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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003

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ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 3014

(By Mr. Speaker, Mr. Kiss, and Delegates Michael, Doyle,
Anderson, H. White, G. White and Browning)

—●—

Passed March 5, 2003

In Effect Ninety Days from Passage

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E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 3014

(By Mr. Speaker, Mr. Kiss, and Delegates Michael,
Doyle, Anderson, H. White, G. White and Browning)

[Passed March 5, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections one-a, two, three, four, four-a, four-b, five, six, eight, nine-f, thirteen, fourteen, sixteen, thirty-one and thirty-three, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, one-a, two, three, three-a, four, five, six, seven, eight, nine, ten, ten-a, eleven, eighteen, twenty-one, twenty-two, twenty-seven and twenty-nine, article fifteen-a of said chapter; to amend and reenact sections one, two, three, and five, article fifteen-b of said chapter; and to further amend said article fifteen-b by adding thereto twenty-one new sections, designated sections two-a, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, all relating generally to "Main Street Fairness Act of

2003,” amending consumers sales and service and use tax laws to conform to requirements of streamlined sales and use tax agreement; incorporating in this state’s sales and use tax laws certain substantive provisions of agreement pertaining to definitions, administration, collection and enforcement of sales and use taxes; renaming simplified sales and use tax administration act as streamlined sales and use tax administration act; authorizing tax commissioner to sign agreement; specifying effective dates; deleting obsolete language and making other technical changes.

Be it enacted by the Legislature of West Virginia:

That sections one-a, two, three, four, four-a, four-b, five, six, eight, nine-f, thirteen, fourteen, sixteen, thirty-one and thirty-three, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, one-a, two, three, three-a, four, five, six, seven, eight, nine, ten, ten-a, eleven, eighteen, twenty-one, twenty-two, twenty-seven and twenty-nine, article fifteen-a of said chapter, be amended and reenacted; that sections one, two, three, and five, article fifteen-b of said chapter be amended and reenacted; and to further amend said article by adding thereto twenty-one new sections, designated sections two-a, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one and thirty-two, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-1a. Legislative findings.

1 The Legislature hereby finds and declares that:

2 (1) It is the intent of the Legislature that the consumers
3 sales tax imposed by the provisions of article fifteen and the use
4 tax imposed by the provisions of article fifteen-a of this chapter,
5 be complementary laws and where ever possible be construed and

6 applied to accomplish such intent as to the imposition, adminis-
7 tration and collection of these taxes; and

8 (2) On and after the first day of January, two thousand four,
9 the taxes levied by this article and article fifteen-a of this
10 chapter shall also be administered and collected in accordance
11 with the provisions of article fifteen-b of this chapter.

§11-15-2. Definitions.

1 (a) *General.* — When used in this article and article fifteen-
2 a of this chapter, words defined in subsection (b) of this section
3 shall have the meanings ascribed to them in this section, except
4 in those instances where a different meaning is provided in this
5 article or the context in which the word is used clearly indicates
6 that a different meaning is intended by the Legislature.

7 (b) *Definitions.* —

8 (1) “Business” includes all activities engaged in or caused
9 to be engaged in with the object of gain or economic benefit,
10 direct or indirect, and all activities of the state and its political
11 subdivisions which involve sales of tangible personal property
12 or the rendering of services when those service activities
13 compete with or may compete with the activities of other
14 persons.

15 (2) “Communication” means all telephone, radio, light,
16 light wave, radiotelephone, telegraph and other communication
17 or means of communication, whether used for voice communi-
18 cation, computer data transmission or other encoded symbolic
19 information transfers and includes commercial broadcast radio,
20 commercial broadcast television and cable television.

21 (3) “Contracting”:

22 (A) *In general.* — “Contracting” means and includes the
23 furnishing of work, or both materials and work, for another (by
24 a sole contractor, general contractor, prime contractor, subcon-
25 tractor or construction manager) in fulfillment of a contract for
26 the construction, alteration, repair, decoration or improvement
27 of a new or existing building or structure, or any part thereof,
28 or for removal or demolition of a building or structure, or any
29 part thereof, or for the alteration, improvement or development
30 of real property. Contracting also includes services provided by
31 a construction manager so long as the project for which the
32 construction manager provides the services results in a capital
33 improvement to a building or structure or to real property.

34 (B) *Form of contract not controlling.* — An activity that
35 falls within the scope of the definition of contracting constitutes
36 contracting regardless of whether the contract governing the
37 activity is written or verbal and regardless of whether it is in
38 substance or form a lump sum contract, a cost-plus contract, a
39 time and materials contract, whether or not open-ended, or any
40 other kind of construction contract.

41 (C) *Special rules.* — For purposes of this definition:

42 (i) The term “structure” includes, but is not limited to,
43 everything built up or composed of parts joined together in
44 some definite manner and attached or affixed to real property
45 or which adds utility to real property or any part thereof or
46 which adds utility to a particular parcel of property and is
47 intended to remain there for an indefinite period of time;

48 (ii) The term “alteration” means, and is limited to, alter-
49 ations which are capital improvements to a building or structure
50 or to real property;

51 (iii) The term “repair” means, and is limited to, repairs
52 which are capital improvements to a building or structure or to
53 real property;

54 (iv) The term “decoration” means, and is limited to,
55 decorations which are capital improvements to a building or
56 structure or to real property;

57 (v) The term “improvement” means, and is limited to,
58 improvements which are capital improvements to a building or
59 structure or to real property;

60 (vi) The term “capital improvement” means improvements
61 that are affixed to or attached to and become a part of a building
62 or structure or the real property or which add utility to real
63 property, or any part thereof, and that last or are intended to be
64 relatively permanent. As used herein, “relatively permanent”
65 means lasting at least a year in duration without the necessity
66 for regularly scheduled recurring service to maintain the capital
67 improvement. “Regular recurring service” means regularly
68 scheduled service intervals of less than one year;

69 (vii) Contracting does not include the furnishing of work,
70 or both materials and work, in the nature of hookup, connection,
71 installation or other services if the service is incidental to the
72 retail sale of tangible personal property from the service
73 provider’s inventory: *Provided*, That the hookup, connection or
74 installation of the foregoing is incidental to the sale of the same
75 and performed by the seller thereof or performed in accordance
76 with arrangements made by the seller thereof. Examples of
77 transactions that are excluded from the definition of contracting
78 pursuant to this subdivision include, but are not limited to, the
79 sale of wall-to-wall carpeting and the installation of
80 wall-to-wall carpeting, the sale, hookup and connection of
81 mobile homes, window air conditioning units, dishwashers,
82 clothing washing machines or dryers, other household appli-

83 ances, drapery rods, window shades, venetian blinds, canvas
84 awnings, free standing industrial or commercial equipment and
85 other similar items of tangible personal property. Repairs made
86 to the foregoing are within the definition of contracting if the
87 repairs involve permanently affixing to or improving real
88 property or something attached thereto which extends the life
89 of the real property or something affixed thereto or allows or
90 intends to allow the real property or thing permanently attached
91 thereto to remain in service for a year or longer; and

92 (viii) The term “construction manager” means a person who
93 enters into an agreement to employ, direct, coordinate or
94 manage design professionals and contractors who are hired and
95 paid directly by the owner or the construction manager. The
96 business activities of a “construction manager” as defined in
97 this subdivision constitute contracting, so long as the project for
98 which the construction manager provides the services results in
99 a capital improvement to a building or structure or to real
100 property.

101 (4) “Directly used or consumed” in the activities of
102 manufacturing, transportation, transmission, communication or
103 the production of natural resources means used or consumed in
104 those activities or operations which constitute an integral and
105 essential part of the activities, as contrasted with and distin-
106 guished from those activities or operations which are simply
107 incidental, convenient or remote to the activities.

108 (A) Uses of property or consumption of services which
109 constitute direct use or consumption in the activities of manu-
110 facturing, transportation, transmission, communication or the
111 production of natural resources include only:

112 (i) In the case of tangible personal property, physical
113 incorporation of property into a finished product resulting from
114 manufacturing production or the production of natural re-
115 sources;

116 (ii) Causing a direct physical, chemical or other change
117 upon property undergoing manufacturing production or
118 production of natural resources;

119 (iii) Transporting or storing property undergoing transporta-
120 tion, communication, transmission, manufacturing production
121 or production of natural resources;

122 (iv) Measuring or verifying a change in property directly
123 used in transportation, communication, transmission, manufac-
124 turing production or production of natural resources;

125 (v) Physically controlling or directing the physical move-
126 ment or operation of property directly used in transportation,
127 communication, transmission, manufacturing production or
128 production of natural resources;

129 (vi) Directly and physically recording the flow of property
130 undergoing transportation, communication, transmission,
131 manufacturing production or production of natural resources;

132 (vii) Producing energy for property directly used in
133 transportation, communication, transmission, manufacturing
134 production or production of natural resources;

135 (viii) Facilitating the transmission of gas, water, steam or
136 electricity from the point of their diversion to property directly
137 used in transportation, communication, transmission, manufac-
138 turing production or production of natural resources;

139 (ix) Controlling or otherwise regulating atmospheric
140 conditions required for transportation, communication, trans-
141 mission, manufacturing production or production of natural
142 resources;

143 (x) Serving as an operating supply for property undergoing
144 transmission, manufacturing production or production of

145 natural resources, or for property directly used in transportation,
146 communication, transmission, manufacturing production or
147 production of natural resources;

148 (xi) Maintaining or repairing of property, including
149 maintenance equipment, directly used in transportation,
150 communication, transmission, manufacturing production or
151 production of natural resources;

152 (xii) storing, removal or transportation of economic waste
153 resulting from the activities of manufacturing, transportation,
154 communication, transmission or the production of natural
155 resources;

156 (xiii) Engaging in pollution control or environmental
157 quality or protection activity directly relating to the activities of
158 manufacturing, transportation, communication, transmission or
159 the production of natural resources and personnel, plant,
160 product or community safety or security activity directly
161 relating to the activities of manufacturing, transportation,
162 communication, transmission or the production of natural
163 resources; or

164 (xiv) Otherwise using as an integral and essential part of
165 transportation, communication, transmission, manufacturing
166 production or production of natural resources.

167 (B) Uses of property or services which do not constitute
168 direct use or consumption in the activities of manufacturing,
169 transportation, transmission, communication or the production
170 of natural resources include, but are not limited to:

171 (i) Heating and illumination of office buildings;

172 (ii) Janitorial or general cleaning activities;

173 (iii) Personal comfort of personnel;

174 (iv) Production planning, scheduling of work or inventory
175 control;

176 (v) Marketing, general management, supervision, finance,
177 training, accounting and administration; or

178 (vi) An activity or function incidental or convenient to
179 transportation, communication, transmission, manufacturing
180 production or production of natural resources, rather than an
181 integral and essential part of these activities.

182 (5) "Directly used or consumed" in the activities of gas
183 storage, the generation or production or sale of electric power,
184 the provision of a public utility service or the operation of a
185 utility business means used or consumed in those activities or
186 operations which constitute an integral and essential part of
187 those activities or operation, as contrasted with and distin-
188 guished from activities or operations which are simply inciden-
189 tal, convenient or remote to those activities.

