WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2003

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 3014

(By Mr. Speaker, Mr. Kiss, and Delegates Michael, Doyle, Anderson, H. White, G. White and Browning)

Passed March 5, 2003

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections one-a, two, three, four, four-a, four-b, five, six, eight, nine-f, thirteen, sixteen, thirty-one and thirty-three, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one-a, two, three, three-a, four, five, six, seven, eight, nine, ten, ten-a, eleven, eighteen, twenty-one, twenty-two, twenty-seven and twenty-nine, article fifteen-a of said chapter; to amend and reenact sections one, two, three, and five, article fifteen-b of said chapter; and to further amend said article fifteen-b by adding thereto twenty-one new sections, designated sections two-a, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, all relating generally to "Main Street Fairness Act of
2003," amending consumers sales and service and use tax laws to conform to requirements of streamlined sales and use tax agreement; incorporating in this state’s sales and use tax laws certain substantive provisions of agreement pertaining to definitions, administration, collection and enforcement of sales and use taxes; renaming simplified sales and use tax administration act as streamlined sales and use tax administration act; authorizing tax commissioner to sign agreement; specifying effective dates; deleting obsolete language and making other technical changes.

*Be it enacted by the Legislature of West Virginia:*

That sections one-a, two, three, four, four-a, four-b, five, six, eight, nine-f, thirteen, fourteen, sixteen, thirty-one and thirty-three, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, one-a, two, three, three-a, four, five, six, seven, eight, nine, ten, ten-a, eleven, eighteen, twenty-one, twenty-two, twenty-seven and twenty-nine, article fifteen-a of said chapter, be amended and reenacted; that sections one, two, three, and five, article fifteen-b of said chapter be amended and reenacted; and to further amend said article by adding thereto twenty-one new sections, designated sections two-a, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, all to read as follows:

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

§11-15-1a. Legislative findings.

1 The Legislature hereby finds and declares that:

2 (1) It is the intent of the Legislature that the consumers sales tax imposed by the provisions of article fifteen and the use tax imposed by the provisions of article fifteen-a of this chapter, be complementary laws and wherever possible be construed and
applied to accomplish such intent as to the imposition, administration and collection of these taxes; and

(2) On and after the first day of January, two thousand four, the taxes levied by this article and article fifteen-a of this chapter shall also be administered and collected in accordance with the provisions of article fifteen-b of this chapter.


(a) General. — When used in this article and article 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 provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) Definitions. —

(1) “Business” includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) “Communication” means all telephone, radio, light, light wave, radiotelephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and includes commercial broadcast radio, commercial broadcast television and cable television.

(3) “Contracting”: 
(A) *In general.* — "Contracting" means and includes the furnishing of work, or both materials and work, for another (by a sole contractor, general contractor, prime contractor, subcontra-
tractor or construction manager) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. Contracting also includes services provided by a construction manager so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(B) *Form of contract not controlling.* — An activity that falls within the scope of the definition of contracting constitutes contracting regardless of whether the contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract, whether or not open-ended, or any other kind of construction contract.

(C) *Special rules.* — For purposes of this definition:

(i) The term "structure" includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property or which adds utility to real property or any part thereof or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time;

(ii) The term "alteration" means, and is limited to, alter-
atations which are capital improvements to a building or structure or to real property;
(iii) The term “repair” means, and is limited to, repairs which are capital improvements to a building or structure or to real property;

(iv) The term “decoration” means, and is limited to, decorations which are capital improvements to a building or structure or to real property;

(v) The term “improvement” means, and is limited to, improvements which are capital improvements to a building or structure or to real property;

(vi) The term “capital improvement” means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property, or any part thereof, and that last or are intended to be relatively permanent. As used herein, “relatively permanent” means lasting at least a year in duration without the necessity for regularly scheduled recurring service to maintain the capital improvement. “Regular recurring service” means regularly scheduled service intervals of less than one year;

(vii) Contracting does not include the furnishing of work, or both materials and work, in the nature of hookup, connection, installation or other services if the service is incidental to the retail sale of tangible personal property from the service provider’s inventory. Provided, that the hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant to this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appli-
ances, drapery rods, window shades, venetian blinds, canvas awnings, free standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if the repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or intends to allow the real property or thing permanently attached thereto to remain in service for a year or longer; and

(viii) The term "construction manager" means a person who enters into an agreement to employ, direct, coordinate or manage design professionals and contractors who are hired and paid directly by the owner or the construction manager. The business activities of a "construction manager" as defined in this subdivision constitute contracting, so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(4) "Directly used or consumed" in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include only:

(i) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;
(ii) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(iii) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(iv) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(v) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(vi) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(vii) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(viii) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(ix) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(x) Serving as an operating supply for property undergoing transmission, manufacturing production or production of


natural resources, or for property directly used in transportation,
communication, transmission, manufacturing production or
production of natural resources;

(xi) Maintaining or repairing of property, including
maintenance equipment, directly used in transportation,
communication, transmission, manufacturing production or
production of natural resources;

(xii) storing, removal or transportation of economic waste
resulting from the activities of manufacturing, transportation,
communication, transmission or the production of natural
resources;

(xiii) Engaging in pollution control or environmental
quality or protection activity directly relating to the activities of
manufacturing, transportation, communication, transmission or
the production of natural resources and personnel, plant,
product or community safety or security activity directly
relating to the activities of manufacturing, transportation,
communication, transmission or the production of natural
resources; or

(xiv) Otherwise using as an integral and essential part of
transportation, communication, transmission, manufacturing
production or production of natural resources.

(B) Uses of property or services which do not constitute
direct use or consumption in the activities of manufacturing,
transportation, transmission, communication or the production
of natural resources include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;
(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of these activities.

(5) "Directly used or consumed" in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business means used or consumed in those activities or operations which constitute an integral and essential part of those activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to those activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include only:

(i) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;
(ii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the transmission or distribution of gas, water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and these vehicles and their equipment as are specifically designed and equipped for those purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(iii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliance, pipes, wires and mains, which are used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and repair parts used to keep in operation exempt storage devices;

(iv) Tangible personal property, custom software or services used immediately in the storage, removal or transportation of economic waste resulting from the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business;

(v) Tangible personal property, custom software or services used immediately in pollution control or environmental quality or protection activity or community safety or security directly relating to the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business.
(B) Uses of property or services which would not constitute direct use or consumption in the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to the activities of gas storage, generation or production or sale of electric power, the provision of public utility service or the operation of a utility business.

