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SB692

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006



ENROLLED

Committee Substitute for

SENATE BILL NO. 692

(By Senator Helmick)



PASSED March 10, 2006

In Effect 90 days from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 692

(SENATOR HELMICK, *original sponsor*)

[Passed March 10, 2006; in effect ninety 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.

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

26 (b) On or before the twentieth day of each month, every
27 permit holder shall make and file with the Tax Commis-
28 sioner a consumers sales and use tax direct pay permit
29 return for the preceding month in the form prescribed by
30 the Tax Commissioner showing the total value of the
31 tangible personal property used, the amount of taxable
32 services purchased, the amount of consumers sales and use
33 taxes due from the permit holder, which shall be paid to
34 the Tax Commissioner with the return, and any other
35 information as the Tax Commissioner considers necessary:
36 *Provided*, That if the amount of consumers sales and use
37 taxes due averages less than two hundred fifty dollars per
38 month, the Tax Commissioner may permit the filing of
39 quarterly returns in lieu of monthly returns and the
40 amount of tax shown on the returns to be due shall be
41 remitted on or before the fifteenth day following the close
42 of the calendar quarter; and if the amount due averages
43 less than one hundred fifty dollars per calendar quarter,
44 the Tax Commissioner may permit the filing of an annual
45 direct pay permit return and the amount of tax shown on
46 the return to be due shall be remitted on or before thirty
47 days after the end of the permit holder tax year for federal
48 and state income tax purposes: *Provided, however*, That
49 the Tax Commissioner may, by nonemergency legislative
50 rules promulgated pursuant to article three, chapter
51 twenty-nine-a of this code, change the minimum amounts
52 established in this subsection. The Tax Commissioner,
53 upon written request by the permit holder, may grant a
54 reasonable extension of time, upon terms as the Tax
55 Commissioner may require, for the making and filing of
56 direct pay permit returns and paying the tax due. Interest
57 on the tax shall be chargeable on every extended payment
58 at the rate specified in section seventeen, article ten of this
59 chapter.

60 (c) A permit issued pursuant to this section is valid until
61 expiration of the taxpayers registration year under article
62 twelve of this chapter. This permit is automatically
63 renewed when the taxpayer's business registration certifi-

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 liabilities
76 imposed by this chapter for the collection and remittance
77 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 collected
80 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.

§11-15-20. Quarterly and annual returns.

1 (a) When the total consumers sales and use tax remit-
2 tance for which a person is liable does not exceed an

3 average monthly amount over the taxable year of two
 4 hundred fifty dollars, he or she may pay the tax and make
 5 a quarterly return on or before the twentieth day of the
 6 first month in the next succeeding quarter in lieu of
 7 monthly returns: *Provided*, That the Tax Commissioner
 8 may, by nonemergency legislative rules promulgated
 9 pursuant to article three, chapter twenty-nine-a of this
 10 code, change the minimum amount established in this
 11 subsection.

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

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

ARTICLE 15A. USE TAX.

§11-15A-3d. Direct pay permits.

1 (a) Notwithstanding any other provision of this article,
 2 the Tax Commissioner may, pursuant to rules promulgated
 3 by him or her in accordance with article three, chapter
 4 twenty-nine-a of this code, authorize a person as defined
 5 in section two of article fifteen who is a user, consumer,
 6 distributor or lessee to which sales or leases of tangible
 7 personal property are made or services provided to pay
 8 any tax levied by this article or article fifteen of this
 9 chapter directly to the Tax Commissioner and waive the
 10 collection of the tax by that person's vendor. This author-
 11 ity is not to be granted or exercised except upon applica-
 12 tion to the Tax Commissioner and after issuance by the

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

27 (b) On or before the twentieth day of each month, every
28 permit holder shall make and file with the Tax Commis-
29 sioner a consumers sales and use tax direct pay permit
30 return for the preceding month in the form prescribed by
31 the Tax Commissioner showing the total value of the
32 tangible personal property so used, the amount of taxable
33 services purchased, the amount of tax due from the permit
34 holder, which amount shall be paid to the Tax Commis-
35 sioner with the return, and any other information the Tax
36 Commissioner considers necessary: *Provided*, That if the
37 amount of consumers sales and use taxes due averages less
38 than two hundred fifty dollars per month, the Tax Com-
39 missioner may permit the filing of quarterly returns in lieu
40 of monthly returns and the amount of tax shown thereon
41 to be due shall be remitted on or before the twentieth day
42 following the close of the calendar quarter; and if the
43 amount due averages less than one hundred fifty dollars
44 per calendar quarter, the Tax Commissioner may permit
45 the filing of an annual direct pay permit return and the
46 amount of tax shown to be due is to be remitted on or
47 before the thirtieth day after the close of permit holder's
48 taxable year: *Provided, however*, That the Tax Commis-
49 sioner may, by nonemergency legislative rules promul-
50 gated pursuant to article three, chapter twenty-nine-a of

51 this code, change the minimum amounts established in this
52 subsection. The Tax Commissioner, upon written request
53 filed by the permit holder before the due date of the
54 return, may grant a reasonable extension of time, upon the
55 terms the Tax Commissioner may require, for the making
56 and filing of direct pay permit returns and paying the tax
57 due. Interest on the tax is chargeable on every extended
58 payment at the rate specified in section seventeen, article
59 ten of this chapter.

60 (c) A permit issued pursuant to this section is to be valid
61 until expiration of the taxpayer's registration year under
62 article twelve of this chapter. This permit is automatically
63 renewed when the taxpayer's business registration certifi-
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 of this chapter. These persons shall notify each
71 vendor from whom tangible personal property is pur-
72 chased or leased or from whom services are purchased of
73 their direct payment permit number and that the tax is
74 being paid directly to the Tax Commissioner. Upon
75 receipt of the notice, the vendor is absolved from all duties
76 and liabilities imposed by this chapter for the collection
77 and remittance of the tax with respect to sales, distribu-
78 tions, leases or storage of tangible personal property and
79 sales of services to the permit holder. Vendors who make
80 sales upon which the tax is not collected by reason of the
81 provisions of this section shall maintain records in a
82 manner by which the amount involved and identity of each
83 purchaser may be ascertained.

