WEST VIRGINIA CODE CHAPTER 11 ARTICLE 15A

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§11-15A-1. Definitions.

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

(b) Definitions. —

(1) "Affiliated person" means a person that, with respect to another person:

(A) Has an ownership interest of more than five percent, whether direct or indirect, in the other person; or

(B) Is related to the other person because a third person, or group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than five percent, whether direct or indirect, in the related persons.

(2) "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of direct or indirect economic gain, benefit or advantage, and includes any purposeful revenue generating activity in this state;

(3) "Consumer" means any person purchasing tangible personal property, custom software or a taxable service from a retailer as defined in §11-15A-1(b)(23), or from a seller as defined in §11-15B-2 of this code;

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(5) "Fiat currency" means government-issued currency that is designated as legal tender in its country of issuance through government decree, regulation, or law;

(6) "Lease" includes rental, hire and license;

(7) "Marketplace" includes any means by which any marketplace seller sells or offers for sale tangible personal property, custom software, or services, for delivery into this state, regardless of whether the marketplace seller has a physical presence in this state;

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

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

(i) Transmitting or otherwise communicating the offer or acceptance between the buyer and

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seller;

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

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

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

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

(i) Payment processing services;

(ii) Fulfillment or storage services;

(iii) Listing products for sale;

(iv) Setting prices;

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

(vi) Order taking;

(vii) Advertising or promotion; or

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

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

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

(10) "Newspaper" means a paper that is printed and distributed usually daily or weekly and that contains news, articles of opinion, features, and advertising.

(11) "Person" includes any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, limited liability company, limited liability partnership, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on

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behalf of others, or any other group or combination acting as a unit, and the plural as well as the singular number;

(12) "Platform" means an electronic or physical medium, including, but not limited to, a website or catalog, operated by a referrer.

(13) "Product" has the same meaning as provided in §11-15B-15 of this code.

(14) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

(15) "Purchase price" means the measure subject to the tax imposed by this article and has the same meaning as sales price;

(16) "Purchaser" means any consumer who purchases or leases a product or service sourced to this state under §11-15B-1 et seq. of this code.

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

(18) (A) "Referrer" means a person, other than a person engaging in the business of printing a newspaper or publishing a newspaper as defined in §11-15A-1(b)(10) of this code, who contracts or otherwise agrees with a seller to list or advertise for sale one or more items in any medium, including a website or catalog; receives a commission, fee, or other consideration from the seller for the listing or advertisement; transfers, via telephone, internet link, or other means, a purchaser to a seller or an affiliated person to complete the sale; and does not collect receipts from the purchasers for the transaction.

(B) "Referrer" does not include a person that:

(i) Provides internet advertising services; and

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

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

(20) "Remote seller" means any seller, other than a marketplace facilitator or referrer, who does not have a physical presence in this state that, through a platform, sells tangible personal property or services to persons in this state, the sale or use of which is subject to the tax imposed by this article. The term does not include an employee who in the ordinary scope of employment renders services to his or her employer in exchange for wages and salaries.

(21) "Resident" means any person that resides, is located, has a place of business, or is

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conducting business in West Virginia;

(22) "Retail sale" and "sale" have the same meaning as provided in §11-15B-1 et seq. of this code.

(23) "Retailer" means and includes every person engaging in the business of selling, leasing or renting tangible personal property or custom software or furnishing a taxable service for use within the meaning of this article, or in the business of selling, at auction, tangible personal property or custom software owned by the person or others for use in this state: Provided, That when in the opinion of the Tax Commissioner it is necessary for the efficient administration of this article to regard any salespersons, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors, employers or persons, the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this article;

(24) "Retailer engaging in business in this state" or any like term, unless otherwise limited by federal statute, means and includes, but is not limited to:

(A) Any retailer having or maintaining, occupying or using, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent (by whatever name called) operating within this state under the authority of the retailer or its subsidiary, irrespective of whether the place of business or agent is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant §31D-15-1 et seq. of this code or §31E-14-1 et seq. of this code; or

(B) On and after January 1, 2014, any retailer that is related to, or part of a unitary business with, a person, entity or business that, without regard to whether the retailer is admitted to do business in this state pursuant to §31D-15-1 et seq. of this code or §31E-14-1 et seq. of this code, is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related entity, a related member or part of a unitary business, all as defined in §11-24-3a of this code;

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

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

(iii) That, by any agent, or representative (by whatever name called), or employee, performs services in this state in connection with tangible personal property or services sold by the

retailer, or any related entity, related member or part of the unitary business; or

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

(C) For purposes of paragraph (B) of this subdivision, the term "service" means and includes, but is not limited to, customer support services, help desk services, call center services, repair services, engineering services, installation service, assembly service, delivery service by means other than common carrier or the United States Postal Service, technical assistance services, the service of investigating, handling or otherwise assisting in resolving customer issues or complaints while in this state, the service of operating a mail order business or telephone, Internet or other remote order business from facilities located within this state, the service of operating a website or Internet-based business from a location within the state, or any other service.

(25) "Sale" means any transaction resulting in the purchase or lease of tangible personal property, custom software or a taxable service from a retailer;

(26) "Seller" means a retailer, and includes every person selling or leasing tangible personal property or custom software or furnishing a taxable service in a transaction that is subject to the tax imposed by this article;

(27) "Solicitor" means a person that directly or indirectly solicits business for a retailer.

