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ENROLLED

Senate Bill No. 430

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

[Passed March 7, 2012; in effect from passage.]

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

Be it enacted by the Legislature of West Virginia:

1 That §11-15B-2, §11-15B-2a, §11-15B-24, §11-15B-25, §11-15B-
2 26, §11-15B-30, §11-15B-32, §11-15B-33 and §11-15B-34 of the Code
3 of West Virginia, 1931, as amended, be amended and reenacted, all
4 to read as follows:

5 **ARTICLE 15B. SALES AND USE TAX ADMINISTRATION.**

6 **§11-15B-2. Definitions.**

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

13 (b) *Terms defined.* --

14 (1) "Agent" means a person appointed by a seller to represent
15 the seller before the member states.

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

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

21 (4) "Bundled transaction" means the retail sale of two or more
22 products, except real property and services to real property,
23 where: (i) The products are otherwise distinct and identifiable;
24 and (ii) the products are sold for one nonitemized price. A

1 "bundled transaction" does not include the sale of any products in
2 which the sales price varies, or is negotiable, based on the
3 selection by the purchaser of the products included in the
4 transaction.

5 (A) "Distinct and identifiable products" does not include:

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

13 (ii) A product provided free of charge with the required
14 purchase of another product. A product is "provided free of
15 charge" if the sales price of the product purchased does not vary
16 depending on the inclusion of the product provided free of charge;
17 or

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

20 (B) The term "one nonitemized price" does not include a price
21 that is separately identified by product on binding sales or other
22 supporting sales-related documentation made available to the
23 customer in paper or electronic form including, but not limited to,
24 an invoice, bill of sale, receipt, contract, service agreement,

1 lease agreement, periodic notice of rates and services, rate card
2 or price list.

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

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

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

16 (iii) A transaction that includes taxable products and
17 nontaxable products and the purchase price or sales price of the
18 taxable products is de minimis;

19 (I) "De minimis" means the seller's purchase price or sales
20 price of the taxable products is ten percent or less of the total
21 purchase price or sales price of the bundled products;

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

1 and sales price of the products to determine if the taxable
2 products are de minimis;

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

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

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

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

19 (II) Where the seller's purchase price or sales price of the
20 taxable tangible personal property taxable at the general rate of
21 tax is fifty percent or less of the total purchase price or sales
22 price of the bundled tangible personal property. Sellers may not
23 use a combination of the purchase price and sales price of the
24 tangible personal property when making the fifty percent

1 determination for a transaction.

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

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

10 (A) "Clothing" shall include:

11 (i) Aprons, household and shop;

12 (ii) Athletic supporters;

13 (iii) Baby receiving blankets;

14 (iv) Bathing suits and caps;

15 (v) Beach capes and coats;

16 (vi) Belts and suspenders;

17 (vii) Boots;

18 (viii) Coats and jackets;

19 (ix) Costumes;

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

21 (xi) Ear muffs;

22 (xii) Footlets;

23 (xiii) Formal wear;

24 (xiv) Garters and garter belts;

- 1 (xv) Girdles;
- 2 (xvi) Gloves and mittens for general use;
- 3 (xvii) Hats and caps;
- 4 (xviii) Hosiery;
- 5 (xix) Insoles for shoes;
- 6 (xx) Lab coats;
- 7 (xxi) Neckties;
- 8 (xxii) Overshoes;
- 9 (xxiii) Pantyhose;
- 10 (xxiv) Rainwear;
- 11 (xxv) Rubber pants;
- 12 (xxvi) Sandals;
- 13 (xxvii) Scarves;
- 14 (xxviii) Shoes and shoe laces;
- 15 (xxix) Slippers;
- 16 (xxx) Sneakers;
- 17 (xxxii) Socks and stockings;
- 18 (xxxiii) Steel-toed shoes;
- 19 (xxxiv) Underwear;
- 20 (xxxv) Uniforms, athletic and nonathletic; and
- 21 (xxxvi) Wedding apparel.
- 22 (B) "Clothing" shall not include:
- 23 (i) Belt buckles sold separately;
- 24 (ii) Costume masks sold separately;