84 (e) Upon the expiration, cancellation or surrender of a
85 direct payment permit, the provisions of this chapter,
86 without regard to this section, shall thereafter apply to the
87 person who previously held the permit, and the person

88 shall promptly notify in writing vendors from whom
89 tangible personal property or services are purchased of the
90 cancellation or surrender. Upon receipt of the notice, the
91 vendor is subject to the provisions of this chapter, without
92 regard to this section, with respect to all sales of tangible
93 personal property or taxable services, thereafter made to
94 or for the person.

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

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

§11-15B-2. 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) "Agent" means a person appointed by a seller to
10 represent the seller before the member states.

11 (2) "Agreement" means the Streamlined Sales and Use
12 Tax Agreement as defined in section two-a of this article.

13 (3) "Alcoholic beverages" means beverages that are
14 suitable for human consumption and contain one half of
15 one percent or more of alcohol by volume.

16 (4) "Bundled transaction" means the retail sale of two or
17 more products, except real property and services to real
18 property, where: (i) The products are otherwise distinct
19 and identifiable; and (ii) the products are sold for one
20 nonitemized price. A "bundled transaction" does not

21 include the sale of any products in which the “sales price”
22 varies, or is negotiable, based on the selection by the
23 purchaser of the products included in the transaction.

24 (A) “Distinct and identifiable products” does not
25 include:

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

34 (ii) A product provided free of charge with the required
35 purchase of another product. A product is “provided free
36 of charge” if the “sales price” of the product purchased
37 does not vary depending on the inclusion of the product
38 “provided free of charge”; or

39 (iii) Items included in the member state’s definition of
40 “sales price”, as defined in this section.

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

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

51 (i) The “retail sale” of tangible personal property and a
52 service where the tangible personal property is essential to
53 the use of the service, and is provided exclusively in

54 connection with the service, and the true object of the
55 transaction is the service; or

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

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

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

68 (II) Sellers shall use either the “purchase price” or the
69 “sales price” of the products to determine if the taxable
70 products are de minimis. Sellers may not use a combina-
71 tion of the “purchase price” and “sales price” of the
72 products to determine if the taxable products are de
73 minimis.

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

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

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

85 (II) Sellers shall use either the “purchase price” or the
86 “sales price” of the products to determine if the products
87 taxable at the general rate of tax are de minimis. Sellers

88 may not use a combination of the “purchase price” and
89 “sales price” of the products to determine if the products
90 taxable at the general rate of tax are de minimis.

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

94 (v) The “retail sale” of exempt tangible personal prop-
95 erty, or food and food ingredients taxable at a lower rate
96 of tax, and tangible personal property taxable at the
97 general rate of tax where:

98 (I) The transaction includes “food and food ingredients”,
99 “drugs”, “durable medical equipment”, “mobility-enhanc-
100 ing equipment”, “prosthetic devices” all as defined in this
101 article; and

102 (II) Where the seller’s “purchase price” or “sales price”
103 of the taxable tangible personal property taxable at the
104 general rate of tax is fifty percent or less of the total
105 “purchase price” or “sales price” of the bundled tangible
106 personal property. Sellers may not use a combination of
107 the “purchase price” and “sales price” of the tangible
108 personal property when making the fifty percent determi-
109 nation for a transaction.

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

116 (6) “Certified automated system” or “CAS” means
117 software certified under the agreement to calculate the tax
118 imposed by each jurisdiction on a transaction, determine
119 the amount of tax to remit to the appropriate state and
120 maintain a record of the transaction.

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

124 (8) "Computer" means an electronic device that accepts
125 information in digital or similar form and manipulates the
126 information for a result based on a sequence of instruc-
127 tions.

128 (9) "Computer software" means a set of coded instruc-
129 tions designed to cause a "computer" or automatic data
130 processing equipment to perform a task.

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

133 (11) "Delivery charges" means charges by the seller of
134 personal property or services for preparation and delivery
135 to a location designated by the purchaser of personal
136 property or services including, but not limited to, trans-
137 portation, shipping, postage, handling, crating and pack-
138 ing.

139 (12) "Dietary supplement" means any product, other
140 than "tobacco", intended to supplement the diet that:

141 (A) Contains one or more of the following dietary
142 ingredients:

143 (i) A vitamin;

144 (ii) A mineral;

145 (iii) A herb or other botanical;

146 (iv) An amino acid;

147 (v) A dietary substance for use by humans to supplement
148 the diet by increasing the total dietary intake; or

149 (vi) A concentrate, metabolite, constituent, extract or
150 combination of any ingredient described in subparagraph
151 (i) through (v), inclusive, of this paragraph;

152 (B) Is intended for ingestion in tablet, capsule, powder,
153 softgel, gelcap or liquid form, or if not intended for
154 ingestion in such a form, is not represented as conven-
155 tional food and is not represented for use as a sole item of
156 a meal or of the diet; and

157 (C) Is required to be labeled as a dietary supplement,
158 identifiable by the "Supplemental Facts" box found on the
159 label as required pursuant to 21 CFR §101.36, or in any
160 successor section of the Code of Federal Regulations.

161 (13) "Direct mail" means printed material delivered or
162 distributed by United States mail or other delivery service
163 to a mass audience or to addressees on a mailing list
164 provided by the purchaser or at the direction of the
165 purchaser when the cost of the items are not billed directly
166 to the recipients. "Direct mail" includes tangible personal
167 property supplied directly or indirectly by the purchaser
168 to the direct mail seller for inclusion in the package
169 containing the printed material. "Direct mail" does not
170 include multiple items of printed material delivered to a
171 single address.

