

**WEST VIRGINIA LEGISLATURE
EIGHTIETH LEGISLATURE
REGULAR SESSION, 2012**

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ENROLLED

Senate Bill No. 430

(BY SENATORS PREZIOSO, FOSTER,
KESSLER (MR. PRESIDENT) AND BEACH)

[PASSED MARCH 7, 2012; IN EFFECT FROM PASSAGE.]

SB430

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2012 MAR 20 PM 4: 01

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AN ACT to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-24, §11-15B-25, §11-15B-26, §11-15B-30, §11-15B-32, §11-15B-33 and §11-15B-34 of the Code of West Virginia, 1931, as amended, all relating to the administration of sales and use tax generally; adding new definitions; clarifying present definitions; incorporating changes to the Streamlined Sales and Use Tax Agreement; adding a “computer software maintenance contract” as a Streamlined Sales and Use Tax Agreement defined term; relieving seller of tax liability in certain instances; clarifying due dates that fall on weekends and legal holidays; eliminating monetary allowance for certain sellers; providing new effective dates; and clarifying state administration of state and local sales and use taxes, bases and exceptions.

Be it enacted by the Legislature of West Virginia:

That §11-15B-2, §11-15B-2a, §11-15B-24, §11-15B-25, §11-15B-26, §11-15B-30, §11-15B-32, §11-15B-33 and §11-15B-34 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.

§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 one
15 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 and
19 identifiable; and (ii) the products are sold for one
20 nonitemized price. A “bundled transaction” does not include
21 the sale of any products in which the sales price varies, or is
22 negotiable, based on the selection by the purchaser of the
23 products included in the transaction.

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

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

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

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

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

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

49 (i) The retail sale of tangible personal property and a
50 service where the tangible personal property is essential to
51 the use of the service and is provided exclusively in connec-
52 tion with the service and the true object of the transaction is
53 the service; or

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

59 (iii) A transaction that includes taxable products and
60 nontaxable products and the purchase price or sales price of
61 the taxable products is de minimis;

62 (I) "De minimis" means the seller's purchase price or
63 sales price of the taxable products is ten percent or less of
64 the total purchase price or sales price of the bundled prod-
65 ucts;

66 (II) Sellers shall use either the purchase price or the sales
67 price of the products to determine if the taxable products are
68 de minimis. Sellers may not use a combination of the pur-
69 chase price and sales price of the products to determine if the
70 taxable products are de minimis;

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

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

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

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

88 (II) Where the seller's purchase price or sales price of the
89 taxable tangible personal property taxable at the general
90 rate of tax is fifty percent or less of the total purchase price
91 or sales price of the bundled tangible personal property.
92 Sellers may not use a combination of the purchase price and
93 sales price of the tangible personal property when making
94 the fifty percent determination for a transaction.

95 (5) "Candy" means a preparation of sugar, honey or other
96 natural or artificial sweeteners in combination with choco-
97 late, fruits, nuts or other ingredients or flavorings in the form
98 of bars, drops or pieces. "Candy" shall not include any
99 preparation containing flour and shall require no refrigera-
100 tion.

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

104 (A) "Clothing" shall include:

- 105 (i) Aprons, household and shop;
- 106 (ii) Athletic supporters;
- 107 (iii) Baby receiving blankets;
- 108 (iv) Bathing suits and caps;
- 109 (v) Beach capes and coats;
- 110 (vi) Belts and suspenders;
- 111 (vii) Boots;
- 112 (viii) Coats and jackets;
- 113 (ix) Costumes;
- 114 (x) Diapers, children and adult, including disposable
- 115 diapers;
- 116 (xi) Ear muffs;
- 117 (xii) Footlets;
- 118 (xiii) Formal wear;
- 119 (xiv) Garters and garter belts;
- 120 (xv) Girdles;
- 121 (xvi) Gloves and mittens for general use;
- 122 (xvii) Hats and caps;
- 123 (xviii) Hosiery;
- 124 (xix) Insoles for shoes;
- 125 (xx) Lab coats;
- 126 (xxi) Neckties;
- 127 (xxii) Overshoes;
- 128 (xxiii) Pantyhose;