(28) "Streamlined sales and use tax agreement" or "agreement", when used in this article, has the same meaning as when used in §11-15B-1 et seq., except when the context in which the word agreement is used clearly indicates that a different meaning is intended by the Legislature;

(29) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, water, gas, and prewritten computer software;

(30) "Tax commissioner" or "commissioner" means the State Tax Commissioner, or his or her delegate. The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article;

(31) "Taxpayer" includes any person within the meaning of this section, who is subject to a tax imposed by this article, whether acting for himself or herself or as a fiduciary; and

(32) "Use" means and includes:

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(A) The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the result of a taxable service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or

(B) The use or enjoyment in this state of the result of a taxable service. As used in this subdivision, "enjoyment" includes a purchaser's right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.

The term "use" does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the state for use thereafter solely outside this state.

(33)(A) "Virtual currency" means any type of digital unit that is used as a medium of exchange or a form of digitally stored value. "Virtual currency" shall be broadly construed to include digital units of exchange that (i) have a centralized repository or administrator; (ii) are decentralized and have no centralized repository or administrator; or (iii) may be created or obtained by computing or manufacturing effort.

(B) "Virtual currency" shall not be construed to include any of the following:

(i) Digital units that (I) are used solely within online gaming platforms, (II) have no market or application outside of those gaming platforms, (III) cannot be converted into, or redeemed for, fiat currency or virtual currency, and (IV) may or may not be redeemable for real-world goods, services, discounts, or purchases;

(ii) Digital units that can be redeemed for goods, services, discounts, or purchases as part of a customer affinity or rewards program with the issuer and/or other designated merchants or can be redeemed for digital units in another customer affinity or rewards program, but cannot be converted into, or redeemed for, fiat currency or virtual currency; or

(iii) Digital units used as part of prepaid cards.

(34) "West Virginia gross revenue" means gross receipts from all sales sourced to West Virginia, as provided in §11-15B-1 et seq. of this code, whether the sale is taxable or exempt from tax.

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

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§11-15A-1a. Legislative findings.

The Legislature hereby finds and declares that:

(1) It is the intent of the Legislature that the use tax imposed by the provisions of article fifteen-a and the consumers sales tax imposed by the provisions of article fifteen of this chapter be complementary laws and wherever possible be construed and applied to accomplish the intent as to the imposition, administration and collection of these taxes; and

(2) On and after January 1, 2004, the taxes levied by this article and article fifteen of this chapter shall also be administered and collected in accordance with the provisions of article fifteen-b of this chapter.

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

(a) An excise tax is hereby levied and imposed on the use in this state of tangible personal property, custom software or taxable services, to be collected and paid as provided in this article or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the property or taxable services, except as otherwise provided in this article.

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

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

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

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

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

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§11-15A-2a. Tax on value of property used or consumed in this state.

(a) Except as otherwise provided, a person who produces for sale, profit or commercial use, any natural resource, product or manufactured product, and uses or consumes such natural resource, product or manufactured product, in this state shall make returns of the gross value of the natural resource, product or manufactured product, so used or consumed by him in this state, and pay the tax imposed by this article, when such use or consumption is not otherwise exempt under this article.

(b) The Tax Commissioner shall promulgate such uniform and equitable rules as he deems necessary for determining the gross value upon which the tax imposed by this article is levied in the absence of a sale, which value shall correspond as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by the same person or by another person.

(c) A person who purchases or leases machinery or equipment or other tangible personal property for use in another state and then uses or consumes such property in this state shall pay the tax imposed by this article on the value of the property so used or consumed in this state. The Tax Commissioner shall promulgate such uniform and equitable rules as he deems necessary for determining the measure of the tax imposed by this article with respect to such property.

(d) The provisions of this section shall apply to property used or consumed in this state on or after May 1, 1989.

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§11-15A-2b. Tax on the manufacture, sale and installation of modular dwellings.

(a) Notwithstanding the provisions of section two-a of this article, persons engaged in the manufacture and sale or the manufacture, sale and installation of a modular dwelling shall pay the tax imposed by this article only on the value of the building supplies and materials used in the manufacture and installation of the modular dwelling and the preparation of the site for permanent installation, and not on the labor involved in such activities. For purposes of this section, the value of the building supplies and materials shall be the actual cost of the building supplies and materials. If the manufacturer asserts an exemption at the time of purchase of the building supplies and materials, the manufacturer shall remit the tax due on the value of the building supplies and materials used in the manufacture of the modular dwelling at the time of sale of the modular dwelling. If the manufacturer pays the tax at the time of purchase of the building supplies and materials, the manufacturer is responsible for maintaining records evidencing payment of the tax. Failure to maintain such records will result in the tax being assessed to the manufacturer.

(b) Persons engaged in the sale and installation of a modular dwelling shall pay the tax imposed by this article on only the value of the materials used in the manufacture and installation of the modular dwelling and the preparation of the site for permanent installation and not on the labor involved in such activities. For purposes of this section, the value of the materials used in the manufacture of the modular dwelling shall be the actual cost of the materials and building supplies to the manufacturer as delineated on the invoice to the purchaser. If the actual cost of the materials is not available, then the cost of the materials used in the manufacture of the modular dwelling shall be sixty percent of the total cost of the modular dwelling. A credit will be given to the purchaser for any sales or use tax that has been lawfully imposed by another state and paid by the manufacturer on the purchase of building supplies and materials used in the manufacture of the modular dwelling. If the manufacturer pays the tax at the time of purchase of the building supplies and materials, the manufacturer is responsible for maintaining records evidencing payment of the tax and delineating the amount on the invoice. Failure to maintain such records will result in the credit being denied.

