

# WEST VIRGINIA CODE: §7-27-3

## §7-27-3. Definitions.

For purposes of this article:

- (1) "Business" means any activity engaged in by any person, or caused to be engaged in by any person, with the object of direct or indirect economic gain, benefit or advantage, and includes any purposeful revenue generating activity in a county of this state that imposes transportation sales and use taxes pursuant to this article.
- (2) "Calendar quarter" means the three-month time period beginning on January 1, April 1, July 1 and October 1 of each year.
- (3) "Commissioner of Highways" means the chief executive officer of the Division of Highways of the Department of Transportation provided in section one, article two-a, chapter seventeen of this code, or his or her designee. The term "designee" in the phrase "or his or her designee", when used in reference to the Commissioner of Highways, means any officer or employee of the Division of Highways duly authorized by the commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.
- (4) "Consumer" means any person purchasing tangible personal property, custom software or a taxable service from a retailer, as that term is defined in subdivision (14) of this section or from a seller, as that term is defined in section two, article fifteen-b, chapter eleven of this code.
- (5) "County transportation sales tax" means the sales tax imposed by a county commission pursuant to this article.
- (6) "County transportation sales and use taxes" means the transportation sales tax and the transportation use tax imposed by a county commission pursuant to this article.
- (7) "County transportation use tax" means the use tax imposed by a county commission pursuant to this article.
- (8) "Custom software" means software prepared for a particular customer to meet the specific needs or circumstances of the customer.
- (9) "Executive Director of the West Virginia Economic Development Authority" means the chief executive officer of the West Virginia Economic Development Authority created in section five, article fifteen, chapter thirty-one, of this code.
- (10) "Expansion projects" are road and bridge construction projects that add to the existing road system and include, but are not limited to, new roads, new bridges, new lanes and new

interchanges.

(11) "Highway authority" or "highway association" means any entity created by the Legislature for the advancement and improvement of the state road and highway system, including, but not limited to, the New River Parkway Authority, Midland Trail Scenic Highway Association, Shawnee Parkway Authority, Corridor G Regional Development Authority, Coalfields Expressway Authority, Robert C. Byrd Corridor H Highway Authority, West Virginia 2 and I-68 Authority, Little Kanawha River Parkway Authority, King Coal Highway Authority, Coal Heritage Highway Authority, Blue and Gray Intermodal Highway Authority and the West Virginia Eastern Panhandle Transportation Authority or, if an authority is abolished, any entity succeeding to the principal functions of the highway authority or to whom the powers given to the highway authority are given by law.

(12) "Modernization projects" are road and bridge construction projects that improve safety by improving the existing roadway including, but not limited to, shoulder improvements, reducing the grade of hills, straightening curves, and improving interchanges.

(13) "Person" includes any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, limited liability company, limited liability partnership, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other group or combination acting as a unit and the plural as well as the singular number.

(14) "Preservation projects" are road and bridge construction projects that take care of infrastructure already in place and include, but are not limited to, pavement rehabilitation and reconstruction, and bridge repairs and replacements.

(15) "Project costs" means capital costs, costs of financing, planning, designing, constructing, expanding, improving, or maintaining a road; the cost of land, equipment, machinery, installation of utilities and other similar expenditures; and all other charges or expenses necessary, appurtenant or incidental to the foregoing.

(16) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means, for a consideration.

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

(18) "Retailer" means and includes every person engaging in the business of selling, leasing or renting tangible personal property or custom software or furnishing a taxable service for use within the meaning of this article, or in the business of selling, at auction, tangible personal property or custom software owned by the person or others for use in the county imposing taxes pursuant to this article. However, when, in the opinion of the Tax Commissioner, it is necessary for the efficient administration of county use taxes imposed

pursuant to this article to regard any salespersons, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of the dealers, distributors, supervisors, employers or persons, the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of county use taxes.

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

(A) Any retailer having or maintaining, occupying or using, within the county, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent, however called, operating within the county under the authority of the retailer or its subsidiary, irrespective of whether the place of business or agent is located in the county permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code; or

(B) Any retailer that is related to, or part of a unitary business with, a person, entity or business that, without regard to whether the retailer is admitted to do business in this state pursuant to article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code, is a subsidiary of the retailer, or is related to, or unitary with, the retailer as a related entity, a related member or part of a unitary business, all as defined in section three-a, article twenty four, chapter eleven of this code, that:

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

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

(iii) By any agent, or representative (by whatever name called), or employee, performs services in the county in connection with tangible personal property or services sold by the retailer, or any related entity, related member or part of the unitary business; or

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

(C) For purposes of paragraph (B) of this subdivision, the term "service" means and includes, but is not limited to, customer support services, help desk services, call center services, repair services, engineering services, installation service, assembly service, delivery service by means other than common carrier or the United States Postal Service, technical assistance services, the service of investigating, handling or otherwise assisting in resolving

customer issues or complaints while in the county, the service of operating a mail order business or telephone, Internet or other remote order business from facilities located within the county, the service of operating a website or internet-based business from a location within the county imposing the use tax or any other service.

(20) "Road" means a public highway, road, bridge, tunnel, or overpass to be used for the transportation of persons or goods including bicycle and pedestrian facilities.

(21) "Road project" means any project to acquire, design, construct, expand, renovate, extend, enlarge, increase, equip, improve, maintain or operate a road in this state, including, but not limited to, providing bicycle and pedestrian facilities in conjunction with a road in this state, that is under the jurisdiction of the Division of Highways.

(22) "Road construction project" means and includes any road construction project included in a road construction project plan that is adopted by a county commission pursuant to this article and approved by the Commissioner of Highways as provided in this article.

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

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

(25) "Taxpayer" means a taxpayer, as that term is defined in section two, article fifteen-b, chapter eleven of this code, who is subject to a county transportation sales tax or county transportation use tax imposed by a county commission pursuant to this article, whether acting for himself or herself or as a fiduciary, and who is liable for payment of any additions to tax, penalties or interest imposed by article ten, chapter eleven of this code for failure to timely pay or remit the county transportation sales taxes or county transportation use taxes imposed by a county commission pursuant to this article.

(26) "Vendor" means any person furnishing services subject to a county's sales and use taxes imposed pursuant to this article, or making sales of tangible personal property or custom software subject to a county's sales and use taxes imposed pursuant to this article. The terms "vendor," "retailer" and "seller" are used interchangeably in this article.

(27) "West Virginia Economic Development Authority" or "Authority" means the governmental entity created in section five, article fifteen, chapter thirty-one, of this code.

As used in this article, the terms "computer software," "lease," "purchase price," "retail sale," "sale at retail," "sales price," "seller," "service," "selected service," and "tangible

personal property” have the same meanings as those terms are given in section two, article fifteen-b, chapter eleven of this code.