WEST VIRGINIA CODE CHAPTER 11 ARTICLE 15B

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§11-15B-1. Title.

The provisions of this article shall be known as and referred to as the "Streamlined Sales and Use Tax Administration Act".

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§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.

(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:

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

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(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;

(xxi) Neckties;

(xxii) Overshoes;

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(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 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:

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(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 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

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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 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.

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(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 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

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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 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.

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(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.

(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

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(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 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

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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.

(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

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(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 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

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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.

(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:

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(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;

(O) Legal pads;

(P) Lunch boxes;

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(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. "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

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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.

(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

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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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§11-15B-2a. Streamlined Sales and Use Tax Agreement defined.

As used in this article and articles fifteen and fifteen-a of this chapter, the term "Streamlined Sales and Use Tax Agreement" or "agreement" means the agreement adopted November 12, 2002, by states that enacted authority to engage in multistate discussions similar to that provided in section four of this article, except when the context in which the term is used clearly indicates that a different meaning is intended by the Legislature. "Agreement" includes amendments to the agreement adopted by the implementing states in calendar years 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012 and amendments adopted by the governing board on or before, January 31, 2017, but does not include any substantive changes in the agreement adopted after January 31, 2017.

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§11-15B-2b. Telecommunications 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 in those instances 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) "Telecommunications service" or "telecommunication service" means the electronic transmission, conveyance or routing of voice, data, audio, video or any other information or signals to a point, or between or among points.

(A) The terms "telecommunications service" or "telecommunication service" includes the transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether the service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added.

(B) "Telecommunications service" or "telecommunication service" does not include:

(i) Advertising, including, but not limited to, directory advertising;

(ii) "Ancillary services";

(iii) Billing and collection services provided to third parties;

(iv) Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;

(v) Digital products "delivered electronically", including, but not limited to, software, music, video, reading materials or ring tones;

(vi) Installation or maintenance of wiring or equipment on a customer's premises;

(vii) Internet access service;

(viii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. §522(6) and audio and video programming services delivered by commercial mobile radio service providers, as

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defined in 47 CFR 20.3; or

(ix) Tangible personal property.

(2) Related or ancillary terms.--

The following terms are either used in subsection (a) of this section or are commonly associated with terms used in that subsection.

(A) "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877" and "888" toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

(B) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for collection services provided by the seller of the "telecommunications services" to the subscriber or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900 service" and any subsequent numbers designated by the Federal Communications Commission.

(C) "Coin-operated telephone service" means a "telecommunications service" paid for by inserting money into a telephone accepting direct deposits of money to operate.

(D) "Conference-bridging service" means an "ancillary service" that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference-bridging service" does not include the "telecommunications services" used to reach the conference bridge.

(E) "Detailed telecommunications billing service" means an "ancillary service" of separately stating information pertaining to individual calls on a customer's billing statement.

(F) "Directory assistance" means an "ancillary service" of providing telephone number information and/or address information.

(G) "Fixed wireless service" means a "telecommunications service" that provides radio communication between fixed points.

(H) "International" means a "telecommunications service" that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession.

(I) "Interstate" means a "telecommunications service" that originates in one United States state, territory or possession and terminates in a different United States state, territory or possession.

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(J) "Intrastate" means a "telecommunications service" that originates in one United States state, territory or possession and terminates in the same United States state, territory or possession.

(K) "Mobile wireless service" means a "telecommunications service" that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, "telecommunications services" that are provided by a commercial mobile radio service provider.

(L) "Paging service" means a "telecommunications service" that provides transmission of coded radio signals for the purpose of activating specific pagers and may include messages and/or sounds.

(M) "Pay telephone service" means a "telecommunications service" provided through any pay telephone.

(N) "Residential telecommunications service" means a "telecommunications service" or "ancillary services" provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, "telecommunications service" is considered residential if it is provided to and paid for by an individual resident rather than the institution.

(O) "Value-added nonvoice data service" means a service that otherwise meets the definition of "telecommunications services" in which computer processing applications are used to act on the form, content, code or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

(P) "Vertical service" means an "ancillary service" that is offered in connection with one or more "telecommunications services" which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including "conference-bridging services".

(Q) "Voice mail service" means an "ancillary service" that enables the customer to store, send or receive recorded messages. "Voice mail service" does not include any "vertical services" that the customer may be required to have in order to utilize the "voice mail service".

(c) Effective date. -- This section enacted in the year 2006 shall apply to purchases made on or after July 1, 2006.

WV Legislature

§11-15B-3. Legislative findings.

(a) The Legislature finds that a streamlined sales and use tax administration system will reduce and over time eliminate the burden and cost for all vendors to collect this state's sales and use tax. The Legislature further finds that this state should participate in multistate discussions to review and/or amend the terms of the agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

(b) The Legislature finds that the streamlined sales and use tax agreement adopted November 12, 2002, by representatives of the states participating in multistate discussions to amend and implement the agreement substantially complies with the requirements of section seven of this article, as enacted in the year 2002, and that this state should now sign the agreement.

WV Legislature

§11-15B-4. Authority to participate in multistate negotiations.

