

SB 533

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WEST VIRGINIA LEGISLATURE

OFFICE WEST VIRGINIA  
LEGISLATURE OF STATE

SEVENTY-NINTH LEGISLATURE  
REGULAR SESSION, 2009



ENROLLED  
COMMITTEE SUBSTITUTE  
FOR

**Senate Bill No. 533**

(SENATORS McCABE, FOSTER,  
UNGER AND KESSLER, *original sponsors*)

[Passed April 11, 2009; in effect from passage.]

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AN ACT to amend and reenact §11-15-9i of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15B-2 and §11-15B-32 of said code, all relating to the definitions of “health care provider” and “drug”; and exempting from the consumers sales and service tax drugs purchased by veterinarians to be dispensed upon prescription for the medical treatment of animals.

*Be it enacted by the Legislature of West Virginia:*

That §11-15-9i of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-15B-2 and §11-15B-32 of said code be amended and reenacted, all to read as follows:

**ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

**§11-15-9i. Exempt drugs, durable medical goods, mobility enhancing equipment and prosthetic devices.**

1 (a) Notwithstanding any provision of this article, article  
2 fifteen-a or article fifteen-b of this chapter, the purchase  
3 by a health care provider of drugs, durable medical goods,  
4 mobility enhancing equipment and prosthetic devices, all  
5 as defined in section two, article fifteen-b of this chapter,  
6 to be dispensed upon prescription and intended for use in  
7 the diagnosis, cure, mitigation, treatment or prevention of  
8 injury or disease are exempt from the tax imposed by this  
9 article.

10 (b) For purposes of this exemption, "health care pro-  
11 vider" means any person licensed to prescribe drugs,  
12 durable medical goods, mobility enhancing equipment and  
13 prosthetic devices intended for use in the diagnosis, cure,  
14 mitigation, treatment or prevention of injury or disease.  
15 For purposes of this section, the term "health care pro-  
16 vider" includes any hospital, medical clinic, nursing home  
17 or provider of inpatient hospital services and any provider  
18 of outpatient hospital services, physician services, nursing  
19 services, ambulance services, surgical services or veteri-  
20 nary services: *Provided*, That the amendment to this  
21 subsection enacted during the 2009 regular legislative  
22 session shall be effective on or after July 1, 2009.

23 (c) This section shall be effective July 1, 2007.

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

**§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 where a different  
5 meaning is distinctly expressed or the context in which the

6 term is used clearly indicates that a different meaning is  
7 intended by the Legislature.

8 (b) *Terms defined.* –

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

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

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

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

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

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

34 (ii) A product provided free of charge with the required  
35 purchase of another product. A product is “provided free  
36 of charge” if the “sales price” of the product purchased

37 does not vary depending on the inclusion of the product  
38 “provided free of charge”; or

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

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

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

51 (i) The “retail sale” of tangible personal property and a  
52 service where the tangible personal property is essential to  
53 the use of the service and is provided exclusively in  
54 connection with the service and the true object of the  
55 transaction is the service; or

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

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

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

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

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

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

83 (v) The “retail sale” of exempt tangible personal prop-  
84 erty, or food and food ingredients taxable at a lower rate  
85 of tax, and tangible personal property taxable at the  
86 general rate of tax where:

87 (I) The transaction includes “food and food ingredients”,  
88 “drugs”, “durable medical equipment”, “mobil-  
89 ity-enhancing equipment”, “over-the-counter drugs”,  
90 “prosthetic devices” or medical supplies, all as defined in  
91 this article; and

92 (II) Where the seller’s “purchase price” or “sales price”  
93 of the taxable tangible personal property taxable at the  
94 general rate of tax is fifty percent or less of the total  
95 “purchase price” or “sales price” of the bundled tangible  
96 personal property. Sellers may not use a combination of  
97 the “purchase price” and “sales price” of the tangible  
98 personal property when making the fifty percent determi-  
99 nation for a transaction.

100 (5) “Candy” means a preparation of sugar, honey or  
101 other natural or artificial sweeteners in combination with

102 chocolate, fruits, nuts or other ingredients or flavorings in  
103 the form of bars, drops or pieces. "Candy" shall not  
104 include any preparation containing flour and shall require  
105 no refrigeration.