172 (14) "Drug" means a compound, substance or prepara-
173 tion, and any component of a compound, substance or
174 preparation, other than food and food ingredients, dietary
175 supplements or alcoholic beverages:

176 (A) Recognized in the official United States pharmaco-
177 poeia, official homeopathic pharmacopoeia of the United
178 States, or official national formulary, and supplement to
179 any of them;

180 (B) Intended for use in the diagnosis, cure, mitigation,
181 treatment or prevention of disease in humans; or

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

184 (15) "Durable medical equipment" means equipment
185 including repair and replacement parts for the equipment,

186 but does not include “mobility-enhancing equipment”,
187 which:

188 (A) Can withstand repeated use;

189 (B) Is primarily and customarily used to serve a medical
190 purpose;

191 (C) Generally is not useful to a person in the absence of
192 illness or injury; and

193 (D) Is not worn in or on the body.

194 (16) “Electronic” means relating to technology having
195 electrical, digital, magnetic, wireless, optical, electromag-
196 netic or similar capabilities.

197 (17) “Entity-based exemption” means an exemption
198 based on who purchases the product or service or who sells
199 the product or service. An exemption that is available to
200 all individuals shall not be considered an entity-based
201 exemption.

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

208 (19) “Food sold through vending machines” means food
209 dispensed from a machine or other mechanical device that
210 accepts payment.

211 (20) “Governing board” means the governing board of
212 the Streamlined Sales and Use Tax Agreement.

213 (21) “Includes” and “including” when used in a defini-
214 tion contained in this article is not considered to exclude
215 other things otherwise within the meaning of the term
216 being defined.

217 (22) "Lease" includes rental, hire and license. "Lease"
218 means any transfer of possession or control of tangible
219 personal property for a fixed or indeterminate term for
220 consideration. A lease or rental may include future
221 options to purchase or extend.

222 (A) "Lease" does not include:

223 (i) A transfer of possession or control of property under
224 a security agreement or deferred payment plan that
225 requires the transfer of title upon completion of the
226 required payments;

227 (ii) A transfer or possession or control of property under
228 an agreement that requires the transfer of title upon
229 completion of required payments and payment of an
230 option price does not exceed the greater of one hundred
231 dollars or one percent of the total required payments; or

232 (iii) Providing tangible personal property along with an
233 operator for a fixed or indeterminate period of time. A
234 condition of this exclusion is that the operator is necessary
235 for the equipment to perform as designed. For the purpose
236 of this subparagraph, an operator must do more than
237 maintain, inspect or set-up the tangible personal property.

238 (B) This definition shall be used for sales and use tax
239 purposes regardless if a transaction is characterized as a
240 lease or rental under generally accepted accounting
241 principles, the Internal Revenue Code, the Uniform
242 Commercial Code or other provisions of federal, state or
243 local law.

244 (23) "Load and leave" means delivery to the purchaser
245 by use of a tangible storage media where the tangible
246 storage media is not physically transferred to the pur-
247 chaser.

248 (24) "Mobility-enhancing equipment" means equipment,
249 including repair and replacement parts to the equipment,
250 but does not include "durable medical equipment", which:

251 (A) Is primarily and customarily used to provide or
252 increase the ability to move from one place to another and
253 which is appropriate for use either in a home or a motor
254 vehicle;

255 (B) Is not generally used by persons with normal mobil-
256 ity; and

257 (C) Does not include any motor vehicle or equipment on
258 a motor vehicle normally provided by a motor vehicle
259 manufacturer.

260 (25) "Model I seller" means a seller that has selected a
261 certified service provider as its agent to perform all the
262 seller's sales and use tax functions, other than the seller's
263 obligation to remit tax on its own purchases.

264 (26) "Model II seller" means a seller that has selected a
265 certified automated system to perform part of its sales and
266 use tax functions, but retains responsibility for remitting
267 the tax.

268 (27) "Model III seller" means a seller that has sales in at
269 least five member states, has total annual sales revenue of
270 at least five hundred million dollars, has a proprietary
271 system that calculates the amount of tax due each jurisdic-
272 tion and has entered into a performance agreement with
273 the member states that establishes a tax performance
274 standard for the seller. As used in this definition, a seller
275 includes an affiliated group of sellers using the same
276 proprietary system.

277 (28) "Person" means an individual, trust, estate, fidu-
278 ciary, partnership, limited liability company, limited
279 liability partnership, corporation or any other legal entity.

280 (29) "Personal service" includes those:

281 (A) Compensated by the payment of wages in the ordi-
282 nary course of employment; and

283 (B) Rendered to the person of an individual without, at
284 the same time, selling tangible personal property, such as
285 nursing, barbering, manicuring and similar services.

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

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

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

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

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

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

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

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

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

312 (31) "Prescription" means an order, formula or recipe
313 issued in any form of oral, written, electronic or other

314 means of transmission by a duly licensed practitioner
315 authorized by the laws of this state to issue prescriptions.

316 (32) "Prewritten computer software" means "computer
317 software", including prewritten upgrades, which is not
318 designed and developed by the author or other creator to
319 the specifications of a specific purchaser.

320 (A) The combining of two or more prewritten computer
321 software programs or prewritten portions thereof does not
322 cause the combination to be other than prewritten com-
323 puter software.

324 (B) "Prewritten computer software" includes software
325 designed and developed by the author or other creator to
326 the specifications of a specific purchaser when it is sold to
327 a person other than the purchaser. Where a person
328 modifies or enhances computer software of which the
329 person is not the author or creator, the person is consid-
330 ered to be the author or creator only of the person's
331 modifications or enhancements.

