

SB 596

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REGULAR SESSION, 2008

SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

ENROLLED

Senate Bill No. 596

(SENATORS HELMICK AND LOVE, *original sponsors*)

[Passed March 8, 2008; in effect from passage.]

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AN ACT to repeal §11-15B-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-2b, §11-15B-10, §11-15B-11, §11-15B-12, §11-15B-14, §11-15B-14a, §11-15B-15, §11-15B-18, §11-15B-19, §11-15B-20, §11-15B-24, §11-15B-25, §11-15B-26, §11-15B-27, §11-15B-28, §11-15B-30 and §11-15B-32 of said code, all relating to Streamlined Sales and Use Tax Agreement and the West Virginia consumers sales and service tax and use tax;

defining terms; specifying applicable dates; specifying procedures; providing relief from liability in specified circumstances; specifying certain sourcing rules; specifying interpretation; specifying discovery criteria; specifying monetary allowance criteria; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That §11-15B-16 of the Code of West Virginia, 1931, as amended, be repealed; and that §11-15B-2, §11-15B-2a, §11-15B-2b, §11-15B-10, §11-15B-11, §11-15B-12, §11-15B-14, §11-15B-14a, §11-15B-15, §11-15B-18, §11-15B-19, §11-15B-20, §11-15B-24, §11-15B-25, §11-15B-26, §11-15B-27, §11-15B-28, §11-15B-30 and §11-15B-32 of said code be amended and reenacted, all to read as follows:

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
5 instances where a different meaning is distinctly
6 expressed or the context in which the term is used
7 clearly indicates that a different meaning is intended by
8 the Legislature.

9 (b) *Terms defined.* —

10 (1) “Agent” means a person appointed by a seller to
11 represent the seller before the member states.

12 (2) “Agreement” means the Streamlined Sales and Use

13 Tax Agreement as defined in section two-a of this
14 article.

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

18 (4) "Bundled transaction" means the retail sale of two
19 or more products, except real property and services to
20 real property, where: (i) The products are otherwise
21 distinct and identifiable; and (ii) the products are sold
22 for one nonitemized price. A "bundled transaction"
23 does not include the sale of any products in which the
24 "sales price" varies, or is negotiable, based on the
25 selection by the purchaser of the products included in
26 the transaction.

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

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

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

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

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

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

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

60 (ii) The "retail sale" of services where one service is
61 provided that is essential to the use or receipt of a
62 second service and the first service is provided
63 exclusively in connection with the second service and
64 the true object of the transaction is the second service;
65 or

66 (iii) A transaction that includes taxable products and
67 nontaxable products and the "purchase price" or "sales
68 price" of the taxable products is de minimis.

69 (I) "De minimis" means the seller's "purchase price"
70 or "sales price" of the taxable products is ten percent or

71 less of the total “purchase price” or “sales price” of the
72 bundled products.

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

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

81 (iv) A transaction that includes products taxable at
82 the general rate of tax and food or food ingredients
83 taxable at a lower rate of tax and the “purchase price”
84 or “sales price” of the products taxable at the general
85 sales tax rate is de minimis. For purposes of this
86 subparagraph, the term “de minimis” has the same
87 meaning as ascribed to it under subparagraph (iii) of
88 this paragraph.

89 (v) The “retail sale” of exempt tangible personal
90 property, or food and food ingredients taxable at a
91 lower rate of tax, and tangible personal property
92 taxable at the general rate of tax where:

93 (I) The transaction includes “food and food
94 ingredients”, “drugs”, “durable medical equipment”,
95 “mobility-enhancing equipment”, “over-the-counter
96 drugs”, “prosthetic devices” or medical supplies, all as
97 defined in this article ; and

98 (II) Where the seller’s “purchase price” or “sales
99 price” of the taxable tangible personal property taxable

100 at the general rate of tax is fifty percent or less of the
101 total "purchase price" or "sales price" of the bundled
102 tangible personal property. Sellers may not use a
103 combination of the "purchase price" and "sales price"
104 of the tangible personal property when making the fifty
105 percent determination for a transaction.

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

112 (6) "Clothing" means all human wearing apparel
113 suitable for general use. The following list contains
114 examples and is not intended to be an all-inclusive list.

115 (A) "Clothing" shall include:

116 (i) Aprons, household and shop;

117 (ii) Athletic supporters;

118 (iii) Baby receiving blankets;

119 (iv) Bathing suits and caps;

120 (v) Beach capes and coats;

121 (vi) Belts and suspenders;

122 (vii) Boots;

123 (viii) Coats and jackets;

- 124 (ix) Costumes;
- 125 (x) Diapers, children and adult, including disposable
126 diapers;
- 127 (xi) Ear muffs;
- 128 (xii) Footlets;
- 129 (xiii) Formal wear;
- 130 (xiv) Garters and garter belts;
- 131 (xv) Girdles;
- 132 (xvi) Gloves and mittens for general use;
- 133 (xvii) Hats and caps;
- 134 (xviii) Hosiery;
- 135 (xix) Insoles for shoes;
- 136 (xx) Lab coats;
- 137 (xxi) Neckties;
- 138 (xxii) Overshoes;
- 139 (xxiii) Pantyhose;
- 140 (xxiv) Rainwear;
- 141 (xxv) Rubber pants;

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142 (xxvi) Sandals;

143 (xxvii) Scarves;

144 (xxviii) Shoes and shoe laces;

145 (xxix) Slippers;

146 (xxx) Sneakers;

147 (xxxi) Socks and stockings;

148 (xxxii) Steel-toed shoes;

149 (xxxiii) Underwear;

150 (xxxiv) Uniforms, athletic and nonathletic; and

151 (xxxv) Wedding apparel.

152 (B) "Clothing" shall not include:

153 (i) Belt buckles sold separately;

154 (ii) Costume masks sold separately;

155 (iii) Patches and emblems sold separately;

156 (iv) Sewing equipment and supplies including, but not
157 limited to, knitting needles, patterns, pins, scissors,
158 sewing machines, sewing needles, tape measures and
159 thimbles; and

160 (v) Sewing materials that become part of "clothing"
161 including, but not limited to, buttons, fabric, lace,

162 thread, yarn and zippers.

163 (7) "Clothing accessories or equipment" means
164 incidental items worn on the person or in conjunction
165 with "clothing". "Clothing accessories or equipment"
166 are mutually exclusive of and may be taxed differently
167 than apparel within the definition of "clothing", "sport
168 or recreational equipment" and "protective equipment".
169 The following list contains examples and is not intended
170 to be an all-inclusive list. "Clothing accessories or
171 equipment" shall include:

172 (a) Briefcases;

173 (b) Cosmetics;

174 (c) Hair notions, including, but not limited to,
175 barrettes, hair bows, and hair nets;

176 (d) Handbags;

177 (e) Handkerchiefs;

178 (f) Jewelry;

179 (g) Sun glasses, nonprescription;

180 (h) Umbrellas;

181 (i) Wallets;

182 (j) Watches; and

183 (k) Wigs and hair pieces.

184 (8) "Certified automated system" or "CAS" means
185 software certified under the agreement to calculate the
186 tax imposed by each jurisdiction on a transaction,
187 determine the amount of tax to remit to the appropriate
188 state and maintain a record of the transaction.