For the purposes of reviewing and/or amending the agreement embodying the simplification requirements as contained in section seven of this article, the state shall enter into multistate discussions. For purposes of such discussions, the state shall be represented by no more than four delegates, two of whom shall be appointed by the President of the Senate and the Speaker of the House of Delegates. The other two delegates shall be the secretary of tax and revenue and the Tax Commissioner, or their respective designees.

WV Legislature

§11-15B-4a. Representatives to governing board of streamlined sales and use tax agreement.

Upon implementation of the streamlined sales and use tax agreement and this state becoming a party to the agreement, West Virginia shall have four representatives to the governing board of the agreement. Two representatives shall be the Secretary of Revenue and the Tax Commissioner, or their respective designees; and two representatives shall be appointed by the President of the Senate and the Speaker of the House of Delegates.

WV Legislature

§11-15B-5. Authority to enter agreement.

(a) The Tax Commissioner is authorized and directed to enter into the streamlined sales and use tax agreement, after June 30, 2003, with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

(b) In furtherance of the agreement, the Tax Commissioner is authorized to act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The Tax Commissioner is further authorized to take other actions reasonably required to implement the provisions set forth in this article. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement. The Tax Commissioner or the commissioner's designee is authorized to represent this state before the other states that are signatories to the agreement.

WV Legislature

§11-15B-6. Relationship to state law.

No provision of the agreement authorized by this article, in whole or part, invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at or after membership of this state in the agreement, must be by the action of this state.

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§11-15B-7. Agreement requirements.

The Tax Commissioner may not enter into the streamlined sales and use tax agreement unless the agreement requires each state to abide by the following requirements:

(1) Simplified state rate. -- The agreement must set restrictions to limit over time the number of state rates.

(2) Uniform standards. -- The agreement must establish uniform standards for the following:

(A) The sourcing of transactions to taxing jurisdictions;

(B) The administration of exempt sales; and

(C) Sales and use tax returns and remittances.

(3) Central registration. -- The agreement must provide a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(4) No nexus attribution. -- The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(5) Local sales and use taxes. -- The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

(A) Restricting variances between the state and local tax bases;

(B) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to or be subject to independent audits from local taxing jurisdictions;

(C) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(D) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(6) Monetary allowances. -- The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

(7) State compliance. -- The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of

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the member state, with all provisions of the agreement while a member.

(8) Consumer privacy. -- The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(9) Advisory councils. -- The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

WV Legislature

§11-15B-8. Cooperating sovereigns.

The agreement authorized by this article is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

WV Legislature

§11-15B-9. Limited binding and beneficial effect.

(a) The agreement authorized by this article binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(b) Consistent with subsection (a) of this section, no person shall have any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

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§11-15B-10. Seller and third-party liability.

(a) (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due the state on all sales transactions it processes for the seller except as set out in this section.

(2) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(b) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(c) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

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§11-15B-11. Seller registration.

(a) General. -- A seller that registers to collect West Virginia sales and use taxes using the online sales and use tax registration system established under the Streamlined Sales and Use Tax Agreement is not required to also register under article twelve of this chapter unless the seller has sufficient presence in this state that provides at least the minimum contacts necessary for a Constitutionally sufficient nexus for this state to require registration and payment of the registration tax under article twelve of this chapter.

(b) Registration of seller making no sales. -- A Model II or Model III seller may elect to register as a seller that anticipates making no sales if the seller had no sales in West Virginia for the preceding twelve months. Such election does not relieve the seller of its agreement pursuant to subsection (a) of section twelve of this article to collect taxes on all sales into this state as well as for all other states participating in the agreement or its liability for remitting to the proper states any taxes collected.

(c) A written signature from the seller is not required.

(d) Registration by agent. -- A person appointed by a seller to represent the seller before the states that are members of the agreement may register the seller under the agreement under uniform procedures approved by the governing board. The appointment of an agent shall be in writing and submitted to this state if requested by the Tax Commissioner.

(e) Cancellation of registration. -- A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the state any taxes collected.

(f) Nothing in this section shall be construed to relieve a seller of any legal obligation it may have to register or any obligation to collect and remit taxes for at least thirty-six months and meet all other requirements for amnesty set out in section thirteen of this article in order to be eligible for amnesty.

(g) Sellers shall be registered as follows:

(1) Model I sellers will be automatically registered.

(2) Model II and Model III sellers will be automatically registered but may elect to be registered as a seller which anticipates making no sales in the state.

(h) The provisions of subsections (b) and (g) of this section shall become effective on January 1, 2010, and are retroactive to that date.

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§11-15B-12. Effect of seller registration and participation in streamlined sales and use tax administration.

(a) Collection of tax. -- By registering under the Streamlined Sales and Use Tax Agreement, the seller agrees to collect and remit sales and use taxes as levied under articles fifteen and fifteen-a of this chapter for all taxable sales into this state as well as for all other states participating in the agreement. Subsequent withdrawal or revocation of a member state does not relieve a seller of its responsibility to remit taxes previously or subsequently collected on behalf of the state.

(b) Effect of registration. -- If the state has withdrawn or been expelled from the Streamlined Sales and Use Tax Agreement, the Tax Commissioner may not use registration with the central registration system and the collection of sales and use taxes in the member states as a factor in determining whether the seller has a nexus with the state for any tax at any time.