332 (C) "Prewritten computer software" or a prewritten
333 portion thereof that is modified or enhanced to any degree,
334 where the modification or enhancement is designed and
335 developed to the specifications of a specific purchaser,
336 remains prewritten computer software: *Provided*, That
337 where there is a reasonable, separately stated charge or an
338 invoice or other statement of the price given to the pur-
339 chaser for the modification or enhancement, the modifica-
340 tion or enhancement does not constitute prewritten
341 computer software.

342 (33) "Product-based exemption" means an exemption
343 based on the description of the product or service and not
344 based on who purchases the product or service or how the
345 purchaser intends to use the product or service.

346 (34) "Prosthetic device" means a replacement, corrective
347 or supportive device, including repair and replacement
348 parts for the device worn on or in the body, to:

349 (A) Artificially replace a missing portion of the body;

350 (B) Prevent or correct physical deformity or malfunction
351 of the body; or

352 (C) Support a weak or deformed portion of the body.

353 (35) "Protective equipment" means items for human
354 wear and designed as protection of the wearer against
355 injury or disease or as protections against damage or
356 injury of other persons or property but not suitable for
357 general use.

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

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

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

368 (39) "Retail sale" or "sale at retail" means:

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

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

374 (40) (A) "Sales price" means the measure subject to the
375 tax levied by this article and includes the total amount of
376 consideration, including cash, credit, property and ser-
377 vices, for which personal property or services are sold,
378 leased or rented, valued in money, whether received in
379 money or otherwise, without any deduction for the follow-
380 ing:

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

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

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

389 (iv) Delivery charges; and

390 (v) Installation charges.

391 (B) "Sales price" does not include:

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

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

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

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

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

407 (ii) The seller has an obligation to pass the price reduc-
408 tion or discount through to the purchaser;

409 (iii) The amount of the consideration attributable to the
410 sale is fixed and determinable by the seller at the time of
411 the sale of the item to the purchaser; and

412 (iv) One of the following criteria is met:

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

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

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

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

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

433 (43) "Service" or "selected service" includes all nonpro-
434 fessional activities engaged in for other persons for a
435 consideration, which involve the rendering of a service as
436 distinguished from the sale of tangible personal property,
437 but does not include contracting, personal services,
438 services rendered by an employee to his or her employer,
439 any service rendered for resale or any service furnished by
440 a business that is subject to the control of the Public
441 Service Commission when the service or the manner in
442 which it is delivered is subject to regulation by the Public
443 Service Commission of this state. The term "service" or
444 "selected service" does not include payments received by
445 a vendor of tangible personal property as an incentive to
446 sell a greater volume of such tangible personal property

447 under a manufacturer's, distributor's or other third-party's
448 marketing support program, sales incentive program,
449 cooperative advertising agreement or similar type of
450 program or agreement, and these payments are not
451 considered to be payments for a "service" or "selected
452 service" rendered, even though the vendor may engage in
453 attendant or ancillary activities associated with the sales
454 of tangible personal property as required under the
455 programs or agreements.

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

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

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

469 (47) "Tax" includes all taxes levied under articles fifteen
470 and fifteen-a of this chapter and additions to tax, interest
471 and penalties levied under article ten of this chapter.

472 (48) "Tax Commissioner" means the State Tax Commis-
473 sioner or his or her delegate. The term "delegate" in the
474 phrase "or his or her delegate", when used in reference to
475 the Tax Commissioner, means any officer or employee of
476 the State Tax Division duly authorized by the Tax Com-
477 missioner directly, or indirectly by one or more
478 redelegations of authority, to perform the functions
479 mentioned or described in this article or rules promulgated
480 for this article.

481 (49) "Taxpayer" means any person liable for the taxes
482 levied by articles fifteen and fifteen-a of this chapter or
483 any additions to tax penalties imposed by article ten of
484 this chapter.

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

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

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

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

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

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

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

1 As used in this article and articles fifteen and fifteen-a
2 of this chapter, the term "Streamlined Sales and Use Tax
3 Agreement" or "agreement" means the agreement adopted
4 the twelfth day of November, two thousand two, by states
5 that enacted authority to engage in multistate discussions
6 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:

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

24 (ii) "Ancillary services";

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

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

33 (v) Digital products "delivered electronically", includ-
34 ing, but not limited to, software, music, video, reading
35 materials or ring tones;

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

38 (vii) Internet access service;

39 (viii) Radio and television audio and video programming
40 services, regardless of the medium, including the furnish-
41 ing of transmission, conveyance and routing of services by
42 the programming service provider. Radio and television
43 audio and video programming services shall include, but
44 not be limited to, cable service as defined in 47 U. S. C.
45 522(6) and audio and video programming services deliv-
46 ered by commercial mobile radio service providers, as
47 defined in 47 CFR 20.3; or

48 (ix) Tangible personal property.

49 (2) *Related or ancillary terms.* – The following terms are
50 either used in subsection (a) of this section or are com-
51 monly associated with terms used in that subsection.

52 (A) "800 service" means a "telecommunications service"
53 that allows a caller to dial a toll-free number without

54 incurring a charge for the call. The service is typically
55 marketed under the name "800", "855", "866", "877" and
56 "888" toll-free calling, and any subsequent numbers
57 designated by the Federal Communications Commission.

58 (B) "900 service" means an inbound toll "telecommuni-
59 cations service" purchased by a subscriber that allows the
60 subscriber's customers to call in to the subscriber's prere-
61 corded announcement or live service. "900 service" does
62 not include the charge for collection services provided by
63 the seller of the "telecommunications services" to the
64 subscriber or service or product sold by the subscriber to
65 the subscriber's customer. The service is typically mar-
66 keted under the name "900" service, and any subsequent
67 numbers designated by the Federal Communications
68 Commission.

69 (C) "Ancillary services" means services that are associ-
70 ated with or incidental to the provision of "telecommuni-
71 cations services", including, but not limited to, "detailed
72 telecommunications billing", "directory assistance",
73 "vertical service" and "voice mail services".