(c) Definition of modular dwelling. -- For purposes of this article, a modular dwelling shall include, but not be limited to, single and multifamily houses, apartment units and commercial dwellings comprised of two or more sections without a permanent chassis, built to a state or model code other than the National Manufactured Housing Construction and Safety Standards Act of 1974, which are primarily constructed at a location other than the permanent site at which they are to be finally assembled and which are shipped to the site with most permanent components in place.

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§11-15A-3. Exemptions.

(a) The use in this state of the following tangible personal property, custom software and services is hereby specifically exempted from the tax imposed by this article to the extent specified:

(1) All articles of tangible personal property and custom software brought into the State of West Virginia by a nonresident individual thereof for his or her use or enjoyment while temporarily within this state or while passing through this state, except gasoline and special fuel: Provided, That fuel contained in the supply tank of a motor vehicle that is not a motor carrier may not be taxable.

(2) Tangible personal property, custom software or services, the gross receipts from the sale of which are exempt from the sales tax by the terms of article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, and the property or services are being used for the purpose for which it was exempted.

(3) Tangible personal property, custom software or services, the gross receipts or the gross proceeds from the sale of which are required to be included in the measure of the tax imposed by article fifteen, chapter eleven of the Code of West Virginia, 1931, as amended, and upon which the tax imposed by said article fifteen has been paid.

(4) Tangible personal property, custom software or services, the sale of which in this state is not subject to the West Virginia consumers sales tax.

(5) Fifty percent of the measure of tax on mobile homes utilized by the owners thereof as their principal year-round residence and dwelling.

(b) The provisions of this section, as amended in the year 2003, shall apply on and after January 1, 2004.

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§11-15A-3a. Moving residence or business into state.

The tax imposed by this article does not apply to tangible personal property, custom software or services purchased outside this state for use outside this state by a person who at that time was a nonresident natural person, or a business entity not actually doing business within this state, who or which later brings tangible personal property or custom software into this state in connection with his or her establishment of a permanent residence or business in this state: Provided, That the property was purchased more than six months prior to the date it was first brought into this state, or six months prior to the establishment of his or her residence or business, whichever first occurs.

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§11-15A-3b.

Repealed.

Acts, 1996 Reg. Sess., Ch. 239.

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§11-15A-3c.

Repealed.

Acts, 1996 Reg. Sess., Ch. 239.

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§11-15A-3d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the Tax Commissioner may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-nine-a of this code, authorize a person as defined in section two of article fifteen who is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided to pay any tax levied by this article or article fifteen of this chapter directly to the Tax Commissioner and waive the collection of the tax by that person's vendor. This authority is not to be granted or exercised except upon application to the Tax Commissioner and after issuance by the Tax Commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section continues to be valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of the direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors thereof shall be made directly to the Tax Commissioner by the permit holder.

(b) On or before the twentieth day of each month, every permit holder shall make and file with the Tax Commissioner a consumers sales and use tax direct pay permit return for the preceding month in the form prescribed by the Tax Commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of tax due from the permit holder, which amount shall be paid to the Tax Commissioner with the return, and any other information the Tax Commissioner considers necessary: Provided, That if the amount of consumers sales and use taxes due averages less than $250 per month, the Tax Commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount of tax shown thereon to be due shall be remitted on or before the twentieth day following the close of the calendar quarter; and if the amount due averages less than $150 per calendar quarter, the Tax Commissioner may permit the filing of an annual direct pay permit return and the amount of tax shown to be due is to be remitted on or before the thirtieth day after the close of permit holder's taxable year: Provided, however, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amounts established in this subsection. The Tax Commissioner, upon written request filed by the permit holder before the due date of the return, may grant a reasonable extension of time, upon the terms the Tax Commissioner may require, for the making and filing of direct pay permit returns and paying the tax due. Interest on the tax is chargeable on every extended payment at the rate specified in section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section is to be valid until expiration of the taxpayer's registration year under article twelve of this chapter. This permit is automatically renewed when the taxpayer's business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the Tax

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Commissioner.

(d) Persons who hold a direct payment permit which has not been canceled are not required to pay the tax to the vendor as otherwise provided in this article or article fifteen of this chapter. These persons shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of the notice, the vendor is absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases or storage of tangible personal property and sales of services to the permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in a manner by which the amount involved and identity of each purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held the permit, and the person shall promptly notify in writing vendors from whom tangible personal property or services are purchased of the cancellation or surrender. Upon receipt of the notice, the vendor is subject to the provisions of this chapter, without regard to this section, with respect to all sales of tangible personal property or taxable services, thereafter made to or for the person.

(f) The amendments to this section enacted in the year 2006 are effective for tax years beginning on or after January 1, 2006.

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§11-15A-4. Evidence of use.

For the purpose of the proper administration of this article to prevent evasion of the tax, evidence that tangible personal property, custom software or a service was sold by any person for delivery in this state is prima facie evidence that the tangible personal property, custom software or service was sold for use in this state.

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§11-15A-5. How collected.

Unless otherwise provided in this chapter, the tax imposed in §11-15A-2 of this code shall be collected in the following manner:

(1) The tax upon the use of all tangible personal property, custom software or services, sold by a retailer engaging in business in this state, or by any other retailer as the Tax Commissioner authorizes pursuant to §11-15A-7 or §11-15B-1 *et seq*. of this code, shall be collected by the retailer and remitted to the State Tax Commissioner, pursuant to the provisions of §11-15A-6 through §11-15A-10, inclusive, of this code, or by the seller registered under §11-15B-1 *et seq*. of this code, in accordance with the provisions of this article and §11-15B-1 *et seq*. of this code.

