

Senate Bill No. 430

(By Senators Prezioso, Foster,
Kessler (Mr. President) and Beach)

[Introduced January 26, 2012; referred to
the Committee on Finance.]

A BILL 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 administra-

tion 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 (xxxii) Socks and stockings;
- 137 (xxxiii) Steel-toed shoes;
- 138 (xxxiiii) Underwear;
- 139 (xxxv) Uniforms, athletic and nonathletic; and
- 140 (xxxvi) 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 ~~(12)~~ (14) “Delivery charges” means charges by the seller
205 of personal property or services for preparation and delivery
206 to a location designated by the purchaser of personal
207 property or services including, but not limited to, transporta-
208 tion, shipping, postage, handling, crating and packing.

209 ~~(13)~~ (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 ~~(14)~~ (16) “Direct mail” means printed material delivered
232 or distributed by United States mail or other delivery service

233 to a mass audience or to addressees on a mailing list pro-
234 vided by the purchaser or at the direction of the purchaser
235 when the cost of the items are not billed directly to the
236 recipients. "Direct mail" includes tangible personal property
237 supplied directly or indirectly by the purchaser to the direct
238 mail seller for inclusion in the package containing the
239 printed material. "Direct mail" does not include multiple
240 items of printed material delivered to a single address.

241 ~~(15)~~ (17) "Drug" means a compound, substance or
242 preparation, and any component of a compound, substance
243 or 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 ~~(16)~~ (18) “Durable medical equipment” means equip-
256 ment, including repair and replacement parts for the equip-
257 ment, but does not include mobility-enhancing equipment,
258 which:

259 (A) Can withstand repeated use;

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

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

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

265 ~~(17)~~ (19) “Electronic” means relating to technology
266 having electrical, digital, magnetic, wireless, optical,
267 electromagnetic or similar capabilities.

268 ~~(18)~~ (20) “Eligible property” means an item of a type,
269 such as clothing, that qualifies for a sales tax holiday
270 exemption in this state.

271 ~~(19)~~ (21) “Energy Star qualified product” means a
272 product that meets the energy efficient guidelines set by the
273 United States Environmental Protection Agency and the
274 United States Department of Energy that are authorized to
275 carry the Energy Star label. Covered products are those
276 listed at www.energystar.gov or successor address.

277 ~~(20)~~ (22) “Entity-based exemption” means an exemption
278 based on who purchases the product or service or who sells
279 the product or service. An exemption that is available to all
280 individuals shall not be considered an entity-based exemp-
281 tion.

282 ~~(21)~~ (23) “Food and food ingredients” means substances,
283 whether in liquid, concentrated, solid, frozen, dried or
284 dehydrated form, that are sold for ingestion or chewing by
285 humans and are consumed for their taste or nutritional
286 value. “Food and food ingredients” does not include alco-
287 holic beverages, prepared food or tobacco.

288 ~~(22)~~ (24) “Food sold through vending machines” means
289 food dispensed from a machine or other mechanical device
290 that accepts payment.

291 ~~(23)~~ (25) “Fur clothing” means clothing that is required
292 to be labeled as a fur product under the Federal Fur Products
293 Labeling Act (15 U. S. C. §69) and the value of the fur
294 components in the product is more than three times the value
295 of the next most valuable tangible component. “Fur cloth-
296 ing” is human-wearing apparel suitable for general use but
297 may be taxed differently from clothing. For the purposes of
298 the definition of “fur clothing”, the term “fur” means any

299 animal skin or part thereof with hair, fleece or fur fibers
300 attached thereto, either in its raw or processed state, but
301 shall not include such skins that have been converted into
302 leather or suede, or which in processing the hair, fleece or fur
303 fiber has been completely removed.

304 ~~(24)~~ (26) “Governing board” means the governing board
305 of the Streamlined Sales and Use Tax Agreement.