106 (6) "Clothing" means all human wearing apparel suit-  
107 able for general use. The following list contains examples  
108 and is not intended to be an all-inclusive list.

109 (A) "Clothing" shall include:

110 (i) Aprons, household and shop;

111 (ii) Athletic supporters;

112 (iii) Baby receiving blankets;

113 (iv) Bathing suits and caps;

114 (v) Beach capes and coats;

115 (vi) Belts and suspenders;

116 (vii) Boots;

117 (viii) Coats and jackets;

118 (ix) Costumes;

119 (x) Diapers, children and adult, including disposable  
120 diapers;

121 (xi) Ear muffs;

122 (xii) Footlets;

123 (xiii) Formal wear;

124 (xiv) Garters and garter belts;

125 (xv) Girdles;

126 (xvi) Gloves and mittens for general use;

127 (xvii) Hats and caps;

- 128 (xviii) Hosiery;
- 129 (xix) Insoles for shoes;
- 130 (xx) Lab coats;
- 131 (xxi) Neckties;
- 132 (xxii) Overshoes;
- 133 (xxiii) Pantyhose;
- 134 (xxiv) Rainwear;
- 135 (xxv) Rubber pants;
- 136 (xxvi) Sandals;
- 137 (xxvii) Scarves;
- 138 (xxviii) Shoes and shoe laces;
- 139 (xxix) Slippers;
- 140 (xxx) Sneakers;
- 141 (xxxix) Socks and stockings;
- 142 (xxxii) Steel-toed shoes;
- 143 (xxxiii) Underwear;
- 144 (xxxiv) Uniforms, athletic and nonathletic; and
- 145 (xxxv) Wedding apparel.
- 146 (B) "Clothing" shall not include:
  - 147 (i) Belt buckles sold separately;
  - 148 (ii) Costume masks sold separately;
  - 149 (iii) Patches and emblems sold separately;
  - 150 (iv) Sewing equipment and supplies, including, but not
  - 151 limited to, knitting needles, patterns, pins, scissors, sewing

152 machines, sewing needles, tape measures and thimbles;  
153 and

154 (v) Sewing materials that become part of “clothing”  
155 including, but not limited to, buttons, fabric, lace, thread,  
156 yarn and zippers.

157 (7) “Clothing accessories or equipment” means inciden-  
158 tal items worn on the person or in conjunction with  
159 “clothing”. “Clothing accessories or equipment” are  
160 mutually exclusive of and may be taxed differently than  
161 apparel within the definition of “clothing”, “sport or  
162 recreational equipment” and “protective equipment”. The  
163 following list contains examples and is not intended to be  
164 an all-inclusive list. “Clothing accessories or equipment”  
165 shall include:

166 (a) Briefcases;

167 (b) Cosmetics;

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

170 (d) Handbags;

171 (e) Handkerchiefs;

172 (f) Jewelry;

173 (g) Sunglasses, nonprescription;

174 (h) Umbrellas;

175 (i) Wallets;

176 (j) Watches; and

177 (k) Wigs and hair pieces.

178 (8) “Certified automated system” or “CAS” means  
179 software certified under the agreement to calculate the tax  
180 imposed by each jurisdiction on a transaction, determine

181 the amount of tax to remit to the appropriate state and  
182 maintain a record of the transaction.

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

187 (10) "Computer" means an electronic device that accepts  
188 information in digital or similar form and manipulates the  
189 information for a result based on a sequence of instruc-  
190 tions.

191 (11) "Computer software" means a set of coded instruc-  
192 tions designed to cause a "computer" or automatic data  
193 processing equipment to perform a task.

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

196 (13) "Delivery charges" means charges by the seller of  
197 personal property or services for preparation and delivery  
198 to a location designated by the purchaser of personal  
199 property or services including, but not limited to, trans-  
200 portation, shipping, postage, handling, crating and  
201 packing.