(2) The tax upon the use of all tangible personal property, custom software, and taxable services not paid pursuant to subdivision (1) of this section, shall be paid to the Tax Commissioner directly by any person using the property or service within this state, pursuant to the provisions of §11-15A-11 of this code.

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§11-15A-6. Collection by retailer.

(a) Unless otherwise provided in this chapter, every retailer engaging in business in this state and making sales of tangible personal property, custom software, or taxable services for delivery into this state, or with the knowledge, directly or indirectly, that the property or service is intended for use in this state, that are not exempted under the provisions of §11-15A-3 of this code, shall at the time of making the sales, whether within or without the state, collect the tax imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the Tax Commissioner, if the Tax Commissioner prescribes by rule.

(b) Each retailer shall list with the Tax Commissioner the name and address of all the retailer's agents operating in this state, and the location of any and all distribution or sales houses or offices or other places of business in this state of the retailer and the retailer's agent or agents.

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§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 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.

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(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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§11-15A-6b. Collection of tax by marketplace facilitators and referrers.

(a) Duty to collect tax. — For purposes of §11-15A-1 et seq. of this code and for collection of use tax required under §11-15A-6 and §11-15A-6b of this code, the phrase retailer engaging in business in this state also means and includes a remote seller, marketplace facilitator, or referrer that meets the requirements of subsection (e) of this section. A marketplace facilitator or referrer is required to collect and remit the use tax on all taxable sales of tangible personal property, [custom software] or services: (i) Made by the marketplace facilitator or referrer; or (ii) facilitated for marketplace sellers, to purchasers in this state.

(b) Agency. — For purposes of §11-15A-6b of this code, a marketplace facilitator or referrer is deemed to be an agent of any marketplace seller making retail sales through the marketplace facilitator's physical or electronic marketplace or directly resulting from a referral of the purchaser by the referrer.

(c) Sales made through a solicitor in this state. — A retailer is deemed to have a solicitor in this state if the retailer enters into an agreement with a resident under which the resident, for a commission, fee, or other similar consideration, directly or indirectly refers potential customers, whether by link on an internet site, or otherwise, to the retailer. This determination may be rebutted by a showing of proof that the resident with whom the retailer has an agreement did not engage in any solicitation in this state on behalf of the retailer that would satisfy the nexus requirement of the United States Constitution during the calendar year in question.

(d) Record keeping. — In addition to other applicable record keeping requirements, the Tax Commissioner may require a marketplace facilitator or referrer to provide or make available to the Tax Commissioner any information the commissioner determines is reasonably necessary to enforce the provisions of §11-15A-1 et seq. of this code. Such information may include documentation of sales made by marketplace sellers through the marketplace facilitator's physical or electronic marketplace or directly resulting from a referral by the referrer. The Tax Commissioner may prescribe by procedural rule promulgate, as provided in §29A-3-1 et seq. of this code, the form and manner for providing this information.

(e) Economic nexus. — A marketplace facilitator, referrer, or remote seller shall collect the tax imposed by §11-15A-2 of the code when:

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

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

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(f) Effective date. — This section enacted in 2019 shall apply to sales by a marketplace facilitator, or referrer, made on and after July 1, 2019.

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§11-15A-7. Foreign retailers.

The Tax Commissioner may, in his or her discretion, upon application authorize the collection of the tax imposed in section two of this article by any retailer not engaging in business within this state, who, to the satisfaction of the Tax Commissioner, furnishes adequate security to insure collection and payment of the tax. The retailer shall be issued, without charge, a permit to collect the tax in the manner, and subject to the rules and agreements as the Tax Commissioner prescribes. When authorized, it is the duty of the retailer to collect the tax upon all tangible personal property, custom software and services sold to the retailer's knowledge for use within this state, in the same manner and subject to the same requirements as a retailer engaging in business within this state. The authority and permit may be canceled when, at any time, the Tax Commissioner considers the security inadequate, or that the tax can more effectively be collected from the person using the property or taxable service in this state.

WV Legislature

§11-15A-8. Absorbing tax.

(a) A retailer may advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the retailer or that any part required to be added to the purchase price will be refunded, so long as:

(1) The retailer separately states the selling price of the property sold and the full amount of tax imposed by this article on such property; and

(2) For each sale for which the retailer assumes or absorbs all or any part of the tax imposed by this article, the retailer shall remit to the Department of Tax and Revenue the full amount of such tax with the return that covers the period in which the retailer completed the sale or transaction.

(b) The Tax Commissioner has the power to adopt and promulgate rules for adding, assuming, or absorbing the tax, or the equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling retailers to add, assume, absorb, or collect, as far as practicable, the amount of the tax.

(c) The provisions of this section shall apply to §11-15-1 *et seq*. of this code, with the same force and effect as if this section was expressly incorporated therein.

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§11-15A-9. Tax as debt.

The tax required to be collected by any retailer pursuant to section six, six-a or seven of this article, or by any seller or certified service provider pursuant to article fifteen-b of this chapter, and any tax collected by any retailer, seller or certified service provider pursuant to section six, six-a or seven of this article, or article fifteen-b of this chapter, constitutes a debt owed by the retailer, seller or certified service provider to this state. The amount of tax collected shall be held in trust for the State of West Virginia until paid over to the Tax Commissioner.

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§11-15A-10. Payment to Tax Commissioner.

(a) Each retailer required or authorized, pursuant to §11-15A-6, §11-15A-6a, or §11-15A-7 of this code, or pursuant to §11-15B-1 *et seq*. of this code, to collect the tax imposed in §11-15A-2 of this code, is required to pay to the Tax Commissioner the amount of the tax on or before the twentieth day of the month next succeeding each calendar month, except as otherwise provided in this article or §11-15B-1 *et seq*. of this code.