306 ~~(25)~~ (27) “Grooming and hygiene products” are soaps and
307 cleaning solutions, shampoo, toothpaste, mouthwash,
308 antiperspirants and sun tan lotions and screens, regardless
309 of whether the items meet the definition of “over-the-
310 counter drugs”.

311 ~~(26)~~ (28) “Includes” and “including” when used in a
312 definition contained in this article is not considered to
313 exclude other things otherwise within the meaning of the
314 term being defined.

315 ~~(27)~~ (29) “Layaway sale” means a transaction in which
316 property is set aside for future delivery to a customer who
317 makes a deposit, agrees to pay the balance of the purchase
318 price over a period of time and, at the end of the payment
319 period, receives the property. An order is accepted for
320 layaway by the seller when the seller removes the property

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

323 ~~(28)~~ (30) “Lease” includes rental, hire and license.

324 “Lease” means any transfer of possession or control of
325 tangible personal property for a fixed or indeterminate term
326 for consideration. A lease or rental may include future
327 options to purchase or extend.

328 (A) “Lease” does not include:

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

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

338 (iii) Providing tangible personal property along with an
339 operator for a fixed or indeterminate period of time. A
340 condition of this exclusion is that the operator is necessary
341 for the equipment to perform as designed. For the purpose of

342 this subparagraph, an operator must do more than maintain,
343 inspect or set up the tangible personal property.

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

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

354 ~~(29)~~ (31) “Load and leave” means delivery to the pur-
355 chaser by use of a tangible storage media where the tangible
356 storage media is not physically transferred to the purchaser.

357 ~~(30)~~ (32) “Mobility-enhancing equipment” means
358 equipment, including repair and replacement parts to the
359 equipment, but does not include “durable medical equip-
360 ment”, which:

361 (A) Is primarily and customarily used to provide or
362 increase the ability to move from one place to another and

363 which is appropriate for use either in a home or a motor
364 vehicle;

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

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

370 ~~(31)~~ (33) “Model I seller” means a seller registered under
371 the Streamlined Sales and Use Tax Agreement that has
372 selected a certified service provider as its agent to perform
373 all the seller’s sales and use tax functions, other than the
374 seller’s obligation to remit tax on its own purchases.

375 ~~(32)~~ (34) “Model II seller” means a seller registered under
376 the Streamlined Sales and Use Tax Agreement that has
377 selected a certified automated system to perform part of its
378 sales and use tax functions, but retains responsibility for
379 remitting the tax.

380 ~~(33)~~ (35) “Model III seller” means a seller registered
381 under the Streamlined Sales and Use Tax Agreement that
382 has sales in at least five member states, has total annual sales
383 revenue of at least \$500 million, has a proprietary system
384 that calculates the amount of tax due each jurisdiction and

385 has entered into a performance agreement with the member
386 states that establishes a tax performance standard for the
387 seller. As used in this definition, a seller includes an affili-
388 ated group of sellers using the same proprietary system.

389 (36) “Model IV seller” means a seller registered under the
390 Streamlined Sales and Use Tax Agreement and is not a
391 Model I seller, a Model II seller or a Model III seller.

392 ~~(36)~~ (37) “Over-the-counter drug” means a drug that
393 contains a label that identifies the product as a drug as
394 required by 21 CFR §201.66. The “over-the-counter drug”
395 label includes:

396 (A) A drug facts panel; or

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

400 ~~(37)~~ (38) “Person” means an individual, trust, estate,
401 fiduciary, partnership, limited liability company, limited
402 liability partnership, corporation or any other legal entity.

403 ~~(38)~~ (39) “Personal service” includes those:

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

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

409 ~~(39)~~ (40) (A) “Prepared food” means:

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

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

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

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

424 (C) Additionally, “prepared food” as defined in this
425 subdivision does not include:

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

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

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

434 ~~(40)~~ (41) “Prescription” means an order, formula or
435 recipe issued in any form of oral, written, electronic or other
436 means of transmission by a duly licensed practitioner
437 authorized by the laws of this state to issue prescriptions.

