

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Enrolled

Senate Bill 661

BY SENATOR MAYNARD

[Passed April 9, 2021; to take effect July 1, 2021]

1 AN ACT to repeal §11-9-7 of the Code of West Virginia, 1931, as amended; to amend and reenact
2 §11-15-3, §11-15-4, §11-15-4a, §11-15-4b, and §11-15-13 of said code; and to amend
3 and reenact §11-15A-5, §11-15A-6, and §11-15A-8 of said code, all relating to permitting
4 retailers to assume or absorb any sales or use tax assessed on tangible personal property;
5 and eliminating criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-7. False statements to purchasers, lessees, or employees relating to tax.

1 [Repealed.]

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3. Amount of tax; allocation of tax and transfers.

1 (a) *Vendor to collect.* — Unless otherwise provided in this article or provided in §11-15A-
2 1 *et seq.* of this code, for the privilege of selling tangible personal property or custom software
3 and for the privilege of furnishing certain selected services defined in §11-15-2 and §11-15-8 of
4 this code, the vendor shall collect from the purchaser the tax as provided under this article and
5 §11-15B-1 *et seq.* of this code, and shall pay the amount of tax to the Tax Commissioner in
6 accordance with the provisions of this article or §11-15B-1 *et seq.* of this code.

7 (b) *Amount of tax.* — The general consumers sales and service tax imposed by this article
8 shall be at the rate of six cents on the dollar of sales or services, excluding gasoline and special
9 fuel sales, which remain taxable at the rate of five cents on the dollar of sales.

10 (c) *Calculation tax on fractional parts of a dollar until January 1, 2004.* — There shall be
11 no tax on sales where the monetary consideration is five cents or less. The amount of the tax
12 shall be computed as follows:

13 (1) On each sale, where the monetary consideration is from six cents to 16 cents, both
14 inclusive, one cent.

15 (2) On each sale, where the monetary consideration is from 17 cents to 33 cents, both
16 inclusive, two cents.

17 (3) On each sale, where the monetary consideration is from 34 cents to 50 cents, both
18 inclusive, three cents.

19 (4) On each sale, where the monetary consideration is from 51 cents to 67 cents, both
20 inclusive, four cents.

21 (5) On each sale, where the monetary consideration is from 68 cents to 84 cents, both
22 inclusive, five cents.

23 (6) On each sale, where the monetary consideration is from 85 cents to \$1, both inclusive,
24 six cents.

25 (7) If the sale price is in excess of \$1, six cents on each whole dollar of sale price, and
26 upon any fractional part of a dollar in excess of whole dollars as follows: One cent on the fractional
27 part of the dollar if less than 17 cents; two cents on the fractional part of the dollar if in excess of
28 16 cents but less than 34 cents; three cents on the fractional part of the dollar if in excess of 33
29 cents but less than 51 cents; four cents on the fractional part of the dollar if in excess of 50 cents
30 but less than 68 cents; five cents on the fractional part of the dollar if in excess of 67 cents but
31 less than 85 cents; and six cents on the fractional part of the dollar if in excess of 84 cents. For
32 example, the tax on sales from \$1.01 to \$1.16, both inclusive, seven cents; on sales from \$1.17
33 to \$1.33, both inclusive, eight cents; on sales from \$1.34 to \$1.50, both inclusive, nine cents; on
34 sales from \$1.51 to \$1.67, both inclusive, 10 cents; on sales from \$1.68 to \$1.84, both inclusive,
35 11 cents; and on sales from \$1.85 to \$2, both inclusive, 12 cents: *Provided*, That beginning
36 January 1, 2004, tax due under this article shall be calculated as provided in this subsection and
37 subsection (d) of this section does not apply to sales made after December 31, 2003.

38 (d) *Calculation of tax on fractional parts of a dollar after December 31, 2003.* — Beginning
39 January 1, 2004, the tax computation under subsection (b) of this section shall be carried to the
40 third decimal place, and the tax rounded up to the next whole cent whenever the third decimal

41 place is greater than four and rounded down to the lower whole cent whenever the third decimal
42 place is four or less. The vendor may elect to compute the tax due on a transaction on a per item
43 basis or on an invoice basis provided the method used is consistently used during the reporting
44 period.

45 (e) *No aggregation of separate sales transactions, exception for coin-operated devices.*

46 — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose
47 of computation of the tax even though the sales are aggregated in the billing or payment therefor.
48 Notwithstanding any other provision of this article, coin-operated amusement and vending
49 machine sales shall be aggregated for the purpose of computation of this tax.

50 (f) *Rate of tax on certain mobile homes.* — Notwithstanding any provision of this article to
51 the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the
52 owner thereof as his or her principal year-round residence and dwelling shall be an amount equal
53 to six percent of 50 percent of the sales price.

54 (g) *Construction; custom software.* — After December 31, 2003, whenever the words
55 “tangible personal property” or “property” appear in this article, the same shall also include the
56 words “custom software”.

57 (h) *Computation of tax on sales of gasoline and special fuel.* — The method of
58 computation of tax provided in this section does not apply to sales of gasoline and special fuel.

§11-15-4. Purchaser to pay; accounting by vendor.

1 (a) Unless assumed or absorbed by the vendor in accordance with the provisions of §11-
2 15A-8 of this code, the purchaser shall pay to the vendor the amount of tax levied by this article
3 which is added to and constitutes a part of the sales price, and is collectible by the vendor who
4 shall account to the state for all tax paid by the purchaser.