- 129 (xxiv) Rainwear;
- 130 (xxv) Rubber pants;
- 131 (xxvi) Sandals;
- 132 (xxvii) Scarves;
- 133 (xxviii) Shoes and shoe laces;
- 134 (xxix) Slippers;
- 135 (xxx) Sneakers;
- 136 (xxxi) Socks and stockings;
- 137 (xxxii) Steel-toed shoes;
- 138 (xxxiii) Underwear;
- 139 (xxxiv) Uniforms, athletic and nonathletic; and
- 140 (xxxv) Wedding apparel.

141 (B) "Clothing" shall not include:

- 142 (i) Belt buckles sold separately;
- 143 (ii) Costume masks sold separately;
- 144 (iii) Patches and emblems sold separately;
- 145 (iv) Sewing equipment and supplies, including, but not
- 146 limited to, knitting needles, patterns, pins, scissors, sewing
- 147 machines, sewing needles, tape measures and thimbles; and
- 148 (v) Sewing materials that become part of clothing
- 149 including, but not limited to, buttons, fabric, lace, thread,
- 150 yarn and zippers.

151 (7) "Clothing accessories or equipment" means incidental
152 items worn on the person or in conjunction with clothing.
153 "Clothing accessories or equipment" are mutually exclusive
154 of and may be taxed differently than apparel within the
155 definition of "clothing", "sport or recreational equipment"

156 and “protective equipment”. The following list contains
157 examples and is not intended to be an all-inclusive list.
158 “Clothing accessories or equipment” shall include:

159 (A) Briefcases;

160 (B) Cosmetics;

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

163 (D) Handbags;

164 (E) Handkerchiefs;

165 (F) Jewelry;

166 (G) Sunglasses, nonprescription;

167 (H) Umbrellas;

168 (I) Wallets;

169 (J) Watches; and

170 (K) Wigs and hair pieces.

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

176 (9) “Certified service provider” or “CSP” means an agent
177 certified under the agreement to perform all of the seller’s
178 sales and use tax functions other than the seller’s obligation
179 to remit tax on its own purchases.

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

183 (11) “Computer software” means a set of coded instruc-
184 tions designed to cause a computer or automatic data
185 processing equipment to perform a task.

186 (12) "Computer software maintenance contract" means
187 a contract that obligates a vendor of computer software, or
188 other person, to provide a customer with future updates or
189 upgrades to computer software, support services with respect
190 to computer software or both. The term "computer software
191 maintenance contract" includes contracts sold by a person
192 other than the vendor of the computer software to which the
193 contract relates.

194 (A) A "mandatory computer software maintenance
195 contract" is a computer software maintenance contract that
196 the customer is obligated by contract to purchase as a
197 condition to the retail sale of computer software.

198 (B) An "optional computer maintenance contract" is a
199 computer software maintenance contract that a customer is
200 not obligated to purchase as a condition to the retail sale of
201 computer software.

202 (13) "Delivered electronically" means delivered to the
203 purchaser by means other than tangible storage media.

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

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

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

213 (i) A vitamin;

214 (ii) A mineral;

215 (iii) An herb or other botanical;

216 (iv) An amino acid;

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

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

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

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

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

241 (17) "Drug" means a compound, substance or prepara-
242 tion, and any component of a compound, substance or
243 preparation, other than food and food ingredients, dietary
244 supplements or alcoholic beverages:

245 (A) Recognized in the official United States Pharmaco-
246 poeia, official Homeopathic Pharmacopoeia of the United
247 States or official National Formulary, and supplement to any
248 of them;

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

251 (C) Intended to affect the structure or any function of the
252 body. The amendment to this subdivision enacted during the

253 2009 regular legislative session shall apply to sales made
254 after July 1, 2009.

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

258 (A) Can withstand repeated use;

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

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

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

264 (19) "Electronic" means relating to technology having
265 electrical, digital, magnetic, wireless, optical, electromag-
266 netic or similar capabilities.