WV Legislature

§11-15B-13. Amnesty for registration.

(a) Subject to the limitations in this section:

(1) The Tax Commissioner shall provide amnesty for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the streamlined sales and use tax agreement: Provided, That the seller was not registered in this state in the twelve-month period preceding October 1, 2005, the effective date of this state's participation in the Streamlined Sales and Use Tax Agreement.

(2) The amnesty precludes assessment for uncollected or unpaid sales or use tax together with additions to tax, penalty or interest for sales made during the period the seller was not registered in this state: Provided, That registration under the agreement occurs within twelve months after the date on which the governing board determines that an adequate number of certified service providers have been certified by the governing board to collect taxes under the agreement.

(b) Exceptions. -- The amnesty is not available:

(1) To a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes; or

(2) For sales or use taxes already paid or remitted to the state or to taxes collected by the seller for this state.

(c) Period of amnesty. -- The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration under the agreement and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. The statute of limitations applicable to asserting a tax liability during this thirty-six month period is tolled.

(d) Effect of amnesty. -- The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

WV Legislature

§11-15B-14. General sourcing definitions.

(a) Definition of receive or receipt. -- For the purposes of subsection (a), section fifteen of this article, the terms "receive" and "receipt" mean:

(1) Taking possession of tangible personal property;

(2) Making first use of services; or

(3) Taking possession or making first use of computer software or digital goods, whichever comes first.

(b) Limitation. -- The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

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§11-15B-14a. Application of general sourcing rules and exclusion from the rules.

(a) Sellers shall source the sale of a product in accordance with section fifteen of this article. The provisions of said section apply regardless of the characterization of the product as tangible personal property, computer software or digital goods or a service. The provisions of said section only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdiction of that use.

(b) Section fifteen of this article does not apply to sales or use tax levied on telecommunication services as defined in section two-b of this article. Telecommunication services shall be sourced in accordance with section nineteen of this article.

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

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(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.

(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

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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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§11-15B-16.

Repealed.

Acts, 2008 Reg. Sess., Ch. 218.

WV Legislature

§11-15B-17. Direct mail sourcing.

(a) Notwithstanding section fifteen of this article, the following provisions apply to sales of "advertising and promotional direct mail:"

(1) A purchaser of "advertising and promotional direct mail" may provide the seller with either:

(A) A direct pay permit;

(B) An agreement certificate of exemption claiming "direct mail" (or other written statement approved, authorized or accepted by the state); or

(C) Information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients.

(2) If the purchaser provides the permit, certificate or statement referred to in paragraph (A) or (B) of subdivision (1) of this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving "advertising and promotional direct mail" to which the permit, certificate or statement applies. The purchaser shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to the recipients and shall report and pay any applicable tax due.

(3) If the purchaser provides the seller information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of "advertising and promotional direct mail" where the seller has sourced the sale according to the delivery information provided by the purchaser.

(4) If the purchaser does not provide the seller with any of the items listed in paragraphs (A), (B) or (C) of subdivision (1) of this subsection, the sale shall be sourced according to subdivision (5) of subsection (a) of section fifteen of this article.

(b) Notwithstanding section fifteen of this article, the following provisions apply to sales of "other direct mail."

(1) Except as otherwise provided in this subdivision, sales of "other direct mail" are sourced in accordance with subdivision (3) of subsection (a) of section fifteen of this article.

(2) A purchaser of "other direct mail" may provide the seller with either:

(A) A direct pay permit; or

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(B) An Agreement certificate of exemption claiming "direct mail" (or other written statement approved, authorized or accepted by this state).

(3) If the purchaser provides the permit, certificate or statement referred to in paragraph (A) or (B) of subdivision (2) of this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving "other direct mail" to which the permit, certificate or statement apply. Notwithstanding subdivision (1) subsection (b) of this section, the sale shall be sourced to the jurisdictions to which the "other direct mail" is to be delivered to the recipients and the purchaser shall report and pay applicable tax due.

(c) For purposes of this section:

(1) "Advertising and promotional direct mail" means:

(A) Printed material that meets the definition of "direct mail," as defined in subdivision (15), subsection (b), section two of this article;

(B) The primary purpose of which is to attract public attention to a product, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word "product" means tangible personal property, a product transferred electronically or a service.

(2) "Other direct mail" means any direct mail that is not "advertising and promotional direct mail" regardless of whether "advertising and promotional direct mail" is included in the same mailing. The term includes, but is not limited to:

(A) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices;

(B) Any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and

(C) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

(d) This section applies to a transaction characterized under state law as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of "direct mail."

(e) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental

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regardless of whether "advertising and promotional direct mail" is included in the same mailing.

(1) If a transaction is a "bundled transaction" that includes "advertising and promotional direct mail," this section applies only if the primary purpose of the transaction is the sale of products or services that meet the definition of "advertising and promotional direct mail."

(2) Nothing in this section shall limit any purchaser's:

(A) Obligation for sales or use tax to any state to which the direct mail is delivered,

(B) Right under local, state, federal or Constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions, or

(C) Right to a refund of sales or use taxes overpaid to any jurisdiction.