(b) Each certified service provider for a Model I seller shall pay to the Tax Commissioner the tax levied by this article on or before the twentieth day of the month next succeeding the calendar month in which the tax accrued, except as otherwise provided in this article or §11-15B-1 *et seq*. of this code.

(c) At that time, each retailer, seller or certified service provider shall file with the Tax Commissioner a return for the preceding monthly period, except as otherwise provided in this article or §11-15B-1 *et seq*. of this code, in the form prescribed by the Tax Commissioner showing the sales price of any or all tangible personal property, custom software and taxable services sold by the retailer or seller during the preceding quarterly period, the use of which is subject to the tax imposed by this article, and any other information the Tax Commissioner may consider necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of the tax, for the period covered by the return, except as otherwise provided in this article or §11-15B-1 *et seq*. of this code: *Provided*, That where the tangible personal property or custom software is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part of the sum is extended over a period longer than sixty days from the date of the sale, the retailer may collect and remit each monthly period that portion of the tax equal to six percent of that portion of the purchase price actually received during the monthly period.

(d) The Tax Commissioner may, upon request and a proper showing of the necessity to do so, grant an extension of time not to exceed 30 days for making any return and payment.

(e) Returns shall be signed by the retailer or seller or his or her duly authorized agent, and must be certified by him or her to be correct, except as otherwise provided in this article or §11-15B-1 *et seq*. of this code.

(f) Accelerated payment. —

(1) For calendar years beginning after December 31, 2002, taxpayers whose average monthly payment of the taxes levied by this article and §11-15-1 *et seq*. of this code during the previous calendar year exceeds $100,000, shall remit the tax attributable to the first 15 days of June each year on or before June 20 of said month.

(2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall remit an amount equal to the amount of tax imposed by this article and §11-15-1 *et seq*. of this code on actual taxable sales of tangible personal property and custom software and

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sales of taxable services during the first 15 days of June or, at the taxpayer's election, taxpayer may remit an amount equal to 50 percent of taxpayer's liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

(3) For a business which has not been in existence for a full calendar year, the total tax due from the business during the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year; and if that amount exceeds $100,000, the tax attributable to the first 15 days of June each year shall be remitted on or before June 20 of said month as provided in subdivision (2) of this subsection.

(4) When a taxpayer required to make an advanced payment of tax under subdivision (1) of this subsection makes out its return for the month of June, which is due on July 20, the taxpayer may claim as a credit against its liability under this article for tax on taxable transactions during the month of June, the amount of the advanced payment of tax made under subdivision (1) of this subsection.

(g) Effective upon passage, the provisions of §11-15A-10(f) of this code shall no longer have any force or effect.

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§11-15A-10a. Credit for sales tax liability paid to another state.

(a) A person is entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of sales tax lawfully paid to another state for the acquisition of that property or service: Provided, That the amount of credit allowed does not exceed the amount of use tax imposed on the use of the property in this state.

(b) For purposes of this section:

(1) "Sales tax" includes a sales tax or compensating use tax imposed on the use of tangible personal property or a service by the state in which the sale occurred; and

(2) "State" includes the District of Columbia but does not include any of the several territories organized by Congress.

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§11-15A-11. Liability of user.

(a) Any person who uses any tangible personal property, custom software or the results of a taxable service upon which the tax herein imposed has not been paid either to a retailer or direct to the Tax Commissioner is liable for the amount of the nonpayment, and persons required by law to hold a West Virginia business registration certificate shall on or before the fifteenth day of the month next succeeding each quarterly period pay the tax imposed in section two of this article upon all the property and services used by him or her during the preceding quarterly period and accompanied by returns the Tax Commissioner prescribes: Provided, That if the aggregate annual tax liability of any person under this article is $600 or less, the person shall, in lieu of the quarterly payment and filing, pay the tax on or before the fifteenth day of the first month next succeeding the end of his or her taxable year, and shall file the annual return as may be prescribed by the Tax Commissioner. The Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the foregoing minimum amounts.

(b) Any individual who is not required by law to hold a West Virginia business registration certificate, who uses any personal property or taxable service upon which the West Virginia use tax has not been paid either to a retailer or directly to the Tax Commissioner is liable for the West Virginia use tax upon property or taxable services and, notwithstanding the amount of the annual aggregate annual tax liability, shall pay the use tax imposed upon all property or taxable services used by him or her during the taxpayer's federal taxable year on or before April 15 of the taxpayer's next succeeding federal tax year, and shall file the annual return therewith as the Tax Commissioner may authorize or require.

(c) All of the provisions of section ten with reference to quarterly or annual returns and payments are applicable to the returns and payments required under this section.

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§11-15A-12. Bond to secure payment.

The Tax Commissioner may, when in his judgment it is necessary and advisable to do so in order to secure the collection of the tax levied under this article, authorize any person subject to such tax and any retailer required or authorized to collect such tax, pursuant to the provisions of sections six and seven of this article, to file with him a bond issued by a surety company authorized to transact business in this state and approved by the Insurance Commissioner as to solvency and responsibility, in such amount as the Tax Commissioner may fix, to secure the payment of any tax, additions to tax, penalties and interest due or which may become due from such person. In lieu of such bond, securities approved by the Tax Commissioner, in such amount as he may prescribe, may be deposited with him which securities shall be kept in the custody of the State Treasurer and may be sold by him at public or private sale, after notice to the depositor thereof, if it becomes necessary to do so in order to recover any tax, additions to tax, penalties and interest due. Upon any such sale, the surplus, if any, above the amounts due under this article and article ten of this chapter, shall be returned to the person who deposited the securities.

