WEST VIRGINIA CODE: §11-15-8a

§11-15-8a. Contractors.

(a) The provisions of this article shall not apply to contracting services. However, purchases by a contractor of tangible personal property or taxable services for use or consumption in the providing of a contracting service shall be taxable beginning March 1, 1989, except as otherwise provided in this article.

(b) Transition rules. -- The exemption from payment of tax on purchases of tangible personal property or taxable services directly used or consumed in the activity of contracting, as defined in section two of this article, which expires as of March 1, 1989, shall nevertheless remain in effect with respect to:

(1) Tangible personal property or taxable services purchased by a contractor on or after said first day of March in fulfillment of a written contract for contracting, as defined in section two of this article, that was executed and legally binding on the parties thereto on or before February 15, 1989; or in fulfillment of a written contract entered into after February 15 pursuant to a written bid for contracting that was made on or before February 15 that was binding on the contractor, but only to the extent that the bid is subsequently incorporated into a written contract; or

(2) Tangible personal property or taxable services purchased by a contractor on or after March 1 pursuant to a written contract executed on or before February 15, 1989, to purchase in specified quantities identified tangible personal property or specified taxable services; or

(3) Tangible personal property or taxable services purchased by a contractor for consumption or use in fulfillment of a written contract entered into before September 1, 1989, when such contract is for the construction of a new improvement to real property the construction or operation of which was approved by a federal or state regulatory body prior to February 1, 1989, or pursuant to a federal grant awarded prior to such first day of February.

(c) Renewals and extensions. -- A renewal of any contract shall constitute a new contract for purposes of this section, and the date of entry into a contract renewal by the parties, the date or dates of tender of consideration and the time of performance of any contractual obligations under a renewed contract shall be treated as the dates for determining application of this section to the renewed contract. Extensions of time granted or agreed upon by the parties to a contract for performance of the contract or for tender of consideration under the contract shall not be treated as contract renewals. Contracts to which such extensions apply shall be treated under these transition rules as if the original contractual provisions for performance and tender of consideration remain in effect.

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(d) Definitions. -- For purposes of this section:

(1) The term "contract" or "contracts" means written agreements reciting or setting forth a fixed price consideration or a consideration based upon cost plus a stated percentage or a stated monetary increment. This term shall not mean or include ongoing sales contracts, contracts whereby any element of the consideration or the property or services sold or to be rendered in performance of the contract are undefined, or determined, as to either nature or quantity, subsequent to the making of the contract, or any open-ended contract.

(2) The term "contract renewal" or "renewal" means a covenant or agreement entered into or assumed by parties which have a current contractual relation or which have had a past contractual relation, whereby the parties agree to incur obligations beyond those which they were, or would have been, required, at the minimum, to carry out under their current or past contractual relation.

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