267 (20) "Eligible property" means an item of a type, such as
268 clothing, that qualifies for a sales tax holiday exemption in
269 this state.

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

276 (22) "Entity-based exemption" means an exemption
277 based on who purchases the product or service or who sells
278 the product or service. An exemption that is available to all
279 individuals shall not be considered an entity-based exemp-
280 tion.

281 (23) "Food and food ingredients" means substances,
282 whether in liquid, concentrated, solid, frozen, dried or
283 dehydrated form, that are sold for ingestion or chewing by
284 humans and are consumed for their taste or nutritional

285 value. "Food and food ingredients" does not include alco-
286 holic beverages, prepared food or tobacco.

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

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

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

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

310 (28) "Includes" and "including" when used in a defini-
311 tion contained in this article is not considered to exclude
312 other things otherwise within the meaning of the term being
313 defined.

314 (29) "Layaway sale" means a transaction in which
315 property is set aside for future delivery to a customer who
316 makes a deposit, agrees to pay the balance of the purchase
317 price over a period of time and, at the end of the payment
318 period, receives the property. An order is accepted for
319 layaway by the seller when the seller removes the property

320 from normal inventory or clearly identifies the property as
321 sold to the purchaser.

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

327 (A) "Lease" does not include:

328 (i) A transfer of possession or control of property under
329 a security agreement or deferred payment plan that requires
330 the transfer of title upon completion of the required pay-
331 ments;

332 (ii) A transfer or possession or control of property under
333 an agreement that requires the transfer of title upon comple-
334 tion of required payments and payment of an option price
335 does not exceed the greater of \$100 or one percent of the
336 total required payments; or

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

343 (iv) "Lease" or "rental" includes agreements covering
344 motor vehicles and trailers where the amount of consider-
345 ation may be increased or decreased by reference to the
346 amount realized upon sale or disposition of the property as
347 defined in 26 U. S. C. §7701(h)(1).

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

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

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

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

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

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

368 (33) "Model I seller" means a seller registered under the
369 Streamlined Sales and Use Tax Agreement that has selected
370 a certified service provider as its agent to perform all the
371 seller's sales and use tax functions, other than the seller's
372 obligation to remit tax on its own purchases.

373 (34) "Model II seller" means a seller registered under the
374 Streamlined Sales and Use Tax Agreement that has selected
375 a certified automated system to perform part of its sales and
376 use tax functions, but retains responsibility for remitting the
377 tax.

378 (35) "Model III seller" means a seller registered under the
379 Streamlined Sales and Use Tax Agreement that has sales in
380 at least five member states, has total annual sales revenue of
381 at least \$500 million, has a proprietary system that calculates
382 the amount of tax due each jurisdiction and has entered into
383 a performance agreement with the member states that
384 establishes a tax performance standard for the seller. As
385 used in this definition, a seller includes an affiliated group of
386 sellers using the same proprietary system.

387 (36) "Model IV seller" means a seller registered under the
388 Streamlined Sales and Use Tax Agreement and is not a
389 Model I seller, a Model II seller or a Model III seller.

390 (37) "Over-the-counter drug" means a drug that contains
391 a label that identifies the product as a drug as required by 21
392 CFR §201.66. The "over-the-counter drug" label includes:

393 (A) A drug facts panel; or

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

397 (38) "Person" means an individual, trust, estate, fidu-
398 ciary, partnership, limited liability company, limited liability
399 partnership, corporation or any other legal entity.

400 (39) "Personal service" includes those:

401 (A) Compensated by the payment of wages in the ordi-
402 nary course of employment; and

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

406 (40) (A) "Prepared food" means:

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

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

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

414 (B) "Prepared food" in subparagraph (ii), paragraph (A)
415 of this subdivision does not include food that is only cut,
416 repackaged or pasteurized by the seller, and eggs, fish, meat,
417 poultry and foods containing these raw animal foods requir-

418 ing cooking by the consumer as recommended by the Food
419 and Drug Administration in Chapter 3, Part 401.11 of its
420 Food Code of 2001 so as to prevent food-borne illnesses.

