

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 120

FISCAL
NOTE

BY SENATORS PLYMALE AND BALDWIN

[Introduced January 10, 2018; Referred
to the Committee on Finance]

1 A BILL to amend and reenact §11-15B-15 of the Code of West Virginia, 1931, as amended,
2 relating to reinstating the exemption for certain sellers of cut flowers and flower
3 arrangements from the general sourcing rules for purposes of the streamlined sales and
4 use taxes; detailing when the exception is applicable; and repealing language that
5 previously ended the exception.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15B. SALES AND USE TAX ADMINISTRATION.

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

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

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

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

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

13 (4) When subdivisions (1), (2) and (3) of this subsection do not apply, the sale is sourced
14 to the location indicated by an address for the purchaser obtained during the consummation of
15 the sale, including the address of a purchaser's payment instrument, if no other address is
16 available, provided use of this address does not constitute bad faith.

17 (5) When none of the previous subdivisions of this subsection apply, including the
18 circumstance in which the seller is without sufficient information to apply the previous rules, then

19 the location will be determined by the address from which tangible personal property or computer
20 software was shipped, from which the digital goods delivered electronically was first available for
21 transmission by the seller or from which the service was provided: Provided, That any location
22 that merely provided the digital transfer of the product sold is disregarded for these purposes.

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

25 (1) For a lease or rental that requires recurring periodic payments, the first periodic
26 payment is sourced the same as a retail sale in accordance with the provisions of subsection (a)
27 of this section. Periodic payments made subsequent to the first payment are sourced to the
28 primary property location for each period covered by the payment. The primary property location
29 is as indicated by an address for the property provided by the lessee that is available to the lessor
30 from its records maintained in the ordinary course of business, when use of this address does not
31 constitute bad faith. The property location may not be altered by intermittent use at different
32 locations, such as use of business property that accompanies employees on business trips and
33 service calls.

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

37 (3) This subsection does not affect the imposition or computation of sales or use tax on
38 leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for
39 lease.

40 (c) *Vehicles.* -- The lease or rental of motor vehicles, trailers, semitrailers or aircraft that
41 do not qualify as transportation equipment, as defined in subsection (d) of this section, shall be
42 sourced as follows:

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

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

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

51 (3) This subsection does not affect the imposition or computation of sales or use tax on
52 leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for
53 lease.

54 (d) *Sale or lease or rental of transportation equipment.* -- The retail sale, including lease
55 or rental, of transportation equipment is sourced the same as a retail sale in accordance with the
56 provisions of subsection (a) of this section, notwithstanding the exclusion of lease or rental in said
57 subsection. "Transportation equipment" means any of the following:

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

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

62 (A) Registered through the international registration plan; and

63 (B) Operated under authority of a carrier authorized and certificated by the United States
64 Department of Transportation or another federal authority to engage in the carriage of persons or
65 property in interstate commerce.

66 (3) Aircraft that are operated by air carriers authorized and certificated by the United States
67 Department of Transportation or another federal or foreign authority to engage in the carriage of
68 persons or property in interstate or foreign commerce.

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

71 (e) *Exceptions.* -- Subsections (a) and (b) of this section shall not apply to the following
72 goods or services:

73 (1) Telecommunications services, ancillary services and Internet access services, as set
74 out in section twenty of this article, shall be sourced in accordance with section nineteen of this
75 article; and

76 (2) ~~Until January 1, 2010~~ A seller who is primarily engaged in the retail sale of cut flowers
77 and flower arrangements taking the original order to sell tangible personal property shall source
78 the sale to the place where order was taken. For purposes of this exception, "primarily" means
79 more than fifty percent of the seller's total gross sales or receipts are derived from that activity. In
80 determining if a seller is primarily a florist, the total sales price of cut flowers and floral
81 arrangements includes separately stated delivery or service charges. ~~After December 31, 2009,~~
82 ~~sales by florists shall be subject to the general sourcing rules stated in subsection (a) of this~~
83 ~~section~~

84 (f) *Product defined.* -- As used in subsection (a) of this section, "product" includes tangible
85 personal property, computer software or digital goods or a service, or any combination thereof.

NOTE: The purpose of this bill is to restore the exception for florists from the general sourcing rules with respect to the collection of sales and use taxes.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.