(6) “Gas storage” means the injection of gas into a storage reservoir or the storage of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir engaged in by businesses subject to the business and occupation tax imposed by sections two and two-e, article thirteen of this chapter.

(7) “Generating or producing or selling of electric power” means the generation, production or sale of electric power engaged in by businesses subject to the business and occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.
(8) “Gross proceeds” means the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses may not be deducted, but any credit or refund made for goods returned may be deducted.

(9) “Includes” and “including,” when used in a definition contained in this article, does not exclude other things otherwise within the meaning of the term being defined.

(10) “Manufacturing” means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(11) “Person” means any individual, partnership, association, corporation, limited liability company, limited liability partnership, or any other legal entity including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

(12) “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, shoe shining, manicuring and similar services.

(13) Production of natural resource.

(A) “Production of natural resources” means, except for oil and gas, the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit or commercial use of
any natural resource products and any reclamation, waste
disposal or environmental activities associated therewith and
the construction, installation or fabrication of ventilation
structures, mine shafts, slopes, boreholes, dewatering structures,
including associated facilities and apparatus, by the producer or
others, including contractors and subcontractors, at a coal mine
or coal production facility.

(B) For the natural resources oil and gas, “production of
natural resources” means the performance, by either the owner
of the natural resources, a contractor or a subcontractor, of the
act or process of exploring, developing, drilling, well-stimula-
tion activities such as logging, perforating or fracturing,
well-completion activities such as the installation of the casing,
tubing and other machinery and equipment and any reclama-
tion, waste disposal or environmental activities associated
therewith, including the installation of the gathering system or
other pipeline to transport the oil and gas produced or environ-
mental activities associated therewith and any service work
performed on the well or well site after production of the well
has initially commenced.

(C) All work performed to install or maintain facilities up
to the point of sale for severance tax purposes is included in the
“production of natural resources” and subject to the direct use
concept.

(D) “Production of natural resources” does not include the
performance or furnishing of work, or materials or work, in
fulfillment of a contract for the construction, alteration, repair,
decoration or improvement of a new or existing building or
structure, or any part thereof, or for the alteration, improvement
or development of real property, by persons other than those
otherwise directly engaged in the activities specifically set forth
in this subdivision (13) as “production of natural resources.”
(14) “Providing a public service or the operating of a utility business” means the providing of a public service or the operating of a utility by businesses subject to the business and occupation tax imposed by sections two and two-d, article thirteen of this chapter.

(15) “Purchaser” means a person who purchases tangible personal property, custom software or a service taxed by this article.

(16) “Sale,” “sales” or “selling” includes any transfer of the possession or ownership of tangible personal property or custom software for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor’s business and is made to the transferee or his or her agent for consumption or use or any other purpose. “Sale” also includes the furnishing of a service for consideration.

(17) “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 or custom software, but does not include contracting, personal services or the services rendered by an employee to his or her employer or any service rendered for resale.

(18) “Streamlined sales and use tax agreement” or “agreement,” when used in this article, shall have the same meaning as when used in article fifteen-b of this chapter, except when the context in which the word agreement is used clearly indicates that a different meaning is intended by the Legislature.

(19) “Tax” includes all taxes, additions to tax, interest and penalties levied under this article or article ten of this chapter.
(20) “Tax commissioner” means the state tax commissioner or his or her delegate. The term “delegate” in the phrase “or his or her delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax division duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(21) “Taxpayer” means any person liable for the tax imposed by this article or additions to tax, penalties and interest imposed by article ten of this chapter.

(22) “Transmission” means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(23) “Transportation” means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(24) “Ultimate consumer” or “consumer” means a person who uses or consumes services or personal property.

(25) “Vendor” means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this article.

(c) Additional definitions. — Other terms used in this article are defined in article fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen.
Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.

§11-15-3. Amount of tax; allocation of tax and transfers.

(a) Vendor to collect. — For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services defined in sections two and eight of this article, the vendor shall collect from the purchaser the tax as provided under this article and article fifteen-b of this chapter, and shall pay the amount of tax to the tax commissioner in accordance with the provisions of this article or article fifteen-b of this chapter.

(b) Amount of tax. — The general consumer sales and service tax imposed by this article shall be at the rate of six cents on the dollar of sales or services, excluding gasoline and special fuel sales, which remain taxable at the rate of five cents on the dollar of sales.

(c) Calculation tax on fractional parts of a dollar until January 1, 2004. — There shall be no tax on sales where the monetary consideration is five cents or less. The amount of the tax shall be computed as follows:

1. On each sale, where the monetary consideration is from six cents to sixteen cents, both inclusive, one cent.
2. On each sale, where the monetary consideration is from seventeen cents to thirty-three cents, both inclusive, two cents.
3. On each sale, where the monetary consideration is from thirty-four cents to fifty cents, both inclusive, three cents.
4. On each sale, where the monetary consideration is from fifty-one cents to sixty-seven cents, both inclusive, four cents.
(5) On each sale, where the monetary consideration is from sixty-eight cents to eighty-four cents, both inclusive, five cents.

(6) On each sale, where the monetary consideration is from eighty-five cents to one dollar, both inclusive, six cents.

(7) If the sale price is in excess of one dollar, six cents on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars as follows: One cent on the fractional part of the dollar if less than seventeen cents; two cents on the fractional part of the dollar if in excess of sixteen cents but less than thirty-four cents; three cents on the fractional part of the dollar if in excess of thirty-three cents but less than fifty-one cents; four cents on the fractional part of the dollar if in excess of fifty cents but less than sixty-eight cents; five cents on the fractional part of the dollar if in excess of sixty-seven cents but less than eighty-five cents; and six cents on the fractional part of the dollar if in excess of eighty-four cents. For example, the tax on sales from one dollar and one cent to one dollar and sixteen cents, both inclusive, seven cents; on sales from one dollar and seventeen cents to one dollar and thirty-three cents, both inclusive, eight cents; on sales from one dollar and thirty-four cents to one dollar and fifty cents, both inclusive, nine cents; on sales from one dollar and fifty-one cents to one dollar and sixty-seven cents, both inclusive, ten cents; on sales from one dollar and sixty-eight cents to one dollar and eighty-four cents, both inclusive, eleven cents and on sales from one dollar and eighty-five cents to two dollars, both inclusive, twelve cents: Provided, That beginning the first day of January, two thousand four, tax due under this article shall be calculated as provided in subsection (d) of this subsection and this subsection (c) does not apply to sales made after the thirty-first day of December, two thousand three.