438 ~~(41)~~ (42) “Prewritten computer software” means com-
439 puter software, including prewritten upgrades, which is not
440 designed and developed by the author or other creator to the
441 specifications of a specific purchaser.

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

446 (B) “Prewritten computer software” includes software
447 designed and developed by the author or other creator to the
448 specifications of a specific purchaser when it is sold to a
449 person other than the specific purchaser. Where a person
450 modifies or enhances computer software of which the person

451 is not the author or creator, the person is considered to be
452 the author or creator only of the person's modifications or
453 enhancements.

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

463 ~~(42)~~ (43) "Product-based exemption" means an exemp-
464 tion based on the description of the product or service and
465 not based on who purchases the product or service or how
466 the purchaser intends to use the product or service.

467 ~~(43)~~ (44) "Prosthetic device" means a replacement,
468 corrective or supportive device, including repair and replace-
469 ment parts for the device worn on or in the body, to:

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

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

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

474 ~~(44)~~ (45) “Protective equipment” means items for human
475 wear and designed as protection of the wearer against injury
476 or disease or as protections against damage or injury of other
477 persons or property but not suitable for general use.

478 ~~(45)~~ (46) “Purchase price” means the measure subject to
479 the tax imposed by article fifteen or fifteen-a of this chapter
480 and has the same meaning as sales price.

481 ~~(46)~~ (47) “Purchaser” means a person to whom a sale of
482 personal property is made or to whom a service is furnished.

483 ~~(47)~~ (48) “Retail sale” or “sale at retail” means:

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

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

489 ~~(48)~~ (49) (A) “Sales price” means the measure subject to
490 the tax levied under article fifteen or fifteen-a of this chapter
491 and includes the total amount of consideration, including
492 cash, credit, property and services, for which personal
493 property or services are sold, leased or rented, valued in

494 money, whether received in money or otherwise, without any
495 deduction for the following:

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

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

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

504 (iv) Delivery charges; and

505 (v) Installation charges.

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

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

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

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

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

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

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

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

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

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

535 (II) The purchaser identifies himself or herself to the
536 seller as a member of a group or organization entitled to a
537 price reduction or discount (a preferred customer card that

538 is available to any patron does not constitute membership in
539 such a group); or

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

544 ~~(49)~~ (50) “Sales tax” means the tax levied under article
545 fifteen of this chapter.

546 ~~(50)~~ (51) “School art supply” means an item commonly
547 used by a student in a course of study for artwork. The term
548 is mutually exclusive of the terms “school supply”, “school
549 instructional material” and “school computer supply” and
550 may be taxed differently. The following is an all-inclusive
551 list:

552 (A) Clay and glazes;

553 (B) Paints; acrylic, tempora and oil;

554 (C) Paintbrushes for artwork;

555 (D) Sketch and drawing pads; and

556 (E) Watercolors.

557 ~~(51)~~ (52) “School instructional material” means written
558 material commonly used by a student in a course of study as
559 a reference and to learn the subject being taught. The term

560 is mutually exclusive of the terms “school supply”, “school
561 art supply” and “school computer supply” and may be taxed
562 differently. The following is an all-inclusive list:

563 (A) Reference books;

564 (B) Reference maps and globes;

565 (C) Textbooks; and

566 (D) Workbooks.

567 ~~(52)~~ (53) “School computer supply” means an item
568 commonly used by a student in a course of study in which a
569 computer is used. The term is mutually exclusive of the terms
570 “school supply”, “school art supply” and “school instruc-
571 tional material” and may be taxed differently. The following
572 is an all-inclusive list:

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

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

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

578 (D) Computer printers; and

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

581 ~~(53)~~ (54) “School supply” means an item commonly used
582 by a student in a course of study. The term is mutually
583 exclusive of the terms “school art supply”, “school instruc-
584 tional material” and “school computer supply” and may be
585 taxed differently. The following is an all-inclusive list of
586 school supplies:

