

CONSUMERS SALES AND SERVICE TAX AND USE TAX

1. Consumers Sales Tax (W. Va. Code §11-15)
2. Use Tax (W. Va. Code §11-15A)

CONSUMERS SALES AND SERVICE TAX

The Consumers Sales and Service Tax Act imposes a duty on vendors to collect a tax from consumers and remit all receipts from this tax to the Department of Tax and Revenue. The tax is imposed on the sale or lease of tangible personal property and the furnishing of certain services. Services rendered by an employee to his employer, services subject to regulation by the West Virginia Public Service Commission and professional and personal services are exempt. Most rentals, excluding those of real estate, are taxable as though they were sales. The tax is also imposed on persons producing for sale, profit or commercial use any natural resource or manufacturing product who also use or consume that product in a contracting activity.

Although Consumers Sales Tax is levied at 6¢ on \$1, 12¢ for \$2, 18¢ for \$3, and so on, this tax is not a flat 6 percent applied against the purchase price. Consumer Sales Tax is computed on a bracket system as shown below:

Sale Price	Tax
\$0.06 through 0.16	1¢
0.17 through 0.33	2¢
0.34 through 0.50	3¢
0.51 through 0.67	4¢
0.68 through 0.84	5¢
0.85 through 1.00	6¢
1.01 through 1.16	7¢
and so on.	

Consumers Sales Tax is to be paid by the ultimate consumer; sellers collect the tax and remit their collections to the Department of Tax and Revenue. The seller collects the tax due from the purchaser at the time of sale unless the purchaser presents the seller with a properly executed exemption certificate or a direct pay permit number. Only one collection of Consumers Sales Tax should occur from production to ultimate consumption for any consumer good or service. Any seller who fails to collect the Consumers Sales Tax must pay the tax himself unless the sale is exempt or the seller receives a direct pay permit number for the purchase. Exempt sales are of three main types:

1. exemption because of the nature of the buyer to whom the sale is made;
2. exemption because of the nature of the article sold, and
3. exemption because of the nature of the sale.

CONSUMERS SALES & USE TAXES

There are several distinct methods by which the exemptions must be claimed. Based on the method by which the exemption must be claimed, exemptions are categorized into three classifications: per se exemptions, exemptions for which exemption certificates are required, and refundable exemptions.

"Per se" exemptions are those for which no separate exemption document is required as proof of the exempt status. The following sales and services are exempt "per se" from Consumers Sales Tax:

1. Advertising--sales of radio and television broadcasting time, preprinted circulars and outdoor advertising space, and newspaper and magazine advertising space;
2. Artistic Services or Performances--the charges to the owner or operator of an entertainment facility for the artistic performances of an entertainer or performing artist pursuant to a contract if the contract amount does not exceed \$3,000;
3. Burial Charges--charges for the services of opening and closing burial lots;
4. Child Care Services--charges for babysitting services provided by individuals who babysit for profit if the gross income of the individual from babysitting services does not exceed \$5,000 in a taxable year (all charges or fees over the \$5,000 limit are taxable);
5. College Room and Board--sales of room and board by public or private colleges or universities if the sale is for more than thirty consecutive days and is on a contract basis to students enrolled at the school;
6. Contracting--the construction, alteration, repair, improvement or decoration of real property when the work done results in a "capital improvement" to the real property (all other construction activities are subject to the tax unless otherwise exempt);
7. Day Care Centers--sales of tangible personal property or services by licensed day care centers;
8. Educational Summer Camp Tuition--tuition charges made for attending educational summer camps (sales of tangible personal property or food by the camps are taxable);
9. Electronic Data Processing Services--sales of electronic data processing services and software related to such purchases to another company, including sales of Internet access service by an Internet access service provider (sales of data processing equipment, material and supplies are taxable);
10. Employees--services provided by an employee to his or her employer if the services are within the scope of the employment contract;
11. Farm Products--sales of livestock, poultry and other farm products in their original state by producers of those products or members of their immediate family when the sales are made to the public in instances when the producer is not otherwise engaged in making retail sales;
12. Federal and State Law--certain organizations, including federal or state chartered credit unions, regional transit authorities, county ambulance authorities and nonprofit health care corporations;