189 (9) "Certified service provider" or "CSP" means an
190 agent certified under the agreement to perform all of the
191 seller's sales and use tax functions other than the
192 seller's obligation to remit tax on its own purchases.

193 (10) "Computer" means an electronic device that
194 accepts information in digital or similar form and
195 manipulates the information for a result based on a
196 sequence of instructions.

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

200 (12) "Delivered" means delivered to the purchaser by
201 means other than tangible storage media.

202 (13) "Delivery charges" means charges by the seller of
203 personal property or services for preparation and
204 delivery to a location designated by the purchaser of
205 personal property or services including, but not limited
206 to, transportation, shipping, postage, handling, crating
207 and packing.

208 (14) "Dietary supplement" means any product, other
209 than "tobacco", intended to supplement the diet that:

210 (A) Contains one or more of the following dietary
211 ingredients:

212 (i) A vitamin;

213 (ii) A mineral;

214 (iii) An herb or other botanical;

215 (iv) An amino acid;

216 (v) A dietary substance for use by humans to
217 supplement the diet by increasing the total dietary
218 intake; or

219 (vi) A concentrate, metabolite, constituent, extract or
220 combination of any ingredient described in
221 subparagraph (i) through (v), inclusive, of this
222 paragraph;

223 (B) And is intended for ingestion in tablet, capsule,
224 powder, softgel, gelcap or liquid form, or if not intended
225 for ingestion in such a form, is not represented as
226 conventional food and is not represented for use as a
227 sole item of a meal or of the diet; and

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

233 (15) "Direct mail" means printed material delivered or
234 distributed by United States mail or other delivery
235 service to a mass audience or to addressees on a mailing
236 list provided by the purchaser or at the direction of the
237 purchaser when the cost of the items are not billed
238 directly to the recipients. "Direct mail" includes

239 tangible personal property supplied directly or
240 indirectly by the purchaser to the direct mail seller for
241 inclusion in the package containing the printed
242 material. "Direct mail" does not include multiple items
243 of printed material delivered to a single address.

244 (16) "Drug" means a compound, substance or
245 preparation, and any component of a compound,
246 substance or preparation, other than food and food
247 ingredients, dietary supplements or alcoholic beverages:

248 (A) Recognized in the official United States
249 Pharmacopoeia, official Homeopathic Pharmacopoeia
250 of the United States or official National Formulary, and
251 supplement to any of them;

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

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

256 (17) "Durable medical equipment" means equipment
257 including repair and replacement parts for the
258 equipment, but does not include "mobility-enhancing
259 equipment", which:

260 (A) Can withstand repeated use;

261 (B) Is primarily and customarily used to serve a
262 medical purpose;

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

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

266 (18) “Electronic” means relating to technology having
267 electrical, digital, magnetic, wireless, optical,
268 electromagnetic or similar capabilities.

269 (19) “Eligible property” means an item of a type, such
270 as clothing, that qualifies for a sales tax holiday
271 exemption in this state.

272 (20) “Energy Star qualified product” means a product
273 that meets the energy efficient guidelines set by the
274 United States Environmental Protection Agency and the
275 United States Department of Energy that are authorized
276 to carry the Energy Star label. Covered products are
277 those listed at www.energystar.gov or successor address.

278 (21) “Entity-based exemption” means an exemption
279 based on who purchases the product or service or who
280 sells the product or service. An exemption that is
281 available to all individuals shall not be considered an
282 entity-based exemption.

283 (22) “Food and food ingredients” means substances,
284 whether in liquid, concentrated, solid, frozen, dried or
285 dehydrated form, that are sold for ingestion or chewing
286 by humans and are consumed for their taste or
287 nutritional value. “Food and food ingredients” does not
288 include alcoholic beverages, prepared food or tobacco.

289 (23) “Food sold through vending machines” means
290 food dispensed from a machine or other mechanical
291 device that accepts payment.

292 (24) “Fur clothing” means “clothing” that is required

293 to be labeled as a fur product under the Federal Fur
294 Products Labeling Act (15 U. S. C. §69) and the value of
295 the fur components in the product is more than three
296 times the value of the next most valuable tangible
297 component. "Fur clothing" is human-wearing apparel
298 suitable for general use but may be taxed differently
299 from "clothing". For the purposes of the definition of
300 "fur clothing", the term "fur" means any animal skin or
301 part thereof with hair, fleece or fur fibers attached
302 thereto, either in its raw or processed state, but shall not
303 include such skins that have been converted into leather
304 or suede, or which in processing, the hair, fleece or fur
305 fiber has been completely removed.

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

308 (26) "Grooming and hygiene products" are soaps and
309 cleaning solutions, shampoo, toothpaste, mouthwash,
310 antiperspirants and sun tan lotions and screens,
311 regardless of whether the items meet the definition of
312 "over-the-counter-drugs".

313 (27) "Includes" and "including" when used in a
314 definition contained in this article is not considered to
315 exclude other things otherwise within the meaning of
316 the term being defined.

317 (28) "Layaway sale" means a transaction in which
318 property is set aside for future delivery to a customer
319 who makes a deposit, agrees to pay the balance of the
320 purchase price over a period of time and, at the end of
321 the payment period, receives the property. An order is
322 accepted for layaway by the seller when the seller
323 removes the property from normal inventory or clearly

324 identifies the property as sold to the purchaser.

325 (29) "Lease" includes rental, hire and license. "Lease"
326 means any transfer of possession or control of tangible
327 personal property for a fixed or indeterminate term for
328 consideration. A lease or rental may include future
329 options to purchase or extend.

330 (A) "Lease" does not include:

331 (i) A transfer of possession or control of property
332 under a security agreement or deferred payment plan
333 that requires the transfer of title upon completion of the
334 required payments;

335 (ii) A transfer or possession or control of property
336 under an agreement that requires the transfer of title
337 upon completion of required payments and payment of
338 an option price does not exceed the greater of one
339 hundred dollars or one percent of the total required
340 payments; or

341 (iii) Providing tangible personal property along with
342 an operator for a fixed or indeterminate period of time.
343 A condition of this exclusion is that the operator is
344 necessary for the equipment to perform as designed.
345 For the purpose of this subparagraph, an operator must
346 do more than maintain, inspect or set-up the tangible
347 personal property.

348 (iv) "Lease" or "rental" includes agreements covering
349 motor vehicles and trailers where the amount of
350 consideration may be increased or decreased by
351 reference to the amount realized upon sale or
352 disposition of the property as defined in 26 U. S.

353 C.7701(h)(1).

354 (B) This definition shall be used for sales and use tax
355 purposes regardless if a transaction is characterized as
356 a lease or rental under generally accepted accounting
357 principles, the Internal Revenue Code, the Uniform
358 Commercial Code or other provisions of federal, state or
359 local law.

360 (30) "Load and leave" means delivery to the purchaser
361 by use of a tangible storage media where the tangible
362 storage media is not physically transferred to the
363 purchaser.

364 (31) "Mobility-enhancing equipment" means
365 equipment, including repair and replacement parts to
366 the equipment, but does not include "durable medical
367 equipment", which:

368 (A) Is primarily and customarily used to provide or
369 increase the ability to move from one place to another
370 and which is appropriate for use either in a home or a
371 motor vehicle;

372 (B) Is not generally used by persons with normal
373 mobility; and

374 (C) Does not include any motor vehicle or equipment
375 on a motor vehicle normally provided by a motor vehicle
376 manufacturer.