5 (b) The vendor shall keep records necessary to account for:

6 (1) The vendor’s gross proceeds from sales of personal property and services;

7 (2) The vendor’s gross proceeds from taxable sales;

8 (3) The vendor's gross proceeds from exempt sales;

9 (4) The amount of taxes collected under this article, which taxes shall be held in trust for
10 the State of West Virginia until paid over to the Tax Commissioner or if assumed or absorbed in
11 accordance with the provisions of §11-15A-8 of this code, the extent to which such taxes were so
12 absorbed or assumed; and

13 (5) Any other information as required by this article or §11-15B-1 *et seq.* of this code, or
14 as required by the Tax Commissioner.

§11-15-4a. Noncollection of tax; liability of vendor.

1 If any vendor does not collect the tax imposed by §11-15-3 of this code, the vendor shall
2 be personally liable for the amount the vendor did not collect, except as otherwise provided in this
3 article or §11-15B-1 *et seq.* of this code.

§11-15-4b. Liability of purchaser; assessment and collection.

1 (a) *General.* — Unless the vendor assumed or absorbs the tax imposed by this article in
2 accordance with §11-15A-8 of this code, if any purchaser refuses or otherwise does not pay to
3 the vendor the tax imposed by §11-15-3 of this code, or a purchaser refuses to present to the
4 vendor a proper certificate indicating the sale is not subject to this tax, or presents to the vendor
5 a false certificate, or after presenting a proper certificate uses the items purchased in a manner
6 that the sale would be subject to the tax, the purchaser shall be personally liable for the amount
7 of tax applicable to the transaction or transactions.

8 (b) *Collection of tax from purchaser.* — Except as otherwise provided in this chapter,
9 nothing in this section relieves any purchaser who owes the tax and who has not paid the tax
10 imposed by §11-15-3 of this code from liability for payment of the tax. In those cases, the Tax
11 Commissioner has authority to make an assessment against the purchaser, based upon any
12 information within his or her possession or that may come into his or her possession. This
13 assessment and notice thereof shall be made and given in accordance with §11-10-7 and §11-
14 10-8 of this code.

15 (c) *Liability of vendor.* — This section may not be construed as relieving the vendor from
16 liability for the tax, except as otherwise provided in this article or §11-15B-1 *et seq.* of this code.

§11-15-13. Remittance of tax when sale on credit.

1 A vendor doing business wholly or partially on a credit basis shall remit to the Tax
2 Commissioner the tax due on the credit sale for the month in which the credit transaction occurred.

ARTICLE 15A. USE TAX.

§11-15A-5. How collected.

1 Unless otherwise provided in this chapter, the tax imposed in §11-15A-2 of this code shall
2 be collected in the following manner:

3 (1) The tax upon the use of all tangible personal property, custom software or services,
4 sold by a retailer engaging in business in this state, or by any other retailer as the Tax
5 Commissioner authorizes pursuant to §11-15A-7 or §11-15B-1 *et seq.* of this code, shall be
6 collected by the retailer and remitted to the State Tax Commissioner, pursuant to the provisions
7 of §11-15A-6 through §11-15A-10, inclusive, of this code, or by the seller registered under §11-
8 15B-1 *et seq.* of this code, in accordance with the provisions of this article and §11-15B-1 *et seq.*
9 of this code.

10 (2) The tax upon the use of all tangible personal property, custom software, and taxable
11 services not paid pursuant to subdivision (1) of this section, shall be paid to the Tax Commissioner
12 directly by any person using the property or service within this state, pursuant to the provisions of
13 §11-15A-11 of this code.

§11-15A-6. Collection by retailer.

1 (a) Unless otherwise provided in this chapter, every retailer engaging in business in this
2 state and making sales of tangible personal property, custom software, or taxable services for
3 delivery into this state, or with the knowledge, directly or indirectly, that the property or service is
4 intended for use in this state, that are not exempted under the provisions of §11-15A-3 of this
5 code, shall at the time of making the sales, whether within or without the state, collect the tax

6 imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the
7 manner and form prescribed by the Tax Commissioner, if the Tax Commissioner prescribes by
8 rule.

9 (b) Each retailer shall list with the Tax Commissioner the name and address of all the
10 retailer's agents operating in this state, and the location of any and all distribution or sales houses
11 or offices or other places of business in this state of the retailer and the retailer's agent or agents.

§11-15A-8. Absorbing tax.

1 (a) A retailer may advertise or hold out or state to the public or to any purchaser, consumer
2 or user, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed
3 or absorbed by the retailer or that any part required to be added to the purchase price will be
4 refunded, so long as:

5 (1) The retailer separately states the selling price of the property sold and the full amount
6 of tax imposed by this article on such property; and

7 (2) For each sale for which the retailer assumes or absorbs all or any part of the tax
8 imposed by this article, the retailer shall remit to the Department of Tax and Revenue the full
9 amount of such tax with the return that covers the period in which the retailer completed the sale
10 or transaction.

11 (b) The Tax Commissioner has the power to adopt and promulgate rules for adding,
12 assuming, or absorbing the tax, or the equivalent thereof, by providing different methods applying
13 uniformly to retailers within the same general classification for the purpose of enabling retailers to
14 add, assume, absorb, or collect, as far as practicable, the amount of the tax.

15 (c) The provisions of this section shall apply to §11-15-1 *et seq.* of this code, with the same
16 force and effect as if this section was expressly incorporated therein.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

To take effect July 1, 2021.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

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Day of, 2021.

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Governor