WEST VIRGINIA CODE: §11-15B-24

§11-15B-24. Administration of exemptions.

(a) General rules.--

When a purchaser claims an exemption from paying tax under article fifteen or fifteen-a of this chapter:

(1) Sellers shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase, as determined by the governing board.

(2) A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.

(3) The seller shall use the standard form for claiming an exemption electronically that is adopted by the governing board.

(4) The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

(5) The Tax Commissioner may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that is presented to the seller at the time of the sale.

(6) The seller shall maintain proper records of exempt transactions and provide the records to the Tax Commissioner or the Tax Commissioner's designee.

(7) The Tax Commissioner shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate or another means that does not burden sellers.

(8) In the case of drop shipments, a third-party vendor such as a drop shipper may claim a resale exemption based on an exemption certificate provided by its customer/reseller or any other acceptable information available to the third-party vendor evidencing qualification for a resale exemption, regardless of whether the customer/reseller is registered to collect and remit sales and use taxes in this state, when the sale is sourced to this state.

(b) The Tax Commissioner shall relieve sellers that follow the requirements of this section from the tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and shall hold the purchaser liable for the nonpayment of tax. This relief from liability does not apply:

(A) To a seller who fraudulently fails to collect the tax;

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(B) To a seller who solicits purchasers to participate in the unlawful claim of an exemption;

(C) To a seller who accepts an exemption certificate when the purchaser claims an entity-based exemption when: (i) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller; and (ii) the state in which that location resides provides an exemption certificate that clearly and affirmatively indicates (graying out exemption reason types on uniform form and posting it on a state's website is an indicator) that the claimed exemption is not available in that state.

(c) Time within which seller must obtain exemption certificates.--

A seller is relieved from paying tax otherwise applicable under article fifteen or fifteen-a of this chapter if the seller obtains a fully completed exemption certificate or captures the required data elements within ninety days subsequent to the date of sale.

(d) (1) If the seller has not obtained an exemption certificate or all required data elements, the seller shall, within one hundred twenty days subsequent to a request for substantiation by the Tax Commissioner, either obtain a fully completed exemption certificate from the purchaser, taken in good faith which means that the seller obtain a certificate that claims an exemption that: (i) Was statutorily available on the date of the transaction in the jurisdiction where the transaction is sourced; (ii) could be applicable to the item being purchased; and (iii) is reasonable for the purchaser's type of business; or obtain other information establishing that the transaction was not subject to the tax.

(2) If the seller obtains the information described in subdivision (1) of this subsection, the seller shall be relieved of any liability for the tax on the transaction unless it is discovered through the audit process that the seller had knowledge or had reason to know at the time such information was provided that the information relating to the exemption claimed was materially false or the seller otherwise knowingly participated in activity intended to purposefully evade the tax that is properly due on the transaction.

(e) Nothing in this section shall affect the ability of the Tax Commissioner to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

(f) A seller is relieved from paying the tax otherwise applicable if the seller obtains a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship. Notwithstanding the provisions of subsection (e) of this section, the Tax Commissioner may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subdivision, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

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(g) Exception.--

No exemption certificate or direct pay permit number is required when the sale is exempt per se from the taxes imposed by articles fifteen and fifteen-a of this chapter.

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