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

423 (i) Food sold by a seller whose proper primary NAICS
424 classification is manufacturing in Sector 311, except Subsec-
425 tion 3118 (bakeries);

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

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

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

435 (42) "Prewritten computer software" means computer
436 software, including prewritten upgrades, which is not
437 designed and developed by the author or other creator to the
438 specifications of a specific purchaser.

439 (A) The combining of two or more prewritten computer
440 software programs or prewritten portions thereof does not
441 cause the combination to be other than prewritten computer
442 software.

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

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

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

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

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

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

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

471 (45) "Protective equipment" means items for human wear
472 and designed as protection of the wearer against injury or
473 disease or as protections against damage or injury of other
474 persons or property but not suitable for general use.

475 (46) "Purchase price" means the measure subject to the
476 tax imposed by article fifteen or fifteen-a of this chapter and
477 has the same meaning as sales price.

478 (47) "Purchaser" means a person to whom a sale of
479 personal property is made or to whom a service is furnished.

480 (48) "Retail sale" or "sale at retail" means:

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

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

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

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

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

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

501 (iv) Delivery charges; and

502 (v) Installation charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 560 (A) Reference books;
- 561 (B) Reference maps and globes;
- 562 (C) Textbooks; and
- 563 (D) Workbooks.

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

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

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

584 (A) Binders;

585 (B) Book bags;

586 (C) Calculators;

587 (D) Cellophane tape;

588 (E) Blackboard chalk;

589 (F) Compasses;

590 (G) Composition books;

591 (H) Crayons;

592 (I) Erasers;

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

594 (K) Glue, paste and paste sticks;

595 (L) Highlighters;

596 (M) Index cards;

597 (N) Index card boxes;

598 (O) Legal pads;

599 (P) Lunch boxes;

600 (Q) Markers;

601 (R) Notebooks;

602 (S) Paper; loose-leaf ruled notebook paper, copy paper,
603 graph paper, tracing paper, manila paper, colored paper,
604 poster board and construction paper;

605 (T) Pencil boxes and other school supply boxes;

606 (U) Pencil sharpeners;

607 (V) Pencils;

608 (W) Pens;

609 (X) Protractors;

610 (Y) Rulers;

611 (Z) Scissors; and

612 (AA) Writing tablets.

613 (55) "Seller" means any person making sales, leases or
614 rentals of personal property or services.

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

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

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

651 (A) Ballet and tap shoes;

652 (B) Cleated or spiked athletic shoes;

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

655 (D) Goggles;

656 (E) Hand and elbow guards;

657 (F) Life preservers and vests;

658 (G) Mouth guards;

659 (H) Roller and ice skates;

660 (I) Shin guards;

661 (J) Shoulder pads;

662 (K) Ski boots;

663 (L) Waders; and

664 (M) Wetsuits and fins.

665 (59) "State" means any state of the United States, the
666 District of Columbia and the Commonwealth of Puerto Rico.

667 (60) "Tangible personal property" means personal
668 property that can be seen, weighed, measured, felt or touched
669 or that is in any manner perceptible to the senses. "Tangible
670 personal property" includes, but is not limited to, electricity,
671 steam, water, gas and prewritten computer software.

672 (61) "Tax" includes all taxes levied under articles fifteen
673 and fifteen-a of this chapter and additions to tax, interest
674 and penalties levied under article ten of this chapter.

675 (62) "Tax Commissioner" means the State Tax Commis-
676 sioner or his or her delegate. The term "delegate" in the
677 phrase "or his or her delegate", when used in reference to the
678 Tax Commissioner, means any officer or employee of the
679 State Tax Division duly authorized by the Tax Commissioner
680 directly, or indirectly by one or more redelegations of
681 authority, to perform the functions mentioned or described
682 in this article or rules promulgated for this article.

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

687 (64) "Telecommunications service" or "telecommunica-
688 tion service" when used in this article and articles fifteen
689 and fifteen-a of this chapter shall have the same meaning as
690 that term is defined in section two-b of this article.