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

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

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

87 (G) "Directory assistance" means an "ancillary service"
88 of providing telephone number information and/or address
89 information.

90 (H) "Fixed wireless service" means a "telecommunica-
91 tions service" that provides radio communication between
92 fixed points.

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

98 (J) "Interstate" means a "telecommunications service"
99 that originates in one United States state, or a United
100 States territory or possession, and terminates in a different
101 United States state or a United States territory or posses-
102 sion.

103 (K) "Intrastate" means a "telecommunications service"
104 that originates in one United States state or a United
105 States territory or possession, and terminates in the same
106 United States state or a United States territory or posses-
107 sion.

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

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

119 (N) "Pay telephone service" means a "telecommunica-
120 tions service" provided through any pay telephone.

121 (O) "Prepaid calling service" means the right to access
122 exclusively "telecommunications services", which must be
123 paid for in advance and which enables the origination of

124 calls using an access number or authorization code,
125 whether manually or electronically dialed, and that is sold
126 in predetermined units or dollars of which the number
127 declines with use in a known amount.

128 (P) "Prepaid wireless calling service" means a "telecom-
129 munications service" that provides the right to utilize
130 "mobile wireless service" as well as other
131 nontelecommunications services including the download
132 of digital products "delivered electronically", content and
133 "ancillary services", which must be paid for in advance
134 that is sold in predetermined units of dollars of which the
135 number declines with use in a known amount.

136 (Q) "Private communications service" means a "tele-
137 communications service" that entitles the customer to
138 exclusive or priority use of a communications channel or
139 group of channels between or among termination points,
140 regardless of the manner in which the channel or channels
141 are connected, and includes switching capacity, extension
142 lines, stations and any other associated services that are
143 provided in connection with the use of the channel or
144 channels.

145 (R) "Residential telecommunications service" means a
146 "telecommunications service" or "ancillary services"
147 provided to an individual for personal use at a residential
148 address, including an individual dwelling unit such as an
149 apartment. In the case of institutions where individuals
150 reside, such as schools or nursing homes, "telecommunica-
151 tions service" is considered residential if it is provided to
152 and paid for by an individual resident rather than the
153 institution.

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

160 (T) "Vertical service" means an "ancillary service" that
161 is offered in connection with one or more "telecommuni-
162 cations services", which offers advanced calling features
163 that allow customers to identify callers and to manage
164 multiple calls and call connections, including "conference-
165 bridging services".

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

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

§11-15B-13. Amnesty for registration.

1 (a) Subject to the limitations in this section:

2 (1) The Tax Commissioner shall provide amnesty for
3 uncollected or unpaid sales or use tax to a seller who
4 registers to pay or to collect and remit applicable sales or
5 use tax on sales made to purchasers in this state in accor-
6 dance with the terms of the streamlined sales and use tax
7 agreement: *Provided*, That the seller was not registered in
8 this state in the twelve-month period preceding the first
9 day of October, two thousand five, the effective date of
10 this state's participation in the Streamlined Sales and Use
11 Tax Agreement.

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

21 (b) *Exceptions.* – The amnesty is not available:

22 (1) To a seller with respect to any matter or matters for
23 which the seller received notice of the commencement of
24 an audit and which audit is not yet finally resolved
25 including any related administrative and judicial pro-
26 cesses; or

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

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

37 (d) *Effect of amnesty.* – The amnesty is applicable only
38 to sales or use taxes due from a seller in its capacity as a
39 seller and not to sales or use taxes due from a seller in its
40 capacity as a buyer.

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

1 (a) Sellers shall source the sale of a product in accor-
2 dance with section fifteen of this article. The provisions
3 of said section apply regardless of the characterization
4 of the product as tangible personal property, custom
5 software or a service. The provisions of said section
6 only apply to determine a seller's obligation to pay
7 or collect and remit a sales or use tax with respect to
8 the seller's sale of a product. These provisions do not
9 affect the obligation of a purchaser or lessee to remit tax
10 on the use of the product to the taxing jurisdiction of that
11 use.

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

§11-15B-15. General transaction sourcing rules.

1 (a) *General rule.* – For purposes of articles fifteen and
2 fifteen-a of this chapter, the retail sale, excluding lease or
3 rental, of a product shall be sourced as follows:

4 (1) When the product is received by the purchaser at a
5 business location of the seller, the sale is sourced to that
6 business location.

7 (2) When the product is not received by the purchaser at
8 a business location of the seller, the sale is sourced to the
9 location where receipt by the purchaser or the purchaser's
10 designated donee occurs, including the location indicated
11 by instructions for delivery to the purchaser or donee,
12 known to the seller.

13 (3) When subdivisions (1) and (2) of this subsection do
14 not apply, the sale is sourced to the location indicated by
15 an address for the purchaser that is available from the
16 business records of the seller that are maintained in the
17 ordinary course of the seller's business when use of this
18 address does not constitute bad faith.

19 (4) When subdivisions (1), (2) and (3) of this subsection
20 do not apply, the sale is sourced to the location indicated
21 by an address for the purchaser obtained during the
22 consummation of the sale, including the address of a
23 purchaser's payment instrument, if no other address is
24 available, provided use of this address does not constitute
25 bad faith.

26 (5) When none of the previous subdivisions of this
27 subsection apply, including the circumstance in which the
28 seller is without sufficient information to apply the

29 previous rules, then the location will be determined by the
30 address from which tangible personal property was
31 shipped, or computer software delivered electronically was
32 first available for transmission by the seller, or from which
33 the service was provided: *Provided*, That any location that
34 merely provided the digital transfer of the product sold is
35 disregarded for these purposes.