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

204 (A) Contains one or more of the following dietary  
205 ingredients:

206 (i) A vitamin;

207 (ii) A mineral;

208 (iii) An herb or other botanical;

209 (iv) An amino acid;

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

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

215 (B) And is intended for ingestion in tablet, capsule,  
216 powder, softgel, gelcap or liquid form, or if not intended  
217 for ingestion in such a form, is not represented as conven-  
218 tional food and is not represented for use as a sole item of  
219 a meal or of the diet; and

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

224 (15) "Direct mail" means printed material delivered or  
225 distributed by United States mail or other delivery service  
226 to a mass audience or to addressees on a mailing list  
227 provided by the purchaser or at the direction of the  
228 purchaser when the cost of the items are not billed directly  
229 to the recipients. "Direct mail" includes tangible personal  
230 property supplied directly or indirectly by the purchaser  
231 to the direct mail seller for inclusion in the package  
232 containing the printed material. "Direct mail" does not  
233 include multiple items of printed material delivered to a  
234 single address.

235 (16) "Drug" means a compound, substance or prepara-  
236 tion, and any component of a compound, substance or  
237 preparation, other than food and food ingredients, dietary  
238 supplements or alcoholic beverages:

239 (A) Recognized in the official United States Pharmaco-  
240 poeia, official Homeopathic Pharmacopoeia of the United  
241 States or official National Formulary, and supplement to  
242 any of them;

243 (B) Intended for use in the diagnosis, cure, mitigation,  
244 treatment or prevention of disease; or

245 (C) Intended to affect the structure or any function of  
246 the body. The amendment to this subdivision enacted  
247 during the 2009 regular legislative session shall apply to  
248 sales made after July 1, 2009.

249 (17) "Durable medical equipment" means equipment,  
250 including repair and replacement parts for the equipment,  
251 but does not include "mobility-enhancing equipment",  
252 which:

253 (A) Can withstand repeated use;

254 (B) Is primarily and customarily used to serve a medical  
255 purpose;

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

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

259 (18) "Electronic" means relating to technology having  
260 electrical, digital, magnetic, wireless, optical, electromag-  
261 netic or similar capabilities.

262 (19) "Eligible property" means an item of a type, such as  
263 clothing, that qualifies for a sales tax holiday exemption  
264 in this state.

265 (20) "Energy Star qualified product" means a product  
266 that meets the energy efficient guidelines set by the United  
267 States Environmental Protection Agency and the United  
268 States Department of Energy that are authorized to carry  
269 the Energy Star label. Covered products are those listed  
270 at [www.energystar.gov](http://www.energystar.gov) or successor address.

271 (21) "Entity-based exemption" means an exemption  
272 based on who purchases the product or service or who sells  
273 the product or service. An exemption that is available to

274 all individuals shall not be considered an entity-based  
275 exemption.

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

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

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

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

300 (26) "Grooming and hygiene products" are soaps and  
301 cleaning solutions, shampoo, toothpaste, mouthwash,  
302 antiperspirants and sun tan lotions and screens, regardless  
303 of whether the items meet the definition of  
304 "over-the-counter drugs".

305 (27) "Includes" and "including" when used in a defini-  
306 tion contained in this article is not considered to exclude

307 other things otherwise within the meaning of the term  
308 being defined.

309 (28) "Layaway sale" means a transaction in which  
310 property is set aside for future delivery to a customer who  
311 makes a deposit, agrees to pay the balance of the purchase  
312 price over a period of time and, at the end of the payment  
313 period, receives the property. An order is accepted for  
314 layaway by the seller when the seller removes the property  
315 from normal inventory or clearly identifies the property as  
316 sold to the purchaser.

317 (29) "Lease" includes rental, hire and license. "Lease"  
318 means any transfer of possession or control of tangible  
319 personal property for a fixed or indeterminate term for  
320 consideration. A lease or rental may include future  
321 options to purchase or extend.

322 (A) "Lease" does not include:

323 (i) A transfer of possession or control of property under  
324 a security agreement or deferred payment plan that  
325 requires the transfer of title upon completion of the  
326 required payments;

327 (ii) A transfer or possession or control of property under  
328 an agreement that requires the transfer of title upon  
329 completion of required payments and payment of an  
330 option price does not exceed the greater of one hundred  
331 dollars or one percent of the total required payments; or

332 (iii) Providing tangible personal property along with an  
333 operator for a fixed or indeterminate period of time. A  
334 condition of this exclusion is that the operator is necessary  
335 for the equipment to perform as designed. For the purpose  
336 of this subparagraph, an operator must do more than  
337 maintain, inspect or set-up the tangible personal property.

