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ENROLLED

Senate Bill No. 461
(By Senators Helmick, McCabe and Minard)

[Passed March 10, 2010; in effect ninety days from passage.]
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AN ACT to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-11, §11-15B-17, §11-15B-25, §11-15B-26 and §11-15B-32 of the Code of West Virginia, 1931, as amended, all relating to the administration of sales and use tax generally; striking certain definitions; incorporating changes made by the governing board in reference to the agreement; adding a classification for registration of seller making no sales in state; defining “advertising and promotional direct mail” and “other direct mail”; providing duties of purchasers and sellers of direct mail; directing the tax commissioner to provide notice and simplified electronic returns; allowing for electronic payment of taxes due; identifying required filers; providing for the loss of exemption for failing to file; adopting a standardized transmission process; authorizing the tax commissioner to establish liability amount of taxes; and providing new effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-15B-2, §11-15B-2a, §11-15B-11, §11-15B-17, §11-15B-25, §11-15B-26 and §11-15B-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 15B. SALES AND USE TAX ADMINISTRATION.


(a) General. – When used in this article and articles fifteen and fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except where a different meaning is distinctly expressed or the context in which the term is used clearly indicates that a different meaning is intended by the Legislature.

(b) Terms defined. –

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

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

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

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

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

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

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

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

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

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

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

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

(iii) A transaction that includes taxable products and nontaxable products and the “purchase price” or “sales price” of the taxable products is de minimis;
(I) "De minimis" means the seller’s "purchase price" or "sales price" of the taxable products is ten percent or less of the total "purchase price" or "sales price" of the bundled products;

(II) Sellers shall use either the "purchase price" or the "sales price" of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the "purchase price" and "sales price" of the products to determine if the taxable products are de minimis;

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

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

(v) The "retail sale" of exempt tangible personal property, or food and food ingredients taxable at a lower rate of tax, and tangible personal property taxable at the general rate of tax where:

(I) The transaction includes "food and food ingredients", "drugs", "durable medical equipment", "mobility-enhancing equipment", "over-the-counter drugs", "prosthetic devices" or medical supplies, all as defined in this article; and

(II) Where the seller’s "purchase price" or "sales price" of the taxable tangible personal property taxable at the general rate of tax is fifty percent or less of the total "purchase price" or "sales price" of the bundled tangible personal property. Sellers may not use a combination of
the “purchase price” and “sales price” of the tangible personal property when making the fifty percent determination for a transaction.

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

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

(A) “Clothing” shall include:

(i) (Aprons, household and shop;

(ii) Athletic supporters;

(iii) Baby receiving blankets;

(iv) Bathing suits and caps;

(v) Beach capes and coats;

(vi) Belts and suspenders;

(vii) Boots;

(viii) Coats and jackets;

(ix) Costumes;

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

(xi) Ear muffs;

(xii) Footlets;

(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  (xxxi) 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:
(I) Belt buckles sold separately;

(ii) Costume masks sold separately;

(iii) Patches and emblems sold separately;

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

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

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

(A) Briefcases;

(B) Cosmetics;

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

(D) Handbags;

(E) Handkerchiefs;

(F) Jewelry;

(G) Sunglasses, nonprescription;

(H) Umbrellas;

(I) Wallets;
(J) Watches; and

(K) Wigs and hair pieces.

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

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

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

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

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

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

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

(i) A vitamin;

(ii) A mineral;
(iii) An herb or other botanical;
(iv) An amino acid;
(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraph (i) through (v), inclusive, of this paragraph;
(B) And is intended for ingestion in tablet, capsule, powder, softgel, gelcap or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
(C) Is required to be labeled as a dietary supplement, identifiable by the “Supplemental Facts” box found on the label as required pursuant to 21 CFR §101.36 or in any successor section of the Code of Federal Regulations.

(14) “Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address.

(15) “Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:
(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United
States or official National Formulary, and supplement to any of them;

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

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

(16) “Durable medical equipment” means equipment, including repair and replacement parts for the equipment, but does not include “mobility-enhancing equipment”, which:

(A) Can withstand repeated use;

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

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

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

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

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

(19) “Energy Star qualified product” means a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at www.energystar.gov or successor address.
(20) "Entity-based exemption" means an exemption based on who purchases the product or service or who sells the product or service. An exemption that is available to all individuals shall not be considered an entity-based exemption.

