WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED
Committee Substitute for
SENATE BILL NO. 692

(By Senator Helmick )

PASSED March 10, 2006

In Effect 90 days from Passage
AN ACT to amend and reenact §11-15-9d and §11-15-20 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15A-3d of said code; to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-13, §11-15B-14a, §11-15B-15, §11-15B-18, §11-15B-19, §11-15B-20, §11-15B-23, §11-15B-24, §11-15B-35 and §11-15B-36 of said code; and to amend said code by adding thereto two new sections, designated §11-15B-2b and §11-15B-37, all relating generally to conforming West Virginia's consumers sales and use tax law to requirements of the Streamlined Sales and Use Tax Agreement as amended; incorporating certain substantive provisions of the agreement pertaining to definitions, administration, collection and enforcement of sales and use taxes; deleting obsolete language; making other technical changes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:
That §11-15-9d and §11-15-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15A-3d of said code be amended and reenacted; that §11-15B-2, §11-15B-2a, §11-15B-13, §11-15B-14a, §11-15B-15, §11-15B-18, §11-15B-19, §11-15B-20, §11-15B-23, §11-15B-24, §11-15B-35 and §11-15B-36 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §11-15B-2b and §11-15B-37, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the Tax Commissioner may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-nine-a of this code, authorize a person who is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided, to pay any tax levied by this article or article fifteen-a of this chapter directly to the Tax Commissioner and waive the collection of the tax by that person’s vendor. No authority shall be granted or exercised except upon application to the Tax Commissioner and after issuance by the Tax Commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section is valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of a direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen-a of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors of the personal property or services shall be made directly to the Tax Commissioner by the permit holder.
(b) On or before the twentieth day of each month, every permit holder shall make and file with the Tax Commissioner a consumers sales and use tax direct pay permit return for the preceding month in the form prescribed by the Tax Commissioner showing the total value of the tangible personal property used, the amount of taxable services purchased, the amount of consumers sales and use taxes due from the permit holder, which shall be paid to the Tax Commissioner with the return, and any other information as the Tax Commissioner considers necessary: Provided, That if the amount of consumers sales and use taxes due averages less than two hundred fifty dollars per month, the Tax Commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount of tax shown on the returns to be due shall be remitted on or before the fifteenth day following the close of the calendar quarter; and if the amount due averages less than one hundred fifty dollars per calendar quarter, the Tax Commissioner may permit the filing of an annual direct pay permit return and the amount of tax shown on the return to be due shall be remitted on or before thirty days after the end of the permit holder tax year for federal and state income tax purposes: Provided, however, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amounts established in this subsection. The Tax Commissioner, upon written request by the permit holder, may grant a reasonable extension of time, upon terms as the Tax Commissioner may require, for the making and filing of direct pay permit returns and paying the tax due. Interest on the tax shall be chargeable on every extended payment at the rate specified in section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section is valid until expiration of the taxpayers registration year under article twelve of this chapter. This permit is automatically renewed when the taxpayer's business registration certi-
64 cate is issued for the next succeeding fiscal year, unless the
65 permit is surrendered by the holder or canceled for cause
66 by the Tax Commissioner.

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

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

94 (f) The amendments to this section enacted in the year
95 two thousand six are effective for tax years beginning on
96 or after the first day of January, two thousand six.


1 (a) When the total consumers sales and use tax remit-
2 tance for which a person is liable does not exceed an
average monthly amount over the taxable year of two hundred fifty dollars, he or she may pay the tax and make a quarterly return on or before the twentieth day of the first month in the next succeeding quarter in lieu of monthly returns: Provided, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amount established in this subsection.

(b) When the total consumers sales and use tax remittance for which a person is liable does not in the aggregate exceed six hundred dollars for the taxable year, he or she may pay the tax and make an annual return on or before thirty days after the end of his or her taxable year for federal and state income tax purposes: Provided, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amount established in this subsection.

(c) The amendments to this section enacted in the year two thousand six are effective for tax years beginning on or after the first day of January, two thousand six.

ARTICLE 15A. USE TAX.

§11-15A-3d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the Tax Commissioner may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-nine-a of this code, authorize a person as defined in section two of article fifteen who is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided to pay any tax levied by this article or article fifteen of this chapter directly to the Tax Commissioner and waive the collection of the tax by that person’s vendor. This authority is not to be granted or exercised except upon application to the Tax Commissioner and after issuance by the
Tax Commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section continues to be valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of the direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors thereof shall be made directly to the Tax Commissioner by the permit holder.

