

HB 2999
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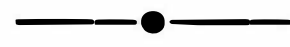
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2009 MAY -6 PM 1:29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2009



ENROLLED

COMMITTEE SUBSTITUTE

FOR

House Bill No. 2999

(By Delegates White, Campbell, Kominar,
Doyle and Carmichael)



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Passed April 11, 2009

In Effect from Passage

*at
Burgoyne Dr. East
Clark of the House
May 27, 2009*

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FILED

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H. B. 2999

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Clark & the other
May 27, 2009*

AN ACT to amend and reenact §11-15-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15A-18 of said code; and to amend and reenact §11-15B-21, §11-15B-24, §11-15B-28 and §11-15B-32 of said code, all relating to the streamlined sales and use tax agreement and the West Virginia consumers sales and service tax and use tax; providing relief from liability in specified circumstances; administrative exemptions; the requirements of certified service providers and the effective date.

Be it enacted by the Legislature of West Virginia:

That §11-15-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15A-18 of said code be amended and reenacted; and that §11-15B-21, §11-15B-24, §11-15B-28 and §11-15B-32 of said code be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

1 (a) The burden of proving that a sale or service was
2 exempt from the tax shall be upon the vendor, unless the
3 vendor takes from the purchaser an exemption certificate
4 signed by and bearing the address of the purchaser and
5 setting forth the reason for the exemption and substantially in
6 the form prescribed by the tax commissioner.

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

ARTICLE 15A. USE TAX.

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

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

6 (b) Notwithstanding subsection (a) of this section, a seller
7 is relieved of the good faith requirement for the taking of an
8 exemption certificate in accordance with article fifteen-b of
9 this chapter, and any rule promulgated by the Tax
10 Commissioner.

11 (c) To prevent evasion it is presumed that all proceeds are
12 subject to the tax until the contrary is clearly established.

13 (d) This certificate shall be substantially in the form
14 prescribed by the Tax Commissioner.

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

§11-15B-21. Notice for state tax changes.

1 (a) *General.* -- The Tax Commissioner shall provide
2 sellers with as much advance notice as practicable of a rate
3 change for a tax levied by article fifteen or fifteen-a of this
4 chapter.

5 (b) *Effective date of rate changes.* -- Unless the
6 Legislature expressly provides a different effective date for
7 a rate change, the change shall take effect on the first day of
8 the calendar quarter that begins on or after the effective date
9 of the act of the Legislature that makes the rate change and
10 that is more than sixty days after passage of the bill making
11 the rate change.

12 (c) *Notification of changes to tax base.* -- The tax
13 commissioner shall make reasonable efforts to notify sellers
14 of legislative changes to the tax base and to amendments to
15 sales and use tax rules, as that term is defined in section two,
16 article one, chapter twenty-nine-a of this code.

17 (d) *Liability of seller.*

18 (1) Failure of a seller to receive notice or failure of the
19 state to provide notice of a rate change or a change in the tax
20 base, or to limit the effective date of a rate change, does not
21 relieve the seller of its obligation to collect sales or use taxes
22 for this state.

23 (2) Failure of the Tax Commissioner to provide for at
24 least thirty days between the enactment of the statute
25 providing for a rate change and the effective date of such rate
26 change shall relieve the seller of liability for failing to collect
27 tax at the new rate if:

28 (A) The seller collected tax at the immediately preceding
29 effective rate; and

30 (B) The seller's failure to collect at the newly effective
31 rate does not extend beyond thirty days after the date of the
32 enactment of the new rate.

33 (e) Notwithstanding subdivision (d)(2), if the seller
34 fraudulently failed to collect at the new rate or solicits
35 purchasers based on the immediately preceding effective rate
36 this relief does not apply.

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

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

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

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

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

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

16 (5) The Tax Commissioner may utilize a system wherein
17 the purchaser exempt from the payment of the tax is issued
18 an identification number that is presented to the seller at the
19 time of the sale.

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

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

27 (8) After December 31, 2007, in the case of drop
28 shipments, a third-party vendor such as a drop shipper may
29 claim a resale exemption based on an exemption certificate
30 provided by its customer/reseller or any other acceptable
31 information available to the third-party vendor evidencing
32 qualification for a resale exemption, regardless of whether
33 the customer/reseller is registered to collect and remit sales
34 and use taxes in this state, when the sale is sourced to this
35 state.

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

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

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

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

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

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

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

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

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

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

1 (a) *Purpose.* -- The purpose of this section is to set forth
 2 the policy of this State for the protection of the
 3 confidentiality rights of all participants in the streamlined
 4 sales and use tax administration and collection system and of
 5 the privacy interests of consumers who deal with Model I
 6 sellers.

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

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

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

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

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

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

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

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

29 (3) It provides consumers clear and conspicuous notice of
30 its information practices, including what information it
31 collects, how it collects the information, how it uses the
32 information, how long, if at all, it retains the information and
33 whether it discloses the information to member states. This
34 notice is satisfied by a written privacy policy statement
35 accessible by the public on the official website of the
36 certified service provider;

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

43 documentation of the correct assignment of taxing
44 jurisdictions; and

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

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

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

59 (g) *Review and correction by individuals.* -- When
60 personally identifiable information regarding an individual is
61 retained by or on behalf of the Tax Commissioner, the
62 commissioner shall provide reasonable access by an
63 individual to his or her own information in the
64 commissioner's possession and a right to correct any
65 inaccurately recorded information.

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

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

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

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

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

87 (3) Prevent, consistent with state law, disclosures of
88 confidential taxpayer information;

89 (4) Prevent, consistent with federal law, disclosures or
90 misuse of federal return information obtained under a
91 disclosure agreement with the Internal Revenue Service; or

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

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

§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 2003, shall
3 take effect the January 1, 2004, and apply to all sales made
4 on or after that date and to all returns and payments due on or
5 after that day, except as otherwise expressly provided in
6 section five of this article.

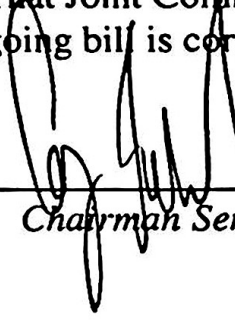
7 (b) The provisions of this article, as amended or added
8 during the second extraordinary legislative session in the year
9 2003, shall take effect January 1, 2004, and apply to all sales
10 made on or after that date.

11 (c) The provisions of this article, as amended or added by
12 Act of the Legislature in the year 2004, shall apply to all
13 sales made on or after the date of passage in the year 2004.

14 (d) The provisions of this article, as amended or added
15 during the regular legislative session in the year 2008, shall
16 apply to all sales made on or after the date of passage and to
17 all returns and payments due on or after that day, except as
18 otherwise expressly provided in this article.

19 (e) The provisions of this article, as amended or added
20 during the regular legislative session in the year 2009, shall
21 apply to all sales made on or after the date of passage and to
22 all returns and payments due on or after that day, except as
23 otherwise expressly provided in this article.

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



Chairman Senate Committee



Chairman House Committee

Originating in the House.

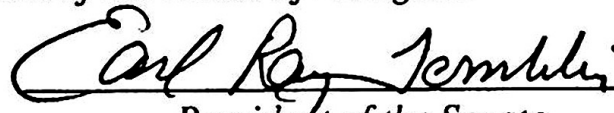
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates




President of the Senate



Speaker of the House of Delegates

The within ye appended this the 6th
day of May, 2009.



Governor

PRESENTED TO THE
GOVERNOR

MAY 4 2009

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