

SB 533

FILED

2009 MAY -8 AM 9: 22

WEST VIRGINIA LEGISLATURE

OFFICE WEST VIRGINIA
LEGISLATURE OF STATE

SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 533

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

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

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

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

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

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

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

ARTICLE 15B. SALES AND USE TAX ADMINISTRATION.

§11-15B-2. Definitions.

1 (a) *General.* – When used in this article and articles
2 fifteen and fifteen-a of this chapter, words defined in
3 subsection (b) of this section shall have the meanings
4 ascribed to them in this section, except where a different
5 meaning is distinctly expressed or the context in which the

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

8 (b) *Terms defined.* –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

109 (A) "Clothing" shall include:

110 (i) Aprons, household and shop;

111 (ii) Athletic supporters;

112 (iii) Baby receiving blankets;

113 (iv) Bathing suits and caps;

114 (v) Beach capes and coats;

115 (vi) Belts and suspenders;

116 (vii) Boots;

117 (viii) Coats and jackets;

118 (ix) Costumes;

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

121 (xi) Ear muffs;

122 (xii) Footlets;

123 (xiii) Formal wear;

124 (xiv) Garters and garter belts;

125 (xv) Girdles;

126 (xvi) Gloves and mittens for general use;

127 (xvii) Hats and caps;

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

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

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

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

166 (a) Briefcases;

167 (b) Cosmetics;

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

170 (d) Handbags;

171 (e) Handkerchiefs;

172 (f) Jewelry;

173 (g) Sunglasses, nonprescription;

174 (h) Umbrellas;

175 (i) Wallets;

176 (j) Watches; and

177 (k) Wigs and hair pieces.

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

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

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

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

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

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

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

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

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

206 (i) A vitamin;

207 (ii) A mineral;

208 (iii) An herb or other botanical;

209 (iv) An amino acid;

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

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

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

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

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

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

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

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

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

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

253 (A) Can withstand repeated use;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

322 (A) "Lease" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

393 (37) "Personal service" includes those:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

502 (iv) Delivery charges; and

503 (v) Installation charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

550 (A) Clay and glazes;

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

552 (C) Paintbrushes for artwork;

553 (D) Sketch and drawing pads; and

554 (E) Watercolors.

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

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

562 (A) Reference books;

563 (B) Reference maps and globes;

564 (C) Textbooks; and

565 (D) Workbooks.

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

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

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

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

577 (D) Computer printers; and

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

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

586 (A) Binders;

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

611 (X) Protractors;

612 (Y) Rulers;

613 (Z) Scissors; and

614 (AA) Writing tablets.

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

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

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

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

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

655 (A) Ballet and tap shoes;

656 (B) Cleated or spiked athletic shoes;

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

659 (D) Goggles;

660 (E) Hand and elbow guards;

661 (F) Life preservers and vests;

662 (G) Mouth guards;

663 (H) Roller and ice skates;

664 (I) Shin guards;

665 (J) Shoulder pads;

666 (K) Ski boots;

667 (L) Waders; and

668 (M) Wetsuits and fins.

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

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

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

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

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

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

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

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

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

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

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

§11-15B-32. Effective date.

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

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

11 (c) The provisions of this article, as amended or added by
12 act of the Legislature in the year 2004 shall apply to all
13 sales made on or after the date of passage in the year 2004.

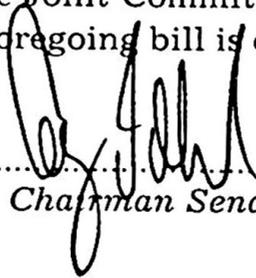
14 (d) The provisions of this article, as amended or added
15 during the regular legislative session in the year 2008,
16 shall apply to all sales made on or after the date of passage

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

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

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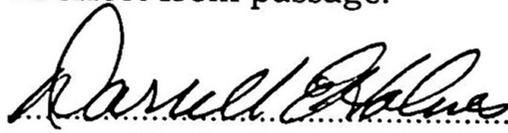
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

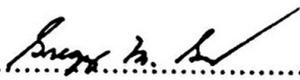

.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 7th
Day of May, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 1 2009

Time 2:50 pm