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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

House Bill No. 4349

(By Delegates Doyle, Campbell, Boggs, Stalnaker,
Houston, Anderson and G. White)



Passed February 24, 2004

In Effect from Passage

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E N R O L L E D

H. B. 4349

(BY DELEGATES DOYLE, CAMPBELL, BOGGS, STALNAKER,
HOUSTON, ANDERSON AND G. WHITE)

[Passed February 24, 2004; in effect from passage.]

AN ACT to amend and reenact §11-15-9 of the code of West Virginia, 1931, as amended; to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-15, 11-15B-30, 11-15B-32 and §11-15B-36 of said code; and to amend said code by adding thereto three new sections, designated §11-15B-14a, §11-15B-19 and §11-15B-20, all relating generally to consumers sales and service tax; clarifying that exemption from tax for durable medical goods, mobility enhancing equipment and prosthetic devices purchased with prescription was not intended to be repealed when house bill 3014 was enacted during the two thousand three regular session of the Legislature; deleting language made obsolete when that bill was enacted; making technical corrections in streamlined sales and use tax administration act; updating certain definitions used in that act; providing sourcing rules and definitions for telecommunications services and retail floral sales based on streamlined sales and use tax agreement; clarifying application of hold harmless rule; deleting obsolete language; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That §11-15-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15B-2, §11-15B-2a, §11-15B-15, 11-15B-30, 11-15B-32 and §11-15B-36 of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §11-15B-14a, §11-15B-19 and §11-15B-20, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9. Exemptions.

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.*— A person having a right or claim to any exemption set
3 forth in this subsection may, in lieu of paying the tax imposed
4 by this article and filing a claim for refund, execute a certificate
5 of exemption, in the form required by the tax commissioner,
6 and deliver it to the vendor of the property or service in the
7 manner required by the tax commissioner. However, the tax
8 commissioner may, by rule, specify those exemptions autho-
9 rized in this subsection for which exemption certificates are not
10 required. The following sales of tangible personal property and
11 services are exempt as provided in this subsection:

12 (1) Sales of gas, steam and water delivered to consumers
13 through mains or pipes and sales of electricity;

14 (2) Sales of textbooks required to be used in any of the
15 schools of this state or in any institution in this state which
16 qualifies as a nonprofit or educational institution subject to the
17 West Virginia department of education and the arts, the board
18 of trustees of the university system of West Virginia or the
19 board of directors for colleges located in this state;

20 (3) Sales of property or services to this state, its institutions
21 or subdivisions, governmental units, institutions or subdivisions
22 of other states: *Provided*, That the law of the other state
23 provides the same exemption to governmental units or subdivi-

24 sions of this state and to the United States, including agencies
25 of federal, state or local governments for distribution in public
26 welfare or relief work;

27 (4) Sales of vehicles which are titled by the division of
28 motor vehicles and which are subject to the tax imposed by
29 section four, article three, chapter seventeen-a of this code or
30 like tax;

31 (5) Sales of property or services to churches which make no
32 charge whatsoever for the services they render: *Provided*, That
33 the exemption granted in this subdivision applies only to
34 services, equipment, supplies, food for meals and materials
35 directly used or consumed by these organizations and does not
36 apply to purchases of gasoline or special fuel;

37 (6) Sales of tangible personal property or services to a
38 corporation or organization which has a current registration
39 certificate issued under article twelve of this chapter, which is
40 exempt from federal income taxes under Section 501(c)(3) or
41 (c)(4) of the Internal Revenue Code of 1986, as amended, and
42 which is:

43 (A) A church or a convention or association of churches as
44 defined in Section 170 of the Internal Revenue Code of 1986,
45 as amended;

46 (B) An elementary or secondary school which maintains a
47 regular faculty and curriculum and has a regularly enrolled
48 body of pupils or students in attendance at the place in this state
49 where its educational activities are regularly carried on;

50 (C) A corporation or organization which annually receives
51 more than one half of its support from any combination of gifts,
52 grants, direct or indirect charitable contributions or membership
53 fees;

54 (D) An organization which has no paid employees and its
55 gross income from fundraisers, less reasonable and necessary
56 expenses incurred to raise the gross income (or the tangible
57 personal property or services purchased with the net income),
58 is donated to an organization which is exempt from income
59 taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue
60 Code of 1986, as amended;

61 (E) A youth organization, such as the girl scouts of the
62 United States of America, the boy scouts of America or the
63 YMCA Indian guide/princess program and the local affiliates
64 thereof, which is organized and operated exclusively for
65 charitable purposes and has as its primary purpose the
66 nonsectarian character development and citizenship training of
67 its members;

68 (F) For purposes of this subsection:

69 (i) The term "support" includes, but is not limited to:

70 (I) Gifts, grants, contributions or membership fees;

71 (II) Gross receipts from fundraisers which include receipts
72 from admissions, sales of merchandise, performance of services
73 or furnishing of facilities in any activity which is not an
74 unrelated trade or business within the meaning of Section 513
75 of the Internal Revenue Code of 1986, as amended;

76 (III) Net income from unrelated business activities, whether
77 or not the activities are carried on regularly as a trade or
78 business;

79 (IV) Gross investment income as defined in Section 509(e)
80 of the Internal Revenue Code of 1986, as amended;

81 (V) Tax revenues levied for the benefit of a corporation or
82 organization either paid to or expended on behalf of the
83 organization; and

84 (VI) The value of services or facilities (exclusive of
85 services or facilities generally furnished to the public without
86 charge) furnished by a governmental unit referred to in Section
87 170(c)(1) of the Internal Revenue Code of 1986, as amended,
88 to an organization without charge. This term does not include
89 any gain from the sale or other disposition of property which
90 would be considered as gain from the sale or exchange of a
91 capital asset or the value of an exemption from any federal,
92 state or local tax or any similar benefit;

93 (ii) The term “charitable contribution” means a contribution
94 or gift to or for the use of a corporation or organization,
95 described in Section 170(c)(2) of the Internal Revenue Code of
96 1986, as amended; and

97 (iii) The term “membership fee” does not include any
98 amounts paid for tangible personal property or specific services
99 rendered to members by the corporation or organization;

100 (G) The exemption allowed by this subdivision does not
101 apply to sales of gasoline or special fuel or to sales of tangible
102 personal property or services to be used or consumed in the
103 generation of unrelated business income as defined in Section
104 513 of the Internal Revenue Code of 1986, as amended. The
105 exemption granted in this subdivision applies only to services,
106 equipment, supplies and materials used or consumed in the
107 activities for which the organizations qualify as tax-exempt
108 organizations under the Internal Revenue Code and does not
109 apply to purchases of gasoline or special fuel;

110 (7) An isolated transaction in which any taxable service or
111 any tangible personal property is sold, transferred, offered for
112 sale or delivered by the owner of the property or by his or her

113 representative for the owner's account, the sale, transfer, offer
114 for sale or delivery not being made in the ordinary course of
115 repeated and successive transactions of like character by the
116 owner or on his or her account by the representative: *Provided,*
117 That nothing contained in this subdivision may be construed to
118 prevent an owner who sells, transfers or offers for sale tangible
119 personal property in an isolated transaction through an auction-
120 eer from availing himself or herself of the exemption provided
121 in this subdivision, regardless of where the isolated sale takes
122 place. The tax commissioner may propose a legislative rule for
123 promulgation pursuant to article three, chapter twenty-nine-a of
124 this code which he or she considers necessary for the efficient
125 administration of this exemption;