(b) On or before the twentieth day of each month, every permit holder shall make and file with the Tax Commissioner a consumers sales and use tax direct pay permit return for the preceding month in the form prescribed by the Tax Commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of tax due from the permit holder, which amount shall be paid to the Tax Commissioner with the return, and any other information the Tax Commissioner considers necessary: Provided, That if the amount of consumers sales and use taxes due averages less than two hundred fifty dollars per month, the Tax Commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount of tax shown thereon to be due shall be remitted on or before the twentieth day following the close of the calendar quarter; and if the amount due averages less than one hundred fifty dollars per calendar quarter, the Tax Commissioner may permit the filing of an annual direct pay permit return and the amount of tax shown to be due is to be remitted on or before the thirtieth day after the close of permit holder's taxable year: Provided, however, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of
this code, change the minimum amounts established in this subsection. The Tax Commissioner, upon written request filed by the permit holder before the due date of the return, may grant a reasonable extension of time, upon the terms the Tax Commissioner may require, for the making and filing of direct pay permit returns and paying the tax due. Interest on the tax is chargeable on every extended payment at the rate specified in section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section is to be valid until expiration of the taxpayer's registration year under article twelve of this chapter. This permit is automatically renewed when the taxpayer's business registration certificate is issued for the next succeeding fiscal year, unless the permit is surrendered by the holder or canceled for cause by the Tax Commissioner.

(d) Persons who hold a direct payment permit which has not been canceled are not required to pay the tax to the vendor as otherwise provided in this article or article fifteen of this chapter. These persons shall notify each vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct payment permit number and that the tax is being paid directly to the Tax Commissioner. Upon receipt of the notice, the vendor is absolved from all duties and liabilities imposed by this chapter for the collection and remittance of the tax with respect to sales, distributions, leases or storage of tangible personal property and sales of services to the permit holder. Vendors who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in a manner by which the amount involved and identity of each purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a direct payment permit, the provisions of this chapter, without regard to this section, shall thereafter apply to the person who previously held the permit, and the person
shall promptly notify in writing vendors from whom tangible personal property or services are purchased of the cancellation or surrender. Upon receipt of the notice, the vendor is subject to the provisions of this chapter, without regard to this section, with respect to all sales of tangible personal property or taxable services, thereafter made to or for the person.

(f) The amendments to this section enacted in the year two thousand six are effective for tax years beginning on or after the first day of January, two thousand six.

ARTICLE 15B. 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) “Bundled transaction” means the retail sale of two or more products, except real property and services to real property, where: (i) The products are otherwise distinct and identifiable; and (ii) the products are sold for one nonitemized price. A “bundled transaction” does not
include the sale of any products in which the "sales price" varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(A) "Distinct and identifiable products" does not include:

(i) Packaging—such as containers, boxes, sacks, bags and bottles—or other materials—such as wrapping, labels, tags and instruction guides—that accompany the "retail sale" of the products and are incidental or immaterial to the "retail sale" thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes;

(ii) A product provided free of charge with the required purchase of another product. A product is "provided free of charge" if the "sales price" of the product purchased does not vary depending on the inclusion of the product "provided free of charge"; or

(iii) Items included in the member state's definition of "sales price", as defined in this section.

(B) The term "one nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card or price list.

(C) A transaction that otherwise meets the definition of a "bundled transaction", as defined in this subdivision, is not a "bundled transaction" if it is:

(i) The "retail sale" of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in
connection with the service, and the true object of the transaction is the service; or

(ii) The “retail sale” of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(iii) A transaction that includes taxable products and nontaxable products and the “purchase price” or “sales price” of the taxable products is de minimis.

(I) “De minimis” means the seller’s “purchase price” or “sales price” of the taxable products is ten percent or less of the total “purchase price” or “sales price” of the bundled products.

(II) Sellers shall use either the “purchase price” or the “sales price” of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the “purchase price” and “sales price” of the products to determine if the taxable products are de minimis.

(III) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) A transaction that includes products taxable at the general rate of tax and food or food ingredients taxable at a lower rate of tax and the “purchase price” or “sales price” of the products taxable at the general sales tax rate is de minimis.

(I) “De minimis” means the seller’s “purchase price” or “sales price” of the products taxable at the general sales tax rate is ten percent or less of the total “purchase price” or “sales price” of the bundled products.

(II) Sellers shall use either the “purchase price” or the “sales price” of the products to determine if the products taxable at the general rate of tax are de minimis. Sellers
may not use a combination of the "purchase price" and "sales price" of the products to determine if the products taxable at the general rate of tax are de minimis.

