WEST VIRGINIA CODE: §11-15B-2

§11-15B-2. Definitions.

(a) General. -- When used in this article and articles fifteen and fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except where a different meaning is distinctly expressed or the context in which the term is used clearly indicates that a different meaning is intended by the Legislature.

(b) Terms defined. --

(1) "Agent" means a person appointed by a seller to represent the seller before the member states.

(2) "Agreement" means the Streamlined Sales and Use Tax Agreement as defined in section two-a of this article.

(3) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one half of one percent or more of alcohol by volume.

(4) "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where: (i) The products are otherwise distinct and identifiable; and (ii) the products are sold for one nonitemized price. A "bundled transaction" does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(A) "Distinct and identifiable products" does not include:

(i) Packaging such as containers, boxes, sacks, bags and bottles or other materials such as wrapping, labels, tags and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoe boxes, dry cleaning garment bags and express delivery envelopes and boxes;

(ii) A product provided free of charge with the required purchase of another product. A product is "provided free of charge" if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or

(iii) Items included in the member state's definition of "sales price" as defined in this section.

(B) The term "one nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card or price list.

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(C) A transaction that otherwise meets the definition of a "bundled transaction", as defined in this subdivision, is not a "bundled transaction" if it is:

(i) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service and is provided exclusively in connection with the service and the true object of the transaction is the service; or

(ii) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(iii) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis;

(I) "De minimis" means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products;

(II) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis;

(III) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) A transaction that includes products taxable at the general rate of tax and food or food ingredients taxable at a lower rate of tax and the purchase price or sales price of the products taxable at the general sales tax rate is de minimis. For purposes of this subparagraph, the term "de minimis" has the same meaning as ascribed to it under subparagraph (iii) of this paragraph;

(v) The retail sale of exempt tangible personal property, or food and food ingredients taxable at a lower rate of tax, and tangible personal property taxable at the general rate of tax where:

(I) The transaction includes "food and food ingredients", "drugs", "durable medical equipment", "mobility-enhancing equipment", "over-the-counter drugs", "prosthetic devices" or "medical supplies", all as defined in this article; and

(II) Where the seller's purchase price or sales price of the taxable tangible personal property taxable at the general rate of tax is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.

(5) "Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of

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bars, drops or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(6) "Clothing" means all human wearing apparel suitable for general use. The following list contains examples and is not intended to be an all-inclusive list.

(A) "Clothing" shall include:

(i) Aprons, household and shop;

(ii) Athletic supporters;

(iii) Baby receiving blankets;

(iv) Bathing suits and caps;

(v) Beach capes and coats;

(vi) Belts and suspenders;

(vii) Boots;

(viii) Coats and jackets;

(ix) Costumes;

(x) Diapers, children and adult, including disposable diapers;

(xi) Ear muffs;

(xii) Footlets;

(xiii) Formal wear;

(xiv) Garters and garter belts;

(xv) Girdles;

(xvi) Gloves and mittens for general use;

(xvii) Hats and caps;

(xviii) Hosiery;

(xix) Insoles for shoes;

(xx) Lab coats;

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(xxi) Neckties;

(xxii) Overshoes;

(xxiii) Pantyhose;

(xxiv) Rainwear;

(xxv) Rubber pants;

(xxvi) Sandals;

(xxvii) Scarves;

(xxviii) Shoes and shoe laces;

(xxix) Slippers;

(xxx) Sneakers;

(xxxi) Socks and stockings;

(xxxii) Steel-toed shoes;

(xxxiii) Underwear;

(xxxiv) Uniforms, athletic and nonathletic; and

(xxxv) Wedding apparel.

(B) "Clothing" shall not include:

(i) Belt buckles sold separately;

(ii) Costume masks sold separately;

(iii) Patches and emblems sold separately;

(iv) Sewing equipment and supplies, including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures and thimbles; and

(v) Sewing materials that become part of clothing including, but not limited to, buttons, fabric, lace, thread, yarn and zippers.

(7) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing. "Clothing accessories or equipment" are mutually exclusive of and may be taxed differently than apparel within the definition of "clothing", "sport or

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recreational equipment" and "protective equipment". The following list contains examples and is not intended to be an all-inclusive list. "Clothing accessories or equipment" shall include:

(A) Briefcases;

(B) Cosmetics;

(C) Hair notions, including, but not limited to, barrettes, hair bows and hair nets;

(D) Handbags;

(E) Handkerchiefs;

(F) Jewelry;

(G) Sunglasses, nonprescription;

(H) Umbrellas;

(I) Wallets;

(J) Watches; and

(K) Wigs and hair pieces.

