

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **Senate Bill 58**

**FISCAL  
NOTE**

BY SENATOR PLYMALE

[Introduced January 9, 2019; Referred  
to the Committee on Economic Development; and then to  
the Committee on Finance]

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

*Be it enacted by the Legislature of West Virginia:*

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

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

1 (a) *General rule.* -- For purposes of §11-15B-15-1 *et seq.*, and §11-15A-1 *et seq.* of this  
2 code, the retail sale, excluding lease or rental, of a product shall be sourced as follows:

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

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

9 (3) When §11-15B-15(a)(1), and §11-15B-15(a)(2) of this code do not apply, the sale is  
10 sourced to the location indicated by an address for the purchaser that is available from the  
11 business records of the seller that are maintained in the ordinary course of the seller's business  
12 when use of this address does not constitute bad faith.

13 (4) When §11-15B-15(a)(1), §11-15B-15(a)(2), and §11-15B-15(a)(3) of this code do not  
14 apply, the sale is sourced to the location indicated by an address for the purchaser obtained  
15 during the consummation of the sale, including the address of a purchaser's payment instrument,  
16 if no other address is available, provided use of this address does not constitute bad faith.

17 (5) When §11-15B-15(a)(1), §11-15B-15(a)(2), §11-15B-15(a)(3), and §11-15B-15(a)(4)  
18 of this code do not apply, including the circumstance in which the seller is without sufficient

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

24 (b) *Lease or rental.* -- The lease or rental of tangible personal property or custom software,  
25 other than property identified in §11-15B-15(c) or §11-15B-15(d) of this code, shall be sourced as  
26 follows:

27 (1) For a lease or rental that requires recurring periodic payments, the first periodic  
28 payment is sourced the same as a retail sale in accordance with the provisions of §11-15B-15(a)  
29 of this code. Periodic payments made subsequent to the first payment are sourced to the primary  
30 property location for each period covered by the payment. The primary property location is as  
31 indicated by an address for the property provided by the lessee that is available to the lessor from  
32 its records maintained in the ordinary course of business, when use of this address does not  
33 constitute bad faith. The property location may not be altered by intermittent use at different  
34 locations, such as use of business property that accompanies employees on business trips and  
35 service calls.

36 (2) For a lease or rental that does not require recurring periodic payments, the payment is  
37 sourced the same as a retail sale in accordance with the provisions of §11-15B-15(a) of this code.

38 (3) §11-15B-15(b) of this code does not affect the imposition or computation of sales or  
39 use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of  
40 property for lease.

41 (c) *Vehicles.* -- The lease or rental of motor vehicles, trailers, semitrailers or aircraft that  
42 do not qualify as transportation equipment, as defined in §11-15B-15(d) of this code, shall be  
43 sourced as follows:

44 (1) For a lease or rental that requires recurring periodic payments, each periodic payment

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

49 (2) For a lease or rental that does not require recurring periodic payments, the payment is  
50 sourced the same as a retail sale in accordance with the provisions of §11-15B-15(a) of this code.

51 (3) §11-15B-15(c) of this code does not affect the imposition or computation of sales or  
52 use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of  
53 property for lease.

54 (d) *Sale or lease or rental of transportation equipment.* -- The retail sale, including lease  
55 or rental, of transportation equipment is sourced the same as a retail sale in accordance with the  
56 provisions of §11-15B-15(a) of this code, notwithstanding the exclusion of lease or rental in §11-  
57 15B-15(a) of this code. "Transportation equipment" means any of the following:

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

60 (2) Trucks and truck-tractors with a gross vehicle weight rating of 10,000 pounds or  
61 greater, trailers, semitrailers or passenger buses that are:

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

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

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

69 (4) Containers designed for use on and component parts attached or secured on the items  
70 set forth in §11-15B-15(d)(1), §11-15B-15(d)(2), and §11-15B-15(d)(3) of this code.

71 (e) *Exceptions.* -- §11-15B-15(a), and §11-15B-15(b) of this code do not apply to the  
72 following goods or services:

73 (1) Telecommunications services, ancillary services and Internet access services, as set  
74 out in §11-15B-20 of this code, shall be sourced in accordance with §11-15B-19 of this code; and

75 (2) ~~Until January 1, 2010~~ A seller who is primarily engaged in the retail sale of cut flowers  
76 and flower arrangements taking the original order to sell tangible personal property shall source  
77 the sale to the place where order was taken. For purposes of this exception, “primarily” means  
78 more than 50 percent of the seller's total gross sales or receipts are derived from that activity. In  
79 determining if a seller is primarily a florist, the total sales price of cut flowers and floral  
80 arrangements includes separately stated delivery or service charges. ~~After December 31, 2009,~~  
81 ~~sales by florists shall be subject to the general sourcing rules stated in subsection (a) of this~~  
82 ~~section~~

83 (f) *Product defined.* -- As used in §11-15B-15(a) of this code, “product” includes tangible  
84 personal property, computer software or digital goods or a service, or any combination thereof.

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

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