126 (8) Sales of tangible personal property or of any taxable
127 services rendered for use or consumption in connection with the
128 commercial production of an agricultural product the ultimate
129 sale of which is subject to the tax imposed by this article or
130 which would have been subject to tax under this article:
131 *Provided,* That sales of tangible personal property and services
132 to be used or consumed in the construction of or permanent
133 improvement to real property and sales of gasoline and special
134 fuel are not exempt: *Provided, however,* That nails and fencing
135 may not be considered as improvements to real property;

136 (9) Sales of tangible personal property to a person for the
137 purpose of resale in the form of tangible personal property:
138 *Provided,* That sales of gasoline and special fuel by distributors
139 and importers is taxable except when the sale is to another
140 distributor for resale: *Provided, however,* That sales of building
141 materials or building supplies or other property to any person
142 engaging in the activity of contracting, as defined in this article,
143 which is to be installed in, affixed to or incorporated by that
144 person or his or her agent into any real property, building or
145 structure is not exempt under this subdivision;

146 (10) Sales of newspapers when delivered to consumers by
147 route carriers;

148 (11) Sales of drugs, durable medical goods, mobility-
149 enhancing equipment and prosthetic devices dispensed upon
150 prescription and sales of insulin to consumers for medical
151 purposes. The amendment to this subdivision shall apply to
152 sales made after the thirty-first day of December, two thousand
153 three;

154 (12) Sales of radio and television broadcasting time,
155 preprinted advertising circulars and newspaper and outdoor
156 advertising space for the advertisement of goods or services;

157 (13) Sales and services performed by day care centers;

158 (14) Casual and occasional sales of property or services not
159 conducted in a repeated manner or in the ordinary course of
160 repetitive and successive transactions of like character by a
161 corporation or organization which is exempt from tax under
162 subdivision (6) of this subsection on its purchases of tangible
163 personal property or services. For purposes of this subdivision,
164 the term "casual and occasional sales not conducted in a
165 repeated manner or in the ordinary course of repetitive and
166 successive transactions of like character" means sales of
167 tangible personal property or services at fundraisers sponsored
168 by a corporation or organization which is exempt, under
169 subdivision (6) of this subsection, from payment of the tax
170 imposed by this article on its purchases when the fundraisers
171 are of limited duration and are held no more than six times
172 during any twelve-month period and "limited duration" means
173 no more than eighty-four consecutive hours: *Provided*, That
174 sales for volunteer fire departments and volunteer school
175 support groups, with duration of events being no more than
176 eighty-four consecutive hours at a time, which are held no more
177 than eighteen times in a twelve-month period for the purposes

178 of this subdivision are considered “casual and occasional sales
179 not conducted in a repeated manner or in the ordinary course of
180 repetitive and successive transactions of a like character;

181 (15) Sales of property or services to a school which has
182 approval from the board of trustees of the university system of
183 West Virginia or the board of directors of the state college
184 system to award degrees, which has its principal campus in this
185 state and which is exempt from federal and state income taxes
186 under Section 501(c)(3) of the Internal Revenue Code of 1986,
187 as amended: *Provided*, That sales of gasoline and special fuel
188 are taxable;

189 (16) Sales of lottery tickets and materials by licensed
190 lottery sales agents and lottery retailers authorized by the state
191 lottery commission, under the provisions of article twenty-two,
192 chapter twenty-nine of this code;

193 (17) Leases of motor vehicles titled pursuant to the provi-
194 sions of article three, chapter seventeen-a of this code to lessees
195 for a period of thirty or more consecutive days;

196 (18) Notwithstanding the provisions of section eighteen or
197 eighteen-b of this article or any other provision of this article to
198 the contrary, sales of propane to consumers for poultry house
199 heating purposes, with any seller to the consumer who may
200 have prior paid the tax in his or her price, to not pass on the
201 same to the consumer, but to make application and receive
202 refund of the tax from the tax commissioner pursuant to rules
203 which are promulgated after being proposed for legislative
204 approval in accordance with chapter twenty-nine-a of this code
205 by the tax commissioner;

206 (19) Any sales of tangible personal property or services
207 purchased and lawfully paid for with food stamps pursuant to
208 the federal food stamp program codified in 7 U. S. C. §2011, et
209 seq., as amended, or with drafts issued through the West

210 Virginia special supplement food program for women, infants
211 and children codified in 42 U. S. C. §1786;

212 (20) Sales of tickets for activities sponsored by elementary
213 and secondary schools located within this state;

214 (21) Sales of electronic data processing services and related
215 software: *Provided*, That, for the purposes of this subdivision,
216 “electronic data processing services” means:

217 (A) The processing of another’s data, including all pro-
218 cesses incident to processing of data such as keypunching,
219 keystroke verification, rearranging or sorting of previously
220 documented data for the purpose of data entry or automatic
221 processing and changing the medium on which data is sorted,
222 whether these processes are done by the same person or several
223 persons; and

224 (B) Providing access to computer equipment for the
225 purpose of processing data or examining or acquiring data
226 stored in or accessible to the computer equipment;

227 (22) Tuition charged for attending educational summer
228 camps;

229 (23) Dispensing of services performed by one corporation,
230 partnership or limited liability company for another corpora-
231 tion, partnership or limited liability company when the entities
232 are members of the same controlled group or are related
233 taxpayers as defined in Section 267 of the Internal Revenue
234 Code. “Control” means ownership, directly or indirectly, of
235 stock, equity interests or membership interests possessing fifty
236 percent or more of the total combined voting power of all
237 classes of the stock of a corporation, equity interests of a
238 partnership or membership interests of a limited liability
239 company entitled to vote or ownership, directly or indirectly, of
240 stock, equity interests or membership interests possessing fifty

241 percent or more of the value of the corporation, partnership or
242 limited liability company;

243 (24) Food for the following are exempt:

244 (A) Food purchased or sold by a public or private school,
245 school-sponsored student organizations or school-sponsored
246 parent-teacher associations to students enrolled in the school or
247 to employees of the school during normal school hours; but not
248 those sales of food made to the general public;

249 (B) Food purchased or sold by a public or private college or
250 university or by a student organization officially recognized by
251 the college or university to students enrolled at the college or
252 university when the sales are made on a contract basis so that
253 a fixed price is paid for consumption of food products for a
254 specific period of time without respect to the amount of food
255 product actually consumed by the particular individual contract-
256 ing for the sale and no money is paid at the time the food
257 product is served or consumed;

258 (C) Food purchased or sold by a charitable or private
259 nonprofit organization, a nonprofit organization or a govern-
260 mental agency under a program to provide food to low-income
261 persons at or below cost;

262 (D) Food sold by a charitable or private nonprofit organiza-
263 tion, a nonprofit organization or a governmental agency under
264 a program operating in West Virginia for a minimum of five
265 years to provide food at or below cost to individuals who
266 perform a minimum of two hours of community service for
267 each unit of food purchased from the organization;

268 (E) Food sold in an occasional sale by a charitable or
269 nonprofit organization, including volunteer fire departments
270 and rescue squads, if the purpose of the sale is to obtain revenue

271 for the functions and activities of the organization and the
272 revenue obtained is actually expended for that purpose;

273 (F) Food sold by any religious organization at a social or
274 other gathering conducted by it or under its auspices, if the
275 purpose in selling the food is to obtain revenue for the functions
276 and activities of the organization and the revenue obtained from
277 selling the food is actually used in carrying out those functions
278 and activities: *Provided*, That purchases made by the organiza-
279 tions are not exempt as a purchase for resale; or

