WEST VIRGINIA CODE: §11-15A-6A

§11-15A-6a. Collection by certain other retailers.

(a) Duty to collect tax. -- For purposes of this article and for collection of use tax required under section six of this article, a retailer engaging in business in this state also means and includes any of the following:

(1) Any retailer soliciting orders from persons located in this state for the sale of tangible personal property or taxable services by means of a telecommunication or television shopping system which utilizes a telephone or mail ordering system, including toll free telephone numbers, reverse charge telephone systems or other telephone ordering systems and which is intended by the retailer to be broadcast by cable television or other means of broadcasting, to consumers located in this state: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a Constitutionally sufficient nexus for a state to require such a retailer collect and remit use taxes.

(2) Any retailer who solicits orders from persons located in this state for the sale of tangible personal property or taxable services by means of advertising that is broadcast from, printed at, or distributed from, a location in this state if the advertising is primarily intended to be disseminated to consumers located in this state and is only secondarily or incidentally disseminated to bordering jurisdictions. For purposes of this paragraph, advertising which is broadcast from a radio or television station located in this state or is printed in or distributed by a newspaper published in this state is rebuttably presumed to be primarily intended for dissemination to consumers located in this state: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a Constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(3) Any retailer soliciting orders from persons located in this state for the sale of tangible personal property or taxable services by mail if the solicitations are substantial and recurring and if the retailer economically benefits from any banking, financing, debt collection, telecommunication or marketing activities occurring in this state or economically benefits from the location in this state of an authorized installation, servicing or repair facility, regardless of whether such facility is owned or operated by such retailer or by a related or unrelated person: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a Constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(4) Any retailer having a franchisee or licensee operating in this state under the retailer's trade name, if the franchisee or licensee is required to collect the tax imposed by this article or article fifteen of this chapter: Provided, That such retailer has physical presence in this

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state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a Constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(5) Any retailer who, pursuant to a contract with a cable television operator located in this state, solicits from persons located in this state orders for the sale of tangible personal property or taxable services by means of advertising which is transmitted or distributed over a cable television system in this state: Provided, That such retailer has physical presence in this state in the form of employees, offices, agents or sales outlets in this state, or any other presence that provides the necessary minimum contacts for a Constitutionally sufficient nexus for a state to require such a retailer to collect and remit use taxes.

(b) Exemption from payment of business registration tax. -- Any retailer required to collect use tax under the provisions of subsection (a) of this section shall be required to obtain a business registration certificate, as provided in article twelve of this chapter, but shall be exempt from payment of the tax levied by subsection (b), section three of said article twelve, unless the retailer has sufficient presence in this state so that required payment of the tax does not violate any provision of the Constitution or laws of this state or of the United States.

(c) Effective date. -- The provisions of this section shall become effective July 1,1989, and apply to sales of tangible personal property or taxable services made on or after that date.

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