WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2999

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

Passed April 27, 2009
In Effect from Passage
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:
§11-15-6. Vendor must show sale or service exempt; presumption.

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

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

ARTICLE 15A. USE TAX.

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

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

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

(c) To prevent evasion it is presumed that all proceeds are subject to the tax until the contrary is clearly established.
ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION ACT.


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

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

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

(d) Liability of seller.

(1) Failure of a seller to receive notice or failure of the state to provide notice of a rate change or a change in the tax base, or to limit the effective date of a rate change, does not relieve the seller of its obligation to collect sales or use taxes for this state.
(2) Failure of the Tax Commissioner to provide for at least thirty days between the enactment of the statute providing for a rate change and the effective date of such rate change shall relieve the seller of liability for failing to collect tax at the new rate if:

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

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

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


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

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

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

(3) The seller shall use the standard form for claiming an exemption electronically that is adopted by the governing board.
(4) The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

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

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

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

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

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

(A) To a seller who fraudulently fails to collect the tax;
(B) To a seller who solicits purchasers to participate in the unlawful claim of an exemption;

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

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

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

(2) Nothing in this section shall affect the ability of the Tax Commissioner to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.
(3) Notwithstanding the preceding provisions of this section, when an exemption may be claimed by exemption certificate, a seller is relieved from paying the tax otherwise applicable if the seller obtains a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship. The Tax Commissioner may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subdivision, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.

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

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

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

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

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

(2) The term "personally identifiable information" means information that identifies a person; and
(3) The term "anonymous data" means information that does not identify a person.

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

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

1. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;
2. That personally identifiable information is only used and retained to the extent necessary for the administration of Model I with respect to exempt purchasers and proper identification of taxing jurisdictions;
3. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. This notice is satisfied by a written privacy policy statement accessible by the public on the official website of the certified service provider;
4. Its collection, use and retention of personally identifiable information is limited to that required by the states that are members of the Streamlined Sales and Use Tax Agreement to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased and for
(5) It provides adequate technical, physical and administrative safeguards as to protect personally identifiable information from unauthorized access and disclosure.

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

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

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

(h) Discovery by other persons. -- If anyone other than the individual, or a person authorized in writing by the individual, or by controlling law seeks to discover personally identifiable information, the Tax Commissioner shall make a reasonable and timely effort to notify the individual of the request.
(i) *Enforcement.* -- This privacy policy shall be enforced by the Tax Commissioner or the Attorney General of this State.

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

1. Conduct audits or other reviews as provided under the Streamlined Sales and Use Tax Agreement and state law;
2. Provide records pursuant to the Freedom of Information Act, disclosure laws with governmental agencies or other laws or regulations;
3. Prevent, consistent with state law, disclosures of confidential taxpayer information;
4. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; or
5. Collect, disclose, disseminate or otherwise use anonymous data for governmental purposes.

(k) *Service provider's confidentiality policy may be more restrictive.* -- This privacy policy does not preclude the governing board from certifying a certified service provider whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the agreement or the laws of this state.
§11-15B-32. Effective date.

(a) The provisions of this article, as amended or added during the regular legislative session in the year 2003, shall take effect January 1, 2004, and apply to all sales made on or after that date and to all returns and payments due on or after that day, except as otherwise expressly provided in section five of this article.

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

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

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

(e) The provisions of this article, as amended or added during the regular legislative session in the year 2009, shall apply to all sales made on or after the date of passage and to all returns and payments due on or after that day, except as 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 happened this the 6th day of May, 2009.

Governor