(d) Calculation of tax on fractional parts of a dollar after December 31, 2003. — Beginning the first day of January, two
thousand four, the tax computation under subsection (b) of this section shall be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(e) No aggregation of separate sales transactions, exception for coin-operated devices. — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though the sales are aggregated in the billing or payment therefor. Notwithstanding any other provision of this article, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.

(f) Rate of tax on certain mobile homes. — Notwithstanding any provision of this article to the contrary, after the thirty-first day of December, two thousand three, the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal year-round residence and dwelling shall be an amount equal to six percent of fifty percent of the sales price.

(g) Construction; custom software. — After the thirty-first day of December, two thousand three, whenever the words “tangible personal property” or “property” appear in this article, the same shall also include the words “custom software.”

(f) Computation of tax on sales of gasoline and special fuel. — The method of computation of tax provided in this section does not apply to sales of gasoline and special fuel.

§11-15-4. Purchaser to pay; accounting by vendor.
(a) The purchaser shall pay to the vendor the amount of tax levied by this article which is added to and constitutes a part of the sales price, and is collectible by the vendor who shall account to the state for all tax paid by the purchaser.

(b) The vendor shall keep records necessary to account for:

1. The vendor’s gross proceeds from sales of personal property and services;
2. The vendor’s gross proceeds from taxable sales;
3. The vendor’s gross proceed from exempt sales;
4. The amount of taxes collected under this article, which taxes shall be held in trust for the state of West Virginia until paid over to the tax commissioner; and
5. Any other information as required by this article, or article fifteen-b of this chapter, or as required by the tax commissioner.

§11-15-4a. Failure to collect tax; liability of vendor.

If any vendor fails to collect the tax imposed by section three of this article, the vendor shall be personally liable for the amount the vendor failed to collect, except as otherwise provided in this article or article fifteen-b of this chapter.

§11-15-4b. Liability of purchaser; assessment and collection.

(a) General. — If any purchaser refuses or otherwise does not pay to the vendor the tax imposed by section three of this article, or a purchaser refuses to present to the vendor a proper certificate indicating the sale is not subject to this tax, or presents to the vendor a false certificate, or after presenting a proper certificate uses the items purchased in a manner that the
sale would be subject to the tax, the purchaser shall be personally liable for the amount of tax applicable to the transaction or transactions.

(b) Collection of tax from purchaser. — Nothing in this section relieves any purchaser who owes the tax and who has not paid the tax imposed by section three of this article from liability for payment of the tax. In those cases the tax commissioner has authority to make an assessment against the purchaser, based upon any information within his or her possession or that may come into his or her possession. This assessment and notice thereof shall be made and given in accordance with sections seven and eight, article ten of this chapter.

(c) Liability of vendor. — This section may not be construed as relieving the vendor from liability for the tax, except as otherwise provided in this article or article fifteen-b of this chapter.

§11-15-5. Total amount collected is to be remitted.

No profit shall accrue to any person as a result of the collection of the tax levied by this article notwithstanding the total amount of the taxes collected may be in excess of the amount for which the person would be liable by the application of the rate of tax levied by section three of this article to the vendor’s gross proceeds from taxable sales and services. The total amount of all taxes collected by the vendor shall be returned and remitted to the tax commissioner as provided in this article or article fifteen-b of this chapter.

§11-15-6. Vendor must show sale or service exempt; presumption.

(a) The burden of proving that a sale or service was exempt from the tax shall be upon the vendor, unless the vendor takes from the purchaser an exemption certificate signed by and bearing the address of the purchaser and setting forth the reason
for the exemption and substantially in the form prescribed by
the tax commissioner: *Provided*, That when the seller is
registered under the streamlined sales and use tax agreement to
collect the tax imposed by this article, the exemption certificate
shall be in the form prescribed by the governing board of the
streamlined sales and use tax agreement, and the signature of
the purchaser is not required unless a paper exemption certifi-
cate is furnished to the seller.

(b) To prevent evasion, it is presumed that all sales and
services are subject to the tax until the contrary is clearly
established.

§11-15-8. Furnishing of services included; exceptions.

The provisions of this article apply not only to selling
tangible personal property and custom software, but also to the
furnishing of all services, except professional and personal
services, and except those services furnished by businesses
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.

§11-15-9f. Exemption for sales and services subject to special
district excise tax.

Notwithstanding any provision of this article to the con-
trary, any sale or service upon which a special district excise tax
is paid, pursuant to the provisions of section eleven, article
thirteen-b, chapter eight of this code, is exempt from the tax
imposed by this article: *Provided*, That the special district
excise tax does not apply to sales of gasoline and special fuel.


A vendor doing business wholly or partially on a credit
basis shall remit to the tax commissioner the tax due on the
credit sale for the month in which the credit transaction occurred.

§11-15-14. When separate records of sales required.

(a) Any vendor engaged in a business subject to this tax, who is at the same time engaged in some other kind of business, occupation or profession, not taxable under this article, shall keep records to show separately the transactions used in determining the tax base taxed under this article.

(b) In the event the person fails to keep separate records there shall be levied upon the person a tax based upon the entire gross proceeds of both or all of the person’s businesses.


(a) Payment of tax. — Subject to the exceptions set forth in subsection (b) of this section, the taxes levied by this article are due and payable in monthly installments, on or before the twentieth day of the month next succeeding the month in which the tax accrued, except as otherwise provided in this article.

(b) Tax return. — The taxpayer shall, on or before the twentieth day of each month, make out and mail to the tax commissioner a return for the preceding month, in the form prescribed by the tax commissioner, showing:

(1) The total gross proceeds of the vendor’s business for the preceding month;

(2) The gross proceeds of the vendor’s business upon which the tax is based;

(3) The amount of the tax for which the vendor is liable;
(4) Any further information necessary in the computation
and collection of the tax which the tax commissioner may
require, except as otherwise provided in this article or article
fifteen-b of this chapter.