- 1 (iii) Patches and emblems sold separately;
- 2 (iv) Sewing equipment and supplies, including, but not limited
3 to, knitting needles, patterns, pins, scissors, sewing machines,
4 sewing needles, tape measures and thimbles; and
- 5 (v) Sewing materials that become part of clothing including,
6 but not limited to, buttons, fabric, lace, thread, yarn and
7 zippers.
- 8 (7) "Clothing accessories or equipment" means incidental items
9 worn on the person or in conjunction with clothing. "Clothing
10 accessories or equipment" are mutually exclusive of and may be
11 taxed differently than apparel within the definition of "clothing",
12 "sport or recreational equipment" and "protective equipment". The
13 following list contains examples and is not intended to be an all-
14 inclusive list. "Clothing accessories or equipment" shall include:
- 15 (A) Briefcases;
- 16 (B) Cosmetics;
- 17 (C) Hair notions, including, but not limited to, barrettes,
18 hair bows and hair nets;
- 19 (D) Handbags;
- 20 (E) Handkerchiefs;
- 21 (F) Jewelry;
- 22 (G) Sunglasses, nonprescription;
- 23 (H) Umbrellas;
- 24 (I) Wallets;

1 (J) Watches; and

2 (K) Wigs and hair pieces.

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

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

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

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

17 (12) "Computer software maintenance contract" means a contract
18 that obligates a vendor of computer software, or other person, to
19 provide a customer with future updates or upgrades to computer
20 software, support services with respect to computer software or
21 both. The term "computer software maintenance contract" includes
22 contracts sold by a person other than the vendor of the computer
23 software to which the contract relates.

24 (A) A "mandatory computer software maintenance contract" is a

1 computer software maintenance contract that the customer is
2 obligated by contract to purchase as a condition to the retail sale
3 of computer software.

4 (B) An "optional computer maintenance contract" is a computer
5 software maintenance contract that a customer is not obligated to
6 purchase as a condition to the retail sale of computer software.

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

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

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

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

17 (i) A vitamin;

18 (ii) A mineral;

19 (iii) An herb or other botanical;

20 (iv) An amino acid;

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

23 (vi) A concentrate, metabolite, constituent, extract or
24 combination of any ingredient described in subparagraph (i) through

1 (v), inclusive, of this paragraph;

2 (B) And is intended for ingestion in tablet, capsule, powder,
3 softgel, gelcap or liquid form, or if not intended for ingestion in
4 such a form, is not represented as conventional food and is not
5 represented for use as a sole item of a meal or of the diet; and

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

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

20 (17) "Drug" means a compound, substance or preparation, and
21 any component of a compound, substance or preparation, other than
22 food and food ingredients, dietary supplements or alcoholic
23 beverages:

24 (A) Recognized in the official United States Pharmacopoeia,

1 official Homeopathic Pharmacopoeia of the United States or official
2 National Formulary, and supplement to any of them;

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

5 (C) Intended to affect the structure or any function of the
6 body. The amendment to this subdivision enacted during the 2009
7 regular legislative session shall apply to sales made after July 1,
8 2009.

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

12 (A) Can withstand repeated use;

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

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

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

18 (19) "Electronic" means relating to technology having
19 electrical, digital, magnetic, wireless, optical, electromagnetic
20 or similar capabilities.

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

24 (21) "Energy Star qualified product" means a product that

1 meets the energy efficient guidelines set by the United States
2 Environmental Protection Agency and the United States Department of
3 Energy that are authorized to carry the Energy Star label. Covered
4 products are those listed at www.energystar.gov or successor
5 address.

6 (22) "Entity-based exemption" means an exemption based on who
7 purchases the product or service or who sells the product or
8 service. An exemption that is available to all individuals shall
9 not be considered an entity-based exemption.

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

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

17 (25) "Fur clothing" means clothing that is required to be
18 labeled as a fur product under the Federal Fur Products Labeling
19 Act (15 U. S. C. §69) and the value of the fur components in the
20 product is more than three times the value of the next most
21 valuable tangible component. "Fur clothing" is human-wearing
22 apparel suitable for general use but may be taxed differently from
23 clothing. For the purposes of the definition of "fur clothing",
24 the term "fur" means any animal skin or part thereof with hair,

1 fleece or fur fibers attached thereto, either in its raw or
2 processed state, but shall not include such skins that have been
3 converted into leather or suede, or which in processing the hair,
4 fleece or fur fiber has been completely removed.

