



Sales and Use Tax Exemptions

The West Virginia sales and use tax laws contain many exemptions from the tax. This publication provides a brief, general description of sales and use tax exemptions. It does not discuss special rules regarding sales of gasoline and special fuels. It is not a substitute for tax laws or regulations.

When discussing sales/use tax exemptions it is important to consider the following general principles:

- **All** sales of tangible personal property or taxable services are presumed to be subject to tax.
- Tax **must** be collected unless a specific exemption applies to the transaction and proper documentation of the exempt status of the transaction is established by the purchaser and retained by the seller.
- Most individuals, businesses and organizations must pay tax on their purchases.
- The burden of proving that a transaction is exempt is on the person claiming the exemption and the vendor making the sale.
- Vendors who fail to collect and remit sales tax on taxable transactions or who fail to maintain proper records and documents with respect to such transactions will be held personally liable for payment of the amount of tax owed the State.
- Intentional disregard of the sales/use tax law or regulations is a serious matter and will result in monetary fines or criminal penalties.

There are several distinct types of exemptions and prescribed methods by which the exemptions must be claimed. Failure to follow the proper method in claiming an exemption may result in a transaction being taxable even though an exemption would exist if the proper method and documentation had been used.

“Per se” Exemptions

The term “per se” means by, of or in itself. When used in the context of sales tax exemptions, it refers to exemptions that do not require a separate exemption document as proof of the exempt status. Generally the normal documentation of the transaction is sufficient proof of the “per se” exemption. Vendors who make sales which are “per se” exempt must maintain adequate records to substantiate the exemption.

The following sales and services are exempt “per se” from sales/use tax in West Virginia.

Advertising - Sales of radio or television broadcasting time, preprinted advertising circulars and outdoor advertising space, newspaper and magazine advertising space for the advertisement of goods or services are exempt from sales tax.

College Room and Board - Sales of room and board by public or private colleges or universities are exempt from sales tax when the sale thereof is for more than 30 consecutive days and is on a “contract basis” to students enrolled at the school.

Contracting - The construction, alteration, repair, improvement or decoration of real property is exempt from sales tax, but only when the work performed results in a “**capital improvement**” to the real property. All other construction trade activities are subject to the sales tax unless otherwise exempt. (See Publication TSD-310) **Purchases** made by contractors are generally taxable.

Day Care Centers - Sales of tangible personal property or services by day care centers are exempt from sales tax. Purchases of property or services by day care centers are generally taxable.

Educational Summer Camp Tuition - Tuition charges made for attending **educational** summer camps are exempt from sales tax. This exemption does not apply to sales of tangible personal property or food by the camps.

Employees - Services provided by an employee to his or her employer that are within the scope of the employment contract are exempt from sales tax. Services provided by an employee to his employer that are outside of the employment contract and services provided by an “independent contractor” are taxable. A discussion of the employee/employer relationship can be found in Section 60 of the Department’s Sales Tax Regulations.

Federal and State Law exempts certain organizations or activities from state sales taxes. These provisions are not found in our sales tax law or legislative rule, but are in the particular provisions of the law which deal with the specific organization or activity. A nonexclusive list of organizations that are exempt from sales tax by other sections of federal or state law are: federal or state chartered credit unions, regional transit authorities, county ambulance authorities, and non-profit public health care corporations. These provisions of federal and state law may exempt the organization or activity from sales tax on the sale of

goods and services or on purchases of goods and services or both. However, this exemption applies only to the activities or transactions specifically excluded from taxation by the applicable statute. For example, state law imposes a part-mutual wagering tax on racing tracks in lieu of other taxes on its operations; nevertheless sales of food, beverages, programs, souvenirs and other items by racing tracks are subject to the sales tax.

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) are exempt from sales tax.

Fraternalities and Sororities - Room and board charges made by fraternalities and sororities to their student members are exempt from tax.

Fund Raising Sales by Churches and Certain Non-Profit Organizations - This exemption only applies to organizations which meet special requirements. For a complete discussion of this exemption see Publication TSD-320.

Intangible Property - The sales tax is not imposed on sales of intangibles (copyrights, royalties, notes, bonds, etc.).