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

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

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

697 (68) "Vendor" means any person furnishing services
698 taxed by article fifteen or fifteen-a of this chapter or making
699 sales of tangible personal property or custom software.
700 "Vendor" and "seller" are used interchangeably in this
701 article and in articles fifteen and fifteen-a of this chapter.

702 (c) *Additional definitions.* —

703 Other terms used in this article are defined in articles
704 fifteen and fifteen-a of this chapter, which definitions are
705 incorporated by reference into this article. Additionally,
706 other sections of this article may define terms primarily used
707 in the section in which the term is defined.

§11-15B-2a. Streamlined Sales and Use Tax Agreement defined.

1 As used in this article and articles fifteen and fifteen-a
2 of this chapter, the term “Streamlined Sales and Use Tax
3 Agreement” or “agreement” means the agreement adopted
4 November 12, 2002, by states that enacted authority to
5 engage in multistate discussions similar to that provided in
6 section four of this article, except when the context in which
7 the term is used clearly indicates that a different meaning is
8 intended by the Legislature. “Agreement” includes amend-
9 ments to the agreement adopted by the implementing states
10 in calendar years 2003, 2004, 2005, 2006, 2007, 2008, 2009,
11 2010, 2011 and amendments adopted by the governing board
12 on or before, January 31, 2012, but does not include any
13 substantive changes in the agreement adopted after January
14 31, 2012.

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

1 (a) *General rules.* —

2 When a purchaser claims an exemption from paying tax
3 under article fifteen or fifteen-a of this chapter:

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

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

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

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

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

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

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

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

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

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

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

44 (C) To a seller who accepts an exemption certificate
45 when the purchaser claims an entity-based exemption when:
46 (i) The subject of the transaction sought to be covered by the

47 exemption certificate is actually received by the purchaser
48 at a location operated by the seller; and (ii) the state in
49 which that location resides provides an exemption certificate
50 that clearly and affirmatively indicates (graying out exemp-
51 tion reason types on uniform form and posting it on a state's
52 website is an indicator) that the claimed exemption is not
53 available in that state.

54 (c) *Time within which seller must obtain exemption*
55 *certificates.* —

56 A seller is relieved from paying tax otherwise applicable
57 under article fifteen or fifteen-a of this chapter if the seller
58 obtains a fully completed exemption certificate or captures
59 the required data elements within ninety days subsequent to
60 the date of sale.

61 (d) (1) If the seller has not obtained an exemption
62 certificate or all required data elements, the seller shall,
63 within one hundred twenty days subsequent to a request for
64 substantiation by the Tax Commissioner, either obtain a
65 fully completed exemption certificate from the purchaser,
66 taken in good faith which means that the seller obtain a
67 certificate that claims an exemption that: (i) Was statutorily
68 available on the date of the transaction in the jurisdiction
69 where the transaction is sourced; (ii) could be applicable to
70 the item being purchased; and (iii) is reasonable for the
71 purchaser's type of business; or obtain other information
72 establishing that the transaction was not subject to the tax.

73 (2) If the seller obtains the information described in
74 subdivision (1) of this subsection, the seller shall be relieved
75 of any liability for the tax on the transaction unless it is
76 discovered through the audit process that the seller had
77 knowledge or had reason to know at the time such informa-
78 tion was provided that the information relating to the
79 exemption claimed was materially false or the seller other-
80 wise knowingly participated in activity intended to purpose-
81 fully evade the tax that is properly due on the transaction.

82 (e) Nothing in this section shall affect the ability of the
83 Tax Commissioner to require purchasers to update exemp-
84 tion certificate information or to reapply with the state to
85 claim certain exemptions.