36 (b) *Lease or rental.* – The lease or rental of tangible
37 personal property or custom software, other than property
38 identified in subsection (c) or (d) of this section, shall be
39 sourced as follows:

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

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

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

62 (c) *Vehicles.* – The lease or rental of motor vehicles,
63 trailers, semitrailers or aircraft that do not qualify as

64 transportation equipment, as defined in subsection (d) of
65 this section, shall be sourced as follows:

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

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

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

83 (d) *Sale or lease or rental of transportation equipment.*
84 – The retail sale, including lease or rental, of transporta-
85 tion equipment is sourced the same as a retail sale in
86 accordance with the provisions of subsection (a) of this
87 section, notwithstanding the exclusion of lease or rental in
88 said subsection. “Transportation equipment” means any
89 of the following:

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

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

95 (A) Registered through the international registration
96 plan; and

97 (B) Operated under authority of a carrier authorized and
98 certificated by the United States Department of Transpor-
99 tation or another federal authority to engage in the
100 carriage of persons or property in interstate commerce.

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

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

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

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

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

128 (f) *Product defined.* – As used in subsection (a) of this
129 section, “product” includes tangible personal property,
130 custom software or a service, or any combination thereof.

§11-15B-18. Multiple points of use of certain products and service.

1 (a) *General.* – Notwithstanding the provisions of section
2 fifteen of this article, a business purchaser that is not a
3 holder of a direct pay permit that knows at the time of the
4 business purchase of a digital good, computer software or
5 service that the digital good, computer software or service
6 will be concurrently available for use in more than one
7 jurisdiction shall deliver to the seller in conjunction with
8 the purchase an exemption certificate claiming “multiple
9 points of use” or meet the requirements of subsection (b)
10 or (c) of this section.

11 (1) Upon receipt of an exemption certificate claiming
12 multiple points of use, the seller is relieved of all obliga-
13 tion to collect, pay or remit the applicable tax and the
14 purchaser shall be obligated to collect, pay or remit the
15 applicable tax on a direct pay basis.

16 (2) A purchaser delivering an exemption certificate
17 claiming multiple points of use may use any reasonable,
18 but consistent and uniform, method of apportionment that
19 is supported by the purchaser’s business records as they
20 exist at the time the transaction is reported for sales or use
21 tax purposes.

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

30 (4) The exemption certificate claiming multiple points of
31 use shall remain in effect for all future sales by the seller
32 to the purchaser, except as to the subsequent sale’s specific
33 apportionment that is governed by the principles of

34 subdivisions (2) and (3) of this subsection until revoked in
35 writing.

36 (b) Notwithstanding subsection (a) of this section, when
37 the seller knows that the product will be concurrently
38 available for use in more than one jurisdiction, but the
39 purchaser does not provide an exemption certificate
40 claiming multiple points of use as required in subsection
41 (a), the seller may work with the purchaser to produce the
42 correct apportionment. The purchaser and seller may use
43 any reasonable, but consistent and uniform, method of
44 apportionment that is supported by the seller's and pur-
45 chaser's business records as they exist at the time the
46 transaction is reported for sales or use tax purposes. If the
47 purchaser certifies to the accuracy of the apportionment
48 and the seller accepts the certification, the seller shall
49 collect and remit the tax pursuant to subdivision (3),
50 subsection (a) of this section. In the absence of bad faith
51 on the part of the seller, the seller is relieved of any further
52 obligation to collect tax on any transaction where the
53 seller has collected tax pursuant to the information
54 certified by the purchaser.

55 (c) When the seller knows that the product will be
56 concurrently available for use in more than one jurisdic-
57 tion and the purchaser does not have a direct pay permit
58 and does not provide the seller with an exemption certifi-
59 cate claiming multiple points of use as required in subsec-
60 tion (a) of this section, or certification pursuant to subsec-
61 tion (b) of this section, the seller shall collect and remit the
62 tax based on the provisions of section fifteen of this
63 article.

64 (d) *Holders of direct pay permits.* – A holder of a direct
65 pay permit may not be required to deliver an exemption
66 certificate claiming multiple points of use to the seller. A
67 direct pay permit holder shall follow the provisions of
68 subdivision (2), subsection (a) of this section in apportion-
69 ing the tax due on a digital good, computer software or a

70 service that will be concurrently available for use in more
71 than one jurisdiction.

§11-15B-19. Telecommunications sourcing rule.

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

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

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

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

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

26 (3) A sale of prepaid calling service or a sale of a prepaid
27 wireless calling service is sourced in accordance with
28 section fifteen of this article: *Provided*, That in the case of
29 a sale of a prepaid wireless calling service, the rule pro-
30 vided in subdivision (5), subsection (a), section fifteen of

31 this article shall include, as an option, the location associ-
32 ated with the mobile telephone number.

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

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

39 (B) Service where all customer termination points are
40 located entirely within one jurisdiction or levels of juris-
41 diction is sourced in the jurisdiction in which the customer
42 channel termination points are located.

43 (C) Service for segments of a channel between two
44 customer channel termination points located in different
45 jurisdictions and which segment of channel are separately
46 charged is sourced fifty percent in each level of jurisdic-
47 tion in which the customer channel termination points are
48 located.

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

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

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

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

8 (2) "Call-by-call basis" means any method of charging
9 for telecommunications services where the price is mea-
10 sured by individual calls.

11 (3) "Communications channel" means a physical or
12 virtual path of communications over which signals are
13 transmitted between or among customer channel termina-
14 tion points.

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

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

30 (6) "End user" means the person who utilizes the tele-
31 communication service. In the case of an entity, "end
32 user" means the individual who utilizes the service on
33 behalf of the entity.

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

37 (8) "Mobile telecommunications service" means the same
38 as that term is defined in Section 124(5) of Public Law
39 106-252 (Mobile Telecommunications Sourcing Act).

40 (9) "Place of primary use" means the street address
41 representative where the customer's use of the telecommu-

42 nication service primarily occurs, which must be the
43 residential street address or the primary business street
44 address of the customer. In the case of mobile telecommu-
45 nications services, "place of primary use" must be within
46 the licensed service area of the home service provider.