190 (A) Uses of property or consumption of services which
191 constitute direct use or consumption in the activities of gas
192 storage, the generation or production or sale of electric power,
193 the provision of a public utility service or the operation of a
194 utility business include only:

195 (i) Tangible personal property, custom software or services,
196 including equipment, machinery, apparatus, supplies, fuel and
197 power and appliances, which are used immediately in produc-
198 tion or generation activities and equipment, machinery,
199 supplies, tools and repair parts used to keep in operation exempt
200 production or generation devices. For purposes of this subsec-
201 tion, production or generation activities shall commence from
202 the intake, receipt or storage of raw materials at the production
203 plant site;

204 (ii) Tangible personal property, custom software or
205 services, including equipment, machinery, apparatus, supplies,
206 fuel and power, appliances, pipes, wires and mains, which are
207 used immediately in the transmission or distribution of gas,
208 water and electricity to the public, and equipment, machinery,
209 tools, repair parts and supplies used to keep in operation exempt
210 transmission or distribution devices, and these vehicles and
211 their equipment as are specifically designed and equipped for
212 those purposes are exempt from the tax when used to keep a
213 transmission or distribution system in operation or repair. For
214 purposes of this subsection, transmission or distribution
215 activities shall commence from the close of production at a
216 production plant or wellhead when a product is ready for
217 transmission or distribution to the public and shall conclude at
218 the point where the product is received by the public;

219 (iii) Tangible personal property, custom software or
220 services, including equipment, machinery, apparatus, supplies,
221 fuel and power, appliance, pipes, wires and mains, which are
222 used immediately in the storage of gas or water, and equipment,
223 machinery, tools, supplies and repair parts used to keep in
224 operation exempt storage devices;

225 (iv) Tangible personal property, custom software or
226 services used immediately in the storage, removal or transporta-
227 tion of economic waste resulting from the activities of gas
228 storage, the generation or production or sale of electric power,
229 the provision of a public utility service or the operation of a
230 utility business;

231 (v) Tangible personal property, custom software or services
232 used immediately in pollution control or environmental quality
233 or protection activity or community safety or security directly
234 relating to the activities of gas storage, generation or production
235 or sale of electric power, the provision of a public utility service
236 or the operation of a utility business.

237 (B) Uses of property or services which would not constitute
238 direct use or consumption in the activities of gas storage,
239 generation or production or sale of electric power, the provision
240 of a public utility service or the operation of a utility business
241 include, but are not limited to:

242 (i) Heating and illumination of office buildings;

243 (ii) Janitorial or general cleaning activities;

244 (iii) Personal comfort of personnel;

245 (iv) Production planning, scheduling of work or inventory
246 control;

247 (v) Marketing, general management, supervision, finance,
248 training, accounting and administration; or

249 (vi) An activity or function incidental or convenient to the
250 activities of gas storage, generation or production or sale of
251 electric power, the provision of public utility service or the
252 operation of a utility business.

253 (6) "Gas storage" means the injection of gas into a storage
254 reservoir or the storage of gas for any period of time in a
255 storage reservoir or the withdrawal of gas from a storage
256 reservoir engaged in by businesses subject to the business and
257 occupation tax imposed by sections two and two-e, article
258 thirteen of this chapter.

259 (7) "Generating or producing or selling of electric power"
260 means the generation, production or sale of electric power
261 engaged in by businesses subject to the business and occupation
262 tax imposed by section two, two-d, two-m or two-n, article
263 thirteen of this chapter.

264 (8) "Gross proceeds" means the amount received in money,
265 credits, property or other consideration from sales and services
266 within this state, without deduction on account of the cost of
267 property sold, amounts paid for interest or discounts or other
268 expenses whatsoever. Losses may not be deducted, but any
269 credit or refund made for goods returned may be deducted.

270 (9) "Includes" and "including," when used in a definition
271 contained in this article, does not exclude other things otherwise
272 within the meaning of the term being defined.

273 (10) "Manufacturing" means a systematic operation or
274 integrated series of systematic operations engaged in as a
275 business or segment of a business which transforms or converts
276 tangible personal property by physical, chemical or other means
277 into a different form, composition or character from that in
278 which it originally existed.

279 (11) "Person" means any individual, partnership, associa-
280 tion, corporation, limited liability company, limited liability
281 partnership, or any other legal entity including this state or its
282 political subdivisions or an agency of either, or the guardian,
283 trustee, committee, executor or administrator of any person.

284 (12) "Personal service" includes those: (A) Compensated
285 by the payment of wages in the ordinary course of employment;
286 and(B) Rendered to the person of an individual without, at the
287 same time, selling tangible personal property, such as nursing,
288 barbering, shoe shining, manicuring and similar services.

289 (13) Production of natural resource.

290 (A) "Production of natural resources" means, except for oil
291 and gas, the performance, by either the owner of the natural
292 resources or another, of the act or process of exploring, devel-
293 oping, severing, extracting, reducing to possession and loading
294 for shipment and shipment for sale, profit or commercial use of

295 any natural resource products and any reclamation, waste
296 disposal or environmental activities associated therewith and
297 the construction, installation or fabrication of ventilation
298 structures, mine shafts, slopes, boreholes, dewatering structures,
299 including associated facilities and apparatus, by the producer or
300 others, including contractors and subcontractors, at a coal mine
301 or coal production facility.

302 (B) For the natural resources oil and gas, “production of
303 natural resources” means the performance, by either the owner
304 of the natural resources, a contractor or a subcontractor, of the
305 act or process of exploring, developing, drilling, well-stimula-
306 tion activities such as logging, perforating or fracturing,
307 well-completion activities such as the installation of the casing,
308 tubing and other machinery and equipment and any reclama-
309 tion, waste disposal or environmental activities associated
310 therewith, including the installation of the gathering system or
311 other pipeline to transport the oil and gas produced or environ-
312 mental activities associated therewith and any service work
313 performed on the well or well site after production of the well
314 has initially commenced.

315 (C) All work performed to install or maintain facilities up
316 to the point of sale for severance tax purposes is included in the
317 “production of natural resources” and subject to the direct use
318 concept.

319 (D) “Production of natural resources” does not include the
320 performance or furnishing of work, or materials or work, in
321 fulfillment of a contract for the construction, alteration, repair,
322 decoration or improvement of a new or existing building or
323 structure, or any part thereof, or for the alteration, improvement
324 or development of real property, by persons other than those
325 otherwise directly engaged in the activities specifically set forth
326 in this subdivision (13) as “production of natural resources.”

327 (14) “Providing a public service or the operating of a utility
328 business” means the providing of a public service or the
329 operating of a utility by businesses subject to the business and
330 occupation tax imposed by sections two and two-d, article
331 thirteen of this chapter.

332 (15) “Purchaser” means a person who purchases tangible
333 personal property, custom software or a service taxed by this
334 article.

335 (16) “Sale,” “sales” or “selling” includes any transfer of the
336 possession or ownership of tangible personal property or
337 custom software for a consideration, including a lease or rental,
338 when the transfer or delivery is made in the ordinary course of
339 the transferor’s business and is made to the transferee or his or
340 her agent for consumption or use or any other purpose. “Sale”
341 also includes the furnishing of a service for consideration.

342 (17) “Service” or “selected service” includes all nonprofes-
343 sional activities engaged in for other persons for a consider-
344 ation, which involve the rendering of a service as distinguished
345 from the sale of tangible personal property or custom software,
346 but does not include contracting, personal services or the
347 services rendered by an employee to his or her employer or any
348 service rendered for resale.

349 (18) “Streamlined sales and use tax agreement” or “agree-
350 ment,” when used in this article, shall have the same meaning
351 as when used in article fifteen-b of this chapter, except when
352 the context in which the word agreement is used clearly
353 indicates that a different meaning is intended by the Legisla-
354 ture.

355 (19) “Tax” includes all taxes, additions to tax, interest and
356 penalties levied under this article or article ten of this chapter.

357 (20) “Tax commissioner” means the state tax commissioner
358 or his or her delegate. The term “delegate” in the phrase “or his
359 or her delegate,” when used in reference to the tax commis-
360 sioner, means any officer or employee of the state tax division
361 duly authorized by the tax commissioner directly, or indirectly
362 by one or more redelegations of authority, to perform the
363 functions mentioned or described in this article or rules
364 promulgated for this article.

365 (21) “Taxpayer” means any person liable for the tax
366 imposed by this article or additions to tax, penalties and interest
367 imposed by article ten of this chapter.

368 (22) “Transmission” means the act or process of causing
369 liquid, natural gas or electricity to pass or be conveyed from
370 one place or geographical location to another place or geo-
371 graphical location through a pipeline or other medium for
372 commercial purposes.

373 (23) “Transportation” means the act or process of convey-
374 ing, as a commercial enterprise, passengers or goods from one
375 place or geographical location to another place or geographical
376 location.

377 (24) “Ultimate consumer” or “consumer” means a person
378 who uses or consumes services or personal property.

379 (25) “Vendor” means any person engaged in this state in
380 furnishing services taxed by this article or making sales of
381 tangible personal property or custom software. “Vendor” and
382 “seller” are used interchangeably in this article.

383 (c) *Additional definitions.* — Other terms used in this
384 article are defined in article fifteen-b of this chapter, which
385 definitions are incorporated by reference into article fifteen.

386 Additionally, other sections of this article may define terms
387 primarily used in the section in which the term is defined.

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

1 (a) *Vendor to collect.* — For the privilege of selling
2 tangible personal property or custom software and for the
3 privilege of furnishing certain selected services defined in
4 sections two and eight of this article, the vendor shall collect
5 from the purchaser the tax as provided under this article and
6 article fifteen-b of this chapter, and shall pay the amount of tax
7 to the tax commissioner in accordance with the provisions of
8 this article or article fifteen-b of this chapter.

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

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

18 (1) On each sale, where the monetary consideration is from
19 six cents to sixteen cents, both inclusive, one cent.

20 (2) On each sale, where the monetary consideration is from
21 seventeen cents to thirty-three cents, both inclusive, two cents.

22 (3) On each sale, where the monetary consideration is from
23 thirty-four cents to fifty cents, both inclusive, three cents.

24 (4) On each sale, where the monetary consideration is from
25 fifty-one cents to sixty-seven cents, both inclusive, four cents.

26 (5) On each sale, where the monetary consideration is from
27 sixty-eight cents to eighty-four cents, both inclusive, five cents.

28 (6) On each sale, where the monetary consideration is from
29 eighty-five cents to one dollar, both inclusive, six cents.

30 (7) If the sale price is in excess of one dollar, six cents on
31 each whole dollar of sale price, and upon any fractional part of
32 a dollar in excess of whole dollars as follows: One cent on the
33 fractional part of the dollar if less than seventeen cents; two
34 cents on the fractional part of the dollar if in excess of sixteen
35 cents but less than thirty-four cents; three cents on the fractional
36 part of the dollar if in excess of thirty-three cents but less than
37 fifty-one cents; four cents on the fractional part of the dollar if
38 in excess of fifty cents but less than sixty-eight cents; five cents
39 on the fractional part of the dollar if in excess of sixty-seven
40 cents but less than eighty-five cents; and six cents on the
41 fractional part of the dollar if in excess of eighty-four cents. For
42 example, the tax on sales from one dollar and one cent to one
43 dollar and sixteen cents, both inclusive, seven cents; on sales
44 from one dollar and seventeen cents to one dollar and
45 thirty-three cents, both inclusive, eight cents; on sales from one
46 dollar and thirty-four cents to one dollar and fifty cents, both
47 inclusive, nine cents; on sales from one dollar and fifty-one
48 cents to one dollar and sixty-seven cents, both inclusive, ten
49 cents; on sales from one dollar and sixty-eight cents to one
50 dollar and eighty-four cents, both inclusive, eleven cents and on
51 sales from one dollar and eighty-five cents to two dollars, both
52 inclusive, twelve cents: *Provided*, That beginning the first day
53 of January, two thousand four, tax due under this article shall be
54 calculated as provided in subsection (d) of this subsection and
55 this subsection (c) does not apply to sales made after the thirty-
56 first day of December, two thousand three.

57 (d) *Calculation of tax on fractional parts of a dollar after*
58 *December 31, 2003.* — Beginning the first day of January, two

59 thousand four, the tax computation under subsection (b) of this
60 section shall be carried to the third decimal place, and the tax
61 rounded up to the next whole cent whenever the third decimal
62 place is greater than four and rounded down to the lower whole
63 cent whenever the third decimal place is four or less. The
64 vendor may elect to compute the tax due on a transaction on a
65 per item basis or on an invoice basis provided the method used
66 is consistently used during the reporting period.