280 (G) Food sold by volunteer fire departments and rescue
281 squads that are exempt from federal income taxes under Section
282 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
283 amended, when the purpose of the sale is to obtain revenue for
284 the functions and activities of the organization and the revenue
285 obtained is exempt from federal income tax and actually
286 expended for that purpose;

287 (25) Sales of food by little leagues, midget football leagues,
288 youth football or soccer leagues, band boosters or other school
289 or athletic booster organizations supporting activities for grades
290 kindergarten through twelve and similar types of organizations,
291 including scouting groups and church youth groups, if the
292 purpose in selling the food is to obtain revenue for the functions
293 and activities of the organization and the revenues obtained
294 from selling the food is actually used in supporting or carrying
295 on functions and activities of the groups: *Provided*, That the
296 purchases made by the organizations are not exempt as a
297 purchase for resale;

298 (26) Charges for room and meals by fraternities and
299 sororities to their members: *Provided*, That the purchases made
300 by a fraternity or sorority are not exempt as a purchase for
301 resale;

302 (27) Sales of or charges for the transportation of passengers
303 in interstate commerce;

304 (28) Sales of tangible personal property or services to any
305 person which this state is prohibited from taxing under the laws
306 of the United States or under the constitution of this state;

307 (29) Sales of tangible personal property or services to any
308 person who claims exemption from the tax imposed by this
309 article or article fifteen-a of this chapter pursuant to the
310 provision of any other chapter of this code;

311 (30) Charges for the services of opening and closing a
312 burial lot;

313 (31) Sales of livestock, poultry or other farm products in
314 their original state by the producer of the livestock, poultry or
315 other farm products or a member of the producer's immediate
316 family who is not otherwise engaged in making retail sales of
317 tangible personal property; and sales of livestock sold at public
318 sales sponsored by breeders or registry associations or livestock
319 auction markets: *Provided*, That the exemptions allowed by this
320 subdivision may be claimed without presenting or obtaining
321 exemption certificates provided the farmer maintains adequate
322 records;

323 (32) Sales of motion picture films to motion picture
324 exhibitors for exhibition if the sale of tickets or the charge for
325 admission to the exhibition of the film is subject to the tax
326 imposed by this article and sales of coin-operated video arcade
327 machines or video arcade games to a person engaged in the
328 business of providing the machines to the public for a charge
329 upon which the tax imposed by this article is remitted to the tax
330 commissioner: *Provided*, That the exemption provided in this
331 subdivision may be claimed by presenting to the seller a
332 properly executed exemption certificate;

333 (33) Sales of aircraft repair, remodeling and maintenance
334 services when the services are to an aircraft operated by a
335 certified or licensed carrier of persons or property, or by a
336 governmental entity, or to an engine or other component part of
337 an aircraft operated by a certificated or licensed carrier of
338 persons or property, or by a governmental entity and sales of
339 tangible personal property that is permanently affixed or
340 permanently attached as a component part of an aircraft owned
341 or operated by a certificated or licensed carrier of persons or
342 property, or by a governmental entity, as part of the repair,
343 remodeling or maintenance service and sales of machinery,
344 tools or equipment, directly used or consumed exclusively in
345 the repair, remodeling or maintenance of aircraft, aircraft
346 engines or aircraft component parts, for a certificated or
347 licensed carrier of persons or property, or for a governmental
348 entity;

349 (34) Charges for memberships or services provided by
350 health and fitness organizations relating to personalized fitness
351 programs;

352 (35) Sales of services by individuals who baby-sit for a
353 profit: *Provided*, That the gross receipts of the individual from
354 the performance of baby-sitting services do not exceed five
355 thousand dollars in a taxable year;

356 (36) Sales of services by public libraries or by libraries at
357 academic institutions or by libraries at institutions of higher
358 learning;

359 (37) Commissions received by a manufacturer's representa-
360 tive;

361 (38) Sales of primary opinion research services when:

362 (A) The services are provided to an out-of-state client;

363 (B) The results of the service activities, including, but not
364 limited to, reports, lists of focus group recruits and compilation
365 of data are transferred to the client across state lines by mail,
366 wire or other means of interstate commerce, for use by the
367 client outside the state of West Virginia; and

368 (C) The transfer of the results of the service activities is an
369 indispensable part of the overall service.

370 For the purpose of this subdivision, the term “primary
371 opinion research” means original research in the form of
372 telephone surveys, mall intercept surveys, focus group research,
373 direct mail surveys, personal interviews and other data collec-
374 tion methods commonly used for quantitative and qualitative
375 opinion research studies;

376 (39) Sales of property or services to persons within the state
377 when those sales are for the purposes of the production of
378 value-added products: *Provided*, That the exemption granted in
379 this subdivision applies only to services, equipment, supplies
380 and materials directly used or consumed by those persons
381 engaged solely in the production of value-added products:
382 *Provided, however*, That this exemption may not be claimed by
383 any one purchaser for more than five consecutive years, except
384 as otherwise permitted in this section.

385 For the purpose of this subdivision, the term “value-added
386 product” means the following products derived from processing
387 a raw agricultural product, whether for human consumption or
388 for other use. For purposes of this subdivision, the following
389 enterprises qualify as processing raw agricultural products into
390 value-added products: Those engaged in the conversion of:

391 (A) Lumber into furniture, toys, collectibles and home
392 furnishings;

393 (B) Fruits into wine;

- 394 (C) Honey into wine;
- 395 (D) Wool into fabric;
- 396 (E) Raw hides into semifinished or finished leather prod-
397 ucts;
- 398 (F) Milk into cheese;
- 399 (G) Fruits or vegetables into a dried, canned or frozen
400 product;
- 401 (H) Feeder cattle into commonly accepted slaughter
402 weights;
- 403 (I) Aquatic animals into a dried, canned, cooked or frozen
404 product; and
- 405 (J) Poultry into a dried, canned, cooked or frozen product;
- 406 (40) Sales of music instructional services by a music
407 teacher and artistic services or artistic performances of an
408 entertainer or performing artist pursuant to a contract with the
409 owner or operator of a retail establishment, restaurant, inn, bar,
410 tavern, sports or other entertainment facility or any other
411 business location in this state in which the public or a limited
412 portion of the public may assemble to hear or see musical
413 works or other artistic works be performed for the enjoyment of
414 the members of the public there assembled when the amount
415 paid by the owner or operator for the artistic service or artistic
416 performance does not exceed three thousand dollars: *Provided*,
417 That nothing contained herein may be construed to deprive
418 private social gatherings, weddings or other private parties from
419 asserting the exemption set forth in this subdivision. For the
420 purposes of this exemption, artistic performance or artistic
421 service means and is limited to the conscious use of creative
422 power, imagination and skill in the creation of aesthetic

423 experience for an audience present and in attendance and
424 includes, and is limited to, stage plays, musical performances,
425 poetry recitations and other readings, dance presentation,
426 circuses and similar presentations and does not include the
427 showing of any film or moving picture, gallery presentations of
428 sculptural or pictorial art, nude or strip show presentations,
429 video games, video arcades, carnival rides, radio or television
430 shows or any video or audio taped presentations or the sale or
431 leasing of video or audio tapes, air shows, or any other public
432 meeting, display or show other than those specified herein:
433 *Provided, however,* That nothing contained herein may be
434 construed to exempt the sales of tickets from the tax imposed in
435 this article. The state tax commissioner shall propose a legisla-
436 tive rule pursuant to article three, chapter twenty-nine-a of this
437 code establishing definitions and eligibility criteria for asserting
438 this exemption which is not inconsistent with the provisions set
439 forth herein: *Provided further,* That nude dancers or strippers
440 may not be considered as entertainers for the purposes of this
441 exemption;