377 (32) "Model I seller" means a seller that has selected
378 a certified service provider as its agent to perform all
379 the seller's sales and use tax functions, other than the
380 seller's obligation to remit tax on its own purchases.

381 (33) "Model II seller" means a seller that has selected
382 a certified automated system to perform part of its sales
383 and use tax functions, but retains responsibility for
384 remitting the tax.

385 (34) "Model III seller" means a seller that has sales in
386 at least five member states, has total annual sales
387 revenue of at least five hundred million dollars, has a
388 proprietary system that calculates the amount of tax
389 due each jurisdiction and has entered into a
390 performance agreement with the member states that
391 establishes a tax performance standard for the seller.
392 As used in this definition, a seller includes an affiliated
393 group of sellers using the same proprietary system.

394 (35) "Over-the-counter-drug" means a drug that
395 contains a label that identifies the product as a drug as
396 required by 21 CFR § 201.66. The
397 "over-the-counter-drug" label includes:

398 (A) A "drug facts" panel; or

399 (B) A statement of the "active ingredient(s)" with a list
400 of those ingredients contained in the compound,
401 substance or preparation.

402 (36) "Person" means an individual, trust, estate,
403 fiduciary, partnership, limited liability company,
404 limited liability partnership, corporation or any other
405 legal entity.

406 (37) "Personal service" includes those:

407 (A) Compensated by the payment of wages in the
408 ordinary course of employment; and

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

413 (38) (A) "Prepared food" means:

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

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

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

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

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

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

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

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

439 (39) "Prescription" means an order, formula or recipe
440 issued in any form of oral, written, electronic or other
441 means of transmission by a duly licensed practitioner
442 authorized by the laws of this state to issue
443 prescriptions.

444 (40) "Prewritten computer software" means
445 "computer software", including prewritten upgrades,
446 which is not designed and developed by the author or
447 other creator to the specifications of a specific
448 purchaser.

449 (A) The combining of two or more prewritten
450 computer software programs or prewritten portions
451 thereof does not cause the combination to be other than
452 prewritten computer software.

453 (B) "Prewritten computer software" includes software
454 designed and developed by the author or other creator
455 to the specifications of a specific purchaser when it is
456 sold to a person other than the specific purchaser.
457 Where a person modifies or enhances computer software
458 of which the person is not the author or creator, the
459 person is considered to be the author or creator only of
460 the person's modifications or enhancements.

461 (C) "Prewritten computer software" or a prewritten
462 portion thereof that is modified or enhanced to any
463 degree, where the modification or enhancement is
464 designed and developed to the specifications of a
465 specific purchaser, remains prewritten computer

466 software: *Provided*, That where there is a reasonable,
467 separately stated charge or an invoice or other
468 statement of the price given to the purchaser for the
469 modification or enhancement, the modification or
470 enhancement does not constitute prewritten computer
471 software.

472 (41) "Product-based exemption" means an exemption
473 based on the description of the product or service and
474 not based on who purchases the product or service or
475 how the purchaser intends to use the product or service.

476 (42) "Prosthetic device" means a replacement,
477 corrective or supportive device, including repair and
478 replacement parts for the device worn on or in the body,
479 to:

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

481 (B) Prevent or correct physical deformity or
482 malfunction of the body; or

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

484 (43) "Protective equipment" means items for human
485 wear and designed as protection of the wearer against
486 injury or disease or as protections against damage or
487 injury of other persons or property but not suitable for
488 general use.

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

492 (45) "Purchaser" means a person to whom a sale of

493 personal property is made or to whom a service is
494 furnished.

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

499 (47) "Retail sale" or "sale at retail" means:

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

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

505 (48) (A) "Sales price" means the measure subject to
506 the tax levied under articles fifteen or fifteen-a of this
507 chapter and includes the total amount of consideration,
508 including cash, credit, property and services, for which
509 personal property or services are sold, leased or rented,
510 valued in money, whether received in money or
511 otherwise, without any deduction for the following:

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

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

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

520 (iv) Delivery charges; and

521 (v) Installation charges.

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

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

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

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

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

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

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

542 (iii) The amount of the consideration attributable to
543 the sale is fixed and determinable by the seller at the
544 time of the sale of the item to the purchaser; and

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

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

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

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

562 (49) "Sales tax" means the tax levied under article
563 fifteen of this chapter.

564 (50) "School art supply" means an item commonly
565 used by a student in a course of study for artwork. The
566 term is mutually exclusive of the terms "school supply",
567 "school instructional material" and "school computer
568 supply" and may be taxed differently. The following is
569 an all-inclusive list:

570 (A) Clay and glazes;

571 (B) Paints; acrylic, tempora and oil;

572 (C) Paintbrushes for artwork;

573 (D) Sketch and drawing pads, and

574 (E) Watercolors.

575 (51) "School instructional material" means written
576 material commonly used by a student in a course of
577 study as a reference and to learn the subject being
578 taught. The term is mutually exclusive of the terms
579 "school supply", "school art supply" and "school
580 computer supply" and may be taxed differently. The
581 following is an all-inclusive list:

582 (A) Reference books;

583 (B) Reference maps and globes;

584 (C) Textbooks; and

585 (D) Workbooks.

586 (52) "School computer supply" means an item
587 commonly used by a student in a course of study in
588 which a computer is used. The term is mutually
589 exclusive of the terms "school supply", "school art
590 supply" and "school instructional material" and may be
591 taxed differently. The following is an all-inclusive list:

592 (A) Computer storage media; diskettes, compact disks;

593 (B) Handheld electronic schedulers, except devices
594 that are cellular phones;

595 (C) Personal digital assistants, except devices that are

596 cellular phones;

597 (D) Computer printers; and

598 (E) Printer supplies for computers; printer paper,
599 printer ink.

600 (53) "School supply" means an item commonly used
601 by a student in a course of study. The term is mutually
602 exclusive of the terms "school art supply", "school
603 instructional material" and "school computer supply"
604 and may be taxed differently. The following is an
605 all-inclusive list of school supplies:

606 (A) Binders;

607 (B) Book bags;

608 (C) Calculators;

609 (D) Cellophane tape;

610 (E) Blackboard chalk;

611 (F) Compasses;

612 (G) Composition books;

613 (H) Crayons;

614 (I) Erasers;

615 (J) Folders; expandable, pocket, plastic and manila;

616 (K) Glue, paste and paste sticks;

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- 617 (L) Highlighters;
- 618 (M) Index cards;
- 619 (N) Index card boxes;
- 620 (O) Legal pads;
- 621 (P) Lunch boxes;
- 622 (Q) Markers;
- 623 (R) Notebooks;
- 624 (S) Paper; loose-leaf ruled notebook paper, copy
625 paper, graph paper, tracing paper, manila paper,
626 colored paper, poster board and construction paper;
- 627 (T) Pencil boxes and other school supply boxes;
- 628 (U) Pencil sharpeners;
- 629 (V) Pencils;
- 630 (W) Pens;
- 631 (X) Protractors;
- 632 (Y) Rulers;
- 633 (Z) Scissors; and
- 634 (AA) Writing tablets.
- 635 (54) "Seller" means any person making sales, leases or

636 rentals of personal property or services.