86 (f) A seller is relieved from paying the tax otherwise
87 applicable if the seller obtains a blanket exemption certifi-
88 cate from a purchaser with which the seller has a recurring
89 business relationship. Notwithstanding the provisions of
90 subsection (e) of this section, the Tax Commissioner may not
91 request from the seller renewal of blanket certificates or
92 updates of exemption certificate information or data ele-
93 ments when there is a recurring business relationship
94 between the buyer and seller. For purposes of this subdivi-
95 sion, a recurring business relationship exists when a period
96 of no more than twelve months elapses between sales
97 transactions.

98 (g) *Exception.*—

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

§11-15B-25. Uniform tax returns.

1 (a) *General.*—

2 A seller who registers with this state is required to file a
3 single sales and use tax return with the Tax Commissioner
4 for each taxing period.

5 (b) *Due date of return.*—

6 (1) This return shall be due on the twentieth day of the
7 month following the month in which the transaction subject
8 to tax occurred.

9 (2) When the due date for a return falls on a Saturday or
10 Sunday or legal holiday, the return shall be due on the next
11 succeeding business day. If the return is filed in conjunction
12 with a remittance and the remittance cannot be made

13 pursuant to subdivision (e), section twenty-six of this article,
14 the return shall be accepted as timely on the same day as the
15 remittance under that subdivision.

16 (c) *Additional information returns.*—

17 The Tax Commissioner shall make available to all sellers,
18 except sellers of products qualifying for exclusion from the
19 provisions of the agreement, a simplified return that is filed
20 electronically.

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

27 (e) After January 1, 2010, the Tax Commissioner shall
28 give notice to a seller, which has no legal requirement to
29 register in this state, of a failure to file a required return and
30 a minimum of thirty days to file thereafter prior to establish-
31 ing a liability amount for taxes based solely on the seller's
32 failure to timely file a return: *Provided*, That the Tax
33 Commissioner may establish a liability amount of taxes
34 based solely on the seller's failure to timely file a return if
35 such seller has a history of nonfiling or late filing.

36 (f) Nothing in this section shall prohibit the Tax Com-
37 missioner from allowing additional return options or the
38 filing of returns less frequently.

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

1 (a) *General.*—

2 Only one remittance is required for each return except as
3 provided in this section.

4 (b) *When electronic remittance required.*—

5 (1) All remittances from sellers under Models I, II and III
6 shall be remitted electronically after December 31, 2003.

7 (2) All remittances in payment of taxes reported on the
8 approved simplified return format shall be remitted electron-
9 ically.

10 (c) *Method of remittance.* —

11 Electronic payments shall be made using either the ACH
12 credit or ACH debit method.

13 (d) *Alternative method.* —

14 The Tax Commissioner shall provide by rule, which may
15 be an existing rule, an alternative method for making same-
16 day payments if an electronic funds transfer fails.

17 (e) *Due date of remittances.* —

18 (1) If a due date for a payment falls on a Saturday,
19 Sunday or legal holiday, the payment, including any related
20 payment voucher information, is due on the next succeeding
21 business day.

22 (2) If the Federal Reserve Bank is closed on a due date
23 that prohibits a person from being able to make a payment
24 by ACH debit or credit, the payment shall be accepted as
25 timely if made on the next day the Federal Reserve Bank is
26 open.

27 (f) *Format of data accompanying remittance.* —

28 Any data that accompanies a remittance shall be format-
29 ted using uniform tax type and payment type codes approved
30 by the governing board.

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

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

2 (1) The Tax Commissioner shall provide a monetary
3 allowance to a certified service provider in Model I. This
4 allowance shall be in accordance with the terms of the
5 contract between the governing board of the Streamlined

6 Sales and Use Tax Agreement and the certified service
7 provider. The details of this monetary allowance shall be
8 developed and provided through the contract process. The
9 contract shall provide that the allowance be funded entirely
10 from money collected in Model I.

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

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

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

23 (b) *Monetary allowance for Model II sellers.* —

24 The monetary allowance to sellers under Model II may be
25 based on the following:

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

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

41 (3) Following the conclusion of the twenty-four-month
42 period, a seller will only be entitled to a vendor discount
43 afforded under each member state's law at the time the base
44 rate expires.