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

7 (27) "Grooming and hygiene products" are soaps and cleaning
8 solutions, shampoo, toothpaste, mouthwash, antiperspirants and sun
9 tan lotions and screens, regardless of whether the items meet the
10 definition of "over-the-counter drugs".

11 (28) "Includes" and "including" when used in a definition
12 contained in this article is not considered to exclude other things
13 otherwise within the meaning of the term being defined.

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

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

1 (A) "Lease" does not include:

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

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

10 (iii) Providing tangible personal property along with an
11 operator for a fixed or indeterminate period of time. A condition
12 of this exclusion is that the operator is necessary for the
13 equipment to perform as designed. For the purpose of this
14 subparagraph, an operator must do more than maintain, inspect or
15 set up the tangible personal property.

16 (iv) "Lease" or "rental" includes agreements covering motor
17 vehicles and trailers where the amount of consideration may be
18 increased or decreased by reference to the amount realized upon
19 sale or disposition of the property as defined in 26 U. S. C.
20 §7701(h)(1).

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

1 federal, state or local law.

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

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

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

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

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

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

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

23 (35) "Model III seller" means a seller registered under the
24 Streamlined Sales and Use Tax Agreement that has sales in at least

1 five member states, has total annual sales revenue of at least \$500
2 million, has a proprietary system that calculates the amount of tax
3 due each jurisdiction and has entered into a performance agreement
4 with the member states that establishes a tax performance standard
5 for the seller. As used in this definition, a seller includes an
6 affiliated group of sellers using the same proprietary system.

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

10 (37) "Over-the-counter drug" means a drug that contains a
11 label that identifies the product as a drug as required by 21 CFR
12 §201.66. The "over-the-counter drug" label includes:

13 (A) A drug facts panel; or

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

17 (38) "Person" means an individual, trust, estate, fiduciary,
18 partnership, limited liability company, limited liability
19 partnership, corporation or any other legal entity.

20 (39) "Personal service" includes those:

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

23 (B) Rendered to the person of an individual without, at the
24 same time, selling tangible personal property, such as nursing,

1 barbering, manicuring and similar services.

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

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

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

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

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

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

19 (i) Food sold by a seller whose proper primary NAICS
20 classification is manufacturing in Sector 311, except Subsection
21 3118 (bakeries);

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

24 (iii) Bakery items, including bread, rolls, buns, biscuits,

1 bagels, croissants, pastries, donuts, danish, cakes, tortes, pies,
2 tarts, muffins, bars, cookies, tortillas.

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

7 (42) "Prewritten computer software" means computer software,
8 including prewritten upgrades, which is not designed and developed
9 by the author or other creator to the specifications of a specific
10 purchaser.

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

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

21 (C) "Prewritten computer software" or a prewritten portion
22 thereof that is modified or enhanced to any degree, where the
23 modification or enhancement is designed and developed to the
24 specifications of a specific purchaser, remains prewritten computer

1 software. However, where there is a reasonable, separately stated
2 charge or an invoice or other statement of the price given to the
3 purchaser for the modification or enhancement, the modification or
4 enhancement does not constitute prewritten computer software.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (iv) Delivery charges; and

19 (v) Installation charges.

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

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

24 (ii) Interest, financing and carrying charges from credit

1 extended on the sale of personal property, goods or services, if
2 the amount is separately stated on the invoice, bill of sale or
3 similar document given to the purchaser; or

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

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

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

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

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

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

18 (I) The purchaser presents a coupon, certificate or other
19 documentation to the seller to claim a price reduction or discount
20 where the coupon, certificate or documentation is authorized,
21 distributed or granted by a third party with the understanding that
22 the third party will reimburse any seller to whom the coupon,
23 certificate or documentation is presented;

24 (II) The purchaser identifies himself or herself to the seller

1 as a member of a group or organization entitled to a price
2 reduction or discount (a preferred customer card that is available
3 to any patron does not constitute membership in such a group); or

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

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

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

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

20 (52) "School instructional material" means written material
21 commonly used by a student in a course of study as a reference and
22 to learn the subject being taught. The term is mutually exclusive
23 of the terms "school supply", "school art supply" and "school
24 computer supply" and may be taxed differently. The following is an

1 all-inclusive list:

2 (A) Reference books;

3 (B) Reference maps and globes;

4 (C) Textbooks; and

5 (D) Workbooks.