13. Food Sales--exempt food sales are as follows:
 - a. food sold by public or private schools, school-sponsored student organizations or school-sponsored parent-teacher organizations to students enrolled in such school or to employees of the school during normal school hours;
 - b. sales of food by public or private colleges or universities or by officially recognized student organizations to students enrolled at such college when such sales are made on contract basis;
 - c. sales of food by a nonprofit organization or a governmental agency to low-income persons at or below cost;
 - d. food sold in an occasional sale by a charitable, nonprofit or religious organization if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue so obtained is actually expended for that purpose, and
 - e. sales of food by little leagues, scouting groups and similar organizations if the purpose of the sale is to obtain revenue for the functions of the organization and the revenue so obtained is actually used for such functions;

14. Food Stamps--sales of food lawfully purchased with federal food stamps or with drafts issued by the West Virginia special supplemental food program for Women, Infants and Children (WIC);
15. Fraternalities and Sororities--room and board charges made by fraternities or sororities to their student members;
16. Fundraising Sales--fundraising sales by
 - a. churches,
 - b. elementary and secondary schools,
 - c. organizations that receive more than half their support from gifts, grants, direct or indirect charitable contributions or membership fees,
 - d. organizations that have no paid employees and whose gross income from fundraising is donated to an organization that is exempt from federal income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code, and
 - e. youth organizations, such as the Girl Scouts, Boy Scouts or YMCA Indian Guide/Princess Program, which are operated exclusively for charitable purposes and whose primary purpose is character development and citizenship training for its members;

if the organization has a current Business Registration Certificate and the organization is exempt from federal income taxes under sections 501(c)(3) or (c)(4) of the Internal Revenue Code only if these fundraising events are

- limited to six events per year and each event lasts no more than eighty-four hours;
17. Governmental Services and Materials--sales of governmental services or governmental materials after June 30, 1997, by county assessors, county sheriffs, county clerks, circuit clerks and/or governmental agents of these county officials in the normal course of local governmental operations;
 18. Health and Fitness Organizations--sales of membership or services provided by health and fitness organizations for personalized fitness programs;
 19. Intangible Property--sales of intangibles, such as copyrights, royalties, notes and bonds;
 20. Isolated Transactions--sales of tangible personal property or taxable services by persons who are not in the business of making such sales, such as individuals selling their used furniture, if the person or business holding the sale holds no more than four in one year and each sale lasts no more than forty-eight hours, and sales of taxable services by persons who are not routinely in the business of providing taxable services, such as teenagers who occasionally mow lawns, babysit or do odd jobs (persons who routinely sell odd items at yard sales, flea markets or along the roadside are engaged in the business of selling and must register with the Department of Tax and Revenue as a business);
 21. Libraries--sales of services after June 30, 1997, by public libraries, libraries at academic institutions, or libraries at institutions of higher learning;
 22. Lottery Tickets--sales of West Virginia lottery tickets and materials by authorized lottery retailers, including sales of Powerball tickets and materials;
 23. Manufacturing Representatives--commissions received after June 30, 1997, by a manufacturer's representative;
 24. Membership Organizations--charges after June 30, 1997, to a member by a membership organization that is exempt from paying federal income taxes under sections 501(c)(3) or (c)(6) of the Internal Revenue Code for
 - a. membership in the association or organization;
 - b. newsletters prepared by the association or organization primarily for distribution to members;
 - c. continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker for use during the continuing education seminar, workshop, convention, lecture or course, not including separate charges for meals, lodging, entertainment or transportation;
 25. Motor Vehicles--sales of motor vehicles and recreational vehicles titled by the West Virginia Division of Motor Vehicles and on which the Motor Vehicles Privilege Tax is paid and leases of motor vehicles if the lease agreement is for thirty days or more;