(f) This section applies for purposes of uniformly sourcing "direct mail" transactions and does not impose requirements on states regarding the taxation of products that meet the definition of "direct mail" or to the application of sales for resale or other exemptions.

WV Legislature

§11-15B-18. Relief from certain liability for purchasers.

(a) A purchaser is relieved from liability for penalty to this state and local jurisdictions of this state for having failed to pay the correct amount of sales or use tax in the following circumstances:

(1) A purchaser's seller or certified service provider relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments or in the taxability matrix completed by this state pursuant to Section 328 of the Streamlined Sales and Use Tax Agreement;

(2) A purchaser holding a direct pay permit relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments or in the taxability matrix completed by this state pursuant to Section 328 of the Streamlined Sales and Use Tax Agreement;

(3) A purchaser relied on erroneous data provided by this state in the taxability matrix completed by this state pursuant to Section 328 of the Streamlined Sales and Use Tax Agreement; or

(4) A purchaser using databases pursuant to subdivisions (3), (4) and (5), subsection (d), section thirty-five of this article relied on erroneous data provided by this state on tax rates, boundaries or taxing jurisdiction assignments. After providing adequate notice as determined by the governing board, this state, having provided an address-based database for assigning taxing jurisdictions pursuant to subdivisions (4) and (5), subsection (d), section thirty-five of this article, shall cease providing liability relief for errors resulting from the reliance on the database provided by this state under the provisions of subdivision (3), subsection (d), section thirty-five of this article.

(b) A purchaser is relieved from liability for tax and interest to this state and its local jurisdictions for having failed to pay the correct amount of sales or use tax in the circumstances described in subsection (a) of this section, provided that, with respect to reliance on the taxability matrix completed by this state pursuant to Section 328 of the Streamlined Sales and Use Tax Agreement, relief is limited to the state's erroneous classification in the taxability matrix of terms included in the Streamlined Sales and Use Tax Agreement library of definitions as "taxable" or "exempt", "included in sales price" or "excluded from sales price" or "included in the definition" or "excluded from the definition".

(c) For purposes of this section, the term "penalty" means an amount imposed for noncompliance that is not fraudulent, willful or intentional which is in addition to the correct amount of sales or use tax and interest.

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§11-15B-19. Telecommunications and related services sourcing rule.

(a) Except for the defined telecommunication services in subsection (c) of this section, the sale of telecommunication service sold on a call-by-call basis shall be sourced to: (1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or (2) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(b) Except for the defined telecommunication services in subsection (c) of this section, a sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

(c) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use, as required by the Mobile Telecommunications Sourcing Act.

(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either: The seller's telecommunications system, or information received by the seller from its service provider, where the system used to transport the signal is not that of the seller.

(3) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with section fifteen of this article: Provided, That in the case of a sale of a prepaid wireless calling service, the rule provided in subdivision (5), subsection (a), section fifteen of this article shall include, as an option, the location associated with the mobile telephone number.

(4) A sale of a private communication service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(B) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(C) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(D) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction

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based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(E) The sale of Internet access service is sourced to the customer's place of primary use.

(F) The sale of an ancillary service is sourced to the customer's place of primary use.

WV Legislature

§11-15B-20. Telecommunication sourcing definitions.

For the purpose of this article, including section nineteen of this article, the following definitions apply:

(1) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services", including, but not limited to, "detailed telecommunications billing", "directory assistance", "vertical service" and "voice mail services".

(3) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(4) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(5) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under section nineteen of this article. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(6) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(7) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(8) "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(9) "Mobile telecommunications service" means the same as that term is defined in Section 124 (7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(10) "Place of primary use" means the street address representative where the customer's use of the telecommunication service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

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(11) "Post-paid calling service" means the telecommunication service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card or by charge made to a telephone number which is not associated with the origination or termination of the telecommunication service. A post-paid calling service includes a telecommunication service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

(12) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(13) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(14) "Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of the channel or channels.

(15) "Service address" means:

(A) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(B) If the location in paragraph (A) of this subdivision is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller; or

(C) If the location in paragraphs (A) and (B) of this subdivision are not known, then "service address" means the location of the customer's place of primary use.

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§11-15B-21. Notice for state tax changes.

(a) General. -- The Tax Commissioner shall provide sellers with as much advance notice as practicable of a rate change for a tax levied by article fifteen or fifteen-a of this chapter.

(b) Effective date of rate changes. -- Unless the Legislature expressly provides a different effective date for a rate change, the change shall take effect on the first day of the calendar quarter that begins on or after the effective date of the act of the Legislature that makes the rate change and that is more than sixty days after passage of the bill making the rate change.

(c) Notification of changes to tax base. -- The Tax Commissioner shall make reasonable efforts to notify sellers of legislative changes to the tax base and to amendments to sales and use tax rules, as that term is defined in section two, article one, chapter twenty-nine-a of this code.

(d) Liability of seller.

(1) Failure of a seller to receive notice or failure of the state to provide notice of a rate change or a change in the tax base, or to limit the effective date of a rate change, does not relieve the seller of its obligation to collect sales or use taxes for this state.