67 (e) *No aggregation of separate sales transactions, excep-*
68 *tion for coin-operated devices.* — Separate sales, such as daily
69 or weekly deliveries, shall not be aggregated for the purpose of
70 computation of the tax even though the sales are aggregated in
71 the billing or payment therefor. Notwithstanding any other
72 provision of this article, coin-operated amusement and vending
73 machine sales shall be aggregated for the purpose of computa-
74 tion of this tax.

75 (f) *Rate of tax on certain mobile homes.* — Notwithstanding
76 any provision of this article to the contrary, after the thirty-first
77 day of December, two thousand three, the tax levied on sales of
78 mobile homes to be used by the owner thereof as his or her
79 principal year-round residence and dwelling shall be an amount
80 equal to six percent of fifty percent of the sales price.

81 (g) *Construction; custom software.* — After the thirty-first
82 day of December, two thousand three, whenever the words
83 “tangible personal property” or “property” appear in this article,
84 the same shall also include the words “custom software.”

85 (f) *Computation of tax on sales of gasoline and special fuel.*
86 — The method of computation of tax provided in this section
87 does not apply to sales of gasoline and special fuel.

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

1 (a) The purchaser shall pay to the vendor the amount of tax
2 levied by this article which is added to and constitutes a part of
3 the sales price, and is collectible by the vendor who shall
4 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
7 property and services;

8 (2) The vendor's gross proceeds from taxable sales;

9 (3) The vendor's gross proceed from exempt sales;

10 (4) The amount of taxes collected under this article, which
11 taxes shall be held in trust for the state of West Virginia until
12 paid over to the tax commissioner; and

13 (5) Any other information as required by this article, or
14 article fifteen-b of this chapter, or as required by the tax
15 commissioner.

§11-15-4a. Failure to collect tax; liability of vendor.

1 If any vendor fails to collect the tax imposed by section
2 three of this article, the vendor shall be personally liable for the
3 amount the vendor failed to collect, except as otherwise
4 provided in this article or article fifteen-b of this chapter.

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

1 (a) *General.* — If any purchaser refuses or otherwise does
2 not pay to the vendor the tax imposed by section three of this
3 article, or a purchaser refuses to present to the vendor a proper
4 certificate indicating the sale is not subject to this tax, or
5 presents to the vendor a false certificate, or after presenting a
6 proper certificate uses the items purchased in a manner that the

7 sale would be subject to the tax, the purchaser shall be person-
8 ally liable for the amount of tax applicable to the transaction or
9 transactions.

10 (b) *Collection of tax from purchaser.* — Nothing in this
11 section relieves any purchaser who owes the tax and who has
12 not paid the tax imposed by section three of this article from
13 liability for payment of the tax. In those cases the tax commis-
14 sioner has authority to make an assessment against the pur-
15 chaser, based upon any information within his or her possession
16 or that may come into his or her possession. This assessment
17 and notice thereof shall be made and given in accordance with
18 sections seven and eight, article ten of this chapter.

19 (c) *Liability of vendor.* — This section may not be con-
20 strued as relieving the vendor from liability for the tax, except
21 as otherwise provided in this article or article fifteen-b of this
22 chapter.

§11-15-5. Total amount collected is to be remitted.

1 No profit shall accrue to any person as a result of the
2 collection of the tax levied by this article notwithstanding the
3 total amount of the taxes collected may be in excess of the
4 amount for which the person would be liable by the application
5 of the rate of tax levied by section three of this article to the
6 vendor's gross proceeds from taxable sales and services. The
7 total amount of all taxes collected by the vendor shall be
8 returned and remitted to the tax commissioner as provided in
9 this article or article fifteen-b of this chapter.

§11-15-6. Vendor must show sale or service exempt; presumption.

1 (a) The burden of proving that a sale or service was exempt
2 from the tax shall be upon the vendor, unless the vendor takes
3 from the purchaser an exemption certificate signed by and
4 bearing the address of the purchaser and setting forth the reason

5 for the exemption and substantially in the form prescribed by
6 the tax commissioner: *Provided*, That when the seller is
7 registered under the streamlined sales and use tax agreement to
8 collect the tax imposed by this article, the exemption certificate
9 shall be in the form prescribed by the governing board of the
10 streamlined sales and use tax agreement, and the signature of
11 the purchaser is not required unless a paper exemption certifi-
12 cate is furnished to the seller.

13 (b) To prevent evasion, it is presumed that all sales and
14 services are subject to the tax until the contrary is clearly
15 established.

§11-15-8. Furnishing of services included; exceptions.

1 The provisions of this article apply not only to selling
2 tangible personal property and custom software, but also to the
3 furnishing of all services, except professional and personal
4 services, and except those services furnished by businesses
5 subject to the control of the public service commission when
6 the service or the manner in which it is delivered is subject to
7 regulation by the public service commission.

§11-15-9f. Exemption for sales and services subject to special district excise tax.

1 Notwithstanding any provision of this article to the con-
2 trary, any sale or service upon which a special district excise tax
3 is paid, pursuant to the provisions of section eleven, article
4 thirteen-b, chapter eight of this code, is exempt from the tax
5 imposed by this article: *Provided*, That the special district
6 excise tax does not apply to sales of gasoline and special fuel.

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

1 A vendor doing business wholly or partially on a credit
2 basis shall remit to the tax commissioner the tax due on the

3 credit sale for the month in which the credit transaction
4 occurred.

§11-15-14. When separate records of sales required.

1 (a) Any vendor engaged in a business subject to this tax,
2 who is at the same time engaged in some other kind of business,
3 occupation or profession, not taxable under this article, shall
4 keep records to show separately the transactions used in
5 determining the tax base taxed under this article.

6 (b) In the event the person fails to keep separate records
7 there shall be levied upon the person a tax based upon the entire
8 gross proceeds of both or all of the person's businesses.

§11-15-16. Tax return and payment; exception.

1 (a) *Payment of tax.* — Subject to the exceptions set forth in
2 subsection (b) of this section, the taxes levied by this article are
3 due and payable in monthly installments, on or before the
4 twentieth day of the month next succeeding the month in which
5 the tax accrued, except as otherwise provided in this article.

6 (b) *Tax return.* — The taxpayer shall, on or before the
7 twentieth day of each month, make out and mail to the tax
8 commissioner a return for the preceding month, in the form
9 prescribed by the tax commissioner, showing:

10 (1) The total gross proceeds of the vendor's business for the
11 preceding month;

12 (2) The gross proceeds of the vendor's business upon which
13 the tax is based;

14 (3) The amount of the tax for which the vendor is liable;
15 and

16 (4) Any further information necessary in the computation
17 and collection of the tax which the tax commissioner may
18 require, except as otherwise provided in this article or article
19 fifteen-b of this chapter.

20 (c) *Remittance to accompany return.* — Except as other-
21 wise provided in this article or article fifteen-b of this chapter,
22 a remittance for the amount of the tax shall accompany the
23 return.

24 (d) *Deposit of collected tax.* — Tax collected by the tax
25 commissioner shall be deposited as provided in section thirty of
26 this article, except that:

27 (1) Tax collected on sales of gasoline and special fuel shall
28 be deposited in the state road fund; and

29 (2) Any sales tax collected by the alcohol beverage control
30 commissioner from persons or organizations licensed under
31 authority of article seven, chapter sixty of this code shall be
32 paid into a revolving fund account in the state treasury, desig-
33 nated the drunk driving prevention fund, to be administered by
34 the commission on drunk driving prevention, subject to
35 appropriations by the Legislature.

36 (e) *Return to be signed.* — A return shall be signed by the
37 taxpayer or the taxpayer's duly authorized agent, when a paper
38 return is prepared and filed. When the return is filed electroni-
39 cally, the return shall include the digital mark or digital
40 signature, as defined in article three, chapter thirty-nine-a of
41 this code, or the personal identification number of the taxpayer,
42 or the taxpayer's duly authorized agent, made in accordance
43 with any procedural rule that may be promulgated by the tax
44 commissioner.

45 (f) *Accelerated payment.* —

46 (1) Taxpayers whose average monthly payment of the taxes
47 levied by this article and article fifteen-a of this chapter during
48 the previous calendar year exceeds one hundred thousand
49 dollars, shall remit the tax attributable to the first fifteen days
50 of June each year on or before the twentieth day of the June.

51 (2) For purposes of complying with subdivision (1) of this
52 subsection the taxpayer shall remit an amount equal to the
53 amount of tax imposed by this article and article fifteen-a of
54 this chapter on actual taxable sales of tangible personal property
55 and custom software and sales of taxable services during the
56 first fifteen days of June or, at the taxpayer's election, the
57 taxpayer may remit an amount equal to fifty percent of the
58 taxpayer's liability for tax under this article on taxable sales of
59 tangible personal property and custom software and sales of
60 taxable services made during the preceding month of May.

61 (3) For a business which has not been in existence for a full
62 calendar year, the total tax due from the business during the
63 prior calendar year shall be divided by the number of months,
64 including fractions of a month, that it was in business during the
65 prior calendar year; and if that amount exceeds one hundred
66 thousand dollars, the tax attributable to the first fifteen days of
67 June each year shall be remitted on or before the twentieth day
68 of June as provided in subdivision (2) of this subsection.

69 (4) When a taxpayer required to make an advanced pay-
70 ment of tax under subdivision (1) of this subsection makes out
71 it's the return for the month of June, which is due on the
72 twentieth day of July, the taxpayer may claim as a credit against
73 liability under this article for tax on taxable transactions during
74 the month of June, the amount of the advanced payment of tax
75 made under subdivision (1) of this subsection.

§11-15-31. Construction and severability.

1 (a) *Construction.* -- If a court of competent jurisdiction
2 finds that the provisions of this article and of article fifteen-b of
3 this chapter conflict and cannot be harmonized, then the
4 provisions of article fifteen-b shall control.

5 (b) *Severability.* — If any section, subsection, subdivision,
6 paragraph, sentence, clause or phrase of this article is for any
7 reason held to be invalid, unlawful or unconstitutional, that
8 decision may not affect the validity of the remaining portions
9 of this article or any part thereof.

§11-15-33. Effective date.

1 The provisions of this article as amended or added during
2 the regular legislative session in the year two thousand three
3 shall take effect the first day of January, two thousand four, and
4 apply to all sales made on or after that date and to all returns
5 and payments due on or after that day.

ARTICLE 15A. USE TAX.

§11-15A-1. Definitions.