26. Music Instructional Services--sales of music instructional services by a music teacher after June 30, 1997;
27. Newspapers--sales of newspapers when delivered to consumers by route carriers (other newspaper sales are taxable);
28. Nonprofit organizations--sales of otherwise taxable services by 501(c)(3) organizations, except nonprofit hospitals, if the organization meets the following criteria:
 - a. the corporation or organization must be organized and operated primarily for charitable or educational purposes;
 - b. the activities and programs of the organization must contribute to promoting the general welfare of youth, families and the aged, improving health and fitness and providing recreational opportunities to the public;
 - c. the corporation or organization must offer membership or participation in its programs and activities to the public;
 - d. the charges, fees and dues of the organization must be arranged so that its programs and activities are accessible by a reasonable cross-section of the community, and
 - e. the corporation or organization must offer financial assistance on a regular and ongoing basis to individuals who are unable to afford the organizations membership dues or fees;
29. Personal Services--personal services, such as barbering, hairstyling, manicuring and massages;
30. Prescriptions--sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;
31. Primary Opinion Research Services--sales of primary research opinion services after June 30, 1997 when such services are provided to an out-of-state client by means of interstate commerce for use by the client outside West Virginia;
32. Professional Services--sales of services recognized as "professional services" under West Virginia law, such as those provided by doctors, lawyers, engineers, architects, certified public accountants and licensed auctioneers;
33. Public Services--sales of services that are subject to regulation by the West Virginia Public Service Commission, including sales of gas, steam or water delivered to consumers through mains or pipes, sales of electricity, most telephone services and services provided by regulated public or common carriers, bus or taxi services (mobile telephone and paging services that may not be regulated are taxable);
34. Real Property--sales of real property (land, houses, buildings and other structures attached to the land), leases or rentals of real property to the same person for thirty or more consecutive days (rentals of less than thirty days are taxable);
35. School Activities--sales of tickets for activities sponsored by elementary and secondary schools located in West Virginia;

36. Textbooks--sales of textbooks required to be used in any of the schools of the State whether the books are sold directly to the school or to students, including written course materials and audio and video materials if they are a required text of the school;
37. Transportation--charges for transporting passengers in interstate commerce, such as airline and bus tickets, if the trip begins or ends outside the State, and
38. Wonderful West Virginia Magazine--direct or subscription sales by the Division of Natural Resources of Wonderful West Virginia magazine, but not newsstand sales.

Some exemptions must be claimed by using a current tax exemption certificate. If a vendor fails to obtain a properly completed exemption certificate from the purchaser or if the purchaser refuses to provide a certificate, the vendor must collect the tax and purchaser must pay the tax. The following is a list of the exemptions for which an exemption certificate is required:

1. Aircraft Repair--aircraft repair, remodeling and maintenance services for licensed carriers of persons or property or for a governmental entity; sales of component parts affixed or attached to such aircraft during repair, remodeling and maintenance services, and sales of tools and equipment directly used to do such services;
2. Controlled Groups--purchases of services by one corporation, limited liability company or partnership from another corporation, limited liability company or partnership when both entities are members of the same controlled group;
3. Food--food purchased by a nonprofit organization or governmental agency that provides meals to low-income persons at or below cost;
4. Livestock--sales of livestock sold at public sales sponsored by the breeder's or registry associations or at livestock auction markets;
5. Management Information Services--sales to a business entitled to claim a credit for investment in certain management information services facilities for the following items to be directly used or consumed in the operation of that facility:
 - a. computer processing and telecommunications equipment;
 - b. data storage and input/output devices;
 - c. disaster recovery services;
 - d. supplies;
 - e. application, telecommunication and operating system software;
 - f. repair and maintenance of any of the above-listed items, and
 - g. other tangible personal property of services that are directly used or consumed in the operation of the facility;
6. Mobile Homes--sales of mobile homes to be used by purchasers as their principal year-round residence are taxed at a 3 percent rate rather than 6 percent;
7. Movies--sales of motion picture films to motion picture exhibitors when the sales of tickets or the charge to view the film are taxable;