442 (41) Charges to a member by a membership association or
443 organization which is exempt from paying federal income taxes
444 under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
445 of 1986, as amended, for membership in the association or
446 organization, including charges to members for newsletters
447 prepared by the association or organization for distribution
448 primarily to its members, charges to members for continuing
449 education seminars, workshops, conventions, lectures or
450 courses put on or sponsored by the association or organization,
451 including charges for related course materials prepared by the
452 association or organization or by the speaker or speakers for use
453 during the continuing education seminar, workshop, conven-
454 tion, lecture or course, but not including any separate charge or
455 separately stated charge for meals, lodging, entertainment or
456 transportation taxable under this article: *Provided,* That the
457 association or organization pays the tax imposed by this article

458 on its purchases of meals, lodging, entertainment or transporta-
459 tion taxable under this article for which a separate or separately
460 stated charge is not made. A membership association or
461 organization which is exempt from paying federal income taxes
462 under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
463 of 1986, as amended, may elect to pay the tax imposed under
464 this article on the purchases for which a separate charge or
465 separately stated charge could apply and not charge its mem-
466 bers the tax imposed by this article or the association or
467 organization may avail itself of the exemption set forth in
468 subdivision (9) of this subsection relating to purchases of
469 tangible personal property for resale and then collect the tax
470 imposed by this article on those items from its member;

471 (42) Sales of governmental services or governmental
472 materials by county assessors, county sheriffs, county clerks or
473 circuit clerks in the normal course of local government opera-
474 tions;

475 (43) Direct or subscription sales by the division of natural
476 resources of the magazine currently entitled "Wonderful West
477 Virginia" and by the division of culture and history of the
478 magazine currently entitled "Goldenseal" and the journal
479 currently entitled "West Virginia History";

480 (44) Sales of soap to be used at car wash facilities;

481 (45) Commissions received by a travel agency from an
482 out-of-state vendor;

483 (46) The service of providing technical evaluations for
484 compliance with federal and state environmental standards
485 provided by environmental and industrial consultants who have
486 formal certification through the West Virginia department of
487 environmental protection or the West Virginia bureau for public
488 health or both. For purposes of this exemption, the service of
489 providing technical evaluations for compliance with federal and

490 state environmental standards includes those costs of tangible
491 personal property directly used in providing such services that
492 are separately billed to the purchaser of such services and on
493 which the tax imposed by this article has previously been paid
494 by the service provider;

495 (47) Sales of tangible personal property and services by
496 volunteer fire departments and rescue squads that are exempt
497 from federal income taxes under Section 501(c)(3) or (c)(4) of
498 the Internal Revenue Code of 1986, as amended, if the sole
499 purpose of the sale is to obtain revenue for the functions and
500 activities of the organization and the revenue obtained is
501 exempt from federal income tax and actually expended for that
502 purpose;

503 (48) Lodging franchise fees, including royalties, marketing
504 fees, reservation system fees or other fees assessed after the
505 first day of December, one thousand nine hundred ninety-seven,
506 that have been or may be imposed by a lodging franchiser as a
507 condition of the franchise agreement; and

508 (49) Sales of the regulation size United States flag and the
509 regulation size West Virginia flag for display.

510 (b) *Refundable exemptions.* — Any person having a right or
511 claim to any exemption set forth in this subsection shall first
512 pay to the vendor the tax imposed by this article and then apply
513 to the tax commissioner for a refund or credit, or as provided in
514 section nine-d of this article, give to the vendor his or her West
515 Virginia direct pay permit number. The following sales of
516 tangible personal property and services are exempt from tax as
517 provided in this subsection:

518 (1) Sales of property or services to bona fide charitable
519 organizations who make no charge whatsoever for the services
520 they render: *Provided*, That the exemption granted in this
521 subdivision applies only to services, equipment, supplies, food,

522 meals and materials directly used or consumed by these
523 organizations and does not apply to purchases of gasoline or
524 special fuel;

525 (2) Sales of services, machinery, supplies and materials
526 directly used or consumed in the activities of manufacturing,
527 transportation, transmission, communication, production of
528 natural resources, gas storage, generation or production or
529 selling electric power, provision of a public utility service or the
530 operation of a utility service or the operation of a utility
531 business, in the businesses or organizations named in this
532 subdivision and does not apply to purchases of gasoline or
533 special fuel;

534 (3) Sales of property or services to nationally chartered
535 fraternal or social organizations for the sole purpose of free
536 distribution in public welfare or relief work: *Provided*, That
537 sales of gasoline and special fuel are taxable;

538 (4) Sales and services, fire fighting or station house
539 equipment, including construction and automotive, made to any
540 volunteer fire department organized and incorporated under the
541 laws of the state of West Virginia: *Provided*, That sales of
542 gasoline and special fuel are taxable; and

543 (5) Sales of building materials or building supplies or other
544 property to an organization qualified under Section 501(c)(3) or
545 (c)(4) of the Internal Revenue Code of 1986, as amended,
546 which are to be installed in, affixed to or incorporated by the
547 organization or its agent into real property or into a building or
548 structure which is or will be used as permanent low-income
549 housing, transitional housing, an emergency homeless shelter,
550 a domestic violence shelter or an emergency children and youth
551 shelter if the shelter is owned, managed, developed or operated
552 by an organization qualified under Section 501(c)(3) or (c)(4)
553 of the Internal Revenue Code of 1986, as amended.

ARTICLE 15B. STREAMLINED SALES AND USE TAX AGREEMENT.

§11-15B-2. Definitions.

1 (a) *General.* — When used in this article and articles fifteen
2 and fifteen-a of this chapter, words defined in subsection (b) of
3 this section shall have the meanings ascribed to them in this
4 section, except in those instances where a different meaning is
5 distinctly expressed or the context in which the term is used
6 clearly indicates that a different meaning is intended by the
7 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 tax
12 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) “Certified automated system” or “CAS” means software
17 certified under the agreement to calculate the tax imposed by
18 each jurisdiction on a transaction, determine the amount of tax
19 to remit to the appropriate state, and maintain a record of the
20 transaction.

21 (5) “Certified service provider” or “CSP” means an agent
22 certified under the agreement to perform all of the seller’s sales
23 tax functions.

24 (6) “Computer” means an electronic device that accepts
25 information in digital or similar form and manipulates the
26 information for a result based on a sequence of instructions.

27 (7) “Computer software” means a set of coded instructions
28 designed to cause a “computer” or automatic data processing
29 equipment to perform a task.

30 (8) “Delivered electronically” means delivered to the
31 purchaser by means other than tangible storage media.

32 (9) “Delivery charges” means charges by the seller of
33 personal property or services for preparation and delivery to a
34 location designated by the purchaser of personal property or
35 services including, but not limited to, transportation, shipping,
36 postage, handling, crating, and packing.