(c) **Remittance to accompany return.** — Except as other-
wise provided in this article or article fifteen-b of this chapter,
a remittance for the amount of the tax shall accompany the
return.

(d) **Deposit of collected tax.** — Tax collected by the tax
commissioner shall be deposited as provided in section thirty of
this article, except that:

(1) Tax collected on sales of gasoline and special fuel shall
be deposited in the state road fund; and

(2) Any sales tax collected by the alcohol beverage control
commissioner from persons or organizations licensed under
authority of article seven, chapter sixty of this code shall be
paid into a revolving fund account in the state treasury, design-
nated the drunk driving prevention fund, to be administered by
the commission on drunk driving prevention, subject to
appropriations by the Legislature.

(e) **Return to be signed.** — A return shall be signed by the
taxpayer or the taxpayer’s duly authorized agent, when a paper
return is prepared and filed. When the return is filed electroni-
cally, the return shall include the digital mark or digital
signature, as defined in article three, chapter thirty-nine-a of
this code, or the personal identification number of the taxpayer,
or the taxpayer’s duly authorized agent, made in accordance
with any procedural rule that may be promulgated by the tax
commissioner.

(f) **Accelerated payment.** —
(1) Taxpayers whose average monthly payment of the taxes levied by this article and article fifteen-a of this chapter during the previous calendar year exceeds one hundred thousand dollars, shall remit the tax attributable to the first fifteen days of June each year on or before the twentieth day of the June.

(2) For purposes of complying with subdivision (1) of this subsection the taxpayer shall remit an amount equal to the amount of tax imposed by this article and article fifteen-a of this chapter on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first fifteen days of June or, at the taxpayer’s election, the taxpayer may remit an amount equal to fifty percent of the taxpayer’s liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

(3) For a business which has not been in existence for a full calendar year, the total tax due from the business during the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year; and if that amount exceeds one hundred thousand dollars, the tax attributable to the first fifteen days of June each year shall be remitted on or before the twentieth day of June as provided in subdivision (2) of this subsection.

(4) When a taxpayer required to make an advanced payment of tax under subdivision (1) of this subsection makes out it’s the return for the month of June, which is due on the twentieth day of July, the taxpayer may claim as a credit against liability under this article for tax on taxable transactions during the month of June, the amount of the advanced payment of tax made under subdivision (1) of this subsection.

(a) Construction. — If a court of competent jurisdiction finds that the provisions of this article and of article fifteen-b of this chapter conflict and cannot be harmonized, then the provisions of article fifteen-b 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 may not affect the validity of the remaining portions of this article or any part thereof.

§11-15-33. Effective date.

The provisions of this article as amended or added during the regular legislative session in the year two thousand three shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date and to all returns and payments due on or after that day.

ARTICLE 15A. USE TAX.


(a) General. — When used in this article and article fifteen of this chapter, terms 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 provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature:

(b) “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 this state;
(2) “Consumer” means any person purchasing tangible personal property, custom software or a taxable service from a retailer as defined in paragraph (7) of this subsection (b) or from a seller as defined in section two, article fifteen-b of this chapter;

(3) “Lease” includes rental, hire and license;

(4) “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;

(5) “Purchase” means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration;

(6) “Purchase price” means the measure subject to the tax imposed by this article and has the same meaning as sales price;

(7) “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 this state: Provided, That when in the opinion of the tax commissioner it is necessary for the efficient administration of 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 this article;

(8) “Retailer engaging in business in this state” or any like term, unless otherwise limited by federal statute, shall mean and include but not be limited to any retailer having or maintaining, occupying or using, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent (by whatever name called) operating within this state under the authority of the retailer or its subsidiary, irrespective of whether the place of business or agent is located here permanently or temporarily, or whether 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;

(9) “Sale” means any transaction resulting in the purchase or lease of tangible personal property, custom software or a taxable service from a retailer;

(10) “Seller” means a retailer, and includes every person selling or leasing tangible personal property or custom software or furnishing a taxable service in a transaction that is subject to the tax imposed by this article;

(11) “Streamlined sales and use tax agreement” or “agreement,” when used in this article, shall have the same meaning as when used in article fifteen-b of this chapter, except when the context in which the word agreement is used clearly indicates that a different meaning is intended by the Legislature;
(12) “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, water, gas, and prewritten computer software;

(13) “Tax commissioner” or “commissioner” means the state tax commissioner, or his or her delegate. The term “delegate” in the phrase “or his or her delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax division duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article;

(14) “Taxpayer” includes any person within the meaning of this section, who is subject to a tax imposed by this article, whether acting for himself or herself or as a fiduciary; and

(15) “Use” means and includes:

(A) The exercise by any person of any right or power over tangible personal property or custom software incident to the ownership, possession or enjoyment of the property, or by any transaction in which possession of or the exercise of any right or power over tangible personal property, custom software or the result of a taxable service is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property or custom software; or

(B) The use or enjoyment in this state of the result of a taxable service. As used in this subdivision (15), “enjoyment” includes a purchaser’s right to direct the disposition of the property or the use of the taxable service, whether or not the purchaser has possession of the property.
The term “use” does not include the keeping, retaining or exercising any right or power over tangible personal property, custom software or the result of a taxable service for the purpose of subsequently transporting it outside the state for use thereafter solely outside this state.

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

§11-15A-1a. Legislative findings.

The Legislature hereby finds and declares that:

1 (1) It is the intent of the Legislature that the use tax imposed by the provisions of article fifteen-a and the consumers sales tax imposed by the provisions of article fifteen of this chapter be complementary laws and wherever possible be construed and applied to accomplish the intent as to the imposition, administration and collection of these taxes; and

8 (2) On and after the first day of January, two thousand four, the taxes levied by this article and article fifteen of this chapter shall also be administered and collected in accordance with the provisions of article fifteen-b of this chapter.

§11-15A-2. Imposition of tax; six percent tax rate; inclusion of services as taxable; transition rules; allocation of tax and transfers.

(a) An excise tax is hereby levied and imposed on the use in this state of tangible personal property, custom software or taxable services, to be collected and paid as provided in this article or article fifteen-b of this chapter, at the rate of six
percent of the purchase price of the property or taxable services, except as otherwise provided in this article.