8. Purchases by an Exempt Commercial Agricultural Producer--purchases of tangible personal property or taxable services for use or consumption in the commercial production of an agricultural product, including the purchase of fencing and nails used for the construction of fencing, and purchases of propane for use in heating poultry houses;
9. Purchases by Certain Nonprofit Organizations--purchases by a corporation or organization that has a current registration certificate, is exempt from federal income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code, receives more than half its support from gifts, grants, direct or indirect charitable contributions and membership fees, and
 - a. is an youth organizations, such as the Girl Scouts and the Boy Scouts, or
 - b. is a church, convention or association of churches as defined in 26 U.S.C. §170, or
 - c. is an organization with no paid employees whose gross income from fundraisers is donated to a 501(c)(3) or (c)(4) organization;
10. Purchases by Churches--purchases of services, equipment, supplies, food for meals and material directly used or consumed by churches that make no charge at all for the services they render;
11. Purchases by Governments--purchases by the federal government and governmental units of West Virginia or another state, if that state grants a sales tax exemption to governmental units of West Virginia (purchases by employees while on government business are not exempt unless such purchases are directly billed to and paid for by the government entity);
12. Purchases by Producers of Materials Used in the Production of Certain Value-Added Products from Raw Agricultural Products--sales of property or services after June 30, 1997, to persons for direct use in the production of a "value-added product" for a period of no more than five years by such persons engaged exclusively in such production activity for the following:
 - a. the conversion of lumber into furniture, toys, collectibles, and home furnishings;
 - b. the conversion of fruit into wine;
 - c. the conversion of honey into wine;
 - d. the conversion of wool into fabric;
 - e. the conversion of raw hides into semi-finished or finished leather products;
 - f. the conversion of milk into cheese;
 - g. the conversion of fruits or vegetables into dried, canned or frozen products;
 - h. the conversion of feeder cattle into commonly acceptable slaughter weights;
 - i. the conversion of aquatic animals into dried, canned, cooked or frozen products, and

- j. the conversion of poultry into dried, canned, cooked or frozen products;
- 13. Purchases by Schools--purchases by a school that has its principal campus in this State and has approval from the board of trustees of the university system of West Virginia or the board of directors of the state college system to award degrees;
- 14. Purchases for Resale--purchases of tangible personal property or taxable services intended for resale or for use in performing taxable services when such property becomes a component part of the property upon which the services are performed and will be actually transferred to the purchases, and
- 15. Video Arcade Games--sales of coin-operated video arcade machines or video arcade games to a person who provides such machines to the public for a charge upon which the tax is imposed.

For purchases for which there are no per se exemptions or for which no exemption certificate may be issued, the purchaser must pay the Consumers Sales Tax and Use Tax unless he has a direct pay permit number from the Department of Tax and Revenue. Each business with a direct pay permit must keep a record of taxable and exempt purchases and remit any tax due directly to the Department of Tax and Revenue. Those without a direct pay permit may either credit the tax paid for items that qualify for a refundable exemption against sales or use tax due and owed on non-exempt purchases or apply for a refund of the tax paid. Refundable exemptions are allowed for the following classifications:

- 1. Businesses Subject to the Business and Occupation Tax, Severance Tax or Telecommunications Tax--purchases of property directly used or consumed in businesses whose gross receipts are subject to these taxes, excluding purchases of gasoline and special fuel (purchases whose use or consumption is only incidental or convenient to the activity subject to Business and Occupation Tax, Severance Tax or Telecommunications Tax are taxable);
- 2. Charitable Organizations--purchases by bona fide charitable organizations that make no charge at all for the services they render;
- 3. Communications Businesses--purchases made for direct use or consumption in the activity of communications, such as telephone, telegraph, commercial broadcast radio and television, and cable television (purchases whose use or consumption is only incidental or convenient to the communications activity are taxable);
- 4. Fraternal or Social Organizations--purchases by nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work;
- 5. Housing--purchases of building materials or building supplies by organizations that are exempt from federal income taxes under section 501(c)(3) or (c)(4) of the Internal Revenue Code when such are to be installed in buildings or structures used as permanent low-income housing, transitional housing, emergency homeless shelters, domestic violence shelters or emergency children and youth shelters when such are owned or operated by organizations listed above;

6. Manufacturing Businesses--purchases of equipment, supplies, materials and services intended for direct use or consumption in the activity of manufacturing (purchases whose use or consumption is only incidental or convenient to the manufacturing activity are taxable);
7. Natural Resource Production Businesses--purchases for direct use or consumption in the activity of producing natural resources by persons who are not subject to Severance Tax, such as contract miners or drillers (purchases whose use or consumption is only incidental or convenient to the natural resource production activity are taxable);
8. Transportation and Transmission Businesses--purchases made for direct use or consumption in the activity of transportation by businesses who are engaged in the activity of hauling or delivering goods for others (purchases whose use or consumption is only incidental or convenient to the transportation or transmission activity are taxable), and
9. Volunteer Fire Departments--purchases of fire fighting or station house equipment, construction and automotive equipment by volunteer fire departments organized and incorporated under the laws of the State of West Virginia.

