

HB # 2473

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

HOUSE BILL No. 2473

(By Delegate Pettit)



Passed March 11, 1994

In Effect 90 Day From Passage

ENROLLED
H. B. 2473

(By DELEGATE PETTIT)

[Passed March 11, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact section nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three-d, article fifteen-a of said chapter, all relating to consumers sales tax and use tax and providing for permanently assigned direct pay permits.

Be it enacted by the Legislature of West Virginia:

That section nine-d, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three-d, article fifteen-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article,
2 the tax commissioner may, pursuant to rules promul-
3 gated by him in accordance with article three, chapter
4 twenty-nine-a of this code, authorize a person (as defined
5 in section two) that is a user, consumer, distributor or
6 lessee to which sales or leases of tangible personal
7 property are made or services provided, to pay any tax
8 levied by this article or article fifteen-a of this chapter
9 directly to the tax commissioner and waive the collection
10 of the tax by that person's vendor. No such authority

11 shall be granted or exercised except upon application to
12 the tax commissioner and after issuance by the tax
13 commissioner of a direct pay permit. Each direct pay
14 permit granted pursuant to this section shall continue
15 to be valid until surrendered by the holder or canceled
16 for cause by the commissioner. The commissioner shall
17 prescribe by rules promulgated in accordance with
18 article three, chapter twenty-nine-a of this code, those
19 activities which will cause cancellation of a direct pay
20 permit issued pursuant to this section. Upon issuance of
21 such direct pay permit, payment of the tax imposed or
22 assertion of the exemptions allowed by this article or
23 article fifteen-a of this chapter on sales and leases of
24 tangible personal property and sales of taxable services
25 from the vendors thereof shall be made directly to the
26 tax commissioner by the permit holder.

27 (b) On or before the fifteenth day of each month, every
28 permit holder shall make and file with the tax commis-
29 sioner a consumer sales and use tax direct pay permit
30 return for the preceding month in the form prescribed
31 by the tax commissioner showing the total value of the
32 tangible personal property so used, the amount of
33 taxable services purchased, the amount of consumers
34 sales and use taxes due from the permit holder, which
35 amount shall be paid to the tax commissioner with such
36 return, and such other information as the tax commis-
37 sioner deems necessary: *Provided*, That if the amount of
38 consumers sales and use taxes due averages less than
39 one hundred dollars per month, the tax commissioner
40 may permit the filing of quarterly returns in lieu of
41 monthly returns and the amount of tax shown thereon
42 to be due shall be remitted on or before the fifteenth day
43 following the close of the calendar quarter; and if the
44 amount due averages less than fifty dollars per calendar
45 quarter, the tax commissioner may permit the filing of
46 an annual direct pay permit return and the amount of
47 tax shown thereon to be due shall be remitted on or
48 before the last day of January each year. The tax
49 commissioner, upon written request by the permit
50 holder, may grant a reasonable extension of time, upon
51 such terms as the tax commissioner may require, for the
52 making and filing of direct pay permit returns and

53 paying the tax due. Interest on such tax shall be
54 chargeable on every such extended payment at the rate
55 specified in section seventeen, article ten of this chapter.

56 (c) A permit issued pursuant to this section shall
57 continue to be valid until expiration of the taxpayers
58 registration year under article twelve of this chapter.
59 This permit shall automatically be renewed when the
60 taxpayers business registration certificate is issued for
61 the next succeeding fiscal year, unless the permit is
62 surrendered by the holder or canceled for cause by the
63 tax commissioner.

64 (d) Persons who hold a direct payment permit which
65 has not been canceled shall not be required to pay the
66 tax to the vendor as otherwise provided in this article
67 or article fifteen-a of this chapter. Such persons shall
68 notify each vendor from whom tangible personal
69 property is purchased or leased or from whom services
70 are purchased of their direct payment permit number
71 and that the tax is being paid directly to the tax
72 commissioner. Upon receipt of such notice, such vendor
73 shall be absolved from all duties and liabilities imposed
74 by this chapter for the collection and remittance of the
75 tax with respect to sales of tangible personal property
76 and sales of services to such permit holder. Vendors who
77 make sales upon which the tax is not collected by reason
78 of the provisions of this section shall maintain records
79 in such manner that the amount involved and identity
80 of each such purchaser may be ascertained.

81 (e) Upon the expiration, cancellation or surrender of
82 a direct payment permit, the provisions of this chapter,
83 without regard to this section, shall thereafter apply to
84 the person who previously held such permit, and such
85 person shall promptly so notify in writing vendors from
86 whom tangible personal property or services are
87 purchased or leased of such cancellation or surrender.
88 Upon receipt of such notice, the vendor shall be subject
89 to the provisions of this chapter, without regard to this
90 section, with respect to all sales, distributions, leases or
91 storage of tangible personal property, thereafter made
92 to or for such person.