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§11-15A-13. Tax on gasoline and special fuel; section repealed January 1, 2004.

(a) Imposition of tax. --

(1) On deliveries in this state. -- Gasoline or special fuel furnished or delivered within this state to consumers or users is subject to tax at the rate imposed by section two of this article: Provided, That the amount of tax due under section two shall in no event be less than five percent of the average wholesale price of gasoline and special fuel and with the price to, in no case, be determined to be less than 97¢ per gallon for all gallons of gasoline and special fuel taxable under section two of this article.

(2) On purchases out-of-state. -- An excise tax is hereby imposed on the use or consumption in this state of gasoline or special fuel purchased outside this state at the rate of five percent of the average wholesale price of gasoline or special fuel, as determined under subsection (c), notwithstanding any provision of this article to the contrary: Provided, That gasoline or special fuel contained in the supply tank of a motor vehicle that is not a motor carrier is not taxable, except that gasoline or special fuel imported in the supply tank or auxiliary tank of construction equipment, mining equipment, track maintenance equipment or other similar equipment, is taxed in the same manner as that in the supply tank of a motor carrier.

(b) Definitions. -- Terms used in this section have the same meaning as when used in a comparable context in section eighteen, article fifteen of this chapter.

(c) Determination of average wholesale price. --

(1) To simplify determining the average wholesale price of all gasoline and special fuel, the Tax Commissioner shall, effective with the period beginning the first day of the month of the effective date of this section and each first day of January, annually, thereafter, determine the average wholesale price of gasoline and special fuel for each annual period, on the basis of sales data gathered for the preceding period of July 1, through the thirty-first day of October. Notification of the average wholesale price of gasoline and special fuel shall be given by the Tax Commissioner at least thirty days in advance of each first day of January, annual period, by filing notice of the average wholesale price in the state register, and by other means as the Tax Commissioner considers reasonable: Provided, That notice of the average wholesale price of gasoline and special fuel for the first period shall be timely given if filed in the state register on the effective date of this section.

(2) The "average wholesale price" means the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of gasoline or diesel fuel, as determined by the Tax Commissioner from information furnished by distributors of gasoline or special fuel in this state, or any other information regarding wholesale selling prices as the Tax Commissioner may gather, or a combination of information: Provided, That in no event shall the average wholesale price be determined to be less than 97¢ per gallon of gasoline or special fuel.

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(3) All actions of the Tax Commissioner in acquiring data necessary to establish and determine the average wholesale price of gasoline and special fuel, in providing notification of his or her determination prior to the effective date of any change in rate, and in establishing and determining the average wholesale price of fuel, may be made by the Tax Commissioner without compliance with the provisions of article three, chapter twenty-nine-a of this code.

(4) In any administrative or court proceeding brought to challenge the average whole price of gasoline and special fuel as determined by the Tax Commissioner, his or her determination is presumed to be correct and shall not be set aside unless it is clearly erroneous.

(d) Computation of tax due from motor carriers. -- Every person who operates or causes to be operated a motor carrier in this state shall pay the tax imposed by this section on the average wholesale price of all gallons of gasoline or special fuel used in the operation of any motor carrier within this state, under the following rules:

(1) The total amount of gasoline or special fuel used in the operation of the motor carrier within this state is that proportion of the total amount of gasoline and special fuel used in any motor carrier's operations within and without this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

(2) A motor carrier shall first determine the gross amount of tax due under this section on the average wholesale value, determined under subsection (c) of this section, of all gasoline and special fuel used in the operation of the motor carrier within this state during the preceding quarter, as if all gasoline and special fuel had been purchased outside this state.

(3) Next, the taxpayer shall determine the total tax paid under article fifteen of this chapter on all gasoline and special fuel purchased in this state for use in the operation of the motor carrier.

(4) The difference between (2) and (3) is the amount of tax due under this article when (2) is greater than (3), or the amount to be refunded or credited to the motor carrier when (3) is greater than (2), which refund or credit is allowed in the same manner and under the same conditions as a refund or credit is allowed for the tax imposed by article fourteen-a of this chapter.

(e) Return and payment of tax. -- Tax due under this article on the uses or consumption in this state of gasoline or special fuel shall be paid by each taxpayer on or before the twenty-fifth day of January, April, July and October of each year, notwithstanding any provision of this article to the contrary, by check, bank draft, certified check or money order, payable to the Tax Commissioner, for the amount of tax due for the preceding quarter. Every taxpayer shall make and file with his or her remittance, a return showing the information the Tax Commissioner requires.

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(f) Compliance. -- To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner may require motor carriers liable for the taxes imposed by this article on the use of gasoline or special fuel in the operation of motor carriers within this state, and the tax imposed by article fourteen-a of this chapter on gallons of fuel, to file a combined return and make a combined payment of the tax due under this article and article fourteen-a of this chapter on the fuel. In order to encourage use of a combined return and the making of a single payment each quarter for both taxes, the due date of the return and tax due under article fourteen-a of this chapter is hereby changed from the last day of January, April, July and October of each calendar year, to the twenty-fifth day of each of those months, notwithstanding any provisions in article fourteen-a of this chapter to the contrary.

(g) Dedication of tax to highways. -- All tax collected under the provisions of this section after deducting the amount of any refunds lawfully paid shall be deposited in the "road fund" in the State Treasurer's office, and used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of principal and interest on state bonds issued for highway purposes.