(b) Calculation of tax on fractional parts of a dollar. — The tax computation under subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(c) "Taxable services," for the purposes of this article, means services of the nature that are subject to the tax imposed by article fifteen of this chapter. In this article, wherever the words "tangible personal property" or "property" appear, the same shall include the words "or taxable services," where the context so requires.

(d) Use tax is hereby imposed upon every person using tangible personal property, custom software or taxable service within this state. That person's liability is not extinguished until the tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in this state, or by a foreign retailer who is authorized by the tax commissioner to collect the tax imposed by this article, relieves the purchaser from further liability for the tax to which the receipt refers.

(e) Purchases of tangible personal property or taxable services made for the government of the United States or any of its agencies by ultimate consumers is subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the state of West Virginia of a character not ordinarily readily obtainable within the state, is not subject to use tax when sold, if the industrial materials and
equipment would not be subject to use taxes if sold outside of the state for use in West Virginia.

(f) This article does not apply to purchases made by counties or municipal corporations.


(a) The use in this state of the following tangible personal property, custom software and services is hereby specifically exempted from the tax imposed by this article to the extent specified:

(1) All articles of tangible personal property and custom software brought into the state of West Virginia by a nonresident individual thereof for his or her use or enjoyment while temporarily within this state or while passing through this state, except gasoline and special fuel: Provided, That fuel contained in the supply tank of a motor vehicle that is not a motor carrier may not be taxable.

(2) Tangible personal property, custom software or services, the gross receipts from the sale of which are exempt from the sales tax by the terms of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and the property or services are being used for the purpose for which it was exempted.

(3) Tangible personal property, custom software or services, the gross receipts or the gross proceeds from the sale of which are required to be included in the measure of the tax imposed by article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and upon which the tax imposed by said article fifteen has been paid.
(4) Tangible personal property, custom software or services, the sale of which in this state is not subject to the West Virginia consumers sales tax.

(5) Fifty percent of the measure of tax on mobile homes utilized by the owners thereof as their principal year-round residence and dwelling.

(b) The provisions of this section, as amended in the year two thousand three, shall apply on and after the first day of January, two thousand four.

§11-15A-3a. Moving residence or business into state.

The tax imposed by this article does not apply to tangible personal property, custom software or services purchased outside this state for use outside this state by a person who at that time was a nonresident natural person, or a business entity not actually doing business within this state, who or which later brings tangible personal property or custom software into this state in connection with his or her establishment of a permanent residence or business in this state: Provided, That the property was purchased more than six months prior to the date it was first brought into this state, or six months prior to the establishment of his or her residence or business, whichever first occurs.

§11-15A-4. Evidence of use.

For the purpose of the proper administration of this article to prevent evasion of the tax, evidence that tangible personal property, custom software or a service was sold by any person for delivery in this state is prima facie evidence that the tangible personal property, custom software or service was sold for use in this state.

The tax imposed in section two of this article shall be collected in the following manner:

(1) The tax upon the use of all tangible personal property, custom software or services, sold by a retailer engaging in business in this state, or by any other retailer as the tax commissioner authorizes pursuant to section seven of this article, or article fifteen –b of this chapter, shall be collected by the retailer and remitted to the state tax commissioner, pursuant to the provisions of sections six through ten, inclusive, of this article, or by the seller registered under article fifteen-b of this chapter, in accordance with the provisions of this article and article fifteen-b of this chapter.

(2) The tax upon the use of all tangible personal property, custom software and taxable services not paid pursuant to subdivision one of this section, shall be paid to the tax commissioner directly by any person using the property or service within this state, pursuant to the provisions of section eleven of this article.


(a) Every retailer engaging in business in this state and making sales of tangible personal property, custom software or taxable services for delivery into this state, or with the knowledge, directly or indirectly, that the property or service is intended for use in this state, that are not exempted under the provisions of section three of this article, shall at the time of making the sales, whether within or without the state, collect the tax imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the tax commissioner, if the tax commissioner prescribes by rule.
§11-lSA-7. Foreign retailers.

The tax commissioner may, in his or her discretion, upon application authorize the collection of the tax imposed in section two of this article by any retailer not engaging in business within this state, who, to the satisfaction of the tax commissioner, furnishes adequate security to insure collection and payment of the tax. The retailer shall be issued, without charge, a permit to collect the tax in the manner, and subject to the rules and agreements as the tax commissioner prescribes. When authorized, it is the duty of the retailer to collect the tax upon all tangible personal property, custom software and services sold to the retailer's knowledge for use within this state, in the same manner and subject to the same requirements as a retailer engaging in business within this state. The authority and permit may be cancelled when, at any time, the tax commissioner considers the security inadequate, or that the tax can more effectively be collected from the person using the property or taxable service in this state.


(a) It is unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property or taxable service sold, or if added that it or any part thereof will be refunded.
35

(b) The tax commissioner has the power to adopt and
promulgate rules for adding the tax, or the equivalent thereof,
by providing different methods applying uniformly to retailers
within the same general classification for the purpose of
enabling retailers to add and collect, as far as practicable, the
amount of the tax.

(c) Any person violating any of the provisions of this
section within this state is guilty of a misdemeanor, and subject
to the penalties provided in section seven, article nine of this
chapter.


The tax required to be collected by any retailer pursuant to
sections six, six-a or seven of this article, or by any seller or
certified service provider pursuant to article fifteen-b of this
chapter, and any tax collected by any retailer, seller or certified
service provider pursuant to sections six, six-a or seven of this
article, or article fifteen-b of this chapter, constitutes a debt
owed by the retailer, seller or certified service provider to this
state. The amount of tax collected shall be held in trust for the
state of West Virginia until paid over to the tax commissioner.

§11-15A-10. Payment to tax commissioner.

(a) Each retailer required or authorized, pursuant to sections
six, six-a or seven, or pursuant to article fifteen-b of this
chapter, to collect the tax imposed in section two of this article,
is required to pay to the tax commissioner the amount of the tax
on or before the twentieth day of the month next succeeding
each calendar month, except as otherwise provided in this
article or article fifteen-b of this chapter.

(b) Each certified service provider for a Model I seller shall
pay to the tax commissioner the tax levied by this article on or
before the twentieth day of the month next succeeding the
calendar month in which the tax accrued, except as otherwise provided in this article or article fifteen-b of this chapter.