37 (10) “Dietary supplement” means any product, other than
38 “tobacco”, intended to supplement the diet that:

39 (A) Contains one or more of the following dietary ingredi-
40 ents:

41 (i) A vitamin;

42 (ii) A mineral;

43 (iii) A herb or other botanical;

44 (iv) An amino acid;

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

47 (vi) A concentrate, metabolite, constituent, extract or
48 combination of any ingredient described in subparagraphs (i)
49 through (v), inclusive, of this subdivision;

50 (B) Is intended for ingestion in tablet, capsule, powder,
51 softgel, gelcap, or liquid form, or if not intended for ingestion
52 in such a form, is not represented as conventional food and is

53 not represented for use as a sole item of a meal or of the diet;
54 and

55 (C) Is required to be labeled as a dietary supplement,
56 identifiable by the "Supplemental Facts" box found on the label
57 as required pursuant to 21 CFR §101.36, or in any successor
58 section of the code of federal regulations.

59 (11) "Direct mail" means printed material delivered or
60 distributed by United States mail or other delivery service to a
61 mass audience or to addressees on a mailing list provided by the
62 purchaser or at the direction of the purchaser when the cost of
63 the items are not billed directly to the recipients. "Direct mail"
64 includes tangible personal property supplied directly or
65 indirectly by the purchaser to the direct mail seller for inclusion
66 in the package containing the printed material. "Direct mail"
67 does not include multiple items of printed material delivered to
68 a single address.

69 (12) "Drug" means a compound, substance or preparation,
70 and any component of a compound, substance or preparation,
71 other than food and food ingredients, dietary supplements or
72 alcoholic beverages:

73 (A) Recognized in the official United States pharmaco-
74 poeia, official homeopathic pharmacopoeia of the United
75 States, or official national formulary, and supplement to any of
76 them;

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

79 (C) Intended to affect the structure or any function of the
80 human body.

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

84 (A) Can withstand repeated use;

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

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

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

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

93 (15) “Entity-based exemption” means an exemption based
94 on who purchases the product or service or who sells the
95 product or service.

96 (16) “Food and food ingredients” means substances,
97 whether in liquid, concentrated, solid, frozen, dried or dehy-
98 drated form, that are sold for ingestion or chewing by humans
99 and are consumed for their taste or nutritional value. “Food and
100 food ingredients” does not include alcoholic beverages or
101 tobacco.

102 (17) “Includes” and “including” when used in a definition
103 contained in this article is not considered to exclude other
104 things otherwise within the meaning of the term being defined.

105 (18) “Lease” includes rental, hire and license. “Lease”
106 means any transfer of possession or control of tangible personal
107 property for a fixed or indeterminate term for consideration. A
108 lease or rental may include future options to purchase or extend.

109 (A) “Lease” does not include:

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

113 (ii) A transfer or possession or control of property under an
114 agreement that requires the transfer of title upon completion of
115 required payments and payment of an option price does not
116 exceed the greater of one hundred dollars or one percent of the
117 total required payments; or

118 (iii) Providing tangible personal property along with an
119 operator for a fixed or indeterminate period of time. A condi-
120 tion of this exclusion is that the operator is necessary for the
121 equipment to perform as designed. For the purpose of this
122 subparagraph, an operator must do more than maintain, inspect,
123 or set-up the tangible personal property.

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

129 (19) “Load and leave” means delivery to the purchaser by
130 use of a tangible storage media where the tangible storage
131 media is not physically transferred to the purchaser.

132 (20) “Mobility enhancing equipment” means equipment,
133 including repair and replacement parts to the equipment, but
134 does not include “durable medical equipment”, which:

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

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

140 (C) Does not include any motor vehicle or equipment on a
141 motor vehicle normally provided by a motor vehicle manufac-
142 turer.

143 (21) “Model I seller” means a seller that has selected a
144 certified service provider as its agent to perform all the seller’s
145 sales and use tax functions, other than the seller’s obligation to
146 remit tax on its own purchases.

147 (22) “Model II seller” means a seller that has selected a
148 certified automated system to perform part of its sales and use
149 tax functions, but retains responsibility for remitting the tax.

150 (23) “Model III seller” means a seller that has sales in at
151 least five member states, has total annual sales revenue of at
152 least five hundred million dollars, has a proprietary system that
153 calculates the amount of tax due each jurisdiction, and has
154 entered into a performance agreement with the member states
155 that establishes a tax performance standard for the seller. As
156 used in this definition, a seller includes an affiliated group of
157 sellers using the same proprietary system.

158 (24) “Person” means an individual, trust, estate, fiduciary,
159 partnership, limited liability company, limited liability partner-
160 ship, corporation or any other legal entity.

161 (25) “Personal service” includes those:

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

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

167 (26) “Prescription” means an order, formula or recipe
168 issued in any form of oral, written, electronic, or other means
169 of transmission by a duly licensed practitioner authorized by the
170 laws of this state to issue prescriptions.

171 (27) “Prewritten computer software” means “computer
172 software”, including prewritten upgrades, which is not designed
173 and developed by the author or other creator to the specifica-
174 tions of a specific purchaser.

175 (A) The combining of two or more prewritten computer
176 software programs or prewritten portions thereof does not cause
177 the combination to be other than prewritten computer software.

178 (B) “Prewritten computer software” includes software
179 designed and developed by the author or other creator to the
180 specifications of a specific purchaser when it is sold to a person
181 other than the purchaser. Where a person modifies or enhances
182 computer software of which the person is not the author or
183 creator, the person is considered to be the author or creator only
184 of the person’s modifications or enhancements.

185 (C) “Prewritten computer software” or a prewritten portion
186 thereof that is modified or enhanced to any degree, where the
187 modification or enhancement is designed and developed to the
188 specifications of a specific purchaser, remains prewritten
189 computer software: *Provided*, That where there is a reasonable,
190 separately stated charge or an invoice or other statement of the
191 price given to the purchaser for the modification or enhance-
192 ment, the modification or enhancement does not constitute
193 prewritten computer software.

194 (28) “Product-based exemption” means an exemption based
195 on the description of the product or service and not based on
196 who purchases the product or service or how the purchaser
197 intends to use the product or service.

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

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

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

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

205 (30) "Protective equipment" means items for human wear
206 and designed as protection of the wearer against injury or
207 disease or as protections against damage or injury of other
208 persons or property but not suitable for general use.

209 (31) "Purchase price" means the measure subject to the tax
210 imposed by article fifteen or article fifteen-a of this chapter and
211 has the same meaning as sales price.

212 (32) "Purchaser" means a person to whom a sale of
213 personal property is made or to whom a service is furnished.

214 (33) "Registered under this agreement" means registration
215 by a seller with the member states under the central registration
216 system provided in article four of the agreement.

217 (34) "Retail sale" or "sale at retail" means:

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

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

222 (35)(A) "Sales price" means the measure subject to the tax
223 levied by this article and includes the total amount of consider-
224 ation, including cash, credit, property and services, for which

225 personal property or services are sold, leased or rented, valued
226 in money, whether received in money or otherwise, without any
227 deduction for the following:

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

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

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

234 (iv) Delivery charges;

235 (v) Installation charges;

236 (vi) The value of exempt personal property given to the
237 purchaser where taxable and exempt personal property have
238 been bundled together and sold by the seller as a single product
239 or piece of merchandise; and

240 (vii) Credit for the fair market value of any trade-in.

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

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

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

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

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

254 (37) “Seller” means any person making sales, leases or
255 rentals of personal property or services.