(h) Construction. -- The tax imposed by this article on the use of gasoline or special fuel in this state is not construed as taxing any gasoline or special fuel which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(i) Effective date. --

This section shall have no force or effect after December 31, 2003: Provided, That tax liabilities arising for periods ending before January 1, 2004, shall be determined, paid, administered, assessed and collected as if this section had not been repealed, and the rights and duties of the taxpayer and the State of West Virginia are fully and completely preserved.

(j) Validation. -- Inasmuch as there is currently litigation challenging the lawfulness of this section in the situation where a motor carrier purchases gasoline or special fuel in another state paying to that other state a sales tax thereon and then consumes that gasoline or special fuel in its operation of a motor carrier in this state, without being statutorily allowed a credit for the sales tax against the tax imposed by this article with respect to the gallonage of tax paid fuel consumed in this state; and inasmuch as section ten-a of this article reestablishes the allowance of a credit and makes the allowance effectively retroactive and applicable to gasoline and special fuel consumed in this state after June 30, 1985, the purported Constitutional infirmity is cured. To avoid any question about whether this section was in effect subsequent to June 30, 1985, this section is reenacted and expressly made retroactive to July 1, 1985, and the Tax Commissioner shall not refund or credit any tax previously paid under this section due to a claim that the tax was not lawfully imposed subsequent to June 30, 1985.

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§11-15A-13a. Tax on motor fuel effective January 1, 2004.

(a) Imposition of tax. –

(1) On deliveries in this state. – Effective January 1, 2004, motor fuel furnished or delivered within this state which is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter is subject to the tax imposed by this article which comprises the variable component of the tax imposed by section five, article fourteen-c, and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c is remitted. The amount of tax due under this article shall not be less than five percent of the average wholesale price of motor fuel as determined in accordance with said section five, article fourteen-c.

(2) On purchases out-of-state subject to motor fuel tax. – Effective January 1, 2004, an excise tax is imposed on the importation into this state of motor fuel purchased outside this state when the purchase is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter. The rate of the tax due under this article shall not be less than five percent of the average wholesale price of the motor fuel, as determined in accordance with said section five, article fourteen-c. The motor fuel subject to the tax imposed by this article comprises the variable component of the tax imposed by section five, article fourteen-c, and shall be collected and remitted by the seller at the time the seller remits the tax imposed by the said section five, article fourteen-c.

(3) On other purchases out-of-state. – An excise tax is imposed on the use or consumption in this state of motor fuel purchased outside this state at the rate of five percent of the average wholesale price of the motor fuel, as determined in accordance with section five, article fourteen-c of this chapter. Motor fuel contained in the fuel supply tank of a motor vehicle that is not a motor carrier is not taxable except that motor fuel imported in the fuel supply tank or auxiliary tank of construction equipment, mining equipment, track maintenance equipment or other similar equipment, is taxed in the same manner as that in the fuel supply tank of a motor carrier.

(4) On use of alternative fuel. – Effective January 1, 2014, an excise tax is imposed on alternative fuel used within this state which is subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter. Alternative fuel is subject to the tax imposed by this article and comprises the variable component of the tax imposed by the section five, article fourteen-c of this chapter and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is remitted. The amount of tax due under this article shall not be less than five percent of the average wholesale price of alternative fuel as determined in accordance with section five, article fourteen-c of this chapter.

(b) Definitions. – For purposes of this article, the terms "gasoline" and "special fuel" are defined as provided in section two, article fourteen-c of this chapter. Other terms used in this section have the same meaning as when used in a similar context in article fourteen-c of

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this chapter.

(c) Computation of tax due from motor carriers. – Every person who operates or causes to be operated a motor carrier in this state shall pay the tax imposed by this section on the average wholesale price of all gallons or equivalent gallons of motor fuel used in the operation of a motor carrier within this state, under the following rules:

(1) The total amount of motor fuel used in the operation of the motor carrier within this state is that proportion of the total amount of motor fuel used in a motor carrier's operations within and without this state, that the total number of miles traveled within this state bears to the total number of miles traveled within and without this state.

(2) A motor carrier shall first determine the gross amount of tax due under this section on the average wholesale value, determined under section five, article fourteen-c of this chapter, of motor fuel used in the operation of the motor carrier within this state during the preceding quarter, as if all gasoline and special fuel had been purchased outside this state.

(3) Next, the taxpayer shall determine the total tax paid under article fifteen of this chapter on all motor fuel purchased in this state for use in the operation of the motor carrier.

(4) The difference between (2) and (3) is the amount of tax due under this article when (2) is greater than (3), or the amount to be refunded or credited to the motor carrier when (3) is greater than (2), which refund or credit is allowed in the same manner and under the same conditions as a refund or credit is allowed for the tax imposed by article fourteen-a of this chapter.

(d) Return and payment of tax. -- Tax due under this article on the uses or consumption in this state of motor fuel shall be paid by each taxpayer on or before January 25, April 25, July 25 and October 25 of each year, notwithstanding any provision of this article to the contrary, by check, bank draft, certified check or money order, payable to the Tax Commissioner, for the amount of tax due for the preceding quarter. The tax due under this article comprising the variable component of the tax due under article fourteen-c of this chapter is due on the last day of the month. Every taxpayer shall make and file with his or her remittance, a return showing the information the Tax Commissioner requires. The tax due under this article comprising the variable component of the tax due under article fourteen-c of this chapter on alternative fuel, is due and shall be collected and remitted at the time the tax imposed by section five, article fourteen-c of this chapter is due, collected and remitted.