- 587 (A) Binders;
- 588 (B) Book bags;
- 589 (C) Calculators;
- 590 (D) Cellophane tape;
- 591 (E) Blackboard chalk;
- 592 (F) Compasses;
- 593 (G) Composition books;
- 594 (H) Crayons;
- 595 (I) Erasers;
- 596 (J) Folders; expandable, pocket, plastic and manila;
- 597 (K) Glue, paste and paste sticks;
- 598 (L) Highlighters;
- 599 (M) Index cards;
- 600 (N) Index card boxes;
- 601 (O) Legal pads;
- 602 (P) Lunch boxes;

- 603 (Q) Markers;
- 604 (R) Notebooks;
- 605 (S) Paper; loose-leaf ruled notebook paper, copy paper,
606 graph paper, tracing paper, manila paper, colored paper,
607 poster board and construction paper;
- 608 (T) Pencil boxes and other school supply boxes;
- 609 (U) Pencil sharpeners;
- 610 (V) Pencils;
- 611 (W) Pens;
- 612 (X) Protractors;
- 613 (Y) Rulers;
- 614 (Z) Scissors; and
- 615 (AA) Writing tablets.
- 616 ~~(54)~~ (55) “Seller” means any person making sales, leases
617 or rentals of personal property or services.
- 618 ~~(55)~~ (56) “Service” or “selected service” includes all
619 nonprofessional activities engaged in for other persons for a
620 consideration which involve the rendering of a service as
621 distinguished from the sale of tangible personal property, but
622 does not include contracting, personal services, services
623 rendered by an employee to his or her employer, any service
624 rendered for resale or any service furnished by a business

625 that is subject to the control of the Public Service Commis-
626 sion when the service or the manner in which it is delivered
627 is subject to regulation by the Public Service Commission of
628 this state. The term “service” or “selected service” does not
629 include payments received by a vendor of tangible personal
630 property as an incentive to sell a greater volume of such
631 tangible personal property under a manufacturer’s, distribu-
632 tor’s or other third-party’s marketing support program, sales
633 incentive program, cooperative advertising agreement or
634 similar type of program or agreement and these payments are
635 not considered to be payments for a service or selected
636 service rendered, even though the vendor may engage in
637 attendant or ancillary activities associated with the sales of
638 tangible personal property as required under the programs
639 or agreements.

640 ~~(56)~~ (57) “Soft drink” means nonalcoholic beverages that
641 contain natural or artificial sweeteners. “Soft drinks” do not
642 include beverages that contain milk or milk products, soy,
643 rice or similar milk substitutes or greater than fifty percent
644 of vegetable or fruit juice by volume.

645 ~~(57)~~ (58) “Sport or recreational equipment” means items
646 designed for human use and worn in conjunction with an

647 athletic or recreational activity that are not suitable for
648 general use. Sport or recreational equipment are mutually
649 exclusive of and may be taxed differently than apparel
650 within the definition of “clothing”, “clothing accessories or
651 equipment” and “protective equipment”. The following list
652 contains examples and is not intended to be an all-inclusive
653 list. “Sport or recreational equipment” shall include:

654 (A) Ballet and tap shoes;

655 (B) Cleated or spiked athletic shoes;

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

658 (D) Goggles;

659 (E) Hand and elbow guards;

660 (F) Life preservers and vests;

661 (G) Mouth guards;

662 (H) Roller and ice skates;

663 (I) Shin guards;

664 (J) Shoulder pads;

665 (K) Ski boots;

666 (L) Waders; and

667 (M) Wetsuits and fins.

668 ~~(50)~~ (59) “State” means any state of the United States,

669 the District of Columbia and the Commonwealth of Puerto
670 Rico.

671 ~~(59)~~ (60) “Tangible personal property” means personal
672 property that can be seen, weighed, measured, felt or touched
673 or that is in any manner perceptible to the senses. “Tangible
674 personal property” includes, but is not limited to, electricity,
675 steam, water, gas and prewritten computer software.