47 (10) "Post-paid calling service" means the telecommuni-
48 cation service obtained by making a payment on a call-by-
49 call basis, either through the use of a credit card or
50 payment mechanism such as a bank card, travel card,
51 credit card or debit card, or by charge made to a telephone
52 number which is not associated with the origination or
53 termination of the telecommunication service. A post-paid
54 calling service includes a telecommunication service,
55 except a prepaid wireless calling service, that would be a
56 prepaid calling service except it is not exclusively a
57 telecommunication service.

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

65 (12) "Prepaid wireless calling service" means a telecom-
66 munications service that provides the right to utilize
67 mobile wireless service as well as other
68 nontelecommunications services, including the download
69 of digital products delivered electronically, content and
70 ancillary services, which must be paid for in advance that
71 is sold in predetermined units or dollars of which the
72 number declines with use in a known amount.

73 (13) "Private communication service" means a telecom-
74 munication service that entitles the customer to exclusive
75 or priority use of a communications channel or group of
76 channels between or among termination points, regardless
77 of the manner in which the channel or channels are

78 connected, and includes switching capacity, extension
79 lines, stations and any other associated services that are
80 provided in connection with the use of the channel or
81 channels.

82 (14) "Service address" means:

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

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

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

§11-15B-23. Enactment of exemptions.

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

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

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

11 (2) If Part II of the Library of Definitions in Appendix C
12 of the Streamlined Sales and Use Tax Agreement has a
13 definition for the product, a product-based exemption may

14 be enacted for the product only if: (A) The exemption
15 utilizes the product definition in a manner consistent with
16 Part II of the Library of Definitions in Appendix C of the
17 Agreement and Section 327 of the Agreement; and (B) the
18 product-based exemption exempts all items included
19 within a definition in Part II of the Library of Definitions
20 unless the product definition in the Library of Definitions
21 sets out an exclusion for the item or items from the
22 definition.

23 (c) *Specific rules of entity-based and use-based exemp-*
24 *tions. -*

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

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

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

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

47 (5) A use-based exemption for an item may be enacted if
48 Part II of the Library of Definitions in Appendix C of the

49 Streamlined Sales and Use Tax Agreement has a definition
50 for a product that includes the item, if the exemption is
51 not prohibited in subdivision (4) of this subsection, and if
52 the exemption is consistent with the definition in Part II of
53 the Library of Definitions.

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

§11-15B-24. Administration of exemptions.

1 (a) *General rules.* – When a purchaser claims an exemp-
2 tion from paying tax under article fifteen or fifteen-a of
3 this chapter:

4 (1) A seller registered under the Streamlined Sales and
5 Use Tax Agreements shall obtain identifying information of
6 the purchaser and the reason for claiming a tax exemption
7 at the time of the purchase, as determined by the govern-
8 ing board established pursuant to the agreement. A seller
9 not registered under the agreement shall obtain identifying
10 information of the purchaser and the reason for claiming
11 a tax exemption at the time of purchase, as determined by
12 the Tax Commissioner.

13 (2) A purchaser is not required to provide a signature to
14 claim an exemption from tax unless a paper exemption
15 certificate is used.

16 (3) The seller shall use the standard form for claiming an
17 exemption electronically that is adopted by the governing
18 board administering the Streamlined Sales and Use Tax
19 Agreement.

20 (4) The seller shall obtain the same information for proof
21 of a claimed exemption regardless of the medium in which
22 the transaction occurred.

23 (5) The Tax Commissioner may utilize a system wherein
24 the purchaser exempt from the payment of the tax is

25 issued an identification number that is presented to the
26 seller at the time of the sale.

27 (6) The seller shall maintain proper records of exempt
28 transactions and provide the records to the Tax Commis-
29 sioner or the Tax Commissioner's designee.

30 (7) The Tax Commissioner shall administer use-based
31 and entity-based exemptions when practicable through a
32 direct pay permit, an exemption certificate or another
33 means that does not burden sellers.

34 (8) After the thirty-first day of December, two thousand
35 seven, in the case of drop shipments, a third-party vendor
36 such as a drop shipper may claim a resale exemption based
37 on an exemption certificate provided by its cus-
38 tomer/reseller or any other acceptable information avail-
39 able to the third-party vendor evidencing qualification for
40 a resale exemption, regardless of whether the cus-
41 tomer/reseller is registered to collect and remit sales and
42 use taxes in this state, when the sale is sourced to this
43 state.

44 (b) The Tax Commissioner shall relieve sellers registered
45 under the Streamlined Sales and Use Tax Agreement that
46 follow the requirements of this section from any tax
47 otherwise applicable if it is determined that the purchaser
48 improperly claimed an exemption and shall hold the
49 purchaser liable for the nonpayment of tax. This relief
50 from liability does not apply:

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

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

54 (C) To a seller who accepts an exemption certificate
55 when the purchaser claims an entity-based exemption
56 when: (i) The subject of the transaction sought to be
57 covered by the exemption certificate is actually received
58 by the purchaser at a location operated by the seller; and

59 (ii) the state in which that location resides provides an
60 exemption certificate that clearly and affirmatively
61 indicates (graying out exemption reason types on uniform
62 form and posting it on a state's web site is an indicator)
63 that the claimed exemption is not available in that state;
64 or

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

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

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

88 (2) Nothing in this section shall affect the ability of the
89 Tax Commissioner to require purchasers to update exemp-
90 tion certificate information or to reapply with the state to
91 claim certain exemptions.

