WEST VIRGINIA CODE: §11-15B-15

§11-15B-15. General transaction sourcing rules.

(a) General rule. -- For purposes of articles fifteen and fifteen-a of this chapter, the retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's designated donee occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(4) When subdivisions (1), (2) and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, provided use of this address does not constitute bad faith.

(5) When none of the previous subdivisions of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property or computer software was shipped, from which the digital goods delivered electronically was first available for transmission by the seller or from which the service was provided: Provided, That any location that merely provided the digital transfer of the product sold is disregarded for these purposes.

(b) Lease or rental. -- The lease or rental of tangible personal property or custom software, other than property identified in subsection (c) or (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location may not be altered by

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intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(c) Vehicles. -- The lease or rental of motor vehicles, trailers, semitrailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.

(d) Sale or lease or rental of transportation equipment. -- The retail sale, including lease or rental, of transportation equipment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section, notwithstanding the exclusion of lease or rental in said subsection. "Transportation equipment" means any of the following:

(1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand pounds or greater, trailers, semitrailers or passenger buses that are:

(A) Registered through the international registration plan; and

(B) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

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(3) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3), inclusive, of this subsection.

(e) Exceptions. -- Subsections (a) and (b) of this section shall not apply to the following goods or services:

(1) Telecommunications services, ancillary services and Internet access services, as set out in section twenty of this article, shall be sourced in accordance with section nineteen of this article; and

(2) Until January 1, 2010, a seller who is primarily engaged in the retail sale of cut flowers and flower arrangements taking the original order to sell tangible personal property shall source the sale to the place where order was taken. For purposes of this exception, "primarily" means more than fifty percent of the seller's total gross sales or receipts are derived from that activity. In determining if a seller is primarily a florist, the total sales price of cut flowers and floral arrangements includes separately stated delivery or service charges. After December 31, 2009, sales by florists shall be subject to the general sourcing rules stated in subsection (a) of this section.

(f) Product defined. -- As used in subsection (a) of this section, "product" includes tangible personal property, computer software or digital goods or a service, or any combination thereof.

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