(c) At that time, each retailer, seller or certified service provider shall file with the tax commissioner a return for the preceding monthly period, except as otherwise provided in this article or article fifteen-b of this chapter, in the form prescribed by the tax commissioner showing the sales price of any or all tangible personal property, custom software and taxable services sold by the retailer or seller during the preceding quarterly period, the use of which is subject to the tax imposed by this article, and any other information the tax commissioner may consider necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of the tax, for the period covered by the return, except as otherwise provided in this article or article fifteen-b of this chapter: Provided, That where the tangible personal property or custom software is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part of the sum is extended over a period longer than sixty days from the date of the sale, the retailer may collect and remit each monthly period that portion of the tax equal to six percent of that portion of the purchase price actually received during the monthly period.

(d) The tax commissioner may, upon request and a proper showing of the necessity to do so, grant an extension of time not to exceed thirty days for making any return and payment.

(e) Returns shall be signed by the retailer or seller or his or her duly authorized agent, and must be certified by him or her to be correct, except as otherwise provided in this article or article fifteen-b of this chapter.

(f) Accelerated payment. —
(1) For calendar years beginning after the thirty-first day of December, two thousand two, taxpayers whose average monthly payment of the taxes levied by this article and article fifteen of this chapter during the previous calendar year exceeds one hundred thousand dollars, shall remit the tax attributable to the first fifteen days of June each year on or before the twentieth day of said month of June.

(2) For purposes of complying with subdivision (1) of this subsection, the taxpayer shall remit an amount equal to the amount of tax imposed by this article and article fifteen of this chapter on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first fifteen days of June or, at the taxpayer’s election, taxpayer may remit an amount equal to fifty percent of taxpayer’s liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

(3) For a business which has not been in existence for a full calendar year, the total tax due from the business during the prior calendar year shall be divided by the number of months, including fractions of a month, that it was in business during the prior calendar year; and if that amount exceeds one hundred thousand dollars, the tax attributable to the first fifteen days of June each year shall be remitted on or before the twentieth day of said month of June as provided in subdivision (2) of this subsection.

(4) When a taxpayer required to make an advanced payment of tax under subdivision (1) of this subsection makes out its return for the month of June, which is due on the twentieth day of July, the taxpayer may claim as a credit against its liability under this article for tax on taxable transactions during the month of June, the amount of the advanced payment of tax made under subdivision (1) of this subsection.
§11-15A-10a. Credit for sales tax liability paid to another state.

(a) A person is entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of sales tax lawfully paid to another state for the acquisition of that property or service: Provided, That the amount of credit allowed does not exceed the amount of use tax imposed on the use of the property in this state.

(b) For purposes of this section:

(1) “Sales tax” includes a sales tax or compensating use tax imposed on the use of tangible personal property or a service by the state in which the sale occurred; and

(2) “State” includes the District of Columbia but does not include any of the several territories organized by Congress.


(a) Any person who uses any tangible personal property, custom software or the results of a taxable service upon which the tax herein imposed has not been paid either to a retailer or direct to the tax commissioner is liable for the amount of the nonpayment, and persons required by law to hold a West Virginia business registration certificate shall on or before the fifteenth day of the month next succeeding each quarterly period pay the tax imposed in section two of this article upon all the property and services used by him or her during the preceding quarterly period and accompanied by returns the tax commissioner prescribes: Provided, That if the aggregate annual tax liability of any person under this article is six hundred dollars or less, the person shall, in lieu of the quarterly payment and filing, pay the tax on or before the fifteenth day of the first month next succeeding the end of his or her taxable year, and shall file the annual return as may be prescribed by
the tax commissioner. The tax commissioner may, by
nonemergency legislative rules promulgated pursuant to article
three, chapter twenty-nine-a of this code, change the foregoing
minimum amounts.

(b) Any individual who is not required by law to hold a
West Virginia business registration certificate, who uses any
personal property or taxable service upon which the West
Virginia use tax has not been paid either to a retailer or directly
to the tax commissioner is liable for the West Virginia use tax
upon property or taxable services and, notwithstanding the
amount of the annual aggregate annual tax liability, shall pay
the use tax imposed upon all property or taxable services used
by him or her during the taxpayer’s federal taxable year on or
before the fifteenth day of April of the taxpayer’s next succeed-
ing federal tax year, and shall file the annual return therewith as
the tax commissioner may authorize or require.

(c) All of the provisions of section ten with reference to
quarterly or annual returns and payments are applicable to the
returns and payments required under this section.

§11-15A-18. Seller must show sale not at retail; presumption.

(a) The burden of proving that a sale was not taxable shall
be upon the seller, unless, the seller, in good faith, takes from
the purchaser a certificate signed by and bearing the address of
the purchaser setting forth the reason for exemption of the sale
from imposition of the tax.

(b) Notwithstanding subsection (a) of this section, a seller
who is registered under the streamlined sales and use tax
agreement to collect this tax is relieved of the good faith
requirement for the taking of an exemption certificate in
accordance with article fifteen-b of this chapter, and any rule
promulgated by the governing board for the agreement.
(c) To prevent evasion it is presumed that all proceeds are subject to the tax until the contrary is clearly established.

(d) This certificate shall be substantially in the form prescribed by the tax commissioner: Provided, That when the seller is registered under the streamlined sales and use tax agreement to collect the tax imposed by this article, the exemption certificate taken shall conform with requirements of the streamlined sales and use tax agreement and any rules prescribed by the governing board for the agreement.


(a) Every retailer required or authorized to collect taxes imposed by this article and every person using in this state tangible personal property, custom software or taxable services shall keep records, receipts, invoices, and other pertinent papers as the tax commissioner requires, in any form as the tax commissioner requires.

(b) In addition to the tax commissioner’s powers set forth in article ten of this chapter, the tax commissioner or any of his or her duly authorized agents is hereby authorized to examine the books, papers, records and equipment of any person who either:

(1) Is selling tangible personal property, custom software or taxable services; or

(2) Is liable for the tax imposed by this article, and to investigate the character of the business of any person in order to verify the accuracy of any return made, or if no return was made by the person, to ascertain and determine the amount due under the provisions of this article.