(III) Sellers shall use the full term of a service contract to determine if the products taxable at the general rate of tax are de minimis; or

(v) The "retail sale" of exempt tangible personal property, or food and food ingredients taxable at a lower rate of tax, and tangible personal property taxable at the general rate of tax where:

(I) The transaction includes "food and food ingredients", "drugs", "durable medical equipment", "mobility-enhancing equipment", "prosthetic devices" all as defined in this article; and

(II) Where the seller's "purchase price" or "sales price" of the taxable tangible personal property taxable at the general rate of tax is fifty percent or less of the total "purchase price" or "sales price" of the bundled tangible personal property. Sellers may not use a combination of the "purchase price" and "sales price" of the tangible personal property when making the fifty percent determination for a transaction.

(5) "Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(6) "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.
(7) "Certified service provider" or "CSP" means an agent certified under the agreement to perform all of the seller's sales tax functions.

(8) "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.

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

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

(11) "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.

(12) "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), inclusive, of this paragraph;
(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 CFR §101.36, or in any successor section of the Code of Federal Regulations.

(13) "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.

(14) "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.

(15) "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.

(16) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(17) "Entity-based exemption" means an exemption based on who purchases the product or service or who sells the product or service. An exemption that is available to all individuals shall not be considered an entity-based exemption.

(18) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, prepared food or tobacco.

(19) "Food sold through vending machines" means food dispensed from a machine or other mechanical device that accepts payment.

(20) "Governing board" means the governing board of the Streamlined Sales and Use Tax Agreement.

(21) "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.
"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.

(23) "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.

(24) "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.

(25) "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.

(26) "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.

(27) "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.

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

(29) "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.

(30) (A) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food.

(B) "Prepared food" in subparagraph (ii), paragraph (A) of this subdivision does not include food that is only cut, repackaged or pasteurized by the seller, and eggs, fish, meat, poultry and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code of 2001 so as to prevent food-borne illnesses.

(C) Additionally, "prepared food", as defined in this subdivision does not include:

(i) Food sold by a seller whose proper primary NAICS classification is manufacturing in Sector 311, except Subsection 3118 (bakeries);

(ii) Food sold in an unheated state by weight or volume as a single item; or

(iii) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

(31) "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.

(32) "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.

(33) "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.

(34) "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.

(35) "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.

(36) "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.

(37) "Purchaser" means a person to whom a sale of
personal property is made or to whom a service is fur-
nished.

(38) "Registered under this agreement" means registra-
tion by a seller with the member states under the central
registration system provided in article four of the agree-
ment.

(39) "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.

(40) (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 ser-

...
(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges; and

(v) Installation charges.

(B) "Sales price" does not include:

(i) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; or

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) "Sales price" shall include consideration received by the seller from third parties if:

(i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a "preferred customer" card that is available to any patron does not constitute membership in such a group); or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(41) "Sales tax" means the tax levied under article fifteen of this chapter.

(42) "Seller" means any person making sales, leases or rentals of personal property or services.

(43) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale or any service furnished by a business that is subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission of this state. The term "service" or "selected service" does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property.
under a manufacturer's, distributor's or other third-party's marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a "service" or "selected service" rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(44) "Soft drink" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes or greater than fifty percent of vegetable or fruit juice by volume.

(45) "State" means any state of the United States and the District of Columbia.

(46) "Tangible personal property" means personal property that can be seen, weighed, measured, felt or touched, or that is in any manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, steam, water, gas and prewritten computer software.

(47) "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.

(48) "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.
(49) "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.

(50) "Telecommunications service" when used in this article and articles fifteen and fifteen-a shall have the same meaning as that term is defined in section two-b of this article.

(51) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco.

(52) "Use tax" means the tax levied under article fifteen-a of this chapter.

(53) "Use-based exemption" means an exemption based on a specific use of the product or service by the purchaser.

(54) "Vendor" means any person furnishing services taxed by article fifteen or fifteen-a of this chapter or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article and in articles fifteen and fifteen-a of this chapter.

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


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,

7 except when the context in which the term is used clearly
8 indicates that a different meaning is intended by the
9 Legislature. "Agreement" includes amendments to the
10 agreement adopted by the implementing states in calendar
11 years two thousand three, two thousand four, two thou-
12 sand five and amendments adopted by the governing board
13 on or before the thirty-first day of January, two thousand
14 six, but does not include any substantive changes in the
15 agreement adopted after the thirty-first day of January,
16 two thousand six.

§11-15B-2b. Telecommunications definitions.