Direct Pay Permit

The State Tax Commissioner may, at his discretion, authorize a person who is a user, consumer, distributor or lessee to pay Consumers Sales Tax and Use Tax directly to the Department of Tax and Revenue and waive the collection of tax by that person's vendors, including out-of-state vendors. No such authority shall be granted or exercised except upon application to the State Tax Commissioner and after issuance by the State Tax Commissioner of a direct pay permit number. To avoid paying the tax or presenting an exemption certificate at the time of each transaction, the direct pay permit number issued to a specific taxpayer may be used when making taxable or exempt purchases. A direct pay permit number does not apply to purchases of gasoline or special fuel.

The tax imposed upon all sales and leases of tangible personal property and sales of taxable services shall be remitted by the permit holder directly to the Department of Tax and Revenue. This tax will be due on or before the fifteenth day of each month for the preceding month's transactions. Direct pay permit returns not filed by the due date will be subject to interest and late filing and late payment penalties.

The permit is valid until expiration of the business' registration year and shall automatically be renewed when the business registration certificate is issued for the next succeeding fiscal year unless the permit is surrendered by the holder or canceled for just cause by the State Tax Commissioner.

When using a direct pay permit, the holder of the permit must notify each specified vendor from whom tangible personal property is purchased or leased or from whom services are purchased of their direct pay permit number and that any tax thereon will be paid directly to the Department of Tax and Revenue. Vendors must maintain records identifying the purchase by name, permit number and the amount of the sale for which the direct pay permit was accepted.

Upon the expiration, cancellation or surrender of the direct pay permit, the holder must promptly notify, in writing, the specified vendors from whom tangible personal property is purchased or leased or by whom services are rendered of the cancellation or surrender.

Credits Against Tax Liabilities

Purchasers who pay Consumers Sales Tax or Use Tax on items that qualify for a refundable exemption may credit such tax overpayment against their monthly or quarterly remittances of Consumers Sales Tax and Use Tax.

USE TAX

The Use Tax is imposed upon the use within West Virginia of tangible personal property and services bought or leased outside West Virginia for use or consumption within this State. The tax is levied at the rate of 6 percent of the purchase price. The Use Tax complements the Consumers Sales and Service Tax that is levied at the rate of six cents on \$1.

Out-of-state vendors engaging in business in this State are required to collect Use Tax from their West Virginia customers. The State Tax Commissioner is empowered to authorize certain foreign retailers to collect Use Tax at the time a sale is made. Collected tax must be remitted quarterly. Any person who used tangible personal property purchased outside West Virginia upon which the tax has not been paid to the seller is personally liable for such tax and is required to remit quarterly the tax imposed upon all such property directly to the Department of Tax and Revenue.

The use in West Virginia of the following tangible personal property is exempt from the tax:

1. all articles of tangible personal property brought into the State by a nonresident individual for his or her use or enjoyment while in the State;
2. tangible personal property and services that are exempt from Consumers Sales Tax;
3. tangible personal property and services upon which the Consumers Sales Tax has been paid;
4. tangible personal property and services that are not subject to the Consumers Sales Tax, and
5. tangible personal property purchased outside West Virginia for use outside this State by a nonresident personal or business who later brings such property into this State in connection with his establishment of a permanent resident or business in West Virginia.

Credits Against Use Tax

A credit is allowed against a taxpayer's Use Tax liability for sales tax lawfully paid to another state, but the amount of the credit allowed may not exceed the amount of Use Tax imposed on the use of property in West Virginia.

**CONSUMERS SALES AND SERVICE TAX
AND USE TAX COLLECTIONS¹**

Fiscal Year	Consumers Sales & Service Tax	Use Tax	Total Net Sales & Use Tax Revenue
1986-1987	\$291,183,560	\$12,118,020	\$303,301,580
1987-1988	330,516,350	16,007,565	346,523,915
1988-1989	379,337,006	18,809,393	389,146,399
1989-1990	494,553,427	27,312,947	521,866,374
1990-1991	536,559,245	30,690,019	567,249,264
1991-1992	569,162,318	33,569,318	602,731,636
1992-1993	652,286,754	39,994,719	692,281,473
1993-1994	681,773,813	45,417,592	727,191,405
1994-1995	743,516,382	49,949,253	793,465,635
1995-1996	745,521,995	51,766,887	797,288,882
1996-1997	775,185,438	56,055,464	831,240,902

¹ Does not include transfers to special revenue funds.