256 (38) “Service” or “selected service” includes all nonprofes-
257 sional activities engaged in for other persons for a consider-
258 ation, which involve the rendering of a service as distinguished
259 from the sale of tangible personal property, but does not include
260 contracting, personal services, services rendered by an em-
261 ployee to his or her employer, any service rendered for resale,
262 or any service furnished by a business that is subject to the
263 control of the public service commission when the service or
264 the manner in which it is delivered is subject to regulation by
265 the public service commission of this state. The term “service”
266 or “selected service” does not include payments received by a
267 vendor of tangible personal property as an incentive to sell a
268 greater volume of such tangible personal property under a
269 manufacturer’s, distributor’s or other third-party’s marketing
270 support program, sales incentive program, cooperative advertis-
271 ing agreement or similar type of program or agreement, and
272 these payments are not considered to be payments for a
273 “service” or “selected service” rendered, even though the
274 vendor may engage in attendant or ancillary activities associ-
275 ated with the sales of tangible personal property as required
276 under the programs or agreements.

277 (39) “State” means any state of the United States and the
278 District of Columbia.

279 (40) “Tangible personal property” means personal property
280 that can be seen, weighed, measured, felt, or touched, or that is
281 in any manner perceptible to the senses. “Tangible personal
282 property” includes, but is not limited to, electricity, water, gas,
283 and prewritten computer software.

284 (41) “Tax” includes all taxes levied under articles fifteen
285 and fifteen-a of this chapter, and additions to tax, interest and
286 penalties levied under article ten of this chapter.

287 (42) “Tax commissioner” means the state tax commissioner
288 or his or her delegate. The term “delegate” in the phrase “or his
289 or her delegate”, when used in reference to the tax commis-
290 sioner, means any officer or employee of the state tax division
291 duly authorized by the tax commissioner directly, or indirectly
292 by one or more redelegations of authority, to perform the
293 functions mentioned or described in this article or rules
294 promulgated for this article.

295 (43) “Taxpayer” means any person liable for the taxes
296 levied by articles fifteen and fifteen-a of this chapter or any
297 additions to tax, penalties imposed by article ten of this chapter.

298 (44) “Tobacco” means cigarettes, cigars, chewing or pipe
299 tobacco, or any other item that contains tobacco.

300 (45) “Use tax” means the tax levied under article fifteen-a
301 of this chapter.

302 (46) “Use-based exemption” means an exemption based on
303 the purchaser’s use of the product or service.

304 (47) “Vendor” means any person furnishing services taxed
305 by article fifteen or fifteen-a of this chapter, or making sales of
306 tangible personal property or custom software. “Vendor” and
307 “seller” are used interchangeably in this article and in article
308 fifteen and fifteen-a of this chapter.

309 (c) *Additional definitions.* — Other terms used in this
310 article are defined in articles fifteen and fifteen-a of this
311 chapter, which definitions are incorporated by reference into
312 this article. Additionally, other sections of this article may

313 define terms primarily used in the section in which the term is
314 defined.

§11-15B-2a. Streamlined sales and use tax agreement defined.

1 As used in this article and articles fifteen and fifteen-a of
2 this chapter, the term “streamlined sales and use tax agreement”
3 or “agreement” means the agreement adopted the twelfth day of
4 November, two thousand two, by states that enacted authority
5 to engage in multistate discussions similar to that provided in
6 section four of this article, except when the context in which the
7 term is used clearly indicates that a different meaning is
8 intended by the Legislature. “Agreement” includes amendments
9 to the agreement adopted by the implementing states in
10 calendar year two thousand three but does not include any
11 substantive changes in the agreement adopted after the thirty-
12 first day of December, two thousand three.

§11-15B-14a. Application of general sourcing rules and exclusions from the rules.

1 (a) Sellers shall source the sale of a product in accordance
2 with section fifteen of this article. The provisions of said
3 section apply regardless of the characterization of the product
4 as tangible personal property, custom software, or a service.
5 The provisions of said section only apply to determine a seller’s
6 obligation to pay or collect and remit a sales or use tax with
7 respect to the seller’s sale of a product. These provisions do not
8 affect the obligation of a purchaser or lessee to remit tax on the
9 use of the product to the taxing jurisdiction of that use.

10 (b) Section fifteen of this article does not apply to sales or
11 use tax levied on telecommunication services as defined in
12 section twenty of this article. Telecommunication services shall
13 be sourced in accordance with section nineteen of this article.

§11-15B-15. General transaction sourcing rules.

1 (a) *General rule.* – For purposes of articles fifteen and
2 fifteen-a of this chapter, the retail sale, excluding lease or
3 rental, of a product shall be sourced as follows:

4 (1) When the product is received by the purchaser at a
5 business location of the seller, the sale is sourced to that
6 business location.

7 (2) When the product is not received by the purchaser at a
8 business location of the seller, the sale is sourced to the location
9 where receipt by the purchaser or the purchaser’s designated
10 donee occurs, including the location indicated by instructions
11 for delivery to the purchaser or donee, known to the seller.

12 (3) When subdivisions (1) and (2) of this subsection do not
13 apply, the sale is sourced to the location indicated by an address
14 for the purchaser that is available from the business records of
15 the seller that are maintained in the ordinary course of the
16 seller’s business when use of this address does not constitute
17 bad faith.

18 (4) When subdivisions (1), (2) and (3) of this subsection do
19 not apply, the sale is sourced to the location indicated by an
20 address for the purchaser obtained during the consummation of
21 the sale, including the address of a purchaser’s payment
22 instrument, if no other address is available, provided use of this
23 address does not constitute bad faith.

24 (5) When none of the previous subdivisions of this subsec-
25 tion apply, including the circumstance in which the seller is
26 without sufficient information to apply the previous rules, then
27 the location will be determined by the address from which
28 tangible personal property was shipped, or computer software
29 delivered electronically was first available for transmission by
30 the seller, or from which the service was provided: *Provided,*
31 That any location that merely provided the digital transfer of
32 the product sold is disregarded for these purposes.

33 (b) *Lease or rental.* — The lease or rental of tangible
34 personal property or custom software, other than property
35 identified in subsection (c) or (d) of this section, shall be
36 sourced as follows:

37 (1) For a lease or rental that requires recurring periodic
38 payments, the first periodic payment is sourced the same as a
39 retail sale in accordance with the provisions of subsection (a) of
40 this section. Periodic payments made subsequent to the first
41 payment are sourced to the primary property location for each
42 period covered by the payment. The primary property location
43 is as indicated by an address for the property provided by the
44 lessee that is available to the lessor from its records maintained
45 in the ordinary course of business, when use of this address
46 does not constitute bad faith. The property location may not be
47 altered by intermittent use at different locations, such as use of
48 business property that accompanies employees on business trips
49 and service calls.

50 (2) For a lease or rental that does not require recurring
51 periodic payments, the payment is sourced the same as a retail
52 sale in accordance with the provisions of subsection (a) of this
53 section.

54 (3) This subsection does not affect the imposition or
55 computation of sales or use tax on leases or rentals based on a
56 lump sum or accelerated basis, or on the acquisition of property
57 for lease.

58 (c) *Vehicles.*— The lease or rental of motor vehicles,
59 trailers, semi-trailers, or aircraft that do not qualify as transpor-
60 tation equipment, as defined in subsection (d) of this section,
61 shall be sourced as follows:

62 (1) For a lease or rental that requires recurring periodic
63 payments, each periodic payment is sourced to the primary
64 property location. The primary property location is indicated by

65 an address for the property provided by the lessee that is
66 available to the lessor from its records maintained in the
67 ordinary course of business, when use of this address does not
68 constitute bad faith. This location shall not be altered by
69 intermittent use at different locations.