45 (c) *Prohibition on allowance or payment of monetary*
46 *allowances.*—

47 Notwithstanding subsections (a), (b) and (c) of this
48 section, the Tax Commissioner may not allow any vendor,
49 seller or certified service provider any monetary allowance,
50 discount or other compensation for collecting and remitting
51 the taxes levied by articles fifteen and fifteen-a of this
52 chapter, or for making and filing the periodic reports
53 required by this article, or articles fifteen and fifteen-a of
54 this chapter, until the cost of collection study required by the
55 agreement is completed and the monetary allowances are
56 based on the results of that study, or on requirements of
57 federal law requiring remote sellers to collect sales and use
58 taxes for states that have signed the agreement.

§11-15B-32. Effective date.

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

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

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

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

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

24 (f) The provisions of this article, as amended or added
25 during the 2010 regular legislative session, shall apply to all
26 sales made on or after the date of passage and to all returns
27 and payments due on or after that day, except as otherwise
28 expressly provided in this article.

29 (g) The provisions of this article, as amended or added
30 during the 2012 regular legislative session, shall apply to all
31 sales made on or after the date of passage and to all returns
32 and payments due on or after that day, except as otherwise
33 expressly provided in this article.

§11-15B-33. State administration of local sales and use taxes.

1 The Tax Commissioner shall administer, or authorize
2 others to conduct on his or her behalf, the sales and use tax
3 laws of this state subject to the agreement. Sellers and
4 purchasers are only required to register with, file returns
5 with and remit funds to the Tax Commissioner. The Tax
6 Commissioner shall collect any municipal sales and use taxes
7 and distribute them to the appropriate taxing jurisdictions.
8 The Tax Commissioner shall conduct, or others may be
9 authorized to conduct on his or her behalf, all audits of
10 sellers and purchasers for compliance with the sales and use
11 tax laws of this state and the sales and use tax laws of its
12 local jurisdictions. Except as provided herein, local jurisdic-
13 tions may not conduct independent sales or use tax audits of
14 sellers and purchasers.

§11-15B-34. State and local sales and use tax bases.

1 (a) *General.*—

2 The tax base of a local jurisdiction that levies a local
3 sales or use tax pursuant to authority granted by the Legisla-
4 ture shall be identical to the sales and use tax base of this
5 state, unless otherwise prohibited by federal law, except as
6 provided in subsection (b) of this section.

7 (b) *Exceptions.*—

8 This section does not apply to sales or use taxes levied
9 on: (1) The wholesale sale of gasoline or special fuel to power
10 motor vehicles, aircraft, locomotives, or watercraft or to
11 electricity, piped natural or artificial gas or other fuels
12 delivered by the seller, which local jurisdictions are prohib-
13 ited from taxing; or (2) the retail sale or transfer of motor
14 vehicles, aircraft, watercraft, modular homes, manufactured
15 homes or mobile homes.

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

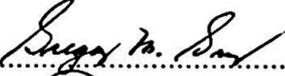

.....
Chairman Senate Committee

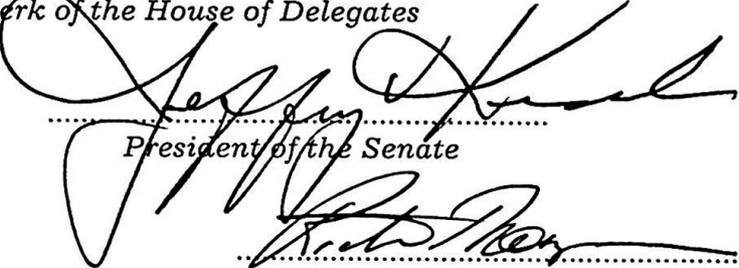

.....
Chairman House Committee

Originated in the Senate.

In effect from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker of the House of Delegates

The within is approved this the 20th
Day of March, 2012.


.....
Governor

FILED

2012 MAR 20 PM 4:01

OFFICE WEST VIRGINIA
SECRETARY OF STATE

PRESENTED TO THE GOVERNOR

MAR 15 2012

Time 1:50 pm