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

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

12 (B) Handheld electronic schedulers, except devices that are
13 cellular phones;

14 (C) Personal digital assistants, except devices that are
15 cellular phones;

16 (D) Computer printers; and

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

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

23 (A) Binders;

- 1 (B) Book bags;
- 2 (C) Calculators;
- 3 (D) Cellophane tape;
- 4 (E) Blackboard chalk;
- 5 (F) Compasses;
- 6 (G) Composition books;
- 7 (H) Crayons;
- 8 (I) Erasers;
- 9 (J) Folders; expandable, pocket, plastic and manila;
- 10 (K) Glue, paste and paste sticks;
- 11 (L) Highlighters;
- 12 (M) Index cards;
- 13 (N) Index card boxes;
- 14 (O) Legal pads;
- 15 (P) Lunch boxes;
- 16 (Q) Markers;
- 17 (R) Notebooks;
- 18 (S) Paper; loose-leaf ruled notebook paper, copy paper, graph
19 paper, tracing paper, manila paper, colored paper, poster board and
20 construction paper;
- 21 (T) Pencil boxes and other school supply boxes;
- 22 (U) Pencil sharpeners;
- 23 (V) Pencils;
- 24 (W) Pens;

1 (X) Protractors;

2 (Y) Rulers;

3 (Z) Scissors; and

4 (AA) Writing tablets.

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

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

1 associated with the sales of tangible personal property as required
2 under the programs or agreements.

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

8 (58) "Sport or recreational equipment" means items designed
9 for human use and worn in conjunction with an athletic or
10 recreational activity that are not suitable for general use. Sport
11 or recreational equipment are mutually exclusive of and may be
12 taxed differently than apparel within the definition of "clothing",
13 "clothing accessories or equipment" and "protective equipment".
14 The following list contains examples and is not intended to be an
15 all-inclusive list. "Sport or recreational equipment" shall
16 include:

17 (A) Ballet and tap shoes;

18 (B) Cleated or spiked athletic shoes;

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

21 (D) Goggles;

22 (E) Hand and elbow guards;

23 (F) Life preservers and vests;

24 (G) Mouth guards;

1 (H) Roller and ice skates;

2 (I) Shin guards;

3 (J) Shoulder pads;

4 (K) Ski boots;

5 (L) Waders; and

6 (M) Wetsuits and fins.

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

9 (60) "Tangible personal property" means personal property that
10 can be seen, weighed, measured, felt or touched or that is in any
11 manner perceptible to the senses. "Tangible personal property"
12 includes, but is not limited to, electricity, steam, water, gas and
13 prewritten computer software.

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

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

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

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

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

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

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

14 (68) "Vendor" means any person furnishing services taxed by
15 article fifteen or fifteen-a of this chapter or making sales of
16 tangible personal property or custom software. "Vendor" and
17 "seller" are used interchangeably in this article and in articles
18 fifteen and fifteen-a of this chapter.

19 (c) *Additional definitions.* --

20 Other terms used in this article are defined in articles
21 fifteen and fifteen-a of this chapter, which definitions are
22 incorporated by reference into this article. Additionally, other
23 sections of this article may define terms primarily used in the
24 section in which the term is defined.

1 **§11-15B-2a. Streamlined Sales and Use Tax Agreement defined.**

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

14 **§11-15B-24. Administration of exemptions.**

15 (a) *General rules.--*

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

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

21 (2) A purchaser is not required to provide a signature to
22 claim an exemption from tax unless a paper exemption certificate is
23 used.

24 (3) The seller shall use the standard form for claiming an

1 exemption electronically that is adopted by the governing board.

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

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

9 (6) The seller shall maintain proper records of exempt
10 transactions and provide the records to the Tax Commissioner or the
11 Tax Commissioner's designee.

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

16 (8) In the case of drop shipments, a third-party vendor such
17 as a drop shipper may claim a resale exemption based on an
18 exemption certificate provided by its customer/reseller or any
19 other acceptable information available to the third-party vendor
20 evidencing qualification for a resale exemption, regardless of
21 whether the customer/reseller is registered to collect and remit
22 sales and use taxes in this state, when the sale is sourced to this
23 state.

24 (b) The Tax Commissioner shall relieve sellers that follow the

1 requirements of this section from the tax otherwise applicable if
2 it is determined that the purchaser improperly claimed an exemption
3 and shall hold the purchaser liable for the nonpayment of tax.