676 ~~(60)~~ (61) “Tax” includes all taxes levied under articles
677 fifteen and fifteen-a of this chapter and additions to tax,
678 interest and penalties levied under article ten of this chapter.

679 ~~(61)~~ (62) “Tax Commissioner” means the State Tax
680 Commissioner or his or her delegate. The term “delegate” in
681 the phrase “or his or her delegate”, when used in reference
682 to the Tax Commissioner, means any officer or employee of
683 the State Tax Division duly authorized by the Tax Commis-
684 sioner directly, or indirectly by one or more redelegations of
685 authority, to perform the functions mentioned or described
686 in this article or rules promulgated for this article.

687 ~~(62)~~ (63) “Taxpayer” means any person liable for the
688 taxes levied by articles fifteen and fifteen-a of this chapter
689 or any additions to tax penalties imposed by article ten of
690 this chapter.

691 ~~(63)~~ (64) “Telecommunications service” or “telecommu-
692 nication service” when used in this article and articles
693 fifteen and fifteen-a of this chapter shall have the same
694 meaning as that term is defined in section two-b of this
695 article.

696 ~~(64)~~ (65) “Tobacco” means cigarettes, cigars, chewing or
697 pipe tobacco or any other item that contains tobacco.

698 ~~(65)~~ (66) “Use tax” means the tax levied under article
699 fifteen-a of this chapter.

700 ~~(66)~~ (67) “Use-based exemption” means an exemption
701 based on a specified use of the product or service by the
702 purchaser.

703 ~~(67)~~ (68) “Vendor” means any person furnishing services
704 taxed by article fifteen or fifteen-a of this chapter or making
705 sales of tangible personal property or custom software.
706 “Vendor” and “seller” are used interchangeably in this
707 article and in articles fifteen and fifteen-a of this chapter.

708 (c) *Additional definitions.* —

709 Other terms used in this article are defined in articles
710 fifteen and fifteen-a of this chapter, which definitions are
711 incorporated by reference into this article. Additionally,

712 other sections of this article may define terms primarily used
 713 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, ~~2010~~ 2012, but does not include any
 13 substantive changes in the agreement adopted after January
 14 31, ~~2010~~ 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) ~~After December 31, 2007, in~~ In the case of drop
28 shipments, a third-party vendor such as a drop shipper may
29 claim a resale exemption based on an exemption certificate
30 provided by its customer/reseller or any other acceptable
31 information available to the third-party vendor evidencing
32 qualification for a resale exemption, regardless of whether
33 the customer/reseller is registered to collect and remit sales
34 and use taxes in this state, when the sale is sourced to this
35 state.

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

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

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

45 (C) To a seller who accepts an exemption certificate
46 when the purchaser claims an entity-based exemption when:

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

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

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

62 (d) (1) If the seller has not obtained an exemption
63 certificate or all required data elements, the seller ~~may~~ shall,
64 within one hundred twenty days subsequent to a request for
65 substantiation by the Tax Commissioner, either ~~prove that~~
66 ~~the transaction was not subject to tax by other means or~~
67 obtain a fully completed exemption certificate from the
68 purchaser, taken in good faith which means that the seller

69 obtain a certificate that claims an exemption that: (i) Was
70 statutorily available on the date of the transaction in the
71 jurisdiction where the transaction is sourced; (ii) could be
72 applicable to the item being purchased; and (iii) is reason-
73 able for the purchaser's type of business; or obtain other
74 information establishing that the transaction was not subject
75 to the tax. For purposes of this section, the Tax Commis-
76 sioner may continue to apply this state's standards of good
77 faith until a uniform standard for good faith is defined in the
78 Streamlined Sales and Use Tax Agreement.

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

88 ~~(2)~~ (e) Nothing in this section shall affect the ability of
89 the Tax Commissioner to require purchasers to update

90 exemption certificate information or to reapply with the
91 state to claim certain exemptions.