70 (2) For a lease or rental that does not require recurring
71 periodic payments, the payment is sourced the same as a retail
72 sale in accordance with the provisions of subsection (a) of this
73 section.

74 (3) This subsection does not affect the imposition or
75 computation of sales or use tax on leases or rentals based on a
76 lump sum or accelerated basis, or on the acquisition of property
77 for lease.

78 (d) *Sale or lease or rental of transportation equipment.* –
79 The retail sale, including lease or rental, of transportation
80 equipment is sourced the same as a retail sale in accordance
81 with the provisions of subsection (a) of this section, notwith-
82 standing the exclusion of lease or rental in said subsection.
83 “Transportation equipment” means any of the following:

84 (1) Locomotives and railcars that are utilized for the
85 carriage of persons or property in interstate commerce.

86 (2) Trucks and truck-tractors with a gross vehicle weight
87 rating of ten thousand pounds or greater, trailers, semitrailers,
88 or passenger buses that are:

89 (A) Registered through the international registration plan;
90 and

91 (B) Operated under authority of a carrier authorized and
92 certificated by the United States department of transportation or
93 another federal authority to engage in the carriage of persons or
94 property in interstate commerce.

95 (3) Aircraft that are operated by air carriers authorized and
96 certificated by the U. S. department of transportation or another
97 federal or foreign authority to engage in the carriage of persons
98 or property in interstate or foreign commerce.

99 (4) Containers designed for use on and component parts
100 attached or secured on the items set forth in subdivisions (1)
101 through (3), inclusive, of this subsection.

102 (e) *Exceptions.*— Subsections (a) and (b) of this section
103 shall not apply to the following goods or services:

104 (1) Telecommunications services, as set out in section
105 twenty of this article, shall be sourced in accordance with
106 section nineteen of this article; and

107 (2) Until the first day of January, two thousand six, a seller
108 who is primarily engaged in the retail sale of cut flowers and
109 flower arrangements taking the original order to sell tangible
110 personal property shall source the sale to the place where order
111 was taken. For purposes of this exception, “primarily” means
112 more than fifty percent of the seller’s total gross sales or
113 receipts are derived from that activity. In determining if a seller
114 is primarily a florist, the total sales price of cut flowers and
115 floral arrangements includes separately stated delivery or
116 service charges. After the thirty-first day of December, two
117 thousand five, sales by florists shall be subject to the general
118 sourcing rules stated in subsection (a) of this section.

119 (f) *Product defined.*— As used in subsection (a) of this
120 section, “product” includes tangible personal property, custom
121 software or a service, or any combination thereof.

§11-15B-19. Telecommunications sourcing rule.

1 (a) Except for the defined telecommunication services in
2 subsection (c) of this section, the sale of telecommunication

3 service sold on a call-by-call basis shall be sourced to: (1) Each
4 level of taxing jurisdiction where the call originates and
5 terminates in that jurisdiction; or (2) each level of taxing
6 jurisdiction where the call either originates or terminates and in
7 which the service address is also located.

8 (b) Except for the defined telecommunication services in
9 subsection (c) of this section, a sale of telecommunication
10 service sold on a basis other than a call-by-call basis is sourced
11 to the customer's place of primary use.

12 (c) The sale of the following telecommunication services
13 shall be sourced to each level of taxing jurisdiction as follows:

14 (1) A sale of mobile telecommunication service, other than
15 air-to-ground radiotelephone service and prepaid calling
16 service, is sourced to the customer's place of primary use, as
17 required by the Mobile Telecommunications Sourcing Act.

18 (2) A sale of post-paid calling service is sourced to the
19 origination point of the telecommunications signal as first
20 identified by either: The seller's telecommunications system, or
21 information received by the seller from its service provider,
22 where the system used to transport the signal is not that of the
23 seller.

24 (3) A sale of prepaid calling service is sourced in accor-
25 dance with section fifteen of this article: *Provided*, That in the
26 case of a sale of mobile telecommunication service that is a
27 prepaid telecommunication service, the rule provided in
28 subdivision (5), subsection (a), section fifteen of this article
29 shall include, as an option, the location associated with the
30 mobile telephone number.

31 (4) A sale of a private communication service is sourced as
32 follows:

33 (A) Service for a separate charge related to a customer
34 channel termination point is sourced to each level of jurisdic-
35 tion in which the customer channel termination point is located.

36 (B) Service where all customer termination points are
37 located entirely within one jurisdiction or levels of jurisdiction
38 is sourced in the jurisdiction in which the customer channel
39 termination points are located.

40 (C) Service for segments of a channel between two cus-
41 tomer channel termination points located in different jurisdic-
42 tions and which segment of channel are separately charged is
43 sourced fifty percent in each level of jurisdiction in which the
44 customer channel termination points are located.

45 (D) Service for segments of a channel located in more than
46 one jurisdiction or levels of jurisdiction and which segments are
47 not separately billed is sourced in each jurisdiction based on the
48 percentage determined by dividing the number of customer
49 channel termination points in the jurisdiction by the total
50 number of customer channel termination points.

§11-15B-20. Telecommunication sourcing definitions.

1 For the purpose of section nineteen of this article, the
2 following definitions apply:

3 (1) “Air-to-ground radiotelephone service” means a radio
4 service, as that term is defined in 47 CFR 22.99, in which
5 common carriers are authorized to offer and provide radio
6 telecommunications service for hire to subscribers in aircraft.

7 (2) “Call-by-call basis” means any method of charging for
8 telecommunications services where the price is measured by
9 individual calls.

10 (3) “Communications channel” means a physical or virtual
11 path of communications over which signals are transmitted
12 between or among customer channel termination points.

13 (4) “Customer” means the person or entity that contracts
14 with the seller of telecommunications services. If the end user
15 of telecommunications services is not the contracting party, the
16 end user of the telecommunications service is the customer of
17 the telecommunication service, but this sentence only applies
18 for the purpose of sourcing sales of telecommunications
19 services under section nineteen of this article. “Customer” does
20 not include a reseller of telecommunications service or for
21 mobile telecommunications service of a serving carrier under
22 an agreement to serve the customer outside the home service
23 provider’s licensed service area.

24 (5) “Customer channel termination point” means the
25 location where the customer either inputs or receives the
26 communications.

27 (6) “End user” means the person who utilizes the telecom-
28 munication service. In the case of an entity, “end user” means
29 the individual who utilizes the service on behalf of the entity.

30 (7) “Home service provider” means the same as that term
31 is defined in Section 124(5) of Public Law 106-252 (Mobile
32 Telecommunications Sourcing Act).

33 (8) “Mobile telecommunications service” means the same
34 as that term is defined in Section 124(5) of Public Law 106-252
35 (Mobile Telecommunications Sourcing Act).

36 (9) “Place of primary use” means the street address
37 representative where the customer’s use of the telecommunica-
38 tion service primarily occurs, which must be the residential
39 street address or the primary business street address of the
40 customer. In the case of mobile telecommunications services,

41 “place of primary use” must be within the licensed service area
42 of the home service provider.

43 (10) “Post-paid calling service” means the telecommunica-
44 tion service obtained by making a payment on a call-by-call
45 basis, either through the use of a credit card or payment
46 mechanism such as a bank card, travel card, credit card, or debit
47 card, or by charge made to a telephone number which is not
48 associated with the origination or termination of the telecom-
49 munication service. A post-paid calling service includes a
50 telecommunication service that would be a prepaid calling
51 service except it is not exclusively a telecommunication service.