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

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

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

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

(25) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants and sun tan lotions and screens, regardless of whether the items meet the definition of "over-the-counter drugs".
(26) "Includes" and "including" when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

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

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

(A) "Lease" does not include:

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

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of $100 or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect or set-up the tangible personal property.
(iv) "Lease" or "rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701(h)(1).

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

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

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

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

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

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

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

(32) "Model II seller" means a seller that has selected a certified automated system to perform part of its sales and
(33) "Model III seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(34) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 CFR §201.66. The “over-the-counter drug” label includes:

(A) A “drug facts” panel; or

(B) A statement of the “active ingredient(s)” with a list of those ingredients contained in the compound, substance or preparation.

(35) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

(36) “Personal service” includes those:

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

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

(37) (A) “Prepared food” means:

(i) Food sold in a heated state or heated by the seller;
(ii) Two or more food ingredients mixed or combined by
the seller for sale as a single item; or

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

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

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

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

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

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

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

(39) "Prewritten computer software" means "computer
software", including prewritten upgrades, which is not
designed and developed by the author or other creator to
the specifications of a specific purchaser.
(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

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

(C) "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

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

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

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

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

(C) Support a weak or deformed portion of the body.
(42) “Protective equipment” means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(43) “Purchase price” means the measure subject to the tax imposed by article fifteen or fifteen-a of this chapter and has the same meaning as sales price.

(44) “Purchaser” means a person to whom a sale of personal property is made or to whom a service is furnished.

(45) “Retail sale” or “sale at retail” means:

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

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

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

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

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

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

(v) Installation charges.

(B) “Sales price” does not include:

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

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

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

(C) “Sales price” shall include consideration received by the seller from third parties if:

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

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

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

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;
(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group); or

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

(47) “Sales tax” means the tax levied under article fifteen of this chapter.

(48) “School art supply” means an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms “school supply”, “school instructional material” and “school computer supply” and may be taxed differently. The following is an all-inclusive list:

(A) Clay and glazes;
(B) Paints; acrylic, tempora and oil;
(C) Paintbrushes for artwork;
(D) Sketch and drawing pads; and
(E) Watercolors.

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

(A) Reference books;
(B) Reference maps and globes;
(C) Textbooks; and
(D) Workbooks.

(50) “School computer supply” means an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms “school supply”, “school art supply” and “school instructional material” and may be taxed differently. The following is an all-inclusive list:

(A) Computer storage media; diskettes, compact disks;
(B) Handheld electronic schedulers, except devices that are cellular phones;
(C) Personal digital assistants, except devices that are cellular phones;
(D) Computer printers; and
(E) Printer supplies for computers; printer paper, printer ink.

(51) “School supply” means an item commonly used by a student in a course of study. The term is mutually exclusive of the terms “school art supply”, “school instructional material” and “school computer supply” and may be taxed differently. The following is an all-inclusive list of school supplies:

(A) Binders;
(B) Book bags;
(C) Calculators;
(D) Cellophane tape;
(E) Blackboard chalk;
(F) Compasses;
(G) Composition books;
(H) Crayons;
(I) Erasers;
(J) Folders; expandable, pocket, plastic and manila;
(K) Glue, paste and paste sticks;
(L) Highlighters;
(M) Index cards;
(N) Index card boxes;
(O) Legal pads;
(P) Lunch boxes;
(Q) Markers;
(R) Notebooks;
(S) Paper; loose-leaf ruled notebook paper, copy paper,
graph paper, tracing paper, manila paper, colored paper,
poster board and construction paper;
(T) Pencil boxes and other school supply boxes;
(U) Pencil sharpeners;
(V) Pencils;
(W) Pens;
(X) Protractors;
(Y) Rulers;
(Z) Scissors; and
(AA) Writing tablets.
(52) "Seller" means any person making sales, leases or rentals of personal property or services.

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

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

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

(A) Ballet and tap shoes;
(B) Cleated or spiked athletic shoes;
(C) Gloves, including, but not limited to, baseball,
bowling, boxing, hockey and golf;
(D) Goggles;
(E) Hand and elbow guards;
(F) Life preservers and vests;
(G) Mouth guards;
(H) Roller and ice skates;
(I) Shin guards;
(J) Shoulder pads;
(K) Ski boots;
(L) Waders; and
(M) Wetsuits and fins.