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

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

666 (57) "Sport or recreational equipment" means items
667 designed for human use and worn in conjunction with

668 an athletic or recreational activity that are not suitable
669 for general use. "Sport or recreational equipment" are
670 mutually exclusive of and may be taxed differently than
671 apparel within the definition of "clothing", "clothing
672 accessories or equipment" and "protective equipment".
673 The following list contains examples and is not intended
674 to be an all-inclusive list. "Sport or recreational
675 equipment" shall include:

676 (A) Ballet and tap shoes;

677 (B) Cleated or spiked athletic shoes;

678 (C) Gloves, including, but not limited to, baseball,
679 bowling, boxing, hockey and golf;

680 (D) Goggles;

681 (E) Hand and elbow guards;

682 (F) Life preservers and vests;

683 (G) Mouth guards;

684 (H) Roller and ice skates;

685 (I) Shin guards;

686 (J) Shoulder pads;

687 (K) Ski boots;

688 (L) Waders; and

689 (M) Wetsuits and fins.

690 (58) "State" means any state of the United States, the
691 District of Columbia and the Commonwealth of Puerto
692 Rico.

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

699 (60) "Tax" includes all taxes levied under articles
700 fifteen and fifteen-a of this chapter and additions to
701 tax, interest and penalties levied under article ten of
702 this chapter.

703 (61) "Tax Commissioner" means the State Tax
704 Commissioner or his or her delegate. The term
705 "delegate" in the phrase "or his or her delegate", when
706 used in reference to the Tax Commissioner, means any
707 officer or employee of the State Tax Division duly
708 authorized by the Tax Commissioner directly, or
709 indirectly by one or more redelegations of authority, to
710 perform the functions mentioned or described in this
711 article or rules promulgated for this article.

712 (62) "Taxpayer" means any person liable for the taxes
713 levied by articles fifteen and fifteen-a of this chapter or
714 any additions to tax penalties imposed by article ten of
715 this chapter.

716 (63) "Telecommunications service" or
717 "telecommunication service" when used in this article
718 and articles fifteen and fifteen-a shall have the same
719 meaning as that term is defined in section two-b of this

720 article.

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

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

725 (66) "Use-based exemption" means an exemption
726 based on a specified use of the product or service by the
727 purchaser.

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

734 (c) *Additional definitions.* — Other terms used in this
735 article are defined in articles fifteen and fifteen-a of this
736 chapter, which definitions are incorporated by reference
737 into this article. Additionally, other sections of this
738 article may define terms primarily used in the section in
739 which 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
3 Tax Agreement" or "agreement" means the agreement
4 adopted the twelfth day of November, two thousand
5 two, by states that enacted authority to engage in
6 multistate discussions similar to that provided in

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

§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
5 instances where a different meaning is distinctly
6 expressed or the context in which the term is used
7 clearly indicates that a different meaning is intended by
8 the Legislature.

9 (b) *Terms defined.* —

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

15 (A) The terms "telecommunications service" or
16 "telecommunication service" includes the transmission,
17 conveyance or routing in which computer processing
18 applications are used to act on the form, code or

19 protocol of the content for purposes of transmission,
20 conveyance or routing without regard to whether the
21 service is referred to as voice over internet protocol
22 services or is classified by the Federal Communications
23 Commission as enhanced or value added.

24 (B) "Telecommunications service" or
25 "telecommunication service" does not include:

26 (i) Advertising, including, but not limited to, directory
27 advertising;

28 (ii) "Ancillary services";

29 (iii) Billing and collection services provided to third
30 parties;

31 (iv) Data processing and information services that
32 allow data to be generated, acquired, stored, processed
33 or retrieved and delivered by an electronic transmission
34 to a purchaser where the purchaser's primary purpose
35 for the underlying transaction is the processed data or
36 information;

37 (v) Digital products "delivered electronically",
38 including, but not limited to, software, music, video,
39 reading materials or ring tones;

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

42 (vii) Internet access service;

43 (viii) Radio and television audio and video
44 programming services, regardless of the medium,

45 including the furnishing of transmission, conveyance
46 and routing of services by the programming service
47 provider. Radio and television audio and video
48 programming services shall include, but not be limited
49 to, cable service as defined in 47 U. S. C.522(6) and
50 audio and video programming services delivered by
51 commercial mobile radio service providers, as defined in
52 47 CFR 20.3; or

53 (ix) Tangible personal property.

54 (2) *Related or ancillary terms.*—

55 The following terms are either used in subsection (a)
56 of this section or are commonly associated with terms
57 used in that subsection.

58 (A) “800 service” means a “telecommunications
59 service” that allows a caller to dial a toll-free number
60 without incurring a charge for the call. The service is
61 typically marketed under the name “800”, “855”, “866”,
62 “877” and “888” toll-free calling and any subsequent
63 numbers designated by the Federal Communications
64 Commission.

65 (B) “900 service” means an inbound toll
66 “telecommunications service” purchased by a
67 subscriber that allows the subscriber’s customers to call
68 in to the subscriber’s prerecorded announcement or live
69 service. “900 service” does not include the charge for
70 collection services provided by the seller of the
71 “telecommunications services” to the subscriber or
72 service or product sold by the subscriber to the
73 subscriber’s customer. The service is typically marketed
74 under the name “900 service” and any subsequent

75 numbers designated by the Federal Communications
76 Commission.

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

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

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

91 (F) "Directory assistance" means an "ancillary
92 service" of providing telephone number information
93 and/or address information.

94 (G) "Fixed wireless service" means a
95 "telecommunications service" that provides radio
96 communication between fixed points.

97 (H) "International" means a "telecommunications
98 service" that originates or terminates in the United
99 States and terminates or originates outside the United
100 States, respectively. United States includes the District
101 of Columbia or a United States territory or possession.

102 (I) "Interstate" means a "telecommunications service"

103 that originates in one United States state, territory or
104 possession and terminates in a different United States
105 state, territory or possession.

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

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

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

122 (M) "Pay telephone service" means a
123 "telecommunications service" provided through any pay
124 telephone.

125 (N) "Residential telecommunications service" means
126 a "telecommunications service" or "ancillary services"
127 provided to an individual for personal use at a
128 residential address, including an individual dwelling
129 unit such as an apartment. In the case of institutions
130 where individuals reside, such as schools or nursing
131 homes, "telecommunications service" is considered
132 residential if it is provided to and paid for by an

133 individual resident rather than the institution.

134 (O) "Value-added nonvoice data service" means a
135 service that otherwise meets the definition of
136 "telecommunications services" in which computer
137 processing applications are used to act on the form,
138 content, code or protocol of the information or data
139 primarily for a purpose other than transmission,
140 conveyance or routing.

141 (P) "Vertical service" means an "ancillary service"
142 that is offered in connection with one or more
143 "telecommunications services" which offers advanced
144 calling features that allow customers to identify callers
145 and to manage multiple calls and call connections,
146 including "conference-bridging services".

147 (Q) "Voice mail service" means an "ancillary service"
148 that enables the customer to store, send or receive
149 recorded messages. "Voice mail service" does not
150 include any "vertical services" that the customer may be
151 required to have in order to utilize the "voice mail
152 service".

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

§11-15B-10. Seller and third-party liability.

