Va. Code §17-16A-16)

Sales to Horse and Dog Racing Associations Subject to License Tax (W. Va. Code §19-23-12)
Purchases for Park Development Projects (W. Va. Code §20-5-6)
Sales to Solid Waste Management Board (W. Va. Code §22C-3-19)
Sales to Economic Development Authority (W. Va. Code §31-15-17)
Sales to Housing Development Fund (W. Va. Code §31-18-18)
Sales to Jail Authority (W. Va. Code §31-20-19)
Sales to Credit Unions (W. Va. Code §31C-2-8)
Sales to Hospital Service Corporations (W. Va. Code §33-24-4)
Sales to Homes and Asylums of Fraternal Orders (W. Va. Code §35-3-1)

WEST VIRGINIA TOURISM DEVELOPMENT CREDIT

STATUTE: West Virginia Code §§5B-2E-7 and 11-15-34

EXEMPTION: 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

VALUE: **Cannot be disclosed**⁶

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.”

⁶ Due to taxpayer confidentiality.

MONETARY ALLOWANCES FROM STREAMLINED SALES TAX

STATUTE:	West Virginia Code §11-15B-30
ALLOWANCE:	Monetary allowances for sales tax collection to certified service providers and to sellers registered under the Streamlined Sales and Use Tax Agreement
VALUE:	\$0 (See Revenue Analysis)

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, collection and remitting sales and use taxes.

Revenue Analysis

Although a monetary allowance is provided for in the Streamlined Sales and Use Tax Agreement, W. Va. Code §11-15B-30(c) prohibits any monetary allowance, discount or other compensation for collecting and remitting West Virginia sales and use taxes until the “cost of collection study” required by the Streamlined Sales and Use Tax Agreement is completed and the monetary allowances are based upon results of that study, or until a federal law requiring remote sellers to collect sales and use taxes for the states that have signed the Agreement requires a monetary allowance. As of the published date of this report, neither condition that would negate the prohibition in W. Va. Code §11-15B-30(c) is in place. Thus, the current expenditure value for the monetary allowance is \$0.

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
- Sales to Persons Exempt Under Laws of the United States

For purposes of this report, these exemptions are considered a basic part of the Consumers Sales and Service Tax and Use 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.

SALES TO THE UNITED STATES GOVERNMENT

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

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

VALUE: **\$63.1 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 Consumers Sales and Service 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 Consumers Sales and Service 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.

FOOD STAMP AND WIC EXEMPTION

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: **\$5.6 million per year at one percent food and food ingredient tax rate**
\$33.4 million per year at six percent base tax rate

Rationale

The exemption for sales of tangible property 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 Consumers Sales and Service Tax upon the poor. Food and food ingredients purchased through the SNAP and WIC programs represent roughly 15.3 percent of total West Virginia food purchases for home consumption.

**TRANSPORTATION OF PASSENGERS
IN INTERSTATE COMMERCE**

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.

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

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**

Examples

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.)

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)

Rationale

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 (W. Va. 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 Consumers Sales and Service Tax.

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

- Sale for Resale
- Credit for Sales Tax Paid to Other States
- Sales to Agricultural Producers
- Sales for Use in the Production of Value-Added Products
- Sales and Services Directly Used or Consumed in Certain Business Activities
- Sales of Newspapers Delivered by Route Carriers
- Sales of Farm Products in Original State by the Producer and Sales of Livestock Sold at Public Auction Sales
- Sales of Services Between Members of the Same Controlled Group
- Sales of Property in Isolated Transactions

SALE FOR RESALE

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.

CREDIT FOR SALES TAX PAID TO OTHER STATES

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.

SALES TO AGRICULTURAL PRODUCERS

STATUTE: West Virginia Code §11-15-9(a)(8)

EXEMPTION: 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

VALUE: \$26.2 million per year

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.

SALES FOR USE IN THE PRODUCTION OF VALUE-ADDED PRODUCTS

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:

- (A) lumber into furniture, toys, collectibles, and home furnishings;
- (B) fruits into wine;
- (C) honey into wine;
- (D) wool into fabric;
- (E) raw hides into semi-finished or finished leather products;
- (F) milk into cheese;
- (G) fruits or vegetables into a dried, canned or frozen product;
- (H) feeder cattle into commonly accepted slaughter weights;
- (I) aquatic animals into a dried, canned, cooked or frozen product; and
- (J) 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.