1 (a) *General.* — When used in this article and article fifteen
2 of this chapter, terms defined in subsection (b) of this section
3 shall have the meanings ascribed to them in this section, except
4 in those instances where a different meaning is provided in this
5 article or the context in which the word is used clearly indicates
6 that a different meaning is intended by the Legislature:

7 (b) “Business” means any activity engaged in by any
8 person, or caused to be engaged in by any person, with the
9 object of direct or indirect economic gain, benefit or advantage,
10 and includes any purposeful revenue generating activity in this
11 state;

12 (2) “Consumer” means any person purchasing tangible
13 personal property, custom software or a taxable service from a
14 retailer as defined in paragraph (7) of this subsection (b) or
15 from a seller as defined in section two, article fifteen-b of this
16 chapter;

17 (3) “Lease” includes rental, hire and license;

18 (4) “Person” includes any individual, firm, partnership,
19 joint venture, joint stock company, association, public or
20 private corporation, limited liability company, limited liability
21 partnership, cooperative, estate, trust, business trust, receiver,
22 executor, administrator, any other fiduciary, any representative
23 appointed by order of any court or otherwise acting on behalf
24 of others, or any other group or combination acting as a unit,
25 and the plural as well as the singular number;

26 (5) “Purchase” means any transfer, exchange or barter,
27 conditional or otherwise, in any manner or by any means
28 whatsoever, for a consideration;

29 (6) “Purchase price” means the measure subject to the tax
30 imposed by this article and has the same meaning as sales price;

31 (7) “Retailer” means and includes every person engaging in
32 the business of selling, leasing or renting tangible personal
33 property or custom software or furnishing a taxable service for
34 use within the meaning of this article, or in the business of
35 selling, at auction, tangible personal property or custom
36 software owned by the person or others for use in this state:
37 *Provided*, That when in the opinion of the tax commissioner it
38 is necessary for the efficient administration of this article to
39 regard any salespersons, representatives, truckers, peddlers or
40 canvassers as the agents of the dealers, distributors, supervisors,
41 employees or persons under whom they operate or from whom
42 they obtain the tangible personal property sold by them,

43 irrespective of whether they are making sales on their own
44 behalf or on behalf of the dealers, distributors, supervisors,
45 employers or persons, the tax commissioner may so regard
46 them and may regard the dealers, distributors, supervisors,
47 employers, or persons as retailers for purposes of this article;

48 (8) "Retailer engaging in business in this state" or any like
49 term, unless otherwise limited by federal statute, shall mean and
50 include but not be limited to any retailer having or maintaining,
51 occupying or using, within this state, directly or by a subsidiary,
52 an office, distribution house, sales house, warehouse, or other
53 place of business, or any agent (by whatever name called)
54 operating within this state under the authority of the retailer or
55 its subsidiary, irrespective of whether the place of business or
56 agent is located here permanently or temporarily, or whether
57 retailer or subsidiary is admitted to do business within this state
58 pursuant to article fifteen, chapter thirty-one-d of this code or
59 article fourteen, chapter thirty-one-e of this code;

60 (9) "Sale" means any transaction resulting in the purchase
61 or lease of tangible personal property, custom software or a
62 taxable service from a retailer;

63 (10) "Seller" means a retailer, and includes every person
64 selling or leasing tangible personal property or custom software
65 or furnishing a taxable service in a transaction that is subject to
66 the tax imposed by this article;

67 (11) "Streamlined sales and use tax agreement" or "agree-
68 ment," when used in this article, shall have the same meaning
69 as when used in article fifteen-b of this chapter, except when
70 the context in which the word agreement is used clearly
71 indicates that a different meaning is intended by the Legisla-
72 ture;

73 (12) “Tangible personal property” means personal property
74 that can be seen, weighed, measured, felt, or touched, or that is
75 in any manner perceptible to the senses. “Tangible personal
76 property” includes, but is not limited to, electricity, water, gas,
77 and prewritten computer software;

78 (13) “Tax commissioner” or “commissioner” means the
79 state tax commissioner, or his or her delegate. The term
80 “delegate” in the phrase “or his or her delegate,” when used in
81 reference to the tax commissioner, means any officer or
82 employee of the state tax division duly authorized by the tax
83 commissioner directly, or indirectly by one or more
84 redelegations of authority, to perform the functions mentioned
85 or described in this article or rules promulgated for this article;

86 (14) “Taxpayer” includes any person within the meaning of
87 this section, who is subject to a tax imposed by this article,
88 whether acting for himself or herself or as a fiduciary; and

89 (15) “Use” means and includes:

90 (A) The exercise by any person of any right or power over
91 tangible personal property or custom software incident to the
92 ownership, possession or enjoyment of the property, or by any
93 transaction in which possession of or the exercise of any right
94 or power over tangible personal property, custom software or
95 the result of a taxable service is acquired for a consideration,
96 including any lease, rental or conditional sale of tangible
97 personal property or custom software; or

98 (B) The use or enjoyment in this state of the result of a
99 taxable service. As used in this subdivision (15), “enjoyment”
100 includes a purchaser’s right to direct the disposition of the
101 property or the use of the taxable service, whether or not the
102 purchaser has possession of the property.

103 The term “use” does not include the keeping, retaining or
104 exercising any right or power over tangible personal property,
105 custom software or the result of a taxable service for the
106 purpose of subsequently transporting it outside the state for use
107 thereafter solely outside this state.

108 (b) *Additional definitions.* — Other terms used in this
109 article are defined in articles fifteen and fifteen-b of this
110 chapter, which definitions are incorporated by reference into
111 article fifteen-a. Additionally, other sections of this article may
112 define terms primarily used in the section in which the term is
113 defined.

§11-15A-1a. Legislative findings.

1 The Legislature hereby finds and declares that:

2 (1) It is the intent of the Legislature that the use tax
3 imposed by the provisions of article fifteen-a and the consumers
4 sales tax imposed by the provisions of article fifteen of this
5 chapter be complementary laws and wherever possible be
6 construed and applied to accomplish the intent as to the
7 imposition, administration and collection of these taxes; and

8 (2) On and after the first day of January, two thousand four,
9 the taxes levied by this article and article fifteen of this chapter
10 shall also be administered and collected in accordance with the
11 provisions of article fifteen-b of this chapter.

**§11-15A-2. Imposition of tax; six percent tax rate; inclusion of
services as taxable; transition rules; allocation of
tax and transfers.**

1 (a) An excise tax is hereby levied and imposed on the use
2 in this state of tangible personal property, custom software or
3 taxable services, to be collected and paid as provided in this
4 article or article fifteen-b of this chapter, at the rate of six

5 percent of the purchase price of the property or taxable services,
6 except as otherwise provided in this article.

7 (b) *Calculation of tax on fractional parts of a dollar.* —
8 The tax computation under subsection (a) of this section shall
9 be carried to the third decimal place and the tax rounded up to
10 the next whole cent whenever the third decimal place is greater
11 than four and rounded down to the lower whole cent whenever
12 the third decimal place is four or less. The vendor may elect to
13 compute the tax due on a transaction on a per item basis or on
14 an invoice basis provided the method used is consistently used
15 during the reporting period.

16 (c) “Taxable services,” for the purposes of this article,
17 means services of the nature that are subject to the tax imposed
18 by article fifteen of this chapter. In this article, wherever the
19 words “tangible personal property” or “property” appear, the
20 same shall include the words “or taxable services,” where the
21 context so requires.

22 (d) Use tax is hereby imposed upon every person using
23 tangible personal property, custom software or taxable service
24 within this state. That person’s liability is not extinguished until
25 the tax has been paid. A receipt with the tax separately stated
26 thereon issued by a retailer engaged in business in this state, or
27 by a foreign retailer who is authorized by the tax commissioner
28 to collect the tax imposed by this article, relieves the purchaser
29 from further liability for the tax to which the receipt refers.

30 (e) Purchases of tangible personal property or taxable
31 services made for the government of the United States or any of
32 its agencies by ultimate consumers is subject to the tax imposed
33 by this section. Industrial materials and equipment owned by
34 the federal government within the state of West Virginia of a
35 character not ordinarily readily obtainable within the state, is
36 not subject to use tax when sold, if the industrial materials and

37 equipment would not be subject to use taxes if sold outside of
38 the state for use in West Virginia.

39 (f) This article does not apply to purchases made by
40 counties or municipal corporations.

§11-15A-3. Exemptions.

1 (a) The use in this state of the following tangible personal
2 property, custom software and services is hereby specifically
3 exempted from the tax imposed by this article to the extent
4 specified:

5 (1) All articles of tangible personal property and custom
6 software brought into the state of West Virginia by a nonresi-
7 dent individual thereof for his or her use or enjoyment while
8 temporarily within this state or while passing through this state,
9 except gasoline and special fuel: *Provided*, That fuel contained
10 in the supply tank of a motor vehicle that is not a motor carrier
11 may not be taxable.

12 (2) Tangible personal property, custom software or ser-
13 vices, the gross receipts from the sale of which are exempt from
14 the sales tax by the terms of article fifteen, chapter eleven of the
15 code of West Virginia, one thousand nine hundred thirty-one,
16 as amended, and the property or services are being used for the
17 purpose for which it was exempted.

18 (3) Tangible personal property, custom software or ser-
19 vices, the gross receipts or the gross proceeds from the sale of
20 which are required to be included in the measure of the tax
21 imposed by article fifteen, chapter eleven of the code of West
22 Virginia, one thousand nine hundred thirty-one, as amended,
23 and upon which the tax imposed by said article fifteen has been
24 paid.

25 (4) Tangible personal property, custom software or ser-
26 vices, the sale of which in this state is not subject to the West
27 Virginia consumers sales tax.

28 (5) Fifty percent of the measure of tax on mobile homes
29 utilized by the owners thereof as their principal year-round
30 residence and dwelling.

31 (b) The provisions of this section, as amended in the year
32 two thousand three, shall apply on and after the first day of
33 January, two thousand four.

§11-15A-3a. Moving residence or business into state.

1 The tax imposed by this article does not apply to tangible
2 personal property, custom software or services purchased
3 outside this state for use outside this state by a person who at
4 that time was a nonresident natural person, or a business entity
5 not actually doing business within this state, who or which later
6 brings tangible personal property or custom software into this
7 state in connection with his or her establishment of a permanent
8 residence or business in this state: *Provided*, That the property
9 was purchased more than six months prior to the date it was
10 first brought into this state, or six months prior to the establish-
11 ment of his or her residence or business, whichever first occurs.

§11-15A-4. Evidence of use.

1 For the purpose of the proper administration of this article
2 to prevent evasion of the tax, evidence that tangible personal
3 property, custom software or a service was sold by any person
4 for delivery in this state is prima facie evidence that the tangible
5 personal property, custom software or service was sold for use
6 in this state.

§11-15A-5. How collected.

1 The tax imposed in section two of this article shall be
2 collected in the following manner:

3 (1) The tax upon the use of all tangible personal property,
4 custom software or services, sold by a retailer engaging in
5 business in this state, or by any other retailer as the tax commis-
6 sioner authorizes pursuant to section seven of this article, or
7 article fifteen –b of this chapter, shall be collected by the
8 retailer and remitted to the state tax commissioner, pursuant to
9 the provisions of sections six through ten, inclusive, of this
10 article, or by the seller registered under article fifteen-b of this
11 chapter, in accordance with the provisions of this article and
12 article fifteen-b of this chapter.

13 (2) The tax upon the use of all tangible personal property,
14 custom software and taxable services not paid pursuant to
15 subdivision one of this section, shall be paid to the tax commis-
16 sioner directly by any person using the property or service
17 within this state, pursuant to the provisions of section eleven of
18 this article.

§11-15A-6. Collection by retailer.

1 (a) Every retailer engaging in business in this state and
2 making sales of tangible personal property, custom software or
3 taxable services for delivery into this state, or with the knowl-
4 edge, directly or indirectly, that the property or service is
5 intended for use in this state, that are not exempted under the
6 provisions of section three of this article, shall at the time of
7 making the sales, whether within or without the state, collect
8 the tax imposed by this article from the purchaser, and give to
9 the purchaser a receipt therefor in the manner and form pre-
10 scribed by the tax commissioner, if the tax commissioner
11 prescribes by rule.

12 (b) Each retailer shall list with the tax commissioner the
13 name and address of all the retailer's agents operating in this
14 state, and the location of any and all distribution or sales houses
15 or offices or other places of business in this state of the retailer
16 and the retailer's agent or agents.

§11-15A-7. Foreign retailers.

1 The tax commissioner may, in his or her discretion, upon
2 application authorize the collection of the tax imposed in
3 section two of this article by any retailer not engaging in
4 business within this state, who, to the satisfaction of the tax
5 commissioner, furnishes adequate security to insure collection
6 and payment of the tax. The retailer shall be issued, without
7 charge, a permit to collect the tax in the manner, and subject to
8 the rules and agreements as the tax commissioner prescribes.
9 When authorized, it is the duty of the retailer to collect the tax
10 upon all tangible personal property, custom software and
11 services sold to the retailer's knowledge for use within this
12 state, in the same manner and subject to the same requirements
13 as a retailer engaging in business within this state. The authority
14 and permit may be cancelled when, at any time, the tax com-
15 missioner considers the security inadequate, or that the tax can
16 more effectively be collected from the person using the
17 property or taxable service in this state.