52 (11) “Prepaid calling service” means the right to access
53 exclusively telecommunications services, which must be paid
54 for in advance and which enables the origination of calls using
55 an access number or authorization code, whether manually or
56 electronically dialed; and that is sold in predetermined units or
57 dollars of which the number declines with use in a known
58 amount.

59 (12) “Private communication service” means a telecommu-
60 nication service that entitles the customer to exclusive or
61 priority use of a communications channel or group of channels
62 between or among termination points, regardless of the manner
63 in which the channel or channels are connected, and includes
64 switching capacity, extension lines, stations, and any other
65 associated services that are provided in connection with the use
66 of the channel or channels.

67 (13) “Service address” means:

68 (A) The location of the telecommunications equipment to
69 which a customer’s call is charged and from which the call
70 originates or terminates, regardless of where the call is billed or
71 paid;

72 (B) If the location in paragraph (A) of this subdivision is
73 not known, service address means the origination point of the
74 signal of the telecommunications services first identified by
75 either the seller’s telecommunications system or in information
76 received by the seller from its service provider, where the
77 system used to transport the signals is not that of the seller; or

78 (C) If the location in paragraphs (A) and (B) of this
79 subdivision are not known, then “service address” means the
80 location of the customer’s place of primary use.

**§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 contract
5 between the governing board of the streamlined sales and use
6 tax agreement and the certified service provider. The details of
7 this monetary allowance shall be developed and provided
8 through the contract process. The contract shall provide that the
9 allowance be funded entirely from money collected in Model I.

10 (2) The contract between the governing board and the
11 certified service provider may base the monetary allowance to
12 a certified service provider on one or more of the following:

13 (A) A base rate that applies to taxable transactions pro-
14 cessed by the certified service provider; or

15 (B) For a period not to exceed twenty-four months follow-
16 ing a voluntary seller’s registration through the agreement’s
17 central registration process, a percentage of tax revenue
18 generated for a member state by the voluntary seller for each

19 member state for which the seller does not have a requirement
20 to register to collect the tax.

21 (b) *Monetary allowance for Model II sellers.*— The
22 monetary allowance to sellers under Model II may be based on
23 the following:

24 (1) All sellers shall receive a base rate for a period not to
25 exceed twenty-four months following the commencement of
26 participation by a seller. The base rate is set by the governing
27 board of the streamlined sales and use tax agreement after the
28 base rate has been established for Model I certified service
29 providers. This allowance is in addition to any vendor or seller
30 discount afforded by each member state at the time.

31 (2) Following the conclusion of the twenty-four month
32 period, a seller will only be entitled to a vendor discount
33 afforded under each member state's law at the time the base
34 rate expires.

35 (c) *Monetary allowance for Model III sellers and all other*
36 *sellers that are not under Model I or II.*— A monetary allow-
37 ance to sellers under Model III and to all other sellers registered
38 under the agreement that are not sellers under Model I or II may
39 be allowed based on the following:

40 (1) For a period not to exceed twenty-four months follow-
41 ing a voluntary seller's registration through the agreement's
42 central registration process, a percentage of tax revenue
43 generated for a member state by the voluntary seller for each
44 member state for which the seller does not have a requirement
45 to register to collect the tax; and

46 (2) Vendor discounts afforded under each member state's
47 law.

48 (d) *Prohibition on allowance or payment of monetary*
49 *allowances.*— Notwithstanding subsections (a), (b) and (c) of
50 this section, the tax commissioner may not allow any vendor,
51 seller or certified service provider any monetary allowance,
52 discount or other compensation for collecting and remitting the
53 taxes levied by articles fifteen and fifteen-a of this chapter, or
54 for making and filing the periodic reports required by this
55 article, or articles fifteen and fifteen-a of this chapter, until the
56 cost of collection study required by the agreement is completed
57 and the monetary allowances are based on the results of that
58 study, or on requirements of federal law requiring remote
59 sellers to collect sales and use taxes for states that have signed
60 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 two thousand
3 three, shall take effect the first day of January, two thousand
4 four, and apply to all sales made on or after that date and to all
5 returns and payments due on or after that day, except as
6 otherwise expressly provided in section five of this article.

7 (b) The provisions of this article, as amended or added
8 during the second extraordinary legislative session in the year
9 two thousand three, shall take effect the first day of January,
10 two thousand four, and apply to all sales made on or after that
11 date.

12 (c) The provisions of this article, as amended or added by
13 this act of the Legislature, shall apply to all sales made on or
14 after the date of passage of this act in the year two thousand
15 four.

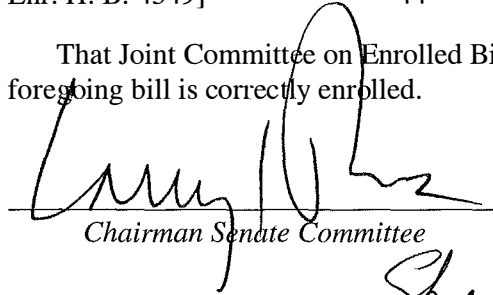
§11-15B-36. Relief from certain liability for state and local taxes.

1 (a) *General.*— Sellers and certified service providers
2 registered under the streamlined sales and use tax agreement to

3 collect sales and use taxes imposed by this state or the eco-
4 nomic opportunity development district excise tax imposed by
5 a local jurisdiction of this state who charged and collected the
6 incorrect amount of sales or use taxes or district excise taxes
7 resulting from the seller or the certified service provider relying
8 on erroneous data provided by this state on tax rates, boundaries
9 or taxing jurisdiction assignments shall be held harmless by the
10 tax commissioner and the local taxing jurisdiction.

11 (b) *Exception.*— A state that is a member of the streamlined
12 sales and use tax agreement and provides an address-based
13 system for assigning taxing jurisdictions pursuant to subdivi-
14 sion (4), subsection (d), section thirty-five of this article, or
15 pursuant to the federal Mobile Telecommunications Sourcing
16 Act, is not required to provide liability relief for errors resulting
17 from reliance on information provided by the member state
18 under subdivision (3), subsection (d), section thirty-five of this
19 article.

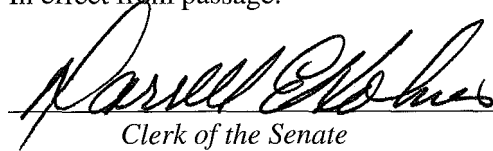
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

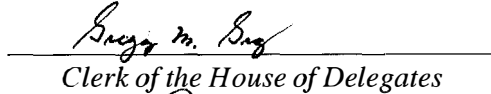

Chairman Senate Committee

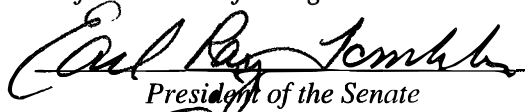

Chairman House Committee

Originating in the House.

In effect from passage.

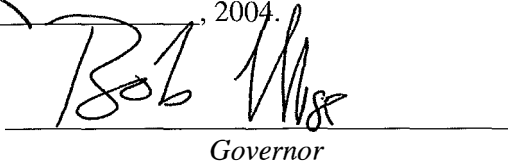

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 4th
day of March, 2004.


Governor

RECEIVED TO THE
GOVERNOR

Date 2/27/04

Time 9:05am