“State” means any state of the United States, the
District of Columbia and the Commonwealth of Puerto Rico.

“Tangible personal property” means personal
property that can be seen, weighed, measured, felt or
touched or that is in any manner perceptible to the senses.
“Tangible personal property” includes, but is not limited
to, electricity, steam, water, gas and prewritten computer
software.
(58) "Tax" includes all taxes levied under articles fifteen and fifteen-a of this chapter and additions to tax, interest and penalties levied under article ten of this chapter.

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

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

(61) "Telecommunications service" or "telecommunication service" when used in this article and articles fifteen and fifteen-a of this chapter shall have the same meaning as that term is defined in section two-b of this article.

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

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

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

(65) "Vendor" means any person furnishing services taxed by article fifteen or fifteen-a of this chapter or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article and in articles fifteen and fifteen-a of this chapter.
(c) Additional definitions. — Other terms used in this article are defined in articles fifteen and fifteen-a of this chapter, which definitions are incorporated by reference into this article. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.


As used in this article and articles fifteen and fifteen-a of this chapter, the term “Streamlined Sales and Use Tax Agreement” or “agreement” means the agreement adopted November 12, 2002, by states that enacted authority to engage in multistate discussions similar to that provided in section four of this article, except when the context in which the term is used clearly indicates that a different meaning is intended by the Legislature. “Agreement” includes amendments to the agreement adopted by the implementing states in calendar years 2003, 2004, 2005, 2006, 2007, 2008, 2009 and amendments adopted by the governing board on or before January 31, 2010, but does not include any substantive changes in the agreement adopted after January 31, 2010.


(a) General. — A seller that registers to collect West Virginia sales and use taxes using the online sales and use tax registration system established under the Streamlined Sales and Use Tax Agreement is not required to also register under article twelve of this chapter unless the seller has sufficient presence in this state that provides at least the minimum contacts necessary for a Constitutionally sufficient nexus for this state to require registration and payment of the registration tax under article twelve of this chapter.
(b) Registration of seller making no sales. – A Model II or Model III seller may elect to register as a seller that anticipates making no sales if the seller had no sales in West Virginia for the preceding twelve months. Such election does not relieve the seller of its agreement pursuant to subsection (a) of section twelve of this article to collect taxes on all sales into this state as well as for all other states participating in the agreement or its liability for remitting to the proper states any taxes collected.

(c) A written signature from the seller is not required.

(d) Registration by agent. – A person appointed by a seller to represent the seller before the states that are members of the agreement may register the seller under the agreement under uniform procedures approved by the governing board. The appointment of an agent shall be in writing and submitted to this state if requested by the Tax Commissioner.

(e) Cancellation of registration. – A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the state any taxes collected.

(f) Nothing in this section shall be construed to relieve a seller of any legal obligation it may have to register or any obligation to collect and remit taxes for at least thirty-six months and meet all other requirements for amnesty set out in section thirteen of this article in order to be eligible for amnesty.

(g) Sellers shall be registered as follows:

(1) Model I sellers will be automatically registered.

(2) Model II and Model III sellers will be automatically registered but may elect to be registered as a seller which anticipates making no sales in the state.
(h) The provisions of subsections (b) and (g) of this section shall become effective on January 1, 2010, and are retroactive to that date.

§11-15B-17. Direct mail sourcing.

(a) Notwithstanding section fifteen of this article, the following provisions apply to sales of "advertising and promotional direct mail."

(1) A purchaser of "advertising and promotional direct mail" may provide the seller with either:

(A) A direct pay permit;

(B) An agreement certificate of exemption claiming "direct mail" (or other written statement approved, authorized or accepted by the state); or

(C) Information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients.

(2) If the purchaser provides the permit, certificate or statement referred to in paragraph (A) or (B) of subdivision (1) of this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving "advertising and promotional direct mail" to which the permit, certificate or statement applies. The purchaser shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to the recipients and shall report and pay any applicable tax due.

(3) If the purchaser provides the seller information showing the jurisdictions to which the "advertising and promotional direct mail" is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the "advertising and promotional direct mail" is to be delivered and shall collect and remit the applicable tax.
In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of “advertising and promotional direct mail” where the seller has sourced the sale according to the delivery information provided by the purchaser.

(4) If the purchaser does not provide the seller with any of the items listed in paragraphs (A), (B) or (C) of subdivision (1) of this subsection, the sale shall be sourced according to subdivision (5) of subsection (a) of section fifteen of this article.