§11-15A-22. Canceling or revoking permits.
Whenever any retailer engaging in business in this state, or authorized to collect the tax imposed in this article pursuant to section seven of this article, fails to comply with any of the provisions of this article or any orders, or rules of the tax commissioner prescribed and adopted for this article under article ten of this chapter, the tax commissioner may, upon notice and hearing, by order, cancel the business registration certificate, if any, issued to the retailer under article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, or if the retailer is a corporation authorized to do business in this state under article fifteen, chapter thirty-one-d of this code or article fourteen, chapter thirty-one-e of this code, may certify to the secretary of state a copy of an order finding that the retailer has failed to comply with certain specified provisions, orders, or rules. The secretary of state shall, upon receipt of the certification, revoke the permit authorizing the corporation to do business in this state, and shall issue a new permit only when the corporation has obtained from the tax commissioner an order finding that the corporation has complied with its obligations under this article. No order authorized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why the order should not be made, and the corporation shall be given twenty days’ notice of the time, place and purpose of the hearing, which shall be heard as provided in article ten-a of this chapter. The tax commissioner shall have the power in his or her discretion to issue a new business registration certificate after the business registration certificate is cancelled.


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

§11-15A-29. Effective date.

The provisions of this article, as amended or added during the regular legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date and to all returns and payments due on or after that day.

ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION ACT.

§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.”


(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) “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) "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.

(5) "Certified service provider" or "CSP" means an agent certified under the agreement to perform all of the seller’s sales tax functions.

(6) "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.

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

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

(9) "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.

(10) "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) A 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) of this subdivision;

(B) 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 C.F.R. §101.36, or in any successor section of the code of federal regulations.

(11) “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.

(12) "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 in humans; or

(C) Intended to affect the structure or any function of the human body.

(13) "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.

(14) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
(15) "Entity-based exemption" means an exemption based on who purchases the product or service or who sells the product or service.

(16) "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 or tobacco.

(17) "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.

(18) "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 one hundred dollars 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.

(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.

(19) “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.

(20) “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.

(21) “Model I seller” means a seller 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.

(22) “Model II seller” means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.
(23) “Model III seller” means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, 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.

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

(25) “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.

(26) “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.

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

(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.
(B) "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the 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: Provided, That 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.

(28) "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.

(29) "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.

(30) "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.

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

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

(33) "Registered under this agreement" means registration by a seller with the member states under the central registration system provided in article four of the agreement.

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

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

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

(35)(A) "Sales price" means the measure subject to the tax levied by this article 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;

(v) Installation charges;

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and

(vii) Credit for the fair market value of any trade-in.

(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; and

(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.

(36) “Sales tax” means the tax levied under article fifteen of this chapter.

(37) “Seller” means any person making sales, leases or rentals of personal property or services.

(38) “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 em-
ployee 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.

(39) “State” means any state of the United States and the District of Columbia.

(40) “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, water, gas, and prewritten computer software.

(41) “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.

(42) “Tax commissioner” means the state tax commissioner or his or her delegate. The term “delegate” in the phrase “or his or her delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax division duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(43) “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.

(44) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(45) “Use tax” means the tax levied under article fifteen-a of this chapter.
(46) “Use based exemption” means an exemption based on the purchaser’s use of the product or service.

(47) “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 article 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 article fifteen-b. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.

§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 the twelfth day of November, two thousand two, 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” does not include any substantive changes in the agreement adopted after the Legislature enacts this section in the year two thousand three.

§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 the twelfth day of November, two
thousand two, 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 two thousand two, and that
this state should now sign the agreement.

§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 the
thirtieth day of June, two thousand three, with one or more
states to simplify and modernize sales and use tax administra-
tion in order to substantially reduce the burden of tax compli-
ance 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.

(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 by agent. — A person appointed by a seller to represent the seller before the states that are members of the streamlined sales tax agreement may register the seller under the agreement under uniform procedures adopted by the member states. The appointment of an agent shall be in writing and submitted to a member state if requested by a member.

(c) Cancellation of registration. — A seller registered under the streamlined sales and use tax agreement may cancel its registration at any time under uniform procedures adopted by the member states.

§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 use tax agreement, the seller agrees to collect and remit sales and use taxes 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.

(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 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 effective date of this state’s participation in the streamlined sales and use tax 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.


(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 custom software, whichever comes first.

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


(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 was shipped, or computer software 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, other than property identified in subsection (c) or subsection (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.

(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, semi-trailers, 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, notwith-
standing the exclusion of lease or rental in subsection (a) of this
section. “Transportation equipment” means any of the follow-
ing:

(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 U.S. department of transportation or another
federal or foreign authority to engage in the 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) of this subsection.

§11-15B-16. Application of general sourcing rule and exclusions
from the rules.

(a) General. — Sellers who collect the taxes levied by
articles fifteen and fifteen-a of this chapter shall source the
retail sale of a product, as provided in section fifteen of this
article. As used in this section, the term “product” includes
tangible personal property, custom software or a service, or any
combination thereof.

(b) Scope of sourcing rule. — The provisions of section
fifteen of this article only apply to determine a seller’s obliga-
tion to pay or collect and remit a sales or use tax with respect to
the seller’s retail sale of a product. Section fifteen of this article
does 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.

(c) Exceptions. — The sourcing rules in this section and
section fifteen of this article do not apply to telecommunica-
tions services.

§11-15B-17. Direct mail sourcing.

(a) General. — Notwithstanding section fifteen of this
article, a purchaser of direct mail that is not a holder of a direct
pay permit shall provide to the seller in conjunction with the
purchase either a “direct mail form” or information to show the jurisdictions to which the direct mail is delivered to recipients.

(1) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form remains in effect for all future sales of direct mail by the seller to the purchaser until revoked in writing.

(2) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith by the seller, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) When purchaser does not have direct pay permit and does not provide direct mail form. — If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection (a) of this section, the seller shall collect the tax according to subdivision (5), subsection (a), section fifteen of this article. Nothing in this subsection (b) shall limit a purchaser’s obligation for sales or use tax to any state to which the direct mail is delivered.

(c) Direct pay permit. — If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser may not be required to provide a direct mail form or delivery information to the seller.

§11-15B-18. Multiple points of use of certain products and services.
(a) General. — Notwithstanding the provisions of section fifteen of this article, a business purchaser that is not a holder of a direct pay permit that knows at the time of the business purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with the purchase a “multiple points of use” or “MPU exemption” form disclosing this fact.

(1) Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.

(2) A purchaser delivering the MPU exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser’s business records as they exist at the time of the consummation of the sale.