338 (iv) "Lease" or "rental" includes agreements covering  
339 motor vehicles and trailers where the amount of consider-

340 ation may be increased or decreased by reference to the  
341 amount realized upon sale or disposition of the property as  
342 defined in 26 U. S. C.7701(h)(1).

343 (B) This definition shall be used for sales and use tax  
344 purposes regardless if a transaction is characterized as a  
345 lease or rental under generally accepted accounting  
346 principles, the Internal Revenue Code, the Uniform  
347 Commercial Code or other provisions of federal, state or  
348 local law.

349 (30) "Load and leave" means delivery to the purchaser  
350 by use of a tangible storage media where the tangible  
351 storage media is not physically transferred to the pur-  
352 chaser.

353 (31) "Mobility-enhancing equipment" means equipment,  
354 including repair and replacement parts to the equipment,  
355 but does not include "durable medical equipment", which:

356 (A) Is primarily and customarily used to provide or  
357 increase the ability to move from one place to another and  
358 which is appropriate for use either in a home or a motor  
359 vehicle;

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

362 (C) Does not include any motor vehicle or equipment on  
363 a motor vehicle normally provided by a motor vehicle  
364 manufacturer.

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

369 (33) "Model II seller" means a seller that has selected a  
370 certified automated system to perform part of its sales and

371 use tax functions, but retains responsibility for remitting  
372 the tax.

373 (34) "Model III seller" means a seller that has sales in at  
374 least five member states, has total annual sales revenue of  
375 at least five hundred million dollars, has a proprietary  
376 system that calculates the amount of tax due each jurisdic-  
377 tion and has entered into a performance agreement with  
378 the member states that establishes a tax performance  
379 standard for the seller. As used in this definition, a seller  
380 includes an affiliated group of sellers using the same  
381 proprietary system.

382 (35) "Over-the-counter drug" means a drug that contains  
383 a label that identifies the product as a drug as required by  
384 21 CFR §201.66. The "over-the-counter drug" label  
385 includes:

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

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

390 (36) "Person" means an individual, trust, estate, fidu-  
391 ciary, partnership, limited liability company, limited  
392 liability partnership, corporation or any other legal entity.

393 (37) "Personal service" includes those:

394 (A) Compensated by the payment of wages in the  
395 ordinary course of employment; and

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

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

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

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

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

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

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

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

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

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

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

429 (40) "Prewritten computer software" means "computer  
430 software", including prewritten upgrades, which is not  
431 designed and developed by the author or other creator to  
432 the specifications of a specific purchaser.

433 (A) The combining of two or more prewritten computer  
434 software programs or prewritten portions thereof does not  
435 cause the combination to be other than prewritten com-  
436 puter software.

437 (B) "Prewritten computer software" includes software  
438 designed and developed by the author or other creator to  
439 the specifications of a specific purchaser when it is sold to  
440 a person other than the specific purchaser. Where a  
441 person modifies or enhances computer software of which  
442 the person is not the author or creator, the person is  
443 considered to be the author or creator only of the person's  
444 modifications or enhancements.

445 (C) "Prewritten computer software" or a prewritten  
446 portion thereof that is modified or enhanced to any degree,  
447 where the modification or enhancement is designed and  
448 developed to the specifications of a specific purchaser,  
449 remains prewritten computer software. However, where  
450 there is a reasonable, separately stated charge or an  
451 invoice or other statement of the price given to the pur-  
452 chaser for the modification or enhancement, the modifica-  
453 tion or enhancement does not constitute prewritten  
454 computer software.

455 (41) "Product-based exemption" means an exemption  
456 based on the description of the product or service and not  
457 based on who purchases the product or service or how the  
458 purchaser intends to use the product or service.

459 (42) "Prosthetic device" means a replacement, corrective  
460 or supportive device, including repair and replacement  
461 parts for the device worn on or in the body, to:

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

463 (B) Prevent or correct physical deformity or malfunction  
464 of the body; or

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

466 (43) "Protective equipment" means items for human  
467 wear and designed as protection of the wearer against  
468 injury or disease or as protections against damage or  
469 injury of other persons or property but not suitable for  
470 general use.

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

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

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

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

482 (A) Any sale, lease or rental for any purpose other than  
483 for resale as tangible personal property, sublease or  
484 subrent; and

485 (B) Any sale of a service other than a service purchased  
486 for resale.