SALES AND SERVICES DIRECTLY USED OR CONSUMED IN CERTAIN BUSINESS ACTIVITIES

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 tax⁷:

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 [W. Va. Code §11-15-9(b)(2)]

Sales of tangible personal property and services directly used or consumed in the activity of research and development [W. Va. 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 W. Va. Code §11-15-9(b)(2) [W. Va. 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

⁷ Purchases of gasoline and special fuel are excluded from the exemption.

purchaser of the “contracting” services would be entitled to claim the exemption provided by W. Va. Code §11-15-9h(a)(7)⁸ [W. Va. Code §11-15-8d(b)]

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 [W. Va. 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 W. Va. Code §11-15-9n⁹ [W. Va. 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” [W. Va. Code §11-15-8d(c)]

VALUE: \$1,374.0 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 an integral and essential component 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

⁸ W. Va. 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.” The W. Va. Code 11-15-9h(a)(7) exemption is included in the Commodity Expenditure section of this Report under the Sales of Computer Hardware and Software expenditure.

⁹The exemption provided via W. Va. 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.

other industrial users. The final goods are ultimately taxable to the final consumer unless subject to another exemption.

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 Consumers Sales and Service 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.

SALES OF NEWSPAPERS DELIVERED BY ROUTE CARRIERS

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

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

VALUE: **\$1.5 million 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.

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

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 Consumers Sales and Service Tax or Use Tax collected on the sales to the consumer by the retailer. However, some farm products are sold direct from the farm to consumers. This exemption relieves farmers who are not in the retail business of the burden of collecting and remitting Consumers Sales and Service Tax and Use 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.

SALES OF SERVICES BETWEEN MEMBERS OF THE SAME CONTROLLED GROUP

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.

SALES OF PROPERTY IN ISOLATED TRANSACTIONS

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

VALUE: **Negligible**

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 forty-eight hours in duration, and no individual may have more than four isolated transactions within any twelve-month period. Any revenue loss associated with this expenditure is negligible transactions.

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 Consumers Sales and Service 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
- Sales of Motor Vehicles, Recreational Vehicles and Leases of Motor Vehicles
- Sales and Services Subject to Special District Excise Tax

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

SALES OF NATURAL GAS DELIVERED THROUGH MAINS OR PIPES

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

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

VALUE: **\$55.1 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 Consumers Sales and Service 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 Consumers Sales and Service Tax or the Business and Occupation Tax.

Revenue Analysis

The repeal of this exemption (sales of natural gas) by itself would not necessarily result in any increase in Consumers Sales and Service 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 of the sales by non-utilities would probably qualify for the exemption provided for the sales of services directly used in manufacturing, transportation, transmission, communications or the production of natural resources. Also, some natural gas sales would be exempt from the Consumers Sales and Service 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.

SALES OF STEAM AND WATER DELIVERED THROUGH MAINS OR PIPES

STATUTE:	West Virginia Code §11-15-9(a)(1)
EXEMPTION:	Sales of steam and water delivered to consumers through mains or pipes
VALUE:	\$19.3 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 Consumers Sales and Service 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.

SALES OF ELECTRICITY

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

EXEMPTION: Sales of electricity

VALUE: **\$145.2 million per year**

Rationale

Sales of electricity are exempt from the Consumers Sales and Service 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 Consumers Sales and Service Tax and the alternative Business and Occupation Tax.

Revenue Analysis

The calculation of the exemption value 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 Consumers Sales and Service 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 Consumers Sales and Service Tax and Use Tax revenue. Additionally, other exemptions in this report applying to certain sales, or certain groups, would exclude significant amounts of potential revenue from the Consumers Sales and Service Tax and Use 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.

SALES OF MOTOR VEHICLES, RECREATIONAL VEHICLES AND LEASES OF MOTOR VEHICLES

STATUTES: West Virginia Code §§11-15-9(a)(4) and 11-15-9(a)(17)

EXEMPTIONS: Sales of vehicles which are titled by the Division of Motor Vehicles and which are subject to the tax imposed by §17A-3-4 of the West Virginia Code. Leases of motor vehicles titled pursuant to the provisions of West Virginia Code §17A-3-1 et. seq. to lessees for a period of thirty or more consecutive days

VALUE: **Not Applicable**

Rationale

The alternative tax reference in this exemption (i.e., W.Va. Code §17A-3-1 et. seq.) was the Motor Vehicle Privilege Tax. Since the Motor Vehicle Privilege Tax was repealed and vehicles are now subject to the Consumers Sales and Service Tax, the exemption is no longer applicable. See the analysis in Group III (Commodity Expenditures) on the Reduced Tax Rate on Sales of Motor Vehicles in this report.

SALES AND SERVICES SUBJECT TO SPECIAL DISTRICT EXCISE TAX

STATUTE: West Virginia Code §11-15-9f

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

VALUE: **\$14.6 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 Consumers Sales and Service 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.

OTHER PROVISIONS THAT ARE NOT CONSIDERED TAX EXPENDITURES

The expenditure listed below is not considered to be a true expenditure. The provision listed below (i.e., Sales of Highway Project Materials) is merely a revenue transfer mechanism.

Sales of Highway Project Materials

SALES OF HIGHWAY PROJECT MATERIALS

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: **\$14.2 million in 2011**
\$13.1 million in 2012

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 six percent of forty 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.