1 (a) (1) A certified service provider is the agent of a
2 seller, with whom the certified service provider has
3 contracted, for the collection and remittance of sales
4 and use taxes. As the seller's agent, the certified service
5 provider is liable for sales and use tax due the state on

6 all sales transactions it processes for the seller except as
7 set out in this section.

8 (2) A seller that contracts with a certified service
9 provider is not liable to the state for sales or use tax due
10 on transactions processed by the certified service
11 provider unless the seller misrepresented the type of
12 items it sells or committed fraud. In the absence of
13 probable cause to believe that the seller has committed
14 fraud or made a material misrepresentation, the seller
15 is not subject to audit on the transactions processed by
16 the certified service provider. A seller is subject to audit
17 for transactions not processed by the certified service
18 provider. The member states acting jointly may perform
19 a system check of the seller and review the seller's
20 procedures to determine if the certified service
21 provider's system is functioning properly and the extent
22 to which the seller's transactions are being processed by
23 the certified service provider.

24 (b) A person that provides a certified automated
25 system is responsible for the proper functioning of that
26 system and is liable to the state for underpayments of
27 tax attributable to errors in the functioning of the
28 certified automated system. A seller that uses a
29 certified automated system remains responsible and is
30 liable to the state for reporting and remitting tax.

31 (c) A seller that has a proprietary system for
32 determining the amount of tax due on transactions and
33 has signed an agreement establishing a performance
34 standard for that system is liable for the failure of the
35 system to meet the performance standard.

**§11-15B-11. Seller registration under streamlined sales and
use tax agreement.**

1 (a) *General.* — A seller that registers to collect West
2 Virginia sales and use taxes using the online sales and
3 use tax registration system established under the
4 streamlined sales and use tax agreement is not required
5 to also register under article twelve of this chapter
6 unless the seller has sufficient presence in this state that
7 provides at least the minimum contacts necessary for a
8 constitutionally sufficient nexus for this state to require
9 registration and payment of the registration tax under
10 article twelve of this chapter.

11 (b) *Registration by agent.* — A person appointed by a
12 seller to represent the seller before the states that are
13 members of the streamlined Sales and Use Tax
14 Agreement may register the seller under the agreement
15 under uniform procedures approved by the governing
16 board. The appointment of an agent shall be in writing
17 and submitted to this state if requested by the Tax
18 Commissioner.

19 (c) *Cancellation of registration.* — A seller may cancel
20 its registration under the system at any time under
21 uniform procedures adopted by the governing board.
22 Cancellation does not relieve the seller of its liability for
23 remitting to the state any taxes collected.

**§11-15B-12. Effect of seller registration and participation in
streamlined sales and use tax administration.**

1 (a) *Collection of tax.* — By registering under the
2 streamlined sales use tax agreement, the seller agrees to
3 collect and remit sales and use taxes as levied under
4 articles fifteen and fifteen-a of this chapter for all
5 taxable sales into this state as well as for all other states
6 participating in the agreement. Subsequent withdrawal
7 or revocation of a member state does not relieve a seller

8 of its responsibility to remit taxes previously or
9 subsequently collected on behalf of the state.

10 (b) *Effect of registration.* — If the state has withdrawn
11 or been expelled from the Streamlined Sales and Use
12 Tax Agreement, the Tax Commissioner may not use
13 registration with the central registration system and the
14 collection of sales and use taxes in the member states as
15 a factor in determining whether the seller has a nexus
16 with the state for any tax at any time.

§11-15B-14. General sourcing definitions.

1 (a) *Definition of receive or receipt.* — For the
2 purposes of subsection (a), section fifteen of this article,
3 the terms “receive” and “receipt” mean:

4 (1) Taking possession of tangible personal property;

5 (2) Making first use of services; or

6 (3) Taking possession or making first use of computer
7 software or digital goods, whichever comes first.

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

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

1 (a) Sellers shall source the sale of a product in
2 accordance with section fifteen of this article. The
3 provisions of said section apply regardless of the
4 characterization of the product as tangible personal
5 property, computer software or digital goods or a

6 service. The provisions of said section only apply to
7 determine a seller's obligation to pay or collect and
8 remit a sales or use tax with respect to the seller's sale
9 of a product. These provisions do not affect the
10 obligation of a purchaser or lessee to remit tax on the
11 use of the product to the taxing jurisdiction of that use.

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

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

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

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

7 (2) When the product is not received by the purchaser
8 at a business location of the seller, the sale is sourced to
9 the location where receipt by the purchaser or the
10 purchaser's designated donee occurs, including the
11 location indicated by instructions for delivery to the
12 purchaser or donee, 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
15 by an address for the purchaser that is available from
16 the business records of the seller that are maintained in
17 the ordinary course of the seller's business when use of
18 this 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
21 indicated by an address for the purchaser obtained
22 during the consummation of the sale, including the
23 address of a purchaser's payment instrument, if no other
24 address is available, provided use of this address does
25 not constitute bad faith.

26 (5) When none of the previous subdivisions of this
27 subsection apply, including the circumstance in which
28 the seller is without sufficient information to apply the
29 previous rules, then the location will be determined by
30 the address from which tangible personal property or
31 computer software was shipped, from which the digital
32 goods delivered electronically was first available for
33 transmission by the seller or from which the service was
34 provided: *Provided*, That any location that merely
35 provided the digital transfer of the product sold is
36 disregarded for these purposes.

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

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

52 The property location may not be altered by
53 intermittent use at different locations, such as use of
54 business property that accompanies employees on
55 business trips and service calls.

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

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

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

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

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

81 (3) This subsection does not affect the imposition or

82 computation of sales or use tax on leases or rentals
83 based on a lump sum or accelerated basis or on the
84 acquisition of property for lease.

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

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

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

97 (A) Registered through the international registration
98 plan; and

99 (B) Operated under authority of a carrier authorized
100 and certificated by the United States Department of
101 Transportation or another federal authority to engage
102 in the carriage of persons or property in interstate
103 commerce.

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

109 (4) Containers designed for use on and component
110 parts attached or secured on the items set forth in

111 subdivisions (1) through (3), inclusive, of this
112 subsection.

113 (e) *Exceptions.* — Subsections (a) and (b) of this
114 section shall not apply to the following goods or
115 services:

116 (1) Telecommunications services, ancillary services
117 and internet access services, as set out in section twenty
118 of this article, shall be sourced in accordance with
119 section nineteen of this article; and

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

134 (f) *Product defined.* — As used in subsection (a) of
135 this section, “product” includes tangible personal
136 property, computer software or digital goods or a
137 service, or any combination thereof.

§11-15B-18. Relief from certain liability for purchasers.

1 (a) A purchaser is relieved from liability for penalty to
2 this state and local jurisdictions of this state for having

3 failed to pay the correct amount of sales or use tax in
4 the following circumstances:

5 (1) A purchaser's seller or certified service provider
6 relied on erroneous data provided by this state on tax
7 rates, boundaries, taxing jurisdiction assignments or in
8 the taxability matrix completed by this state pursuant
9 to Section 328 of the Streamlined Sales and Use Tax
10 Agreement;

11 (2) A purchaser holding a direct pay permit relied on
12 erroneous data provided by this state on tax rates,
13 boundaries, taxing jurisdiction assignments or in the
14 taxability matrix completed by this state pursuant to
15 Section 328 of the Streamlined Sales and Use Tax
16 Agreement;

17 (3) A purchaser relied on erroneous data provided by
18 this state in the taxability matrix completed by this
19 state pursuant to Section 328 of the Streamlined Sales
20 and Use Tax Agreement; or

21 (4) A purchaser using databases pursuant to
22 subdivisions (3), (4) and (5), subsection (d), section
23 thirty-five of this article relied on erroneous data
24 provided by this state on tax rates, boundaries or taxing
25 jurisdiction assignments. After providing adequate
26 notice as determined by the governing board, this state,
27 having provided an address-based database for
28 assigning taxing jurisdictions pursuant to subdivisions
29 (4) and (5), subsection (d), section thirty-five of this
30 article, shall cease providing liability relief for errors
31 resulting from the reliance on the database provided by
32 this state under the provisions of subdivision (3),
33 subsection (d), section thirty-five of this article.