(8) "Certified automated system" or "CAS" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

(9) "Certified service provider" or "CSP" means an agent certified under the agreement to perform all of the seller's sales and use tax functions other than the seller's obligation to remit tax on its own purchases.

(10) "Computer" means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

(11) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(12) "Computer software maintenance contract" means a contract that obligates a vendor of computer software, or other person, to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both. The term "computer software maintenance contract" includes contracts sold by a person other than the vendor of the computer software to which the contract relates.

(A) A "mandatory computer software maintenance contract" is a computer software

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maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.

(B) An "optional computer maintenance contract" is a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

(13) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(14) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating and packing.

(15) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraph (i) through (v), inclusive, of this paragraph;

(B) And is intended for ingestion in tablet, capsule, powder, softgel, gelcap or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label as required pursuant to 21 CFR § 101.36 or in any successor section of the Code of Federal Regulations.

(16) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly

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or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(17) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease; or

(C) Intended to affect the structure or any function of the body. The amendment to this subdivision enacted during the 2009 regular legislative session shall apply to sales made after July 1, 2009.

(18) "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, but does not include mobility-enhancing equipment, which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

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

(20) "Eligible property" means an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in this state.

(21) "Energy Star qualified product" means a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at www.energystar.gov or successor address.

(22) "Entity-based exemption" means an exemption based on who purchases the product or service or who sells the product or service. An exemption that is available to all individuals shall not be considered an entity-based exemption.

(23) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are

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consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, prepared food or tobacco.

(24) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

(25)"Fur clothing" means clothing that is required to be labeled as a fur product under the Federal Fur Products Labeling Act (15 U. S. C. §69) and the value of the fur components in the product is more than three times the value of the next most valuable tangible component. "Fur clothing" is human-wearing apparel suitable for general use but may be taxed differently from clothing. For the purposes of the definition of "fur clothing", the term "fur" means any animal skin or part thereof with hair, fleece or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins that have been converted into leather or suede, or which in processing the hair, fleece or fur fiber has been completely removed.

(26) "Governing board" means the governing board of the Streamlined Sales and Use Tax Agreement.

(27) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants and sun tan lotions and screens, regardless of whether the items meet the definition of "over-the-counter drugs".

(28) "Includes" and "including" when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

(29) "Layaway sale" means a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.

(30) "Lease" includes rental, hire and license. "Lease" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) "Lease" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of $100 or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate

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period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect or set up the tangible personal property.

(iv) "Lease" or "rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U. S. C. §7701(h)(1).

(B) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code or other provisions of federal, state or local law.

(31) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(32) "Mobility-enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include "durable medical equipment", which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(33) "Model I seller" means a seller registered under the Streamlined Sales and Use Tax Agreement that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(34) "Model II seller" means a seller registered under the Streamlined Sales and Use Tax Agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(35) "Model III seller" means a seller registered under the Streamlined Sales and Use Tax Agreement that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(36) "Model IV seller" means a seller registered under the Streamlined Sales and Use Tax Agreement and is not a Model I seller, a Model II seller or a Model III seller.

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(37) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR §201.66. The "over-the-counter drug" label includes:

(A) A drug facts panel; or

(B) A statement of the active ingredient(s) with a list of those ingredients contained in the compound, substance or preparation.

(38) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

(39) "Personal service" includes those:

(A) Compensated by the payment of wages in the ordinary course of employment; and

(B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services.

(40) (A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food.

(B) "Prepared food" in subparagraph (ii), paragraph (A) of this subdivision does not include food that is only cut, repackaged or pasteurized by the seller, and eggs, fish, meat, poultry and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code of 2001 so as to prevent food-borne illnesses.

(C) Additionally, "prepared food" as defined in this subdivision does not include:

(i) Food sold by a seller whose proper primary NAICS classification is manufacturing in Sector 311, except Subsection 3118 (bakeries);

(ii) Food sold in an unheated state by weight or volume as a single item; or

(iii) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

(41) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner authorized by the

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laws of this state to issue prescriptions.

(42) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

(B) "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.

(C) "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(43) "Product-based exemption" means an exemption based on the description of the product or service and not based on who purchases the product or service or how the purchaser intends to use the product or service.

(44) "Prosthetic device" means a replacement, corrective or supportive device, including repair and replacement parts for the device worn on or in the body, to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction of the body; or

(C) Support a weak or deformed portion of the body.

(45) "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(46) "Purchase price" means the measure subject to the tax imposed by article fifteen or fifteen-a of this chapter and has the same meaning as sales price.

(47) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

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(48) "Retail sale" or "sale at retail" means:

(A) Any sale, lease or rental for any purpose other than for resale as tangible personal property, sublease or subrent; and

(B) Any sale of a service other than a service purchased for resale.