(2) Failure of the Tax Commissioner to provide for at least thirty days between the enactment of the statute providing for a rate change and the effective date of such rate change shall relieve the seller of liability for failing to collect tax at the new rate if:

(A) The seller collected tax at the immediately preceding effective rate; and

(B) The seller's failure to collect at the newly effective rate does not extend beyond thirty days after the date of the enactment of the new rate.

(e) Notwithstanding subdivision (d)(2), if the seller fraudulently failed to collect at the new rate or solicits purchasers based on the immediately preceding effective rate this relief does not apply.

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§11-15B-22. Effective date of rate changes for certain services.

The effective date of rate changes for services covering a service period starting before and ending after the statutory effective date is as follows:

(1) For a rate increase, the new rate applies to the first billing period starting on or after the effective date.

(2) For a rate decrease, the new rate applies to bills rendered on or after the effective date.

WV Legislature

§11-15B-23. Enactment of exemptions.

(a) General rule. -- The Legislature may only enact entity-based, use-based and product-based exemptions, from the taxes levied by articles fifteen and fifteen-a of this chapter, in accordance with the provisions of this section and Streamlined Sales and Use Tax Agreement.

(b) Specific rules for product-based exemptions. --

(1) A product-based exemption may be enacted without restriction if Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement does not have a definition for the product.

(2) If Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement has a definition for the product, a product-based exemption may be enacted for the product only if: (A) The exemption utilizes the product definition in a manner consistent with Part II of the Library of Definitions in Appendix C of the Agreement and Section 327 of the Agreement; and (B) the product-based exemption exempts all items included within a definition in Part II of the Library of Definitions unless the product definition in the Library of Definitions sets out an exclusion for the item or items from the definition.

(c) Specific rules of entity-based and use-based exemptions. --

(1) An entity-based or use-based exemption for a product may be enacted without restriction if Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement does not have a definition for the product.

(2) If Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement has a definition for the product, the entity-based or use-based exemption for the product must utilize the product definition in a manner consistent with Part II of the Library of Definitions and Section 327 of the Streamlined Sales and Use Tax Agreement.

(3) An entity-based exemption for an item may be enacted if Part II of the Library of Definition in Appendix C of the Streamlined Sales and Use Tax Agreement does not have a definition for the item but does have a definition for a product that includes the item.

(4) A use-based exemption for an item may not be enacted that effectively constitutes a product-based exemption if Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement has a definition for a product that includes the item.

(5) A use-based exemption for an item may be enacted if Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement has a definition for a product that includes the item, if the exemption is not prohibited in subdivision (4) of this subsection, and if the exemption is consistent with the definition in Part II of the Library of Definitions.

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(d) Construction. -- For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.

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§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;

(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-

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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.

(g) Exception.--

No exemption certificate or direct pay permit number is required when the sale is exempt

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per se from the taxes imposed by articles fifteen and fifteen-a of this chapter.

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§11-15B-25. Uniform tax returns.

(a) General.--

A seller who registers with this state is required to file a single sales and use tax return with the Tax Commissioner for each taxing period.

(b) Due date of return.--

(1) This return shall be due on the twentieth day of the month following the month in which the transaction subject to tax occurred.

(2) When the due date for a return falls on a Saturday or Sunday or legal holiday, the return shall be due on the next succeeding business day. If the return is filed in conjunction with a remittance and the remittance cannot be made pursuant to subdivision (e), section twenty-six of this article, the return shall be accepted as timely on the same day as the remittance under that subdivision.

(c) Additional information returns.--

The Tax Commissioner shall make available to all sellers, except sellers of products qualifying for exclusion from the provisions of the agreement, a simplified return that is filed electronically.

(d) The Tax Commissioner may not require a seller which has indicated at the time of registration that it anticipates making no sales which would be sourced to this state to file a return, except that the seller shall lose the exemption upon making any taxable sales into this state and shall file a return in the month following any sale.

(e) After January 1, 2010, the Tax Commissioner shall give notice to a seller, which has no legal requirement to register in this state, of a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return: Provided, That the Tax Commissioner may establish a liability amount of taxes based solely on the seller's failure to timely file a return if such seller has a history of nonfiling or late filing.

(f) Nothing in this section shall prohibit the Tax Commissioner from allowing additional return options or the filing of returns less frequently.

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§11-15B-26. Uniform rules for remittances of funds.

(a) General.--

Only one remittance is required for each return except as provided in this section.

(b) When electronic remittance required.--

(1) All remittances from sellers under Models I, II and III shall be remitted electronically after December 31, 2003.

(2) All remittances in payment of taxes reported on the approved simplified return format shall be remitted electronically.

(c) Method of remittance.--

Electronic payments shall be made using either the ACH credit or ACH debit method.

(d) Alternative method.--

The Tax Commissioner shall provide by rule, which may be an existing rule, an alternative method for making same-day payments if an electronic funds transfer fails.

(e)Due date of remittances.--

(1) If a due date for a payment falls on a Saturday, Sunday or legal holiday, the payment, including any related payment voucher information, is due on the next succeeding business day.