487 (48) (A) "Sales price" means the measure subject to the  
488 tax levied under article fifteen or fifteen-a of this chapter  
489 and includes the total amount of consideration, including  
490 cash, credit, property and services, for which personal  
491 property or services are sold, leased or rented, valued in  
492 money, whether received in money or otherwise, without  
493 any deduction for the following:

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

495 (ii) The cost of materials used, labor or service cost,  
496 interest, losses, all costs of transportation to the seller, all

497 taxes imposed on the seller and any other expense of the  
498 seller;

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

502 (iv) Delivery charges; and

503 (v) Installation charges.

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

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

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

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

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

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

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

522 (iii) The amount of the consideration attributable to the  
523 sale is fixed and determinable by the seller at the time of  
524 the sale of the item to the purchaser; and

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

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

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

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

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

544 (50) "School art supply" means an item commonly used  
545 by a student in a course of study for artwork. The term is  
546 mutually exclusive of the terms "school supply", "school  
547 instructional material" and "school computer supply" and  
548 may be taxed differently. The following is an all-inclusive  
549 list:

550 (A) Clay and glazes;

551 (B) Paints; acrylic, tempera and oil;

552 (C) Paintbrushes for artwork;

553 (D) Sketch and drawing pads; and

554 (E) Watercolors.

555 (51) "School instructional material" means written  
556 material commonly used by a student in a course of study

557 as a reference and to learn the subject being taught. The  
558 term is mutually exclusive of the terms "school supply",  
559 "school art supply" and "school computer supply" and  
560 may be taxed differently. The following is an all-inclusive  
561 list:

562 (A) Reference books;

563 (B) Reference maps and globes;

564 (C) Textbooks; and

565 (D) Workbooks.

566 (52) "School computersupply" means an item commonly  
567 used by a student in a course of study in which a computer  
568 is used. The term is mutually exclusive of the terms  
569 "school supply", "school art supply" and "school instruc-  
570 tional material" and may be taxed differently. The  
571 following is an all-inclusive list:

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

573 (B) Handheld electronic schedulers, except devices that  
574 are cellular phones;

575 (C) Personal digital assistants, except devices that are  
576 cellular phones;

577 (D) Computer printers; and

578 (E) Printer supplies for computers; printer paper, printer  
579 ink.

580 (53) "School supply" means an item commonly used by  
581 a student in a course of study. The term is mutually  
582 exclusive of the terms "school art supply", "school in-  
583 structional material" and "school computer supply" and  
584 may be taxed differently. The following is an all-inclusive  
585 list of school supplies:

586 (A) Binders;

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- 587 (B) Book bags;
- 588 (C) Calculators;
- 589 (D) Cellophane tape;
- 590 (E) Blackboard chalk;
- 591 (F) Compasses;
- 592 (G) Composition books;
- 593 (H) Crayons;
- 594 (I) Erasers;
- 595 (J) Folders; expandable, pocket, plastic and manila;
- 596 (K) Glue, paste and paste sticks;
- 597 (L) Highlighters;
- 598 (M) Index cards;
- 599 (N) Index card boxes;
- 600 (O) Legal pads;
- 601 (P) Lunch boxes;
- 602 (Q) Markers;
- 603 (R) Notebooks;
- 604 (S) Paper; loose-leaf ruled notebook paper, copy paper,  
605 graph paper, tracing paper, manila paper, colored paper,  
606 poster board and construction paper;
- 607 (T) Pencil boxes and other school supply boxes;
- 608 (U) Pencil sharpeners;
- 609 (V) Pencils;
- 610 (W) Pens;

611 (X) Protractors;

612 (Y) Rulers;

613 (Z) Scissors; and

614 (AA) Writing tablets.