4 This relief from liability does not apply:

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

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

8 (C) To a seller who accepts an exemption certificate when the
9 purchaser claims an entity-based exemption when: (i) The subject of
10 the transaction sought to be covered by the exemption certificate
11 is actually received by the purchaser at a location operated by the
12 seller; and (ii) the state in which that location resides provides
13 an exemption certificate that clearly and affirmatively indicates
14 (graying out exemption reason types on uniform form and posting it
15 on a state's website is an indicator) that the claimed exemption is
16 not available in that state.

17 (c) *Time within which seller must obtain exemption*
18 *certificates.--*

19 A seller is relieved from paying tax otherwise applicable
20 under article fifteen or fifteen-a of this chapter if the seller
21 obtains a fully completed exemption certificate or captures the
22 required data elements within ninety days subsequent to the date of
23 sale.

24 (d) (1) If the seller has not obtained an exemption

1 certificate or all required data elements, the seller shall, within
2 one hundred twenty days subsequent to a request for substantiation
3 by the Tax Commissioner, either obtain a fully completed exemption
4 certificate from the purchaser, taken in good faith which means
5 that the seller obtain a certificate that claims an exemption that:
6 (i) Was statutorily available on the date of the transaction in the
7 jurisdiction where the transaction is sourced; (ii) could be
8 applicable to the item being purchased; and (iii) is reasonable for
9 the purchaser's type of business; or obtain other information
10 establishing that the transaction was not subject to the tax.

11 (2) If the seller obtains the information described in
12 subdivision (1) of this subsection, the seller shall be relieved of
13 any liability for the tax on the transaction unless it is
14 discovered through the audit process that the seller had knowledge
15 or had reason to know at the time such information was provided
16 that the information relating to the exemption claimed was
17 materially false or the seller otherwise knowingly participated in
18 activity intended to purposefully evade the tax that is properly
19 due on the transaction.

20 (e) Nothing in this section shall affect the ability of the
21 Tax Commissioner to require purchasers to update exemption
22 certificate information or to reapply with the state to claim
23 certain exemptions.

24 (f) A seller is relieved from paying the tax otherwise

1 applicable if the seller obtains a blanket exemption certificate
2 from a purchaser with which the seller has a recurring business
3 relationship. Notwithstanding the provisions of subsection (e) of
4 this section, the Tax Commissioner may not request from the seller
5 renewal of blanket certificates or updates of exemption certificate
6 information or data elements when there is a recurring business
7 relationship between the buyer and seller. For purposes of this
8 subdivision, a recurring business relationship exists when a period
9 of no more than twelve months elapses between sales transactions.

10 (g) *Exception.--*

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

14 **§11-15B-25. Uniform tax returns.**

15 (a) *General.--*

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

19 (b) *Due date of return.--*

20 (1) This return shall be due on the twentieth day of the month
21 following the month in which the transaction subject to tax
22 occurred.

23 (2) When the due date for a return falls on a Saturday or
24 Sunday or legal holiday, the return shall be due on the next

1 succeeding business day. If the return is filed in conjunction
2 with a remittance and the remittance cannot be made pursuant to
3 subdivision (e), section twenty-six of this article, the return
4 shall be accepted as timely on the same day as the remittance under
5 that subdivision.

6 (c) *Additional information returns.*--

7 The Tax Commissioner shall make available to all sellers,
8 except sellers of products qualifying for exclusion from the
9 provisions of the agreement, a simplified return that is filed
10 electronically.

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

17 (e) After January 1, 2010, the Tax Commissioner shall give
18 notice to a seller, which has no legal requirement to register in
19 this state, of a failure to file a required return and a minimum of
20 thirty days to file thereafter prior to establishing a liability
21 amount for taxes based solely on the seller's failure to timely
22 file a return: *Provided*, That the Tax Commissioner may establish a
23 liability amount of taxes based solely on the seller's failure to
24 timely file a return if such seller has a history of nonfiling or

1 late filing.

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

5 **§11-15B-26. Uniform rules for remittances of funds.**

6 (a) *General.*--

7 Only one remittance is required for each return except as
8 provided in this section.

9 (b) *When electronic remittance required.*--

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

12 (2) All remittances in payment of taxes reported on the
13 approved simplified return format shall be remitted electronically.