§11-15A-8. Absorbing tax; criminal penalty.

1 (a) It is unlawful for any retailer to advertise or hold out or
2 state to the public or to any purchaser, consumer or user,
3 directly or indirectly, that the tax or any part thereof imposed
4 by this article will be assumed or absorbed by the retailer or
5 that it will not be added to the selling price of the property or
6 taxable service sold, or if added that it or any part thereof will
7 be refunded.

8 (b) The tax commissioner has the power to adopt and
9 promulgate rules for adding the tax, or the equivalent thereof,
10 by providing different methods applying uniformly to retailers
11 within the same general classification for the purpose of
12 enabling retailers to add and collect, as far as practicable, the
13 amount of the tax.

14 (c) Any person violating any of the provisions of this
15 section within this state is guilty of a misdemeanor, and subject
16 to the penalties provided in section seven, article nine of this
17 chapter.

§11-15A-9. Tax as debt.

1 The tax required to be collected by any retailer pursuant to
2 sections six, six-a or seven of this article, or by any seller or
3 certified service provider pursuant to article fifteen-b of this
4 chapter, and any tax collected by any retailer, seller or certified
5 service provider pursuant to sections six, six-a or seven of this
6 article, or article fifteen-b of this chapter, constitutes a debt
7 owed by the retailer, seller or certified service provider to this
8 state. The amount of tax collected shall be held in trust for the
9 state of West Virginia until paid over to the tax commissioner.

§11-15A-10. Payment to tax commissioner.

1 (a) Each retailer required or authorized, pursuant to sections
2 six, six-a or seven, or pursuant to article fifteen-b of this
3 chapter, to collect the tax imposed in section two of this article,
4 is required to pay to the tax commissioner the amount of the tax
5 on or before the twentieth day of the month next succeeding
6 each calendar month, except as otherwise provided in this
7 article or article fifteen-b of this chapter.

8 (b) Each certified service provider for a Model I seller shall
9 pay to the tax commissioner the tax levied by this article on or
10 before the twentieth day of the month next succeeding the

11 calendar month in which the tax accrued, except as otherwise
12 provided in this article or article fifteen-b of this chapter.

13 (c) At that time, each retailer, seller or certified service
14 provider shall file with the tax commissioner a return for the
15 preceding monthly period, except as otherwise provided in this
16 article or article fifteen-b of this chapter, in the form prescribed
17 by the tax commissioner showing the sales price of any or all
18 tangible personal property, custom software and taxable
19 services sold by the retailer or seller during the preceding
20 quarterly period, the use of which is subject to the tax imposed
21 by this article, and any other information the tax commissioner
22 may consider necessary for the proper administration of this
23 article. The return shall be accompanied by a remittance of the
24 amount of the tax, for the period covered by the return, except
25 as otherwise provided in this article or article fifteen-b of this
26 chapter: *Provided*, That where the tangible personal property or
27 custom software is sold under a conditional sales contract, or
28 under any other form of sale wherein the payment of the
29 principal sum, or a part of the sum is extended over a period
30 longer than sixty days from the date of the sale, the retailer may
31 collect and remit each monthly period that portion of the tax
32 equal to six percent of that portion of the purchase price
33 actually received during the monthly period.

34 (d) The tax commissioner may, upon request and a proper
35 showing of the necessity to do so, grant an extension of time
36 not to exceed thirty days for making any return and payment.

37 (e) Returns shall be signed by the retailer or seller or his or
38 her duly authorized agent, and must be certified by him or her
39 to be correct, except as otherwise provided in this article or
40 article fifteen-b of this chapter.

41 (f) *Accelerated payment.* —

42 (1) For calendar years beginning after the thirty-first day of
43 December, two thousand two, taxpayers whose average
44 monthly payment of the taxes levied by this article and article
45 fifteen of this chapter during the previous calendar year exceeds
46 one hundred thousand dollars, shall remit the tax attributable to
47 the first fifteen days of June each year on or before the twenti-
48 eth day of said month of June.

49 (2) For purposes of complying with subdivision (1) of this
50 subsection, the taxpayer shall remit an amount equal to the
51 amount of tax imposed by this article and article fifteen of this
52 chapter on actual taxable sales of tangible personal property and
53 custom software and sales of taxable services during the first
54 fifteen days of June or, at the taxpayer's election, taxpayer may
55 remit an amount equal to fifty percent of taxpayer's liability for
56 tax under this article on taxable sales of tangible personal
57 property and custom software and sales of taxable services
58 made during the preceding month of May.

59 (3) For a business which has not been in existence for a full
60 calendar year, the total tax due from the business during the
61 prior calendar year shall be divided by the number of months,
62 including fractions of a month, that it was in business during the
63 prior calendar year; and if that amount exceeds one hundred
64 thousand dollars, the tax attributable to the first fifteen days of
65 June each year shall be remitted on or before the twentieth day
66 of said month of June as provided in subdivision (2) of this
67 subsection.

68 (4) When a taxpayer required to make an advanced pay-
69 ment of tax under subdivision (1) of this subsection makes out
70 its return for the month of June, which is due on the twentieth
71 day of July, the taxpayer may claim as a credit against its
72 liability under this article for tax on taxable transactions during
73 the month of June, the amount of the advanced payment of tax
74 made under subdivision (1) of this subsection.

§11-15A-10a. Credit for sales tax liability paid to another state.

1 (a) A person is entitled to a credit against the tax imposed
2 by this article on the use of a particular item of tangible
3 personal property, custom software or service equal to the
4 amount, if any, of sales tax lawfully paid to another state for the
5 acquisition of that property or service: *Provided*, That the
6 amount of credit allowed does not exceed the amount of use tax
7 imposed on the use of the property in this state.

8 (b) For purposes of this section:

9 (1) "Sales tax" includes a sales tax or compensating use tax
10 imposed on the use of tangible personal property or a service by
11 the state in which the sale occurred; and

12 (2) "State" includes the District of Columbia but does not
13 include any of the several territories organized by Congress.

§11-15A-11. Liability of user.

1 (a) Any person who uses any tangible personal property,
2 custom software or the results of a taxable service upon which
3 the tax herein imposed has not been paid either to a retailer or
4 direct to the tax commissioner is liable for the amount of the
5 nonpayment, and persons required by law to hold a West
6 Virginia business registration certificate shall on or before the
7 fifteenth day of the month next succeeding each quarterly
8 period pay the tax imposed in section two of this article upon all
9 the property and services used by him or her during the
10 preceding quarterly period and accompanied by returns the tax
11 commissioner prescribes: *Provided*, That if the aggregate
12 annual tax liability of any person under this article is six
13 hundred dollars or less, the person shall, in lieu of the quarterly
14 payment and filing, pay the tax on or before the fifteenth day of
15 the first month next succeeding the end of his or her taxable
16 year, and shall file the annual return as may be prescribed by

17 the tax commissioner. The tax commissioner may, by
18 nonemergency legislative rules promulgated pursuant to article
19 three, chapter twenty-nine-a of this code, change the foregoing
20 minimum amounts.

21 (b) Any individual who is not required by law to hold a
22 West Virginia business registration certificate, who uses any
23 personal property or taxable service upon which the West
24 Virginia use tax has not been paid either to a retailer or directly
25 to the tax commissioner is liable for the West Virginia use tax
26 upon property or taxable services and, notwithstanding the
27 amount of the annual aggregate annual tax liability, shall pay
28 the use tax imposed upon all property or taxable services used
29 by him or her during the taxpayer's federal taxable year on or
30 before the fifteenth day of April of the taxpayer's next succeed-
31 ing federal tax year, and shall file the annual return therewith as
32 the tax commissioner may authorize or require.

33 (c) All of the provisions of section ten with reference to
34 quarterly or annual returns and payments are applicable to the
35 returns and payments required under this section.

§11-15A-18. Seller must show sale not at retail; presumption.

1 (a) The burden of proving that a sale was not taxable shall
2 be upon the seller, unless, the seller, in good faith, takes from
3 the purchaser a certificate signed by and bearing the address of
4 the purchaser setting forth the reason for exemption of the sale
5 from imposition of the tax.

6 (b) Notwithstanding subsection (a) of this section, a seller
7 who is registered under the streamlined sales and use tax
8 agreement to collect this tax is relieved of the good faith
9 requirement for the taking of an exemption certificate in
10 accordance with article fifteen-b of this chapter, and any rule
11 promulgated by the governing board for the agreement.

12 (c) To prevent evasion it is presumed that all proceeds are
13 subject to the tax until the contrary is clearly established.

14 (d) This certificate shall be substantially in the form
15 prescribed by the tax commissioner: *Provided*, That when the
16 seller is registered under the streamlined sales and use tax
17 agreement to collect the tax imposed by this article, the
18 exemption certificate taken shall conform with requirements of
19 the streamlined sales and use tax agreement and any rules
20 prescribed by the governing board for the agreement.

§11-15A-21. Books; examination.

1 (a) Every retailer required or authorized to collect taxes
2 imposed by this article and every person using in this state
3 tangible personal property, custom software or taxable services
4 shall keep records, receipts, invoices, and other pertinent papers
5 as the tax commissioner requires, in any form as the tax
6 commissioner requires.

7 (b) In addition to the tax commissioner's powers set forth
8 in article ten of this chapter, the tax commissioner or any of his
9 or her duly authorized agents is hereby authorized to examine
10 the books, papers, records and equipment of any person who
11 either:

12 (1) Is selling tangible personal property, custom software
13 or taxable services; or

14 (2) Is liable for the tax imposed by this article, and to
15 investigate the character of the business of any person in order
16 to verify the accuracy of any return made, or if no return was
17 made by the person, to ascertain and determine the amount due
18 under the provisions of this article.

§11-15A-22. Canceling or revoking permits.

1 Whenever any retailer engaging in business in this state, or
2 authorized to collect the tax imposed in this article pursuant to
3 section seven of this article, fails to comply with any of the
4 provisions of this article or any orders, or rules of the tax
5 commissioner prescribed and adopted for this article under
6 article ten of this chapter, the tax commissioner may, upon
7 notice and hearing, by order, cancel the business registration
8 certificate, if any, issued to the retailer under article twelve,
9 chapter eleven of the code of West Virginia, one thousand nine
10 hundred thirty-one, as amended, or if the retailer is a corpora-
11 tion authorized to do business in this state under article fifteen,
12 chapter thirty-one-d of this code or article fourteen, chapter
13 thirty-one-e of this code, may certify to the secretary of state a
14 copy of an order finding that the retailer has failed to comply
15 with certain specified provisions, orders, or rules. The secretary
16 of state shall, upon receipt of the certification, revoke the
17 permit authorizing the corporation to do business in this state,
18 and shall issue a new permit only when the corporation has
19 obtained from the tax commissioner an order finding that the
20 corporation has complied with its obligations under this article.
21 No order authorized in this section shall be made until the
22 retailer is given an opportunity to be heard and to show cause
23 why the order should not be made, and the corporation shall be
24 given twenty days' notice of the time, place and purpose of the
25 hearing, which shall be heard as provided in article ten-a of this
26 chapter. The tax commissioner shall have the power in his or
27 her discretion to issue a new business registration certificate
28 after the business registration certificate is cancelled.

§11-15A-27. Construction; partial unconstitutionality.

1 (a) If a court of competent jurisdiction finds that the
2 provisions of this article and of article fifteen-b of this chapter
3 conflict and cannot be harmonized, then the provisions of
4 article fifteen-b shall control.

5 (b) If any section, subsection, subdivision, paragraph,
6 sentence, clause or phrase of this article is for any reason held
7 to be invalid, unlawful or unconstitutional, that decision does
8 not affect the validity of the remaining portions of this article
9 or any part thereof.

§11-15A-29. Effective date.