(e) Compliance. -- To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner shall require motor carriers liable for the taxes imposed by this article on the use of motor fuel in the operation of motor carriers within this state, and the tax imposed by article fourteen-a of this chapter on such gallons of motor fuel, to file a combined return and make a combined payment of the tax due under this article and article fourteen-a of this chapter on the fuel. In order to encourage use of a combined return and the making of a single payment each quarter for both taxes, the due date of the return and tax due under

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article fourteen-a of this chapter is the last day of January, April, July and October of each calendar year: Provided, That the Tax Commissioner may prescribe reporting and payment requirements for tax due under this article on alternative fuel which accommodate the due dates and requirements prescribed in this article and article fourteen-c of this chapter, either under a separate return and payment or a combined return and payment, within the discretion of the Tax Commissioner.

(f) Dedication of tax to highways. – Tax collected under the provisions of this section, after deducting the amount of refunds lawfully paid, shall be deposited in the Road Fund in the State Treasurer's office and used only for the purpose of construction, reconstruction, maintenance and repair of highways and payment of principal and interest on state bonds issued for highway purposes.

(g) Construction. – The tax imposed by this article on the use of motor fuel in this state does not tax motor fuel which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

(h) Effective date. – The provisions of this section take effect January 1, 2004. The provisions of this section enacted during the 2013 legislative session take effect on January 1, 2014.

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§11-15A-14.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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§11-15A-15.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

WV Legislature

§11-15A-16.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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§11-15A-17.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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§11-15A-18. Seller must show sale not at retail; presumption.

(a) The burden of proving that a sale was not taxable shall be upon the seller, unless, the seller, in good faith, takes from the purchaser a certificate signed by and bearing the address of the purchaser setting forth the reason for exemption of the sale from imposition of the tax.

(b) Notwithstanding subsection (a) of this section, a seller is relieved of the good faith requirement for the taking of an exemption certificate in accordance with article fifteen-b of this chapter, and any rule promulgated by the Tax Commissioner.

(c) To prevent evasion it is presumed that all proceeds are subject to the tax until the contrary is clearly established.

(d) This certificate shall be substantially in the form prescribed by the Tax Commissioner.

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§11-15A-19.

Repealed.

Acts, 1984 Reg. Sess., Ch. 170.

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§11-15A-20.

Repealed.

Acts, 1984 Reg. Sess., Ch. 170.

WV Legislature

§11-15A-21. Books; examination.

(a) Every retailer required or authorized to collect taxes imposed by this article and every person using in this state tangible personal property, custom software or taxable services shall keep records, receipts, invoices, and other pertinent papers as the Tax Commissioner requires, in any form as the Tax Commissioner requires.

(b) In addition to the Tax Commissioner's powers set forth in article ten of this chapter, the Tax Commissioner or any of his or her duly authorized agents is hereby authorized to examine the books, papers, records and equipment of any person who either:

(1) Is selling tangible personal property, custom software or taxable services; or

(2) Is liable for the tax imposed by this article, and to investigate the character of the business of any person in order to verify the accuracy of any return made, or if no return was made by the person, to ascertain and determine the amount due under the provisions of this article.

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§11-15A-22. Canceling or revoking permits.

Whenever any retailer engaging in business in this state, or authorized to collect the tax imposed in this article pursuant to section seven of this article, fails to comply with any of the provisions of this article or any orders, or rules of the Tax Commissioner prescribed and adopted for this article under article ten of this chapter, the Tax Commissioner may, upon notice and hearing, by order, cancel the business registration certificate, if any, issued to the retailer under article twelve, chapter eleven of the Code of West Virginia, 1931, as amended, or if the retailer is a corporation authorized to do business in this state under article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code, may certify to the Secretary of State a copy of an order finding that the retailer has failed to comply with certain specified provisions, orders, or rules. The Secretary of State shall, upon receipt of the certification, revoke the permit authorizing the corporation to do business in this state, and shall issue a new permit only when the corporation has obtained from the Tax Commissioner an order finding that the corporation has complied with its obligations under this article. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why the order should not be made, and the corporation shall be given twenty days' notice of the time, place and purpose of the hearing, which shall be heard as provided in article ten-a of this chapter. The Tax Commissioner shall have the power in his or her discretion to issue a new business registration certificate after the business registration certificate is canceled.

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§11-15A-23. Tax imposed is in addition to all other taxes and charges.

The tax imposed under this article shall be in addition to all other taxes, licenses or charges to which the persons taxed herein are subject under the law of this state. It is the purpose of this article to rest a fair share of the tax burden, commensurate with the benefits received, upon those exercising the privilege taxed hereby within this state.

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§11-15A-24.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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§11-15A-25.

Repealed.

Acts, 1978 Reg. Sess., Ch. 95.

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§11-15A-26.

Repealed.

Acts, 1986 2nd Ex. Sess., Ch. 6.

WV Legislature

§11-15A-27. Construction; partial unconstitutionality.

(a) If a court of competent jurisdiction finds that the provisions of this article and of article fifteen-b of this chapter conflict and cannot be harmonized, then the provisions of article fifteen-b shall control.

(b) If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision does not affect the validity of the remaining portions of this article or any part thereof.

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§11-15A-28. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the tax imposed by this article fifteen-a with like effect as if said act were applicable only to the tax imposed by this article fifteen-a and were set forth in extenso in this article fifteen-a.

WV Legislature

§11-15A-29. Effective date.

The provisions of this article, as amended or added during the regular legislative session in the year 2003, shall take effect January 1, 2004, and apply to all sales made on or after that date and to all returns and payments due on or after that day.

WV Legislature