(2) If the Federal Reserve Bank is closed on a due date that prohibits a person from being able to make a payment by ACH debit or credit, the payment shall be accepted as timely if made on the next day the Federal Reserve Bank is open.

(f) Format of data accompanying remittance.--

Any data that accompanies a remittance shall be formatted using uniform tax type and payment type codes approved by the governing board.

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§11-15B-27. Uniform rules for recovery of bad debt.

(a) General. -- A deduction from taxable sales is allowed for bad debts. Any deduction taken that is attributed to bad debts may not include interest or any amount upon which the sales or use tax imposed by this state was not previously paid.

(b) "Bad debt" defined. -- The term "bad debt" has the same meaning as when used in the federal definition of "bad debt" in 26 U.S.C. §166 as the basis for calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C. §166 is adjusted to exclude:

(1) Financing charges or interest;

(2) Sales or use taxes charged on the purchase price;

(3) Uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;

(4) Expenses incurred in attempting to collect any debt; or

(5) Repossessed property.

(c) When deduction may be taken. -- Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this section, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(d) Subsequent recovery. -- If a deduction is taken for a bad debt and the debt is subsequently collected, in whole or in part, the tax on the amount collected shall be paid and reported on the return filed for the period in which the collection is made.

(e) When bad debt deduction exceeds taxable sales. -- When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the period specified in section fourteen, article ten of this chapter, for filing a claim for refund of sales or use tax, except that the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(f) When certified service provider is used. -- Where filing responsibilities of the seller have been assumed by a certified service provider, the certified service provider may claim, on behalf of the seller, any bad debt allowance provided by this section. The certified service provider shall credit or refund to the seller the full amount of any bad debt allowance or refund received under this section.

(g) Reporting of payment received on previously claimed bad debt. -- For the purposes of

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reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(h) Allocation. -- In situations where the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among two or more states that are members of the Streamlined Sales and Use Tax Agreement, the allocation is permitted.

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§11-15B-28. Confidentiality and privacy protections under Model I.

(a) Purpose. -- The purpose of this section is to set forth the policy of this state for the protection of the confidentiality rights of all participants in the streamlined sales and use tax administration and collection system and of the privacy interests of consumers who deal with Model I sellers.

(b) Certain terms defined. -- As used in this section:

(1) The term "confidential taxpayer information" means all information that is protected under section five-d, article ten of this chapter;

(2) The term "personally identifiable information" means information that identifies a person; and

(3) The term "anonymous data" means information that does not identify a person.

(c) Certified service providers. -- With very limited exceptions, a certified service provider shall perform its tax calculation, remittance and reporting functions without retaining the personally identifiable information of consumers.

(d) Certification of service providers. -- The governing board may certify a service provider only if that certified service provider certifies that:

(1) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(2) That personally identifiable information is only used and retained to the extent necessary for the administration of Model I with respect to exempt purchasers and proper identification of taxing jurisdictions;

(3) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. This notice is satisfied by a written privacy policy statement accessible by the public on the official website of the certified service provider;

(4) Its collection, use and retention of personally identifiable information is limited to that required by the states that are members of the Streamlined Sales and Use Tax Agreement to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased and for documentation of the correct assignment of taxing jurisdictions; and

(5) It provides adequate technical, physical and administrative safeguards as to protect personally identifiable information from unauthorized access and disclosure.

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(e) State notification of privacy policy. -- The Tax Commissioner shall provide public notification to consumers, including their exempt purchasers, of this state's practices relating to the collection, use and retention of personally identifiable information.

(f) Destruction of confidential information. -- When any personally identifiable information that has been collected and retained by the Tax Commissioner is no longer required for the purposes set forth in subdivision (4), subsection (d) of this section, the information shall no longer be retained by the Tax Commissioner.

(g) Review and correction by individuals. -- When personally identifiable information regarding an individual is retained by or on behalf of the Tax Commissioner, the commissioner shall provide reasonable access by an individual to his or her own information in the commissioner's possession and a right to correct any inaccurately recorded information.

(h) Discovery by other persons. -- If anyone other than the individual, or a person authorized in writing by the individual, or by controlling law seeks to discover personally identifiable information, the Tax Commissioner shall make a reasonable and timely effort to notify the individual of the request.

(i) Enforcement. -- This privacy policy shall be enforced by the Tax Commissioner or the Attorney General of this state.

(j) This section shall not be interpreted as limiting or abrogating any other statutory or regulatory provision of this state regarding the collection, use and maintenance of confidential taxpayer information, which provisions remain fully applicable and binding. This section and the Streamlined Sales and Use Tax Agreement do not enlarge or limit the authority of this state to:

(1) Conduct audits or other reviews as provided under the Streamlined Sales and Use Tax Agreement and state law;

(2) Provide records pursuant to the Freedom of Information Act, disclosure laws with governmental agencies or other laws or regulations;

(3) Prevent, consistent with state law, disclosures of confidential taxpayer information;

(4) Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; or

(5) Collect, disclose, disseminate or otherwise use anonymous data for governmental purposes.

(k) Service provider's confidentiality policy may be more restrictive. -- This privacy policy does not preclude the governing board from certifying a certified service provider whose privacy policy is more protective of confidential taxpayer information or personally

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identifiable information than is required by the agreement or the laws of this state.