1 (a) General. – When used in this article and articles
2 fifteen and fifteen-a of this chapter, words defined in
3 subsection (b) of this section shall have the meanings
4 ascribed to them in this section, except in those instances
5 where a different meaning is distinctly expressed or the
6 context in which the term is used clearly indicates that a
7 different meaning is intended by the Legislature.

8 (b) Terms defined. –

9 (1) "Telecommunications service" means the electronic
10 transmission, conveyance or routing of voice, data, audio,
11 video or any other information or signals to a point, or
12 between or among points.

13 (A) The term "telecommunications service" includes such
14 transmission, conveyance or routing in which computer
15 processing applications are used to act on the form, code
16 or protocol of the content for purposes of transmission,
17 conveyance or routing without regard to whether the
18 service is referred to as voice over internet protocol
19 services or is classified by the Federal Communications
20 Commission as enhanced or value added.

21 (B) "Telecommunications service" does not include:
(i) Advertising, including, but not limited to, directory advertising;
(ii) "Ancillary services";
(iii) Billing and collection services provided to third parties;
(iv) Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;
(v) Digital products "delivered electronically", including, but not limited to, software, music, video, reading materials or ring tones;
(vi) Installation or maintenance of wiring or equipment on a customer's premises;
(vii) Internet access service;
(viii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U. S. C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3; or
(ix) Tangible personal property.

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

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

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

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

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

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

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

(G) "Directory assistance" means an "ancillary service" of providing telephone number information and/or address information.
(H) "Fixed wireless service" means a "telecommunications service" that provides radio communication between fixed points.

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

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

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

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

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

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

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

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

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

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

(S) “Value-added nonvoice data service” means a service that otherwise meets the definition of “telecommunications services” in which computer processing applications are used to act on the form, content, code or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.
(T) "Vertical service" means an "ancillary service" that
is offered in connection with one or more "telecommunica-
tions services", which offers advanced calling features
that allow customers to identify callers and to manage
multiple calls and call connections, including "conference-
bridging services".

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

(c) Effective date. – This section enacted in the year two
thousand six shall apply to purchases made on or after the
first day of July, two thousand six.


(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 accor-
dance 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 first
day of October, two thousand five, the effective date of
this state's participation in the Streamlined Sales and Use
Tax Agreement.

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

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

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

(c) Period of amnesty. – The amnesty is fully effective, absent the seller's fraud or intentional misrepresentation of a material fact, as long as the seller continues registration under the agreement and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. The statute of limitations applicable to asserting a tax liability during this 36-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.

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

(a) Sellers shall source the sale of a product in accordance with section fifteen of this article. The provisions of said section apply regardless of the characterization of the product as tangible personal property, custom software or a service. The provisions of said section only apply to determine a seller's obligation to pay or collect and remit a sales or use tax with respect to the seller's sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdiction of that use.
(b) Section fifteen of this article does not apply to sales or use tax levied on telecommunication services as defined in section two-b of this article. Telecommunication services shall be sourced in accordance with section nineteen of this article.


(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 or custom software, other than property identified in subsection (c) or (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location may not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(c) Vehicles. — The lease or rental of motor vehicles, trailers, semitrailers or aircraft that do not qualify as
transportation equipment, as defined in subsection (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(d) Sale or lease or rental of transportation equipment. — The retail sale, including lease or rental, of transportation equipment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section, notwithstanding the exclusion of lease or rental in said subsection. "Transportation equipment" means any of the following:

(1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand pounds or greater, trailers, semitrailers or passenger buses that are:

(A) Registered through the international registration plan; and
(B) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3), inclusive, of this subsection.

(e) Exceptions. – Subsections (a) and (b) of this section shall not apply to the following goods or services:

(1) Telecommunications services, as set out in section twenty of this article, shall be sourced in accordance with section nineteen of this article; and

(2) Until the first day of January, two thousand eight, a seller who is primarily engaged in the retail sale of cut flowers and flower arrangements taking the original order to sell tangible personal property shall source the sale to the place where order was taken. For purposes of this exception, “primarily” means more than fifty percent of the seller’s total gross sales or receipts are derived from that activity. In determining if a seller is primarily a florist, the total sales price of cut flowers and floral arrangements includes separately stated delivery or service charges. After the thirty-first day of December, two thousand seven, sales by florists shall be subject to the general sourcing rules stated in subsection (a) of this section.

(f) Product defined. – As used in subsection (a) of this section, “product” includes tangible personal property, custom software or a service, or any combination thereof.
§11-15B-18. Multiple points of use of certain products and service.