(3) The MPU exemption form remains in effect for all future sales by the seller to the purchaser, except as to the subsequent sale’s specific apportionment that is governed by the principle of subdivision (2) of this subsection and the facts existing at the time of the sale, until revoked in writing.

(b) Holders of direct pay permits. — A holder of a direct pay permit may not be required to deliver a MPU exemption form to the seller. A direct pay permit holder shall follow the provisions of subdivision (2), subsection (a) of this section in apportioning the tax due on a digital good, computer software delivered electronically, or a service that will be concurrently available for use in more than one jurisdiction.

(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. — 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.

§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.

§11-15B-23. Enactment of exemptions.

(a) Product-based exemptions. — The Legislature may enact a product-based exemption from the taxes levied by article fifteen and fifteen-a of this chapter without restriction if the streamlined sales and use tax agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, the Legislature may exempt all items included within the definition but may not exempt only part of the items included within the definition, unless the streamlined sales and use tax agreement sets out the exemption for part of the items as an acceptable variation.

(b) Entity-based or use-based exemption. — The Legislature may enact an entity-based or use-based exemption from a tax levied by article fifteen or fifteen-a of this chapter without restriction if the streamlined sales and use tax agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, the Legislature may enact an entity-based or use-based exemption that applies to that product, as long as the exemption utilizes the streamline sales and use tax agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, the Legislature may enact an entity-based or use-based exemption for the product without restriction.

(c) 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.

(a) General. — When a purchaser claims an exemption under article fifteen or fifteen-a of this chapter:

(1) A seller registered under the streamlined sales and use tax agreement 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 established pursuant to the agreement. A seller not registered under the agreement shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of purchase, as determined by the tax commissioner.

(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 administering the streamlined sales and use tax agreement.

(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) The tax commissioner shall relieve sellers registered under the streamlined sales and use tax agreement that follow the requirements of this section from any 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 to a seller who fraudulently fails to collect the tax or solicits purchasers to participate in the unlawful claim of an exemption.


(a) General. — A seller who registers with this state under the streamlined sales tax agreement is required to file one sales/use tax return with the tax commissioner for each taxing period.

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

(c) Additional information returns. — The tax commissioner shall allow any Model I, Model II, or Model III seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board administering the streamlined sales and use tax agreement. The tax commissioner may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board administering the streamlined sales and use tax agreement.

(d) The tax commissioner shall allow any seller that is registered with this state under the streamlined sales and use tax agreement, which does not have a legal requirement to register
in this state under article twelve of this chapter, and is not a Model I, II, or III seller, to submit its sales and use tax returns as follows:

(1) Upon registration, the tax commissioner shall provide to the seller the returns required by this state.

(2) The tax commissioner may require a seller to file a return anytime within one year of the month of initial registration, and future returns may be required on an annual basis in succeeding years.

(3) In addition to the returns required in subdivision (2) of this subsection, a seller shall submit a return by the twentieth day of the month following any month in which the seller accumulated state and local tax funds for the state in the amount of one thousand dollars or more.

(4) The tax commissioner shall participate with other states that are members of the streamlined sales and use tax agreement in developing a more uniform sales and use tax return that, when completed, is available to all sellers.

(5) All Model I, II, and III sellers shall file returns electronically after the first day of January, two thousand four.


(a) General. — Only one remittance is required for each return except as provided in this section.

(b) When electronic remittance required. — All remittances from sellers under Models I, II, and III shall be remitted electronically after the thirty-first day of December, two thousand three.
(c) **Method of remittance.** — Electronic payments shall be made using either the ACH credit or ACH debit method.

(d) **Alternative method.** — The tax commission 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) **Format of data accompany remittance.** — Any data that accompanies a remittance shall be formatted using uniform tax type and payment type codes approved by the governing board administering the streamlined sales and use tax agreement.


(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. Sec. 166 as the basis for calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C. Sec. 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; and
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 or 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 reporting a payment received on a previously claimed bad debt, any payments made on a debt or account is 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.

§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 administering the streamlined sales and used tax agree-
ment 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;

(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 web site of the certified service provider;

(4) Its collection, use and retention of personally identifi-
able 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

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

(e) State notification of privacy policy. — The tax commis-
sioner 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, 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) *Service provider’s confidentiality policy may be more restrictive.* — This privacy policy does not preclude the governing board administering the streamlined sales and use tax agreement from certifying a certified service provider whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the agreement or the laws of this state.

(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.

§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) 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) Monetary allowance for Model III sellers and all other sellers that are not under Models I or II. — A monetary allowance to sellers under Model III and to all other sellers that are not under Models I or II may be allowed based on the following:

1. 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; and

2. Vendor discounts afforded under each member state’s law.

(d) 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 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 this section is amended by the Legislature.

(e) Findings and declarations. — The Legislature finds that the vendor cost of collection study was not completed for use by the governing board of the streamlined sales and use tax agreement or this Legislature before this Legislature was asked to authorize the tax commissioner to sign the streamlined sales and use tax agreement. Additionally, no preliminary findings or conclusions of the study regarding vendor costs of collection
are available upon which the tax commissioner or the Legislature can reasonably project the effect the payment of the monetary allowances provided for in subsections (a) through (c) of this section will have on net sales and use tax collections. Because the cost of allowing monetary allowances under collection Models I through IV may reduce net sales and use tax collections, at least in the early years of the agreement, because many states including this state are experiencing revenue shortfalls, and because the Legislature is constitutionally required to pass a balanced budget, the Legislature finds and declares that it is both reasonable and prudent to delay approving this aspect of the agreement until adequate information does become available and the effect the monetary allowances will have on West Virginia sales and use tax collections can reasonably be quantified. The Legislature declares its support for the streamlined sales and use tax agreement by adopting in this enactment all substantive changes in West Virginia’s sales and use tax laws necessary for West Virginia’s sales and use tax laws to be in substantial compliance with the streamlined sales and use tax agreement. Additionally, the Legislature declares that it can quickly act to reconsider subsection (d) of this section once the requisite information becomes available.


(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.
§11-15B-32. Effective date.

The provisions of this article, as amended or added during the regular legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 14th day of March, 2003.

Governor
PRESENTED TO THE GOVERNOR

Date 3/8/03
Time 12:00 P.M.