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§11-15B-29. Customer refund procedure.

(a) General. -– The customer refund procedures set forth in this section apply when a purchaser seeks a return of over-collected sales or use taxes from the seller.

(b) Applicability. -– These customer refund procedures provide the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. The notice to the seller must contain the information necessary to determine the validity of the request.

(c) Presumption of reasonable business practice. -– In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller is presumed to have a reasonable business practice, if in the collection of the sales or use taxes, the seller:

(1) Uses either a certified service provider or a certified automated system, including a proprietary system, that is certified by the state; and

(2) Has remitted to the state all taxes collected less any allowable deductions, credits, or collection allowances.

(d) Statute of limitations. -– Nothing in this section shall operate to extend any person's time to seek from the Tax Commissioner a refund of sales or use taxes collected or remitted by a seller in error.

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§11-15B-30. Monetary allowances for new technological models for sales tax collection; delayed effective date.

(a) Monetary allowance under Model I.--

(1) The Tax Commissioner shall provide a monetary allowance to a certified service provider in Model I. This allowance shall be in accordance with the terms of the contract between the governing board of the Streamlined Sales and Use Tax Agreement and the certified service provider. The details of this monetary allowance shall be developed and provided through the contract process. The contract shall provide that the allowance be funded entirely from money collected in Model I.

(2) The contract between the governing board and the certified service provider may base the monetary allowance to a certified service provider on one or more of the following:

(A) A base rate that applies to taxable transactions processed by the certified service provider; or

(B) For a period not to exceed twenty-four months following a voluntary seller's registration through the agreement's central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each member state for which the seller does not have a requirement to register to collect the tax.

(b) Monetary allowance for Model II sellers.--

The monetary allowance to sellers under Model II may be based on the following:

(1) All sellers shall receive a base rate for a period not to exceed twenty-four months following the commencement of participation by a seller. The base rate is set by the governing board of the Streamlined Sales and Use Tax Agreement after the base rate has been established for Model I certified service providers. This allowance is in addition to any vendor or seller discount afforded by each member state at the time.

(2) A voluntary Model II seller not otherwise required to register with this state to collect the consumers sales and service tax and use tax, that registers through the Streamlined Sales and Use Tax Agreement's central registration process, shall receive for a period not to exceed twenty-four months following the voluntary seller's registration, the base rate percentage of tax revenue generated for this state by the voluntary seller.

(3) Following the conclusion of the twenty-four-month period, a seller will only be entitled to a vendor discount afforded under each member state's law at the time the base rate expires.

(c) Prohibition on allowance or payment of monetary allowances.--

Notwithstanding subsections (a), (b) and (c) of this section, the Tax Commissioner may not allow any vendor, seller or certified service provider any monetary allowance, discount or

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other compensation for collecting and remitting the taxes levied by articles fifteen and fifteen-a of this chapter, or for making and filing the periodic reports required by this article, or articles fifteen and fifteen-a of this chapter, until the cost of collection study required by the agreement is completed and the monetary allowances are based on the results of that study, or on requirements of federal law requiring remote sellers to collect sales and use taxes for states that have signed the agreement.

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§11-15B-31. Conflict; partial unconstitutionality.

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

(b) Severability. -– 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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§11-15B-32. Effective date.

(a) 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, except as otherwise expressly provided in section five of this article.

(b) The provisions of this article, as amended or added during the second extraordinary legislative session in the year 2003, shall take effect January 1, 2004, and apply to all sales made on or after that date.

(c) The provisions of this article, as amended or added by act of the Legislature in the year 2004 shall apply to all sales made on or after the date of passage in the year 2004.

(d) The provisions of this article, as amended or added during the regular legislative session in the year 2008, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

(e) The provisions of this article, as amended or added during the 2009 regular legislative session, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

(f) The provisions of this article, as amended or added during the 2010 regular legislative session, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

(g) The provisions of this article, as amended or added during the 2012 regular legislative session, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

(h) The provisions of this article, as amended or added during the 2017 regular legislative session, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as otherwise expressly provided in this article.

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§11-15B-33. State administration of local sales and use taxes.

The Tax Commissioner shall administer, or authorize others to conduct on his or her behalf, the sales and use tax laws of this state subject to the agreement. Sellers and purchasers are only required to register with, file returns with and remit funds to the Tax Commissioner. The Tax Commissioner shall collect any municipal sales and use taxes and distribute them to the appropriate taxing jurisdictions. The Tax Commissioner shall conduct, or others may be authorized to conduct on his or her behalf, all audits of sellers and purchasers for compliance with the sales and use tax laws of this state and the sales and use tax laws of its local jurisdictions. Except as provided herein, local jurisdictions may not conduct independent sales or use tax audits of sellers and purchasers.

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§11-15B-34. State and local sales and use tax bases.

(a) General. -- The tax base of a local jurisdiction that levies a local sales or use tax pursuant to authority granted by the Legislature shall be identical to the sales and use tax base of this state, unless otherwise prohibited by federal law, except as provided in subsection (b) of this section.