34 (b) A purchaser is relieved from liability for tax and
35 interest to this state and its local jurisdictions for
36 having failed to pay the correct amount of sales or use
37 tax in the circumstances described in subsection (a) of
38 this section, provided that, with respect to reliance on
39 the taxability matrix completed by this state pursuant
40 to Section 328 of the Streamlined Sales and Use Tax
41 Agreement, relief is limited to the state's erroneous
42 classification in the taxability matrix of terms included
43 in the Streamlined Sales and Use Tax Agreement
44 library of definitions as "taxable" or "exempt",
45 "included in sales price" or "excluded from sales price"
46 or "included in the definition" or "excluded from the
47 definition".

48 (c) For purposes of this section, the term "penalty"
49 means an amount imposed for noncompliance that is not
50 fraudulent, willful or intentional which is in addition to
51 the correct amount of sales or use tax and interest.

**§11-15B-19. Telecommunications and related services
sourcing rule.**

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

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

13 primary use.

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

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

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

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

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

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

41 (B) Service where all customer termination points are

42 located entirely within one jurisdiction or levels of
43 jurisdiction is sourced in the jurisdiction in which the
44 customer channel termination points are located.

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

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

58 (E) The sale of internet access service is sourced to the
59 customer's place of primary use.

60 (F) The sale of an ancillary service is sourced to the
61 customer's place of primary use.

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

1 For the purpose of this article, including section
2 nineteen of this article, the 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
6 provide radio telecommunications service for hire to
7 subscribers in aircraft.

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

14 (3) "Call-by-call basis" means any method of charging
15 for telecommunications services where the price is
16 measured by individual calls.

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

21 (5) "Customer" means the person or entity that
22 contracts with the seller of telecommunications services.
23 If the end user of telecommunications services is not the
24 contracting party, the end user of the
25 telecommunications service is the customer of the
26 telecommunication service, but this sentence only
27 applies for the purpose of sourcing sales of
28 telecommunications services under section nineteen of
29 this article. "Customer" does not include a reseller of
30 telecommunications service or for mobile
31 telecommunications service of a serving carrier under
32 an agreement to serve the customer outside the Home
33 service provider's licensed service area.

34 (6) "Customer channel termination point" means the
35 location where the customer either inputs or receives
36 the communications.

37 (7) "End user" means the person who utilizes the
38 telecommunication service. In the case of an entity,

39 "end user" means the individual who utilizes the service
40 on behalf of the entity.

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

44 (9) "Mobile telecommunications service" means the
45 same as that term is defined in Section 124 (7) of Public
46 Law 106-252 (Mobile Telecommunications Sourcing
47 Act).

48 (10) "Place of primary use" means the street address
49 representative where the customer's use of the
50 telecommunication service primarily occurs, which must
51 be the residential street address or the primary business
52 street address of the customer. In the case of mobile
53 telecommunications services, "place of primary use"
54 must be within the licensed service area of the home
55 service provider.

56 (11) "Post-paid calling service" means the
57 telecommunication service obtained by making a
58 payment on a call-by-call basis either through the use
59 of a credit card or payment mechanism such as a bank
60 card, travel card, credit card or debit card or by charge
61 made to a telephone number which is not associated
62 with the origination or termination of the
63 telecommunication service. A post-paid calling service
64 includes a telecommunication service, except a prepaid
65 wireless calling service, that would be a prepaid calling
66 service except it is not exclusively a telecommunication
67 service.

68 (12) "Prepaid calling service" means the right to
69 access exclusively telecommunications services, which

70 must be paid for in advance and which enables the
71 origination of calls using an access number or
72 authorization code, whether manually or electronically
73 dialed, and that is sold in predetermined units or dollars
74 of which the number declines with use in a known
75 amount.

76 (13) "Prepaid wireless calling service" means a
77 telecommunications service that provides the right to
78 utilize mobile wireless service as well as other
79 nontelecommunications services, including the
80 download of digital products delivered electronically,
81 content and ancillary services, which must be paid for
82 in advance that is sold in predetermined units or dollars
83 of which the number declines with use in a known
84 amount.

85 (14) "Private communication service" means a
86 telecommunication service that entitles the customer to
87 exclusive or priority use of a communications channel
88 or group of channels between or among termination
89 points, regardless of the manner in which the channel or
90 channels are connected, and includes switching
91 capacity, extension lines, stations and any other
92 associated services that are provided in connection with
93 the use of the channel or channels.

94 (15) "Service address" means:

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

99 (B) If the location in paragraph (A) of this subdivision
100 is not known, service address means the origination

101 point of the signal of the telecommunications services
102 first identified by either the seller's telecommunications
103 system or in information received by the seller from its
104 service provider, where the system used to transport the
105 signals is not that of the seller; or

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

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

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

4 (1) Sellers shall obtain identifying information of the
5 purchaser and the reason for claiming a tax exemption
6 at the time of the purchase, as determined by the
7 governing board.

8 (2) A purchaser is not required to provide a signature
9 to claim an exemption from tax unless a paper
10 exemption certificate is used.

11 (3) The seller shall use the standard form for claiming
12 an exemption electronically that is adopted by the
13 governing board.

14 (4) The seller shall obtain the same information for
15 proof of a claimed exemption regardless of the medium
16 in which the transaction occurred.

17 (5) The Tax Commissioner may utilize a system
18 wherein the purchaser exempt from the payment of the

19 tax is issued an identification number that is presented
20 to the seller at the time of the sale.

21 (6) The seller shall maintain proper records of exempt
22 transactions and provide the records to the Tax
23 Commissioner or the Tax Commissioner's designee.

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

28 (8) After the thirty-first day of December, two
29 thousand seven, in the case of drop shipments, a
30 third-party vendor such as a drop shipper may claim a
31 resale exemption based on an exemption certificate
32 provided by its customer/reseller or any other
33 acceptable information available to the third-party
34 vendor evidencing qualification for a resale exemption,
35 regardless of whether the customer/reseller is registered
36 to collect and remit sales and use taxes in this state,
37 when the sale is sourced to this state.

38 (b) The Tax Commissioner shall relieve sellers that
39 follow the requirements of this section from any tax
40 otherwise applicable if it is determined that the
41 purchaser improperly claimed an exemption and shall
42 hold the purchaser liable for the nonpayment of tax.
43 This relief from liability does not apply:

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

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

47 (C) To a seller who accepts an exemption certificate

48 when the purchaser claims an entity-based exemption
49 when: (i) The subject of the transaction sought to be
50 covered by the exemption certificate is actually received
51 by the purchaser at a location operated by the seller;
52 and (ii) the state in which that location resides provides
53 an exemption certificate that clearly and affirmatively
54 indicates (graying out exemption reason types on
55 uniform form and posting it on a state's web site is an
56 indicator) that the claimed exemption is not available in
57 that state.