ARTICLE 15A. USE TAX.

§11-15A-3d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article,
2 the tax commissioner may, pursuant to rules promul-
3 gated by him in accordance with article three, chapter
4 twenty-nine-a of this code, authorize a person (as defined
5 in section two of article fifteen) that is a user, consumer,
6 distributor or lessee to which sales or leases of tangible
7 personal property are made or services provided to pay
8 any tax levied by this article or article fifteen of this
9 chapter directly to the tax commissioner and waive the
10 collection of the tax by that person's vendor. No such
11 authority shall be granted or exercised except upon
12 application to the tax commissioner and after issuance
13 by the tax commissioner of a direct pay permit. Each
14 direct pay permit granted pursuant to this section shall
15 continue to be valid until surrendered by the holder or
16 canceled for cause by the commissioner. The commis-
17 sioner shall prescribe by rules promulgated in accor-
18 dance with article three, chapter twenty-nine-a of this
19 code, those activities which will cause cancellation of a
20 direct pay permit issued pursuant to this section. Upon
21 issuance of such direct pay permit, payment of the tax
22 imposed or assertion of the exemptions allowed by this
23 article or article fifteen of this chapter on sales and
24 leases of tangible personal property and sales of taxable
25 services from the vendors thereof shall be made directly
26 to the tax commissioner by the permit holder.

27 (b) On or before the fifteenth day of each month, every
28 permit holder shall make and file with the tax commis-
29 sioner a consumers sales and use tax direct pay permit
30 return for the preceding month in the form prescribed
31 by the tax commissioner showing the total value of the
32 tangible personal property so used, the amount of
33 taxable services purchased, the amount of tax due from
34 the permit holder, which amount shall be paid to the tax
35 commissioner with such return, and such other informa-
36 tion as the tax commissioner deems necessary: *Provided,*
37 That if the amount of consumers sales and use taxes due
38 averages less than one hundred dollars per month, the
39 tax commissioner may permit the filing of quarterly

40 returns in lieu of monthly returns and the amount of tax
41 shown thereon to be due shall be remitted on or before
42 the fifteenth day following the close of the calendar
43 quarter; and if the amount due averages less than fifty
44 dollars per calendar quarter, the tax commissioner may
45 permit the filing of an annual direct pay permit return
46 and the amount of tax shown thereon to be due shall be
47 remitted on or before the last day of January each year.
48 The tax commissioner, upon written request filed by the
49 permit holder before the due date of the return, may
50 grant a reasonable extension of time, upon such terms
51 as the tax commissioner may require, for the making
52 and filing of direct pay permit returns and paying the
53 tax due. Interest on such tax shall be chargeable on
54 every such extended payment at the rate specified in
55 section seventeen, article ten of this chapter.

56 (c) A permit issued pursuant to this section shall
57 continue to be valid until expiration of the taxpayer's
58 registration year under article twelve of this chapter.
59 This permit shall automatically be renewed when the
60 taxpayer's business registration certificate is issued for
61 the next succeeding fiscal year, unless the permit is
62 surrendered by the holder or canceled for cause by the
63 tax commissioner.

64 (d) Persons who hold a direct payment permit which
65 has not been canceled shall not be required to pay the
66 tax to the vendor as otherwise provided in this article
67 or article fifteen of this chapter. Such persons shall
68 notify each vendor from whom tangible personal
69 property is purchased or leased or from whom services
70 are purchased of their direct payment permit number
71 and that the tax is being paid directly to the tax
72 commissioner. Upon receipt of such notice, such vendor
73 shall be absolved from all duties and liabilities imposed
74 by this chapter for the collection and remittance of the
75 tax with respect to sales, distributions, leases or storage
76 of tangible personal property and sales of services to
77 such permit holder. Vendors who make sales upon
78 which the tax is not collected by reason of the provisions
79 of this section shall maintain records in such manner
80 that the amount involved and identity of each such

81 purchaser may be ascertained.

82 (e) Upon the expiration, cancellation or surrender of
83 a direct payment permit, the provisions of this chapter,
84 without regard to this section, shall thereafter apply to
85 the person who previously held such permit, and such
86 person shall promptly so notify in writing vendors from
87 whom tangible personal property or services are
88 purchased of such cancellation or surrender. Upon
89 receipt of such notice, the vendor shall be subject to the
90 provisions of this chapter, without regard to this section,
91 with respect to all sales of tangible personal property
92 or taxable services, thereafter made to or for such
93 person.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage

David E. Adams

Clerk of the Senate

Donald L. Kopp
Clerk of the House of Delegates

Ken Sundt
President of the Senate

Hub Hubert
Speaker of the House of Delegates

The within is approved this the 30th day of March, 1994.

Gaston Capreol
Governor

PRESENTED TO THE

GOVERNOR

Date

3/28/94

Time

9:40 am