(b) Exceptions. --

This section does not apply to sales or use taxes levied on: (1) The wholesale sale of gasoline or special fuel to power motor vehicles, aircraft, locomotives, or watercraft or to electricity, piped natural or artificial gas or other fuels delivered by the seller, which local jurisdictions are prohibited from taxing; or (2) the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes.

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§11-15B-35. Local rate and boundary changes.

(a) General. -- Local tax rate changes shall be effective only on the first day of a calendar quarter after a minimum of sixty days' notice to the sellers, except as provided in subsection (b) of this section.

(b) Printed catalogs. -- Local tax rate changes shall apply to purchases from printed catalogs where the purchaser computed the tax based upon the local tax rate published in the catalog only on and after the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the sellers.

(c) Local boundary changes. -- A local jurisdiction boundary change shall first apply for purposes of computation of a local sales and use tax on the first day of a calendar quarter after a minimum of sixty days' notice to sellers.

(d) Database of local jurisdiction boundaries. --

(1) The state shall provide and maintain a database that describes boundary changes for all taxing jurisdictions. This database shall include a description of the change and the effective date of the change for sales and use tax purposes.

(2) The state shall provide and maintain a database of all sales and use tax rates for all of the jurisdictions levying taxes within the state. For the identification of states, counties and cities, codes corresponding to the rates must be provided according to federal information processing standards (FIPS) as developed by the National Institute of Standards and Technology. For the identification of all other jurisdictions, codes corresponding to the rates must be in the format determined by the governing board.

(3) The state shall provide and maintain a database that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code applicable to a purchase.

(4) This state shall have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates which are in addition to the requirements of subdivision (3) of this subsection. The database records must be in the same approved format as the database records pursuant to subdivision (3) of this subsection and

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shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U.S.C. §119(a)). The governing board may allow the state to require sellers that register under the agreement to use an address-based database provided by the state. If the state develops address-based assignment database records pursuant to the agreement, a seller or certified service provider may use those database records in place of the five- and nine-digit zip code database records provided in subdivision (3) of this subsection. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based database record after exercising due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this subsection, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.

(5) The Tax Commissioner, after meeting the requirements of subdivision (3) of this subsection, may certify vendor provided address-based databases for assigning tax rates and jurisdictions. The databases must be in the same approved format as the database records pursuant to subdivision (4) of this subsection and must meet the requirements developed pursuant to the federal Mobil Telecommunications Sourcing Act (4 U.S.C. §119(a)). If the state certifies a vendor address-based database, a seller or certified service provider may use that database in place of the database provided for in subdivision (3) or (4) of this subsection. Vendors providing address-based databases may request certification of their databases from the governing board. Certification by the governing board does not replace the requirement that the databases be certified by the state.

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§11-15B-36. Relief from certain liability for state and local taxes.

(a) General. -- Sellers and certified service providers registered under the streamlined sales and use tax agreement to collect sales and use taxes imposed by this state or a political subdivision of this state who charged and collected the incorrect amount of sales or use taxes resulting from the seller or the certified service provider relying on erroneous data provided by this state on tax rates, boundaries or taxing jurisdiction assignments shall be held harmless by the Tax Commissioner and the local taxing jurisdiction.

(b) Exception. -- After providing adequate notice as determined by the governing board, if the state provides an address-based database for assigning taxing jurisdictions pursuant to subdivision (4) or (5), subsection (d), section thirty-five of this article, the state may cease providing liability relief for errors resulting from reliance on the database provided by the Tax Commissioner under subdivision (3) of said subsection. If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, the Tax Commissioner and the governing board may extend the relief from liability to that seller for a designated period of time.

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§11-15B-37. State review and approval of certified automated system software and certain liability relief.

(a) The Tax Commissioner shall review software submitted to the governing board for certification as a certified automated system under the agreement. The Tax Commissioner's review shall include a review to determine that the program adequately classifies the State of West Virginia's product-based exemptions. Upon completion of the review, the Tax Commissioner shall certify to the governing board its acceptance of the classifications made by the system.

(b) Certified service providers and Model 2 sellers shall be relieved of liability for not collecting sales or use taxes resulting from the certified service provider or Model 2 seller relying on the certification provided by the Tax Commissioner.

(c) Certified service providers shall be relieved of liability for not collecting sales and use taxes in the same manner as provided to sellers under the provisions of section twenty-four of this article.

(d) The governing board and the State of West Virginia shall not be responsible for classification of an item or transaction within the product-based exemptions certified and the relief from liability provided in this section shall not be available for a certified service provider or a Model 2 seller that has incorrectly classified an item or transaction into a product-based exemption certified by the Tax Commissioner: Provided, That the provisions of this subsection shall not apply to the individual listing of items or transactions within a product definition approved by the governing board or the Tax Commissioner.

(e) If the Tax Commissioner determines that an item or transaction is incorrectly classified as to its taxability, the Tax Commissioner shall notify the certified service provider or Model 2 seller of the incorrect classification. The certified service provider or Model 2 seller shall have ten days to revise the classification after receipt of notice from the Tax Commissioner of the determination. Upon expiration of the ten days, the certified service provider or Model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing the state.

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