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

617 (55) "Service" or "selected service" includes all nonpro-  
618 fessional activities engaged in for other persons for a  
619 consideration which involve the rendering of a service as  
620 distinguished from the sale of tangible personal property,  
621 but does not include contracting, personal services,  
622 services rendered by an employee to his or her employer,  
623 any service rendered for resale or any service furnished by  
624 a business that is subject to the control of the Public  
625 Service Commission when the service or the manner in  
626 which it is delivered is subject to regulation by the Public  
627 Service Commission of this state. The term "service" or  
628 "selected service" does not include payments received by  
629 a vendor of tangible personal property as an incentive to  
630 sell a greater volume of such tangible personal property  
631 under a manufacturer's, distributor's or other third-party's  
632 marketing support program, sales incentive program,  
633 cooperative advertising agreement or similar type of  
634 program or agreement and these payments are not consid-  
635 ered to be payments for a "service" or "selected service"  
636 rendered, even though the vendor may engage in attendant  
637 or ancillary activities associated with the sales of tangible  
638 personal property as required under the programs or  
639 agreements.

640 (56) "Soft drink" means nonalcoholic beverages that  
641 contain natural or artificial sweeteners. "Soft drinks" do  
642 not include beverages that contain milk or milk products,

643 soy, rice or similar milk substitutes or greater than fifty  
644 percent of vegetable or fruit juice by volume.

645 (57) "Sport or recreational equipment" means items  
646 designed for human use and worn in conjunction with an  
647 athletic or recreational activity that are not suitable for  
648 general use. "Sport or recreational equipment" are  
649 mutually exclusive of and may be taxed differently than  
650 apparel within the definition of "clothing", "clothing  
651 accessories or equipment" and "protective equipment".  
652 The following list contains examples and is not intended  
653 to be an all-inclusive list. "Sport or recreational equip-  
654 ment" shall include:

655 (A) Ballet and tap shoes;

656 (B) Cleated or spiked athletic shoes;

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

659 (D) Goggles;

660 (E) Hand and elbow guards;

661 (F) Life preservers and vests;

662 (G) Mouth guards;

663 (H) Roller and ice skates;

664 (I) Shin guards;

665 (J) Shoulder pads;

666 (K) Ski boots;

667 (L) Waders; and

668 (M) Wetsuits and fins.

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

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

677 (60) "Tax" includes all taxes levied under articles fifteen  
678 and fifteen-a of this chapter and additions to tax, interest  
679 and penalties levied under article ten of this chapter.

680 (61) "Tax Commissioner" means the State Tax Commis-  
681 sioner or his or her delegate. The term "delegate" in the  
682 phrase "or his or her delegate", when used in reference to  
683 the Tax Commissioner, means any officer or employee of  
684 the State Tax Division duly authorized by the Tax Com-  
685 missioner directly, or indirectly by one or more  
686 redelegations of authority, to perform the functions  
687 mentioned or described in this article or rules promulgated  
688 for this article.

689 (62) "Taxpayer" means any person liable for the taxes  
690 levied by articles fifteen and fifteen-a of this chapter or  
691 any additions to tax penalties imposed by article ten of  
692 this chapter.

693 (63) "Telecommunications service" or "telecommunica-  
694 tion service" when used in this article and articles fifteen  
695 and fifteen-a of this chapter shall have the same meaning  
696 as that term is defined in section two-b of this article.

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

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

701 (66) "Use-based exemption" means an exemption based  
702 on a specified use of the product or service by the pur-  
703 chaser.

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

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

**§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,  
3 shall take effect January 1, 2004, and apply to all sales  
4 made on or after that date and to all returns and payments  
5 due on or after that day, except as otherwise expressly  
6 provided in 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  
9 year 2003, shall take effect January 1, 2004, and apply to  
10 all sales 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.

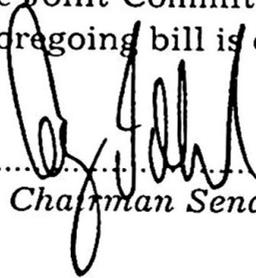
14 (d) The provisions of this article, as amended or added  
15 during the regular legislative session in the year 2008,  
16 shall apply to all sales made on or after the date of passage

17 and to all returns and payments due on or after that day,  
18 except as otherwise expressly provided in this article.

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

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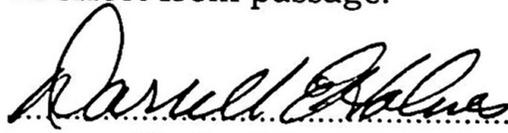
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

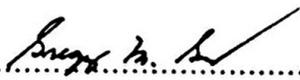
  
.....  
Chairman Senate Committee

  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within is approved this the 7<sup>th</sup>  
Day of May, 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAY 1 2009

Time 2:50 pm