(b) Notwithstanding section fifteen of this article, the following provisions apply to sales of “other direct mail.”

(1) Except as otherwise provided in this subdivision, sales of “other direct mail” are sourced in accordance with subdivision (3) of subsection (a) of section fifteen of this article.

(2) A purchaser of “other direct mail” may provide the seller with either:

(A) A direct pay permit; or

(B) An Agreement certificate of exemption claiming “direct mail” (or other written statement approved, authorized or accepted by this state).

(3) If the purchaser provides the permit, certificate or statement referred to in paragraph (A) or (B) of subdivision (2) of this subsection, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving “other direct mail” to which the permit, certificate or statement apply.

Notwithstanding subdivision (1) subsection (b) of this section, the sale shall be sourced to the jurisdictions to which the “other direct mail” is to be delivered to the recipients and the purchaser shall report and pay applicable tax due.
(c) For purposes of this section:

(1) "Advertising and promotional direct mail" means:

(A) Printed material that meets the definition of "direct mail," as defined in subdivision (15), subsection (b), section two of this article;

(B) The primary purpose of which is to attract public attention to a product, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word "product" means tangible personal property, a product transferred electronically or a service.

(2) "Other direct mail" means any direct mail that is not "advertising and promotional direct mail" regardless of whether "advertising and promotional direct mail" is included in the same mailing. The term includes, but is not limited to:

(A) Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices;

(B) Any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and

(C) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces.

Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.
(d) This section applies to a transaction characterized under state law as the sale of services only if the service is an integral part of the production and distribution of printed material that meets the definition of "direct mail."

(e) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental regardless of whether "advertising and promotional direct mail" is included in the same mailing.

1. If a transaction is a "bundled transaction" that includes "advertising and promotional direct mail," this section applies only if the primary purpose of the transaction is the sale of products or services that meet the definition of "advertising and promotional direct mail."

2. Nothing in this section shall limit any purchaser's:
   - Obligation for sales or use tax to any state to which the direct mail is delivered,
   - Right under local, state, federal or Constitutional law, to a credit for sales or use taxes legally due and paid to other jurisdictions, or
   - Right to a refund of sales or use taxes overpaid to any jurisdiction.

(f) This section applies for purposes of uniformly sourcing "direct mail" transactions and does not impose requirements on states regarding the taxation of products that meet the definition of "direct mail" or to the application of sales for resale or other exemptions.


(a) General. – A seller who registers with this state is required to file a single sales and use tax return with the Tax Commissioner for each taxing period.
(b) Due date of return. – This return shall be due on the twentieth day of the month following the month in which the transaction subject to tax occurred.

c) Additional information returns. – The Tax Commissioner shall make available to all sellers, except sellers of products qualifying for exclusion from the provisions of the agreement, a simplified return that is filed electronically.

d) The Tax Commissioner may not require a seller which has indicated at the time of registration that it anticipates making no sales which would be sourced to this state to file a return, except that the seller shall lose the exemption upon making any taxable sales into this state and shall file a return in the month following any sale.

e) After January 1, 2010, the Tax Commissioner shall give notice to a seller, which has no legal requirement to register in this state, of a failure to file a required return and a minimum of thirty days to file thereafter prior to establishing a liability amount for taxes based solely on the seller’s failure to timely file a return: Provided, That the Tax Commissioner may establish a liability amount of taxes based solely on the seller’s failure to timely file a return if such seller has a history of nonfiling or late filing.

(f) Nothing in this section shall prohibit the Tax Commissioner from allowing additional return options or the filing of returns less frequently.


(a) General. – Only one remittance is required for each return except as provided in this section.

(b) When electronic remittance required. –

(1) All remittances from sellers under Models I, II and III shall be remitted electronically after December 31, 2003.
(2) All remittances in payment of taxes reported on the approved simplified return format shall be remitted electronically.

(c) Method of remittance. – Electronic payments shall be made using either the ACH credit or ACH debit method.

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

(e) Format of data accompanying remittance. – Any data that accompanies a remittance shall be formatted using uniform tax type and payment type codes approved by the governing board.

§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 2009 regular legislative session, 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.

(f) The provisions of this article, as amended or added during the 2010 regular legislative session, 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 18th Day of 2010.

Governor