1 The provisions of this article, as amended or added during
2 the regular legislative session in the year two thousand three,
3 shall take effect the first day of January, two thousand four, and
4 apply to all sales made on or after that date and to all returns
5 and payments due on or after that day.

**ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION
ACT.**

§11-15B-1. Title.

1 The provisions of this article shall be known as and referred
2 to as the “Streamlined Sales and Use Tax Administration Act.”

§11-15B-2. Definitions.

1 (a) *General.* — When used in this article and articles fifteen
2 and fifteen-a of this chapter, words defined in subsection (b) of
3 this section shall have the meanings ascribed to them in this
4 section, except in those instances where a different meaning is
5 distinctly expressed or the context in which the term is used
6 clearly indicates that a different meaning is intended by the
7 Legislature.

8 (b) *Terms defined.* —

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

11 (2) "Agreement" means the streamlined sales and use tax
12 agreement, as defined in section two-a of this article.

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

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

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

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

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

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

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

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

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

41 (i) A vitamin;

42 (ii) A mineral;

43 (iii) A herb or other botanical;

44 (iv) An amino acid;

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

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

50 (B) Is intended for ingestion in tablet, capsule, powder,
51 softgel, gelcap, or liquid form, or if not intended for ingestion
52 in such a form, is not represented as conventional food and is
53 not represented for use as a sole item of a meal or of the diet;
54 and

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

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

67 does not include multiple items of printed material delivered to
68 a single address.

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

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

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

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

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

84 (A) Can withstand repeated use;

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

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

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

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

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

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

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

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

109 (A) “Lease” does not include:

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

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

118 (iii) Providing tangible personal property along with an
119 operator for a fixed or indeterminate period of time. A condi-
120 tion of this exclusion is that the operator is necessary for the
121 equipment to perform as designed. For the purpose of this

122 subparagraph, an operator must do more than maintain, inspect,
123 or set-up the tangible personal property.

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

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

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

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

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

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

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

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

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

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

161 (25) “Personal service” includes those:

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

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

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

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

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

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

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

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

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

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

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

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

205 (30) "Protective equipment" means items for human wear
206 and designed as protection of the wearer against injury or

207 disease or as protections against damage or injury of other
208 persons or property but not suitable for general use.

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

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

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

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

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

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

222 (35)(A) "Sales price" means the measure subject to the tax
223 levied by this article and includes the total amount of consider-
224 ation, including cash, credit, property and services, for which
225 personal property or services are sold, leased or rented, valued
226 in money, whether received in money or otherwise, without any
227 deduction for the following:

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

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

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

- 234 (iv) Delivery charges;
- 235 (v) Installation charges;
- 236 (vi) The value of exempt personal property given to the
237 purchaser where taxable and exempt personal property have
238 been bundled together and sold by the seller as a single product
239 or piece of merchandise; and
- 240 (vii) Credit for the fair market value of any trade-in.
- 241 (B) "Sales price" does not include:
- 242 (i) Discounts, including cash, term, or coupons that are not
243 reimbursed by a third party that are allowed by a seller and
244 taken by a purchaser on a sale;
- 245 (ii) Interest, financing, and carrying charges from credit
246 extended on the sale of personal property, goods or services, if
247 the amount is separately stated on the invoice, bill of sale or
248 similar document given to the purchaser; and
- 249 (iii) Any taxes legally imposed directly on the consumer
250 that are separately stated on the invoice, bill of sale or similar
251 document given to the purchaser.
- 252 (36) "Sales tax" means the tax levied under article fifteen
253 of this chapter.
- 254 (37) "Seller" means any person making sales, leases or
255 rentals of personal property or services.
- 256 (38) "Service" or "selected service" includes all nonprofes-
257 sional activities engaged in for other persons for a consider-
258 ation, which involve the rendering of a service as distinguished
259 from the sale of tangible personal property, but does not include
260 contracting, personal services, services rendered by an em-

261 ployee to his or her employer, any service rendered for resale,
262 or any service furnished by a business that is subject to the
263 control of the public service commission when the service or
264 the manner in which it is delivered is subject to regulation by
265 the public service commission of this state.

266 (39) "State" means any state of the United States and the
267 District of Columbia.

268 (40) "Tangible personal property" means personal property
269 that can be seen, weighed, measured, felt, or touched, or that is
270 in any manner perceptible to the senses. "Tangible personal
271 property" includes, but is not limited to, electricity, water, gas,
272 and prewritten computer software.

273 (41) "Tax" includes all taxes levied under articles fifteen
274 and fifteen-a of this chapter, and additions to tax, interest and
275 penalties levied under article ten of this chapter.

276 (42) "Tax commissioner" means the state tax commissioner
277 or his or her delegate. The term "delegate" in the phrase "or his
278 or her delegate," when used in reference to the tax commis-
279 sioner, means any officer or employee of the state tax division
280 duly authorized by the tax commissioner directly, or indirectly
281 by one or more redelegations of authority, to perform the
282 functions mentioned or described in this article or rules
283 promulgated for this article.

284 (43) "Taxpayer" means any person liable for the taxes
285 levied by articles fifteen and fifteen-a of this chapter or any
286 additions to tax, penalties imposed by article ten of this chapter.

287 (44) "Tobacco" means cigarettes, cigars, chewing or pipe
288 tobacco, or any other item that contains tobacco.

289 (45) "Use tax" means the tax levied under article fifteen-a
290 of this chapter.

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

293 (47) “Vendor” means any person furnishing services taxed
294 by article fifteen or fifteen-a of this chapter, or making sales of
295 tangible personal property or custom software. “Vendor” and
296 “seller” are used interchangeably in this article and in article
297 fifteen and fifteen-a of this chapter.

298 (c) *Additional definitions.* — Other terms used in this
299 article are defined in articles fifteen and fifteen-a of this
300 chapter, which definitions are incorporated by reference into
301 article fifteen-b. Additionally, other sections of this article may
302 define terms primarily used in the section in which the term is
303 defined.

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

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

§11-15B-3. Legislative findings.

1 (a) The Legislature finds that a streamlined sales and use
2 tax administration system will reduce and over time eliminate
3 the burden and cost for all vendors to collect this state’s sales
4 and use tax. The Legislature further finds that this state should
5 participate in multistate discussions to review and/or amend the

6 terms of the agreement to simplify and modernize sales and use
7 tax administration in order to substantially reduce the burden of
8 tax compliance for all sellers and for all types of commerce.

9 (b) The Legislature finds that the streamlined sales and use
10 tax agreement adopted the twelfth day of November, two
11 thousand two, by representatives of the states participating in
12 multistate discussions to amend and implement the agreement
13 substantially complies with the requirements of section seven
14 of this article, as enacted in the year two thousand two, and that
15 this state should now sign the agreement.

§11-15B-5. Authority to enter agreement.

1 (a) The tax commissioner is authorized and directed to enter
2 into the streamlined sales and use tax agreement, after the
3 thirtieth day of June, two thousand three, with one or more
4 states to simplify and modernize sales and use tax administra-
5 tion in order to substantially reduce the burden of tax compli-
6 ance for all sellers and for all types of commerce.

7 (b) In furtherance of the agreement, the tax commissioner
8 is authorized to act jointly with other states that are members of
9 the agreement to establish standards for certification of a
10 certified service provider and certified automated system and
11 establish performance standards for multistate sellers. The tax
12 commissioner is further authorized to take other actions
13 reasonably required to implement the provisions set forth in this
14 article. Other actions authorized by this section include, but are
15 not limited to, the adoption of rules and the joint procurement,
16 with other member states, of goods and services in furtherance
17 of the cooperative agreement. The tax commissioner or the
18 commissioner's designee is authorized to represent this state
19 before the other states that are signatories to the agreement.

§11-15B-11. Seller registration under streamlined sales tax agreement.

1 (a) *General.* — A seller that registers to collect West
2 Virginia sales and use taxes using the online sales and use tax
3 registration system established under the streamlined sales and
4 use tax agreement is not required to also register under article
5 twelve of this chapter unless the seller has sufficient presence
6 in this state that provides at least the minimum contacts
7 necessary for a constitutionally sufficient nexus for this state to
8 require registration and payment of the registration tax under
9 article twelve of this chapter.

10 (b) *Registration by agent.* — A person appointed by a seller
11 to represent the seller before the states that are members of the
12 streamlined sales tax agreement may register the seller under
13 the agreement under uniform procedures adopted by the
14 member states. The appointment of an agent shall be in writing
15 and submitted to a member state if requested by a member.

16 (c) *Cancellation of registration.* — A seller registered
17 under the streamlined sales and use tax agreement may cancel
18 its registration at any time under uniform procedures adopted
19 by the member states.

§11-15B-12. Effect of seller registration and participation in streamlined sales and use tax administration.

1 (a) *Collection of tax.* — By registering under the stream-
2 lined sales use tax agreement, the seller agrees to collect and
3 remit sales and use taxes for all taxable sales into this state, as
4 well as for all other states participating in the agreement.
5 Subsequent withdrawal or revocation of a member state does
6 not relieve a seller of its responsibility to remit taxes previously
7 or subsequently collected on behalf of the state.

8 (b) *Effect of registration.* -- A member state, or a state that
9 has withdrawn or been expelled from the streamlined sales and
10 use tax agreement, may not use registration with the central
11 registration system and the collection of sales and use taxes in
12 the member states as a factor in determining whether the seller
13 has a nexus with that state for any tax at any time.

§11-15B-13. Amnesty for registration.

1 (a) Subject to the limitations in this section:

2 (1) The tax commissioner shall provide amnesty for
3 uncollected or unpaid sales or use tax to a seller who registers
4 to pay or to collect and remit applicable sales or use tax on sales
5 made to purchasers in this state in accordance with the terms of
6 the streamlined sales and use tax agreement: *Provided*, That the
7 seller was not registered in this state in the twelve-month period
8 preceding the effective date of this state's participation in the
9 streamlined sales and use tax agreement.

10 (2) The amnesty precludes assessment for uncollected or
11 unpaid sales or use tax together with additions to tax, penalty or
12 interest for sales made during the period the seller was not
13 registered in this state: *Provided*, That registration under the
14 agreement occurs within twelve months after the effective date
15 of this state's participation in the streamlined sales and use tax
16 agreement.

17 (b) *Exceptions.* — The amnesty is not available:

18 (1) To a seller with respect to any matter or matters for
19 which the seller received notice of the commencement of an
20 audit and which audit is not yet finally resolved including any
21 related administrative and judicial processes; or

22 (2) For sales or use taxes already paid or remitted to the
23 state or to taxes collected by the seller for this state.

24 (c) *Period of amnesty.* — The amnesty is fully effective,
25 absent the seller’s fraud or intentional misrepresentation of a
26 material fact, as long as the seller continues registration under
27 the agreement and continues payment or collection and remit-
28 tance of applicable sales or use taxes for a period of at least
29 thirty-six months. The statute of limitations applicable to
30 asserting a tax liability during this thirty-six month period is
31 tolled.

32 (d) *Effect of amnesty.* — The amnesty is applicable only to
33 sales or use taxes due from a seller in its capacity as a seller and
34 not to sales or use taxes due from a seller in its capacity as a
35 buyer.

§11-15B-14. General transaction sourcing definitions.

1 (a) *Definition of receive or receipt.* — For the purposes of
2 subsection (a), section fifteen of this article, the terms “receive”
3 and “receipt” mean:

4 (1) Taking possession of tangible personal property;

5 (2) Making first use of services; or

6 (3) Taking possession or making first use of custom
7 software, whichever comes first.

8 (b) *Limitation.* — The terms “receive” and “receipt” do not
9 include possession by a shipping company on behalf of the
10 purchaser.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§11-15B-16. Application of general sourcing rule and exclusions
from the rules.**

1 (a) *General.* — Sellers who collect the taxes levied by
2 articles fifteen and fifteen-a of this chapter shall source the
3 retail sale of a product, as provided in section fifteen of this
4 article. As used in this section, the term “product” includes
5 tangible personal property, custom software or a service, or any
6 combination thereof.