92 (3) Notwithstanding the preceding provisions of this
93 section, when an exemption may be claimed by exemption

94 certificate, a seller is relieved from paying the tax other-
95 wise applicable if the seller obtains a blanket exemption
96 certificate from a purchaser with which the seller has a
97 recurring business relationship. The Tax Commissioner
98 may not request from the seller renewal of blanket certifi-
99 cates or updates of exemption certificate information or
100 data elements when there is a recurring business relation-
101 ship between the buyer and seller. For purposes of this
102 subdivision, a recurring business relationship exists when
103 a period of no more than twelve months elapses between
104 sales transactions.

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

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

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

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

11 (c) *Local boundary changes.* – A local jurisdiction
12 boundary change shall first apply for purposes of compu-
13 tation of a local sales and use tax on the first day of a
14 calendar quarter after a minimum of sixty days' notice to
15 sellers.

16 (d) *Database of local jurisdiction boundaries.* –

17 (1) The state shall provide and maintain a database that
18 describes boundary changes for all taxing jurisdictions.

19 This database shall include a description of the change and
20 the effective date of the change for sales and use tax
21 purposes.

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

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

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

56 subdivision (3) of this subsection and shall meet the
57 requirements developed pursuant to the federal Mobile
58 Telecommunications Sourcing Act (4 U. S. C. §119(a)).
59 The governing board may allow the state to require sellers
60 that register under the agreement to use an address-based
61 database provided by the state. If the state develops
62 address-based assignment database records pursuant to
63 the agreement, a seller or certified service provider may
64 use those database records in place of the five- and nine-
65 digit zip code database records provided in subdivision (3)
66 of this subsection. If a seller or certified service provider
67 is unable to determine the applicable rate and jurisdiction
68 using an address-based database record after exercising
69 due diligence, the seller or certified service provider may
70 apply the nine-digit zip code designation applicable to a
71 purchase. If a nine-digit zip code designation is not
72 available for a street address or if a seller or certified
73 service provider is unable to determine the nine-digit zip
74 code designation applicable to a purchase after exercising
75 due diligence to determine the designation, the seller or
76 certified service provider may apply the rate for the five-
77 digit zip code area. For the purposes of this subsection,
78 there is a rebuttable presumption that a seller or certified
79 service provider has exercised due diligence if the seller or
80 certified service provider has attempted to determine the
81 tax rate and jurisdiction by utilizing software approved by
82 the governing board that makes this assignment from the
83 address and zip code information applicable to the pur-
84 chase.

85 (5) The Tax Commissioner, after meeting the require-
86 ments of subdivision (3) of this subsection, may certify
87 vendor provided address-based databases for assigning tax
88 rates and jurisdictions. The databases must be in the same
89 approved format as the database records pursuant to
90 subdivision (4) of this subsection and must meet the
91 requirements developed pursuant to the federal Mobil
92 Telecommunications Sourcing Act (4 U. S. C. §119(a)).
93 If the state certifies a vendor address-based database, a

94 seller or certified service provider may use that database
95 in place of the database provided for in subdivision (3) or
96 (4) of this subsection. Vendors providing address-based
97 databases may request certification of their databases
98 from the governing board. Certification by the governing
99 board does not replace the requirement that the databases
100 be certified by the state.

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

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

11 (b) *Exception.* - After providing adequate notice as
12 determined by the governing board, if the state provides
13 an address-based database for assigning taxing jurisdic-
14 tions pursuant to subdivision (4) or (5), subsection (d),
15 section thirty-five of this article, the state may cease
16 providing liability relief for errors resulting from reliance
17 on the database provided by the Tax Commissioner under
18 subdivision (3) of said subsection. If a seller demonstrates
19 that requiring the use of the address-based database
20 would create an undue hardship, the Tax Commissioner
21 and the governing board may extend the relief from
22 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.**

1 (a) The Tax Commissioner shall review software submit-
2 ted to the governing board for certification as a certified

3 automated system under the agreement. The Tax Commis-
4 sioner's review shall include a review to determine that the
5 program adequately classifies the State of West Virginia's
6 product-based exemptions. Upon completion of the
7 review, the Tax Commissioner shall certify to the govern-
8 ing board its acceptance of the classifications made by the
9 system.

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

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

19 (d) The governing board and the State of West Virginia
20 shall not be responsible for classification of an item or
21 transaction within the product-based exemptions certified
22 and the relief from liability provided in this section shall
23 not be available for a certified service provider or a Model
24 2 seller that has incorrectly classified an item or transac-
25 tion into a product-based exemption certified by the Tax
26 Commissioner: *Provided*, That the provisions of this
27 subsection shall not apply to the individual listing of items
28 or transactions within a product definition approved by
29 the governing board or the Tax Commissioner.

30 (e) If the Tax Commissioner determines that an item or
31 transaction is incorrectly classified as to its taxability, the
32 Tax Commissioner shall notify the certified service
33 provider or Model 2 seller of the incorrect classification.
34 The certified service provider or Model 2 seller shall have
35 ten days to revise the classification after receipt of notice
36 from the Tax Commissioner of the determination. Upon
37 expiration of the ten days, the certified service provider or
38 Model 2 seller shall be liable for the failure to collect the

51 [Enr. Com. Sub. for S. B. No. 692

39 correct amount of sales or use taxes due and owing the
40 state.

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


.....
Chairman Senate Committee

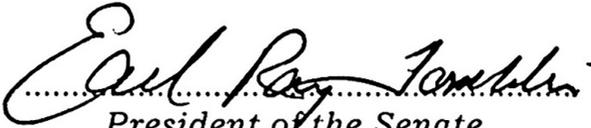

.....
Chairman House Committee

Originated in the Senate.

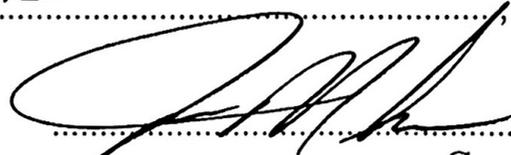
In effect ninety days from passage.


.....
Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within is approved this the 29th
Day of March, 2006.

.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 29 2006

Time 9:50 am