14 (c) *Method of remittance.*--

15 Electronic payments shall be made using either the ACH credit
16 or ACH debit method.

17 (d) *Alternative method.*--

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

21 (e) *Due date of remittances.*--

22 (1) If a due date for a payment falls on a Saturday, Sunday or
23 legal holiday, the payment, including any related payment voucher

1 information, is due on the next succeeding business day.

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

6 (f) *Format of data accompanying remittance.--*

7 Any data that accompanies a remittance shall be formatted
8 using uniform tax type and payment type codes approved by the
9 governing board.

10 **§11-15B-30. Monetary allowances for new technological models for**
11 **sales tax collection; delayed effective date.**

12 (a) *Monetary allowance under Model I.--*

13 (1) The Tax Commissioner shall provide a monetary allowance to
14 a certified service provider in Model I. This allowance shall be
15 in accordance with the terms of the contract between the governing
16 board of the Streamlined Sales and Use Tax Agreement and the
17 certified service provider. The details of this monetary allowance
18 shall be developed and provided through the contract process. The
19 contract shall provide that the allowance be funded entirely from
20 money collected in Model I.

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

24 (A) A base rate that applies to taxable transactions processed

1 by the certified service provider; or

2 (B) For a period not to exceed twenty-four months following a
3 voluntary seller's registration through the agreement's central
4 registration process, a percentage of tax revenue generated for a
5 member state by the voluntary seller for each member state for
6 which the seller does not have a requirement to register to collect
7 the tax.

8 (b) *Monetary allowance for Model II sellers.--*

9 The monetary allowance to sellers under Model II may be based
10 on the following:

11 (1) All sellers shall receive a base rate for a period not to
12 exceed twenty-four months following the commencement of
13 participation by a seller. The base rate is set by the governing
14 board of the Streamlined Sales and Use Tax Agreement after the base
15 rate has been established for Model I certified service providers.
16 This allowance is in addition to any vendor or seller discount
17 afforded by each member state at the time.

18 (2) A voluntary Model II seller not otherwise required to
19 register with this state to collect the consumers sales and service
20 tax and use tax, that registers through the Streamlined Sales and
21 Use Tax Agreement's central registration process, shall receive for
22 a period not to exceed twenty-four months following the voluntary
23 seller's registration, the base rate percentage of tax revenue
24 generated for this state by the voluntary seller.

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

4 (c) *Prohibition on allowance or payment of monetary*
5 *allowances.--*

6 Notwithstanding subsections (a), (b) and (c) of this section,
7 the Tax Commissioner may not allow any vendor, seller or certified
8 service provider any monetary allowance, discount or other
9 compensation for collecting and remitting the taxes levied by
10 articles fifteen and fifteen-a of this chapter, or for making and
11 filing the periodic reports required by this article, or articles
12 fifteen and fifteen-a of this chapter, until the cost of collection
13 study required by the agreement is completed and the monetary
14 allowances are based on the results of that study, or on
15 requirements of federal law requiring remote sellers to collect
16 sales and use taxes for states that have signed the agreement.

17 **§11-15B-32. Effective date.**

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

23 (b) The provisions of this article, as amended or added during
24 the second extraordinary legislative session in the year 2003,

1 shall take effect January 1, 2004, and apply to all sales made on
2 or after that date.

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

6 (d) The provisions of this article, as amended or added during
7 the regular legislative session in the year 2008, shall apply to
8 all sales made on or after the date of passage and to all returns
9 and payments due on or after that day, except as otherwise
10 expressly provided in this article.

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

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

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

1 this article.

2 **§11-15B-33. State administration of local sales and use taxes.**

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

16 **§11-15B-34. State and local sales and use tax bases.**

17 (a) *General.*-- The tax base of a local jurisdiction that
18 levies a local sales or use tax pursuant to authority granted by
19 the Legislature shall be identical to the sales and use tax base of
20 this state, unless otherwise prohibited by federal law, except as
21 provided in subsection (b) of this section.

22 (b) *Exceptions.*--

23 This section does not apply to sales or use taxes levied on:
24 (1) The wholesale sale of gasoline or special fuel to power motor

1 vehicles, aircraft, locomotives, or watercraft or to electricity,
2 piped natural or artificial gas or other fuels delivered by the
3 seller, which local jurisdictions are prohibited from taxing; or
4 (2) the retail sale or transfer of motor vehicles, aircraft,
5 watercraft, modular homes, manufactured homes or mobile homes.