7 (b) *Scope of sourcing rule.* — The provisions of section
8 fifteen of this article only apply to determine a seller’s obliga-
9 tion to pay or collect and remit a sales or use tax with respect to
10 the seller’s retail sale of a product. Section fifteen of this article
11 does not affect the obligation of a purchaser or lessee to remit
12 tax on the use of the product to the taxing jurisdiction of that
13 use.

14 (c) *Exceptions.* — The sourcing rules in this section and
15 section fifteen of this article do not apply to telecommunica-
16 tions services.

§11-15B-17. Direct mail sourcing.

1 (a) *General.* — Notwithstanding section fifteen of this
2 article, a purchaser of direct mail that is not a holder of a direct
3 pay permit shall provide to the seller in conjunction with the

4 purchase either a “direct mail form” or information to show the
5 jurisdictions to which the direct mail is delivered to recipients.

6 (1) Upon receipt of the direct mail form, the seller is
7 relieved of all obligations to collect, pay, or remit the applicable
8 tax and the purchaser is obligated to pay or remit the applicable
9 tax on a direct pay basis. A direct mail form remains in effect
10 for all future sales of direct mail by the seller to the purchaser
11 until revoked in writing.

12 (2) Upon receipt of information from the purchaser
13 showing the jurisdictions to which the direct mail is delivered
14 to recipients, the seller shall collect the tax according to the
15 delivery information provided by the purchaser. In the absence
16 of bad faith by the seller, the seller is relieved of any further
17 obligation to collect tax on any transaction where the seller has
18 collected tax pursuant to the delivery information provided by
19 the purchaser.

20 (b) *When purchaser does not have direct pay permit and*
21 *does not provide direct mail form.* — If the purchaser of direct
22 mail does not have a direct pay permit and does not provide the
23 seller with either a direct mail form or delivery information, as
24 required by subsection (a) of this section, the seller shall collect
25 the tax according to subdivision (5), subsection (a), section
26 fifteen of this article. Nothing in this subsection (b) shall limit
27 a purchaser’s obligation for sales or use tax to any state to
28 which the direct mail is delivered.

29 (c) *Direct pay permit.* — If a purchaser of direct mail
30 provides the seller with documentation of direct pay authority,
31 the purchaser may not be required to provide a direct mail form
32 or delivery information to the seller.

**§11-15B-18. Multiple points of use of certain products and ser-
vices.**

1 (a) *General.* — Notwithstanding the provisions of section
2 fifteen of this article, a business purchaser that is not a holder
3 of a direct pay permit that knows at the time of the business
4 purchase of a digital good, computer software delivered
5 electronically, or a service that the digital good, computer
6 software delivered electronically, or service will be concur-
7 rently available for use in more than one jurisdiction shall
8 deliver to the seller in conjunction with the purchase a “multi-
9 ple points of use” or “MPU exemption” form disclosing this
10 fact.

11 (1) Upon receipt of the MPU exemption form, the seller is
12 relieved of all obligation to collect, pay, or remit the applicable
13 tax and the purchaser shall be obligated to collect, pay, or remit
14 the applicable tax on a direct pay basis.

15 (2) A purchaser delivering the MPU exemption form may
16 use any reasonable, but consistent and uniform, method of
17 apportionment that is supported by the purchaser’s business
18 records as they exist at the time of the consummation of the
19 sale.

20 (3) The MPU exemption form remains in effect for all
21 future sales by the seller to the purchaser, except as to the
22 subsequent sale’s specific apportionment that is governed by
23 the principle of subdivision (2) of this subsection and the facts
24 existing at the time of the sale, until revoked in writing.

25 (b) *Holders of direct pay permits.* — A holder of a direct
26 pay permit may not be required to deliver a MPU exemption
27 form to the seller. A direct pay permit holder shall follow the
28 provisions of subdivision (2), subsection (a) of this section in
29 apportioning the tax due on a digital good, computer software
30 delivered electronically, or a service that will be concurrently
31 available for use in more than one jurisdiction.

[§11-15B-19 and §11-15B-20 Reserved.]

§11-15B-21. Notice for state tax changes.

1 (a) *General.* — The tax commissioner shall provide sellers
2 with as much advance notice as practicable of a rate change for
3 a tax levied by article fifteen or fifteen-a of this chapter.

4 (b) *Effective date of rate changes.* — Unless the Legislature
5 expressly provides a different effective date for a rate change,
6 the change shall take effect on the first day of the calendar
7 quarter that begins on or after the effective date of the act of the
8 Legislature that makes the rate change and that is more than
9 sixty days after passage of the bill making the rate change.

10 (c) *Notification of changes to tax base.* — The tax commis-
11 sioner shall make reasonable efforts to notify sellers of legisla-
12 tive changes to the tax base and to amendments to sales and use
13 tax rules, as that term is defined in section two, article one,
14 chapter twenty-nine-a of this code.

15 (d) *Liability of seller.* — Failure of a seller to receive notice
16 or failure of the state to provide notice of a rate change or a
17 change in the tax base, or to limit the effective date of a rate
18 change, does not relieve the seller of its obligation to collect
19 sales or use taxes for this state.

§11-15B-22. Effective date of rate changes for certain services.

1 The effective date of rate changes for services covering a
2 service period starting before and ending after the statutory
3 effective date is as follows:

4 (1) For a rate increase, the new rate applies to the first
5 billing period starting on or after the effective date.

6 (2) For a rate decrease, the new rate applies to bills ren-
7 dered on or after the effective date.

§11-15B-23. Enactment of exemptions.

1 (a) *Product-based exemptions.* — The Legislature may
2 enact a product-based exemption from the taxes levied by
3 article fifteen and fifteen-a of this chapter without restriction if
4 the streamlined sales and use tax agreement does not have a
5 definition for the product or for a term that includes the
6 product. If the agreement has a definition for the product or for
7 a term that includes the product, the Legislature may exempt all
8 items included within the definition but may not exempt only
9 part of the items included within the definition, unless the
10 streamlined sales and use tax agreement sets out the exemption
11 for part of the items as an acceptable variation.

12 (b) *Entity-based or use-based exemption.* — The Legisla-
13 ture may enact an entity-based or use-based exemption from a
14 tax levied by article fifteen or fifteen-a of this chapter without
15 restriction if the streamlined sales and use tax agreement does
16 not have a definition for the product whose use or purchase by
17 a specific entity is exempt or for a term that includes the
18 product. If the agreement has a definition for the product whose
19 use or specific purchase is exempt, the Legislature may enact an
20 entity-based or use-based exemption that applies to that
21 product, as long as the exemption utilizes the streamline sales
22 and use tax agreement definition of the product. If the agree-
23 ment does not have a definition for the product whose use or
24 specific purchase is exempt but has a definition for a term that
25 includes the product, the Legislature may enact an entity-based
26 or use-based exemption for the product without restriction.

27 (c) *Construction.* — For purposes of complying with the
28 requirements in this section, the inclusion of a product within
29 the definition of tangible personal property is disregarded.

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

1 (a) *General.* — When a purchaser claims an exemption
2 under article fifteen or fifteen-a of this chapter:

3 (1) A seller registered under the streamlined sales and use
4 tax agreement shall obtain identifying information of the
5 purchaser and the reason for claiming a tax exemption at the
6 time of the purchase, as determined by the governing board
7 established pursuant to the agreement. A seller not registered
8 under the agreement shall obtain identifying information of the
9 purchaser and the reason for claiming a tax exemption at the
10 time of purchase, as determined by the tax commissioner.

11 (2) A purchaser is not required to provide a signature to
12 claim an exemption from tax unless a paper exemption certifi-
13 cate is used.

14 (3) The seller shall use the standard form for claiming an
15 exemption electronically that is adopted by the governing board
16 administering the streamlined sales and use tax agreement.

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

20 (5) The tax commissioner may utilize a system wherein the
21 purchaser exempt from the payment of the tax is issued an
22 identification number that is presented to the seller at the time
23 of the sale.

24 (6) The seller shall maintain proper records of exempt
25 transactions and provide the records to the tax commissioner or
26 the tax commissioner's designee.

27 (7) The tax commissioner shall administer use-based and
28 entity-based exemptions when practicable through a direct pay

29 permit, an exemption certificate, or another means that does not
30 burden sellers.

31 (8) The tax commissioner shall relieve sellers registered
32 under the streamlined sales and use tax agreement that follow
33 the requirements of this section from any tax otherwise applica-
34 ble if it is determined that the purchaser improperly claimed an
35 exemption and shall hold the purchaser liable for the nonpay-
36 ment of tax. This relief from liability does not apply to a seller
37 who fraudulently fails to collect the tax or solicits purchasers to
38 participate in the unlawful claim of an exemption.

§11-15B-25. Uniform tax returns.

1 (a) *General.* — A seller who registers with this state under
2 the streamlined sales tax agreement is required to file one
3 sales/use tax return with the tax commissioner for each taxing
4 period.

5 (b) *Due date of return.* — This return shall be due on the
6 twentieth day of the month following the month in which the
7 transaction subject to tax occurred.

8 (c) *Additional information returns.* — The tax commis-
9 sioner shall allow any Model I, Model II, or Model III seller to
10 submit its sales and use tax returns in a simplified format that
11 does not include more data fields than permitted by the govern-
12 ing board administering the streamlined sales and use tax
13 agreement. The tax commissioner may require additional
14 informational returns to be submitted not more frequently than
15 every six months under a staggered system developed by the
16 governing board administering the streamlined sales and use tax
17 agreement.

18 (d) The tax commissioner shall allow any seller that is
19 registered with this state under the streamlined sales and use tax
20 agreement, which does not have a legal requirement to register

21 in this state under article twelve of this chapter, and is not a
22 Model I, II, or III seller, to submit its sales and use tax returns
23 as follows:

24 (1) Upon registration, the tax commissioner shall provide
25 to the seller the returns required by this state.

26 (2) The tax commissioner may require a seller to file a
27 return anytime within one year of the month of initial registra-
28 tion, and future returns may be required on an annual basis in
29 succeeding years.

30 (3) In addition to the returns required in subdivision (2) of
31 this subsection, a seller shall submit a return by the twentieth
32 day of the month following any month in which the seller
33 accumulated state and local tax funds for the state in the amount
34 of one thousand dollars or more.

35 (4) The tax commissioner shall participate with other states
36 that are members of the streamlined sales and use tax agree-
37 ment in developing a more uniform sales and use tax return
38 that, when completed, is available to all sellers.

39 (5) All Model I, II, and III sellers shall file returns electron-
40 ically after the first day of January, two thousand four.

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

1 (a) *General.* — Only one remittance is required for each
2 return except as provided in this section.

3 (b) *When electronic remittance required.* — All remittances
4 from sellers under Models I, II, and III shall be remitted
5 electronically after the thirty-first day of December, two
6 thousand three.

7 (c) *Method of remittance.* — Electronic payments shall be
8 made using either the ACH credit or ACH debit method.

9 (d) *Alternative method.* — The tax commission shall
10 provide by rule, which may be an existing rule, an alternative
11 method for making “same day” payments if an electronic funds
12 transfer fails.

13 (e) *Format of data accompany remittance.* — Any data that
14 accompanies a remittance shall be formatted using uniform tax
15 type and payment type codes approved by the governing board
16 administering the streamlined sales and use tax agreement.

§11-15B-27. Uniform rules for recovery of bad debt.

1 (a) *General.* — A deduction from taxable sales is allowed
2 for bad debts. Any deduction taken that is attributed to bad
3 debts may not include interest or any amount upon which the
4 sales or use tax imposed by this state was not previously paid.