58 (c) *Time within which seller must obtain exemption*
59 *certificates.* — A seller is relieved from paying tax
60 otherwise applicable under article fifteen or fifteen-a of
61 this chapter if the seller obtains a fully completed
62 exemption certificate or captures the required data
63 elements within ninety days subsequent to the date of
64 sale.

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

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

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

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

§11-15B-25. Uniform tax returns.

1 (a) *General.* — A seller who registers with this state is
2 required to file one sales/use tax return with the Tax
3 Commissioner for each taxing period.

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

7 (c) *Additional information returns.* — The Tax
8 Commissioner shall allow any Model I, Model II or
9 Model III seller to submit its sales and use tax returns in
10 a simplified format that does not include more data
11 fields than permitted by the governing board. The Tax
12 Commissioner may require additional informational
13 returns to be submitted not more frequently than every

14 six months under a staggered system developed by the
15 governing board.

16 (d) The Tax Commissioner shall allow any seller that
17 is registered with this state under the Streamlined Sales
18 and Use Tax Agreement which does not have a legal
19 requirement to register in this state under article twelve
20 of this chapter and is not a Model I, II, or III seller to
21 submit its sales and use tax returns as follows:

22 (1) Upon registration, the Tax Commissioner shall
23 provide to the seller the returns required by this state.

24 (2) The Tax Commissioner may require a seller to file
25 a return anytime within one year of the month of initial
26 registration and future returns may be required on an
27 annual basis in succeeding years.

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

34 (4) The Tax Commissioner shall participate with other
35 states that are members of the Streamlined Sales and
36 Use Tax Agreement in developing a more uniform sales
37 and use tax return that, when completed, is available to
38 all sellers.

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

§11-15B-26. Uniform rules for remittances of funds.

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

3 (b) *When electronic remittance required.* — All
4 remittances from sellers under Models I, II and III shall
5 be remitted electronically after the thirty-first day of
6 December, two thousand three.

7 (c) *Method of remittance.* — Electronic payments
8 shall be made using either the ACH credit or ACH debit
9 method.

10 (d) *Alternative method.* — The Tax Commissioner
11 shall provide by rule, which may be an existing rule, an
12 alternative method for making “same day” payments if
13 an electronic funds transfer fails.

14 (e) *Format of data accompany remittance.* — Any data
15 that accompanies a remittance shall be formatted using
16 uniform tax type and payment type codes approved by
17 the governing board.

§11-15B-27. Uniform rules for recovery of bad debt.

1 (a) *General.* — A deduction from taxable sales is
2 allowed for bad debts. Any deduction taken that is
3 attributed to bad debts may not include interest or any
4 amount upon which the sales or use tax imposed by this
5 state was not previously paid.

6 (b) *“Bad debt” defined.* — The term “bad debt” has
7 the same meaning as when used in the federal definition
8 of “bad debt” in 26 U. S. C. §166 as the basis for
9 calculating bad debt recovery. However, the amount
10 calculated pursuant to 26 U. S. C. §166 is adjusted to
11 exclude:

12 (1) Financing charges or interest;

13 (2) Sales or use taxes charged on the purchase price;

14 (3) Uncollectible amounts on property that remain in
15 the possession of the seller until the full purchase price
16 is paid;

17 (4) Expenses incurred in attempting to collect any
18 debt; or

19 (5) Repossessed property.

20 (c) *When deduction may be taken.* — Bad debts may
21 be deducted on the return for the period during which
22 the bad debt is written off as uncollectible in the
23 claimant's books and records and is eligible to be
24 deducted for federal income tax purposes. For purposes
25 of this section, a claimant who is not required to file
26 federal income tax returns may deduct a bad debt on a
27 return filed for the period in which the bad debt is
28 written off as uncollectible in the claimant's books and
29 records and would be eligible for a bad debt deduction
30 for federal income tax purposes if the claimant was
31 required to file a federal income tax return.

32 (d) *Subsequent recovery.* — If a deduction is taken for
33 a bad debt and the debt is subsequently collected, in
34 whole or in part, the tax on the amount collected shall
35 be paid and reported on the return filed for the period
36 in which the collection is made.

37 (e) *When bad debt deduction exceeds taxable sales.* —
38 When the amount of bad debt exceeds the amount of
39 taxable sales for the period during which the bad debt
40 is written off, a refund claim may be filed within the

41 period specified in section fourteen, article ten of this
42 chapter, for filing a claim for refund of sales or use tax,
43 except that the statute of limitations shall be measured
44 from the due date of the return on which the bad debt
45 could first be claimed.

46 (f) *When certified service provider is used.* — Where
47 filing responsibilities of the seller have been assumed by
48 a certified service provider, the certified service
49 provider may claim, on behalf of the seller, any bad debt
50 allowance provided by this section. The certified
51 service provider shall credit or refund to the seller the
52 full amount of any bad debt allowance or refund
53 received under this section.

54 (g) *Reporting of payment received on previously*
55 *claimed bad debt.* — For the purposes of reporting a
56 payment received on a previously claimed bad debt, any
57 payments made on a debt or account are applied first
58 proportionally to the taxable price of the property or
59 service and the sales tax thereon, and secondly to
60 interest, service charges, and any other charges.

61 (h) *Allocation.* — In situations where the books and
62 records of the party claiming the bad debt allowance
63 support an allocation of the bad debts among two or
64 more states that are members of the Streamlined Sales
65 and Use Tax Agreement, the allocation is permitted.

**§11-15B-28. Confidentiality and privacy protections under
Model I.**

1 (a) *Purpose.* — The purpose of this section is to set
2 forth the policy of this state for the protection of the
3 confidentiality rights of all participants in the
4 streamlined sales and use tax administration and

5 collection system and of the privacy interests of
6 consumers who deal with Model I sellers.

7 (b) *Certain terms defined.* — As used in this section:

8 (1) The term “confidential taxpayer information”
9 means all information that is protected under section
10 five-d, article ten of this chapter;

11 (2) The term “personally identifiable information”
12 means information that identifies a person; and

13 (3) The term “anonymous data” means information
14 that does not identify a person.

15 (c) *Certified service providers.* — With very limited
16 exceptions, a certified service provider shall perform its
17 tax calculation, remittance and reporting functions
18 without retaining the personally identifiable
19 information of consumers.

20 (d) *Certification of service providers.* — The governing
21 board may certify a service provider only if that
22 certified service provider certifies that:

23 (1) Its system has been designed and tested to ensure
24 that the fundamental precept of anonymity is respected;

25 (2) That personally identifiable information is only
26 used and retained to the extent necessary for the
27 administration of Model I with respect to exempt
28 purchasers;

29 (3) It provides consumers clear and conspicuous notice
30 of its information practices, including what information
31 it collects, how it collects the information, how it uses

32 the information, how long, if at all, it retains the
33 information and whether it discloses the information to
34 member states. This notice is satisfied by a written
35 privacy policy statement accessible by the public on the
36 official website of the certified service provider;

37 (4) Its collection, use and retention of personally
38 identifiable information is limited to that required by
39 the states that are members of the Streamlined Sales
40 and Use Tax Agreement to ensure the validity of
41 exemptions from taxation that are claimed by reason of
42 a consumer's status or the intended use of the goods or
43 services purchased; and

44 (5) It provides adequate technical, physical, and
45 administrative safeguards as to protect personally
46 identifiable information from unauthorized access and
47 disclosure.