(49) (A) "Sales price" means the measure subject to the tax levied under article fifteen or fifteen-a of this chapter and includes the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges; and

(v) Installation charges.

(B) "Sales price" does not include:

(i) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; or

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) "Sales price" shall include consideration received by the seller from third parties if:

(i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the

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seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a preferred customer card that is available to any patron does not constitute membership in such a group); or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(50) "Sales tax" means the tax levied under article fifteen of this chapter.

(51) "School art supply" means an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms "school supply", "school instructional material" and "school computer supply" and may be taxed differently. The following is an all-inclusive list:

(A) Clay and glazes;

(B) Paints; acrylic, tempora and oil;

(C) Paintbrushes for artwork;

(D) Sketch and drawing pads; and

(E) Watercolors.

(52) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms "school supply", "school art supply" and "school computer supply" and may be taxed differently. The following is an all-inclusive list:

(A) Reference books;

(B) Reference maps and globes;

(C) Textbooks; and

(D) Workbooks.

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(53) "School computer supply" means an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms "school supply", "school art supply" and "school instructional material" and may be taxed differently. The following is an all-inclusive list:

(A) Computer storage media; diskettes, compact disks;

(B) Handheld electronic schedulers, except devices that are cellular phones;

(C) Personal digital assistants, except devices that are cellular phones;

(D) Computer printers; and

(E)Printer supplies for computers; printer paper, printer ink.

(54) "School supply" means an item commonly used by a student in a course of study. The term is mutually exclusive of the terms "school art supply", "school instructional material" and "school computer supply" and may be taxed differently. The following is an all-inclusive list of school supplies:

(A) Binders;

(B) Book bags;

(C) Calculators;

(D) Cellophane tape;

(E) Blackboard chalk;

(F) Compasses;

(G) Composition books;

(H) Crayons;

(I) Erasers;

(J) Folders; expandable, pocket, plastic and manila;

(K) Glue, paste and paste sticks;

(L) Highlighters;

(M) Index cards;

(N) Index card boxes;

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(O) Legal pads;

(P) Lunch boxes;

(Q) Markers;

(R) Notebooks;

(S) Paper; loose-leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board and construction paper;

(T) Pencil boxes and other school supply boxes;

(U) Pencil sharpeners;

(V) Pencils;

(W) Pens;

(X) Protractors;

(Y) Rulers;

(Z) Scissors; and

(AA) Writing tablets.

(55) "Seller" means any person making sales, leases or rentals of personal property or services.

(56) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale or any service furnished by a business that is subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission of this state. The term "service" or "selected service" does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer's, distributor's or other third-party's marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement and these payments are not considered to be payments for a service or selected service rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(57) "Soft drink" means nonalcoholic beverages that contain natural or artificial sweeteners.

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"Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes or greater than fifty percent of vegetable or fruit juice by volume.

(58) "Sport or recreational equipment" means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. Sport or recreational equipment are mutually exclusive of and may be taxed differently than apparel within the definition of "clothing", "clothing accessories or equipment" and "protective equipment". The following list contains examples and is not intended to be an all-inclusive list. "Sport or recreational equipment" shall include:

(A) Ballet and tap shoes;

(B) Cleated or spiked athletic shoes;

(C) Gloves, including, but not limited to, baseball, bowling, boxing, hockey and golf;

(D) Goggles;

(E) Hand and elbow guards;

(F) Life preservers and vests;

(G) Mouth guards;

(H) Roller and ice skates;

(I) Shin guards;

(J) Shoulder pads;

(K) Ski boots;

(L) Waders; and

(M) Wetsuits and fins.

(59) "State" means any state of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(60) "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, steam, water, gas and prewritten computer software.

(61) "Tax" includes all taxes levied under articles fifteen and fifteen-a of this chapter and additions to tax, interest and penalties levied under article ten of this chapter.

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(62) "Tax 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.

(63) "Taxpayer" means any person liable for the taxes levied by articles fifteen and fifteen-a of this chapter or any additions to tax penalties imposed by article ten of this chapter.

(64) "Telecommunications service" or "telecommunication service" when used in this article and articles fifteen and fifteen-a of this chapter shall have the same meaning as that term is defined in section two-b of this article.

(65) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco.

(66) "Use tax" means the tax levied under article fifteen-a of this chapter.

(67) "Use-based exemption" means an exemption based on a specified use of the product or service by the purchaser.

(68) "Vendor" means any person furnishing services taxed by article fifteen or fifteen-a of this chapter or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article and in articles fifteen and fifteen-a of this chapter.

(c) Additional definitions. --

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

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