92 ~~(3) (f) Notwithstanding the preceding provisions of this~~
93 ~~section, when an exemption may be claimed by exemption~~
94 ~~certificate, A seller is relieved from paying the tax otherwise~~
95 ~~applicable if the seller obtains a blanket exemption certifi-~~
96 ~~cate from a purchaser with which the seller has a recurring~~
97 ~~business relationship. The Notwithstanding the provisions of~~
98 ~~subsection (e) of this section, the Tax Commissioner may not~~
99 ~~request from the seller renewal of blanket certificates or~~
100 ~~updates of exemption certificate information or data ele-~~
101 ~~ments when there is a recurring business relationship~~
102 ~~between the buyer and seller. For purposes of this subdivi-~~
103 ~~sion, a recurring business relationship exists when a period~~
104 ~~of no more than twelve months elapses between sales~~
105 ~~transactions.~~

106 ~~(4) (g) *Exception.*—~~

107 No exemption certificate or direct pay permit number is
108 required when the sale is exempt per se from the taxes
109 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 ~~(e)~~ (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) Monetary allowance for Model III sellers and all other~~
46 ~~sellers that are not under Model I or II.~~

47 ~~A monetary allowance to sellers under Model III and to~~
48 ~~all other sellers registered under the agreement that are not~~
49 ~~sellers under Model I or II may be allowed based on the~~
50 ~~following:~~

51 ~~(1) For a period not to exceed twenty-four months~~
52 ~~following a voluntary seller's registration through the~~
53 ~~agreement's central registration process, a percentage of tax~~
54 ~~revenue generated for a member state by the voluntary seller~~
55 ~~for each member state for which the seller does not have a~~
56 ~~requirement to register to collect the tax; and~~

57 ~~(2) Vendor discounts afforded under each member state's~~
58 ~~law.~~

59 ~~(d) (c) Prohibition on allowance or payment of monetary~~
60 ~~allowances.—~~

61 Notwithstanding subsections (a), (b) and (c) of this
62 section, the Tax Commissioner may not allow any vendor,
63 seller or certified service provider any monetary allowance,
64 discount or other compensation for collecting and remitting
65 the taxes levied by articles fifteen and fifteen-a of this
66 chapter, or for making and filing the periodic reports
67 required by this article, or articles fifteen and fifteen-a of
68 this chapter, until the cost of collection study required by the
69 agreement is completed and the monetary allowances are
70 based on the results of that study, or on requirements of
71 federal law requiring remote sellers to collect sales and use
72 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 ~~conduct~~ administer, or
2 authorize others to conduct on his or her behalf, the sales
3 and use tax laws of this state subject to the agreement.
4 Sellers and purchasers are only required to register with, file
5 returns with and remit funds to the Tax Commissioner. The
6 Tax Commissioner shall collect any municipal sales and use
7 taxes and distribute them to the appropriate taxing jurisdic-
8 tions. The Tax Commissioner shall conduct, or others may be
9 authorized to conduct on his or her behalf, all audits of
10 ~~sellers registered under the Streamlined Sales and Use Tax~~
11 ~~Agreement and purchasers~~ for compliance with the sales and
12 use tax laws of this state and the sales and use tax laws of its
13 local jurisdictions. ~~A~~ Except as provided herein, local
14 jurisdictions may not conduct independent sales or use tax
15 ~~audits of sellers registered under the Streamlined Sales and~~
16 ~~Use Tax Agreement 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.

(NOTE: The purpose of this bill is to update code provisions to conform to the Streamlined Sales Tax Agreement. The bill adds new definitions and clarifies present definitions. The bill incorporates changes to the Streamlined Sales and Use Tax Agreement and adds computer software maintenance contracts as a Streamlined Sales and Use Tax Agreement. The bill also relieves a seller of the tax liability in certain instances, eliminates monetary allowances for certain sellers, provides new effective dates, clarifies state administration of state and local sales and use taxes, bases and exemptions.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)