48 (e) *State notification of privacy policy.* — The Tax
49 Commissioner shall provide public notification to
50 consumers, including their exempt purchasers, of this
51 state's practices relating to the collection, use and
52 retention of personally identifiable information.

53 (f) *Destruction of confidential information.* — When
54 any personally identifiable information that has been
55 collected and retained by the Tax Commissioner is no
56 longer required for the purposes set forth in subdivision
57 (4), subsection (d) of this section, the information shall
58 no longer be retained by the Tax Commissioner.

59 (g) *Review and correction by individuals.* — When
60 personally identifiable information regarding an
61 individual is retained by or on behalf of the Tax
62 Commissioner, the commissioner shall provide

63 reasonable access by an individual to his or her own
64 information in the commissioner's possession and a
65 right to correct any inaccurately recorded information.

66 (h) *Discovery by other persons.* — If anyone other
67 than the individual, or a person authorized in writing by
68 the individual, or by controlling law seeks to discover
69 personally identifiable information, the Tax
70 Commissioner shall make a reasonable and timely effort
71 to notify the individual of the request.

72 (i) *Enforcement.* — This privacy policy shall be
73 enforced by the Tax Commissioner or the Attorney
74 General of this state.

75 (j) This section shall not be interpreted as limiting or
76 abrogating any other statutory or regulatory provision
77 of this state regarding the collection, use and
78 maintenance of confidential taxpayer information,
79 which provisions remain fully applicable and binding.
80 This section and the Streamlined Sales and Use Tax
81 Agreement do not enlarge or limit the authority of this
82 state to:

83 (1) Conduct audits or other reviews as provided under
84 the Streamlined Sales and Use Tax Agreement and state
85 law;

86 (2) Provide records pursuant to the Freedom of
87 Information Act, disclosure laws with governmental
88 agencies or other laws or regulations;

89 (3) Prevent, consistent with state law, disclosures of
90 confidential taxpayer information;

91 (4) Prevent, consistent with federal law, disclosures or

92 misuse of federal return information obtained under a
93 disclosure agreement with the Internal Revenue Service;
94 or

95 (5) Collect, disclose, disseminate or otherwise use
96 anonymous data for governmental purposes.

97 (k) *Service provider's confidentiality policy may be*
98 *more restrictive.* — This privacy policy does not
99 preclude the governing board from certifying a certified
100 service provider whose privacy policy is more protective
101 of confidential taxpayer information or personally
102 identifiable information than is required by the
103 agreement or the laws of this state.

**§11-15B-30. Monetary allowances for new technological
models for sales tax collection; delayed
effective date.**

1 (a) *Monetary allowance under Model I.* —

2 (1) The Tax Commissioner shall provide a monetary
3 allowance to a certified service provider in Model I.
4 This allowance shall be in accordance with the terms of
5 the contract between the governing board of the
6 Streamlined Sales and Use Tax Agreement and the
7 certified service provider. The details of this monetary
8 allowance shall be developed and provided through the
9 contract process. The contract shall provide that the
10 allowance be funded entirely from money collected in
11 Model I.

12 (2) The contract between the governing board and the
13 certified service provider may base the monetary
14 allowance to a certified service provider on one or more
15 of the following:

16 (A) A base rate that applies to taxable transactions
17 processed by the certified service provider; or

18 (B) For a period not to exceed twenty-four months
19 following a voluntary seller's registration through the
20 agreement's central registration process, a percentage of
21 tax revenue generated for a member state by the
22 voluntary seller for each member state for which the
23 seller does not have a requirement to register to collect
24 the tax.

25 (b) *Monetary allowance for Model II sellers.* — The
26 monetary allowance to sellers under Model II may be
27 based on the following:

28 (1) All sellers shall receive a base rate for a period not
29 to exceed twenty-four months following the
30 commencement of participation by a seller. The base
31 rate is set by the governing board of the Streamlined
32 Sales and Use Tax Agreement after the base rate has
33 been established for Model I certified service providers.
34 This allowance is in addition to any vendor or seller
35 discount afforded by each member state at the time.

36 (2) A voluntary Model II seller not otherwise required
37 to register with this state to collect the consumers sales
38 and service tax and use tax, that registers through the
39 Streamlined Sales and Use Tax Agreement's central
40 registration process, shall receive for a period not to
41 exceed twenty-four months following the voluntary
42 seller's registration, the base rate percentage of tax
43 revenue generated for this state by the voluntary seller.

44 (3) Following the conclusion of the twenty-four month
45 period, a seller will only be entitled to a vendor discount
46 afforded under each member state's law at the time the

47 base rate expires.

48 (c) Monetary allowance for Model III sellers and all
49 other sellers that are not under Model I or II.

50 A monetary allowance to sellers under Model III and
51 to all other sellers registered under the agreement that
52 are not sellers under Model I or II may be allowed based
53 on the following:

54 (1) For a period not to exceed twenty-four months
55 following a voluntary seller's registration through the
56 agreement's central registration process, a percentage of
57 tax revenue generated for a member state by the
58 voluntary seller for each member state for which the
59 seller does not have a requirement to register to collect
60 the tax; and

61 (2) Vendor discounts afforded under each member
62 state's law.

63 (d) Prohibition on allowance or payment of monetary
64 allowances.

65 Notwithstanding subsections (a), (b) and (c) of this
66 section, the Tax Commissioner may not allow any
67 vendor, seller or certified service provider any monetary
68 allowance, discount or other compensation for
69 collecting and remitting the taxes levied by articles
70 fifteen and fifteen-a of this chapter, or for making and
71 filing the periodic reports required by this article, or
72 articles fifteen and fifteen-a of this chapter, until the
73 cost of collection study required by the agreement is
74 completed and the monetary allowances are based on
75 the results of that study, or on requirements of federal
76 law requiring remote sellers to collect sales and use

77 taxes for states that have signed the agreement.

§11-15B-32. Effective date.

1 (a) The provisions of this article, as amended or added
2 during the regular legislative session in the year two
3 thousand three, shall take effect the first day of
4 January, two thousand four, and apply to all sales made
5 on or after that date and to all returns and payments
6 due on or after that day, except as otherwise expressly
7 provided in section five of this article.

8 (b) The provisions of this article, as amended or added
9 during the second extraordinary legislative session in
10 the year two thousand three, shall take effect the first
11 day of January, two thousand four, and apply to all
12 sales made on or after that date.

13 (c) The provisions of this article, as amended or added
14 by Act of the Legislature in the year two thousand four,
15 shall apply to all sales made on or after the date of
16 passage in the year two thousand four.

17 (d) The provisions of this article, as amended or added
18 during the regular legislative session in the year two
19 thousand eight, shall apply to all sales made on or after
20 the date of passage and to all returns and payments due
21 on or after that day, except as otherwise expressly
22 provided in this article.

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

Randy White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell Holmes
.....
Clerk of the Senate

Suzanne S. S.
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this
the *2nd* Day of *March* , 2008.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2008

Time 3:10 pm