(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 or service that the digital good, computer software or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with the purchase an exemption certificate claiming "multiple points of use" or meet the requirements of subsection (b) or (c) of this section.

(1) Upon receipt of an exemption certificate claiming multiple points of use, 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 an exemption certificate claiming multiple points of use 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 the transaction is reported for sales or use tax purposes.

(3) A purchaser delivering an exemption certificate claiming multiple points of use shall report and pay the appropriate tax to each jurisdiction where concurrent use occurs. The tax due shall be calculated as if the apportioned amount of the digital good, computer software or service had been delivered to each jurisdiction to which the sale is apportioned pursuant to subdivision (2) of this subsection.

(4) The exemption certificate claiming multiple points of use shall remain 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 principles of
subdivisions (2) and (3) of this subsection until revoked in writing.

(b) Notwithstanding subsection (a) of this section, when the seller knows that the product will be concurrently available for use in more than one jurisdiction, but the purchaser does not provide an exemption certificate claiming multiple points of use as required in subsection (a), the seller may work with the purchaser to produce the correct apportionment. The purchaser and seller may use any reasonable, but consistent and uniform, method of apportionment that is supported by the seller's and purchaser's business records as they exist at the time the transaction is reported for sales or use tax purposes. If the purchaser certifies to the accuracy of the apportionment and the seller accepts the certification, the seller shall collect and remit the tax pursuant to subdivision (3), subsection (a) of this section. In the absence of bad faith on the part of 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 information certified by the purchaser.

(c) When the seller knows that the product will be concurrently available for use in more than one jurisdiction and the purchaser does not have a direct pay permit and does not provide the seller with an exemption certificate claiming multiple points of use as required in subsection (a) of this section, or certification pursuant to subsection (b) of this section, the seller shall collect and remit the tax based on the provisions of section fifteen of this article.

(d) **Holders of direct pay permits.** – A holder of a direct pay permit may not be required to deliver an exemption certificate claiming multiple points of use 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 or a
service that will be concurrently available for use in more than one jurisdiction.


(a) Except for the defined telecommunication services in subsection (c) of this section, the sale of telecommunication service sold on a call-by-call basis shall be sourced to:

(1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or (2) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

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

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

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

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

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

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

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

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

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

(D) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

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

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

(1) “Air-to-ground radiotelephone service” means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.
(2) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

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

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

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

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

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

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

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

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

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

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

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

(14) "Service address" means:

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

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

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

§11-15B-23. Enactment of exemptions.

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

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

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

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

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

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

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

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

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

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

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


(a) General rules. – When a purchaser claims an exemption from paying tax 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) After the thirty-first day of December, two thousand seven, in the case of drop shipments, a third-party vendor such as a drop shipper may claim a resale exemption based on an exemption certificate provided by its customer/reseller or any other acceptable information available to the third-party vendor evidencing qualification for a resale exemption, regardless of whether the customer/reseller is registered to collect and remit sales and use taxes in this state, when the sale is sourced to this state.

(b) The Tax Commissioner shall relieve sellers 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:

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

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

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

(D) To a seller who accepts an exemption certificate claiming multiple points of use for tangible personal property other than computer software for which exemption claiming multiple points of use is acceptable under section eighteen of this article.

(c) Time within which seller must obtain exemption certificates. – A seller is relieved from paying tax otherwise applicable under article fifteen or fifteen-a of this chapter if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Streamlined Sales and Use Tax Agreement within ninety days subsequent to the date of sale.

(1) If the seller has not obtained an exemption certificate or all relevant data elements, the seller may, within one hundred twenty days subsequent to a request for substantiation by the Tax Commissioner, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, the Tax Commissioner may continue to apply this state's standards of good faith until a uniform standard for good faith is defined in the Streamlined Sales and Use Tax Agreement.

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

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

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

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

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

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

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

(d) Database of local jurisdiction boundaries. –

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

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

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

(4) This state shall have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates which are in addition to the requirements of subdivision (3) of this subsection. The database records must be in the same approved format as the database records pursuant to
subdivision (3) of this subsection and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U. S. C. §119(a)).

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

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

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

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

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

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

(a) The Tax Commissioner shall review software submitted to the governing board for certification as a certified

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automated system under the agreement. The Tax Commissioner’s review shall include a review to determine that the program adequately classifies the State of West Virginia’s product-based exemptions. Upon completion of the review, the Tax Commissioner shall certify to the governing board its acceptance of the classifications made by the system.

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

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

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

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

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 29th Day of

Governor

2006.
PRESENTED TO THE GOVERNOR

MAR 29 2006

Time 9:50 AM