5 (b) *“Bad debt” defined.* — The term “bad debt” has the
6 same meaning as when used in the federal definition of “bad
7 debt” in 26 U.S.C. Sec. 166 as the basis for calculating bad debt
8 recovery. However, the amount calculated pursuant to 26
9 U.S.C. Sec. 166 is adjusted to exclude:

10 (1) Financing charges or interest;

11 (2) Sales or use taxes charged on the purchase price;

12 (3) Uncollectible amounts on property that remain in the
13 possession of the seller until the full purchase price is paid;

14 (4) Expenses incurred in attempting to collect any debt; and

15 (5) Repossessed property.

16 (c) *When deduction may be taken.* — Bad debts may be
17 deducted on the return for the period during which the bad debt
18 is written off as uncollectible in the claimant's books and
19 records and is eligible to be deducted for federal income tax
20 purposes. For purposes of this section, a claimant who is not
21 required to file federal income tax returns may deduct a bad
22 debt on a return filed for the period in which the bad debt is
23 written off as uncollectible in the claimant's books and records
24 and would be eligible for a bad debt deduction for federal
25 income tax purposes if the claimant was required to file a
26 federal income tax return.

27 (d) *Subsequent recovery.* — If a deduction is taken for a
28 bad debt and the debt is subsequently collected, in whole or in
29 part, the tax on the amount collected shall be paid and reported
30 on the return filed for the period in which the collection is
31 made.

32 (e) *When bad debt deduction exceeds taxable sales.* —
33 When the amount of bad debt exceeds the amount of taxable
34 sales for the period during which the bad debt is written off, a
35 refund claim may be filed within the period specified in section
36 fourteen, article ten of this chapter, for filing a claim for refund
37 or sales or use tax, except that the statute of limitations shall be
38 measured from the due date of the return on which the bad debt
39 could first be claimed.

40 (f) *When certified service provider is used.* — Where filing
41 responsibilities of the seller have been assumed by a certified
42 service provider, the certified service provider may claim, on
43 behalf of the seller, any bad debt allowance provided by this
44 section. The certified service provider shall credit or refund to
45 the seller the full amount of any bad debt allowance or refund
46 received under this section.

47 (g) *Reporting of payment received on previously claimed*
48 *bad debt.* — For the purposes of reporting a payment received
49 on a previously claimed bad debt, any payments made on a debt
50 or account is applied first proportionally to the taxable price of
51 the property or service and the sales tax thereon, and secondly
52 to interest, service charges, and any other charges.

53 (h) *Allocation.* — In situations where the books and records
54 of the party claiming the bad debt allowance support an
55 allocation of the bad debts among two or more states that are
56 members of the streamlined sales and use tax agreement, the
57 allocation is permitted.

§11-15B-28. Confidentiality and privacy protections under Model I.

1 (a) *Purpose.* — The purpose of this section is to set forth
2 the policy of this state for the protection of the confidentiality
3 rights of all participants in the streamlined sales and use tax
4 administration and collection system and of the privacy
5 interests of consumers who deal with Model I sellers.

6 (b) *Certain terms defined.* — As used in this section:

7 (1) The term “confidential taxpayer information” means all
8 information that is protected under section five-d, article ten of
9 this chapter;

10 (2) The term “personally identifiable information” means
11 information that identifies a person; and

12 (3) The term “anonymous data” means information that
13 does not identify a person.

14 (c) *Certified service providers.* — With very limited
15 exceptions, a certified service provider shall perform its tax

16 calculation, remittance, and reporting functions without
17 retaining the personally identifiable information of consumers.

18 (d) *Certification of service providers.* — The governing
19 board administering the streamlined sales and used tax agree-
20 ment may certify a service provider only if that certified service
21 provider certifies that:

22 (1) Its system has been designed and tested to ensure that
23 the fundamental precept of anonymity is respected;

24 (2) That personally identifiable information is only used
25 and retained to the extent necessary for the administration of
26 Model I with respect to exempt purchasers;

27 (3) It provides consumers clear and conspicuous notice of
28 its information practices, including what information it collects,
29 how it collects the information, how it uses the information,
30 how long, if at all, it retains the information and whether it
31 discloses the information to member states. This notice is
32 satisfied by a written privacy policy statement accessible by the
33 public on the official web site of the certified service provider;

34 (4) Its collection, use and retention of personally identifi-
35 able information is limited to that required by the states that are
36 members of the streamlined sales and use tax agreement to
37 ensure the validity of exemptions from taxation that are claimed
38 by reason of a consumer's status or the intended use of the
39 goods or services purchased; and

40 (5) It provides adequate technical, physical, and administra-
41 tive safeguards as to protect personally identifiable information
42 from unauthorized access and disclosure.

43 (e) *State notification of privacy policy.* — The tax commis-
44 sioner shall provide public notification to consumers, including
45 their exempt purchasers, of this state's practices relating to the

46 collection, use and retention of personally identifiable informa-
47 tion.

48 (f) *Destruction of confidential information.* — When any
49 personally identifiable information that has been collected and
50 retained by the tax commissioner is no longer required for the
51 purposes set forth in subdivision (4), subsection (d) of this
52 section, the information shall no longer be retained by the tax
53 commissioner.

54 (g) *Review and correction by individuals.* — When
55 personally identifiable information regarding an individual is
56 retained by or on behalf of the tax commissioner, the commis-
57 sioner shall provide reasonable access by an individual to his or
58 her own information in the commissioner's possession and a
59 right to correct any inaccurately recorded information.

60 (h) *Discovery by other persons.* — If anyone other than the
61 individual, or a person authorized in writing by the individual,
62 seeks to discover personally identifiable information, the tax
63 commissioner shall make a reasonable and timely effort to
64 notify the individual of the request.

65 (i) *Enforcement.* — This privacy policy shall be enforced
66 by the tax commissioner or the attorney general of this state.

67 (j) *Service provider's confidentiality policy may be more*
68 *restrictive.* — This privacy policy does not preclude the
69 governing board administering the streamlined sales and use tax
70 agreement from certifying a certified service provider whose
71 privacy policy is more protective of confidential taxpayer
72 information or personally identifiable information than is
73 required by the agreement or the laws of this state.

§11-15B-29. Customer refund procedure.

1 (a) *General.* — The customer refund procedures set forth
2 in this section apply when a purchaser seeks a return of
3 over-collected sales or use taxes from the seller.

4 (b) *Applicability.* — These customer refund procedures
5 provide the first course of remedy available to purchasers
6 seeking a return of over-collected sales or use taxes from the
7 seller. A cause of action against the seller for the over-collected
8 sales or use taxes does not accrue until a purchaser has provided
9 written notice to a seller and the seller has had sixty days to
10 respond. The notice to the seller must contain the information
11 necessary to determine the validity of the request.

12 (c) *Presumption of reasonable business practice.* — In
13 connection with a purchaser's request from a seller of
14 over-collected sales or use taxes, a seller is presumed to have a
15 reasonable business practice, if in the collection of the sales or
16 use taxes, the seller:

17 (1) Uses either a certified service provider or a certified
18 automated system, including a proprietary system, that is
19 certified by the state; and

20 (2) Has remitted to the state all taxes collected less any
21 allowable deductions, credits, or collection allowances.

22 (d) *Statute of limitations.* — Nothing in this section shall
23 operate to extend any person's time to seek from the tax
24 commissioner a refund of sales or use taxes collected or
25 remitted by a seller in error.

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

1 (a) *Monetary allowance under Model I.* —

2 (1) The tax commissioner shall provide a monetary
3 allowance to a certified service provider in Model I. This
4 allowance shall be in accordance with the terms of the contract
5 between the governing board of the streamlined sales and use
6 tax agreement and the certified service provider. The details of
7 this monetary allowance shall be developed and provided
8 through the contract process. The contract shall provide that the
9 allowance be funded entirely from money collected in Model I.

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

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

15 (B) For a period not to exceed twenty-four months follow-
16 ing a voluntary seller's registration through the agreement's
17 central registration process, a percentage of tax revenue
18 generated for a member state by the voluntary seller for each
19 member state for which the seller does not have a requirement
20 to register to collect the tax.

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

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

31 (2) Following the conclusion of the twenty-four month
32 period, a seller will only be entitled to a vendor discount

33 afforded under each member state's law at the time the base
34 rate expires.

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

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

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

48 (d) *Prohibition on allowance or payment of monetary*
49 *allowances.* — Notwithstanding subsections (a), (b) and (c) of
50 this section, the tax commissioner may not allow any vendor,
51 seller or certified service provider any monetary allowance,
52 discount or other compensation for collecting and remitting the
53 taxes levied by articles fifteen and fifteen-a of this chapter, or
54 for making and filing the periodic reports required by this
55 article, or articles fifteen and fifteen-a of this chapter, until this
56 section is amended by the Legislature.

57 (e) *Findings and declarations.* — The Legislature finds that
58 the vendor cost of collection study was not completed for use
59 by the governing board of the streamlined sales and use tax
60 agreement or this Legislature before this Legislature was asked
61 to authorize the tax commissioner to sign the streamlined sales
62 and use tax agreement. Additionally, no preliminary findings or
63 conclusions of the study regarding vendor costs of collection

64 are available upon which the tax commissioner or the Legisla-
65 ture can reasonably project the effect the payment of the
66 monetary allowances provided for in subsections (a) through (c)
67 of this section will have on net sales and use tax collections.
68 Because the cost of allowing monetary allowances under
69 collection Models I through IV may reduce net sales and use
70 tax collections, at least in the early years of the agreement,
71 because many states including this state are experiencing
72 revenue shortfalls, and because the Legislature is constitution-
73 ally required to pass a balanced budget, the Legislature finds
74 and declares that it is both reasonable and prudent to delay
75 approving this aspect of the agreement until adequate informa-
76 tion does become available and the effect the monetary allow-
77 ances will have on West Virginia sales and use tax collections
78 can reasonably be quantified. The Legislature declares its
79 support for the streamlined sales and use tax agreement by
80 adopting in this enactment all substantive changes in West
81 Virginia's sales and use tax laws necessary for West Virginia's
82 sales and use tax laws to be in substantial compliance with the
83 streamlined sales and use tax agreement. Additionally, the
84 Legislature declares that it can quickly act to reconsider
85 subsection (d) of this section once the requisite information
86 becomes available.

§11-15B-31. Conflict; partial unconstitutionality.

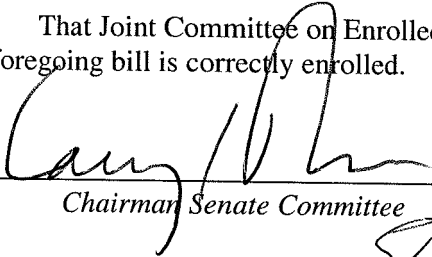
1 (a) *Conflict*. — If a court of competent jurisdiction finds
2 that the provisions of this article and of article fifteen-a of this
3 chapter conflict and cannot be harmonized, then the provisions
4 of this article shall control.

5 (b) *Severability*. — If any section, subsection, subdivision,
6 paragraph, sentence, clause or phrase of this article is for any
7 reason held to be invalid, unlawful or unconstitutional, that
8 decision does not affect the validity of the remaining portions
9 of this article or any part thereof.

§11-15B-32. Effective date.

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

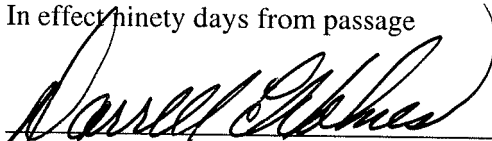
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

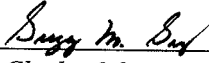

Chairman Senate Committee

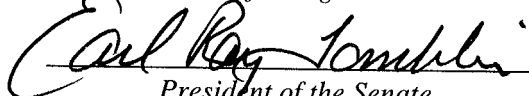

Chairman House Committee

Originating in the House.

In effect ninety days from passage


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 14th
day of March, 2003.


Governor

PRESENTED TO THE
GOVERNOR

Date 3/8/03

Time 12:00 