Isolated Transactions - Sales of tangible personal property or taxable services **by persons** who are not in the business of making such sales, such as an individual selling his personal belongings or a law office selling its used furniture, are exempt from sales tax. Sales of tangible personal property may be made at yard sales without collecting sales tax provided such sales are held no more than 4 times per year and last no longer than 48 hours each. Persons who regularly and routinely sell goods at yard sales, flea markets or along the roadside are engaged in the business of selling. They must register with the State Tax Department and collect sales tax on such sales. Persons who are not engaged in the business of providing taxable services may also qualify for this exemption. For example, teenagers who occasionally mow lawns, baby sit or do odd jobs for their neighbors may be able to claim this exemption.

Lottery Tickets - Sales of West Virginia lottery tickets and materials by authorized lottery retailers, including sales of Lotto America tickets and materials, are exempt from sales tax.

Motor Vehicles - Sales of motor vehicles and recreational vehicles titled by the West Virginia Department of Motor Vehicles are subject to a \$10.00 title fee and 5% sales tax that is based on the sales price of the vehicle regardless of whether it was purchased in or outside West Virginia. However, if a West Virginia resident purchases a vehicle outside of West Virginia and previously paid sales tax to the seller, a credit will be allowed, up to the amount that would have been due had the vehicle been purchased in this state, for sales tax previously paid. Long-term leases (leases of 30 days or more) of motor vehicles are exempt from sales tax. **Daily or weekly** rentals of motor vehicles or recreational vehicles are subject to sales tax.

Newspapers - Sales of newspapers are generally taxable. However, when they are delivered by route carriers they are exempt. Over the counter and vending machine sales **are** taxable.

Personal Services - Sales of services to the "person" of an individual, such as barbering, hairstyling, manicuring and massaging are exempt from tax. Generally this exemption does not apply to weight loss or physical fitness programs. Purchases of tangible personal property or taxable services made by personal service providers are generally taxable.

Prescriptions - Sales of drugs dispensed upon prescriptions issued by persons licensed to prescribe, and sales of insulin to consumers for medical purposes are exempt from tax. Sales of nonprescription medications are subject to the tax. Note, however, that **purchases** of prescription drugs and insulin by medical professionals for use in their medical services are taxable.

Professional Services And Certified Public Accountants - Sales of services recognized as "professional" under West Virginia law such as those provided by doctors, lawyers, engineers, architects and CPA's are not taxable. **Purchases** by professionals are taxable.

Public Services - Sales of services which are subject to the control of the West Virginia Public Service Commission, including sales of gas, steam and water delivered through pipes and mains and sales of electricity, most telephone services and services of regulated public or common carriers, bus and taxi services are exempt from tax. Mobile telephone and paging services that may not be regulated are subject to the tax. Sales of goods by regulated companies are generally **not** exempt.

Real Property - Sales tax is not imposed on the sale, lease or rental of real estate (land, houses, buildings and other structures attached to the land). Leases or rentals of real property to the same person or occupant for thirty or more consecutive days are exempt while rentals for less than thirty days are subject to the tax, such as daily parking rental.

School Activities - Sales of tickets for activities sponsored by elementary and secondary schools located within this State are exempt from sales tax. This exemption does not include activities sponsored by other organizations which merely occur on school property and are not sponsored by the school.

Textbooks - Sales of textbooks required to be used in any of the schools of the State, whether the books are sold directly to schools or students are exempt from tax. This exemption includes written course materials as well as audio and video materials so long as they are a required text of the school. This exemption does not apply to books or materials that are not textbooks, pens, pencils, paper or other school supplies.

Transportation - Charges for transporting passengers in interstate commerce, such as airplane tickets or bus tickets, are exempt from tax when the trip begins or ends outside the State.

Exemptions

The following is a list of tax exemptions that may be claimed by presenting a properly executed Certificate of Exemption (Form F0003) to the seller of the tangible personal property or taxable services. 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 the purchaser must pay the tax. You cannot typically claim these exemptions by using a direct pay permit unless you are otherwise eligible to hold a direct pay permit.

Purchase 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 purchaser, are exempt from sales tax.

Purchased 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 and purchases of propane for use in heating poultry houses are exempt from sales tax, but not purchases for construction of or permanent improvement of real property.

Tax Exempt Organizations

Government - Purchases by the United States government or the State of West Virginia, including their institutions or subdivisions and county and municipal governments of West Virginia are exempt from sales tax. Purchases by employees of such government agencies while on government business are not exempt from sales tax unless such purchases are directly billed to and paid for by the government agency. Purchases by another state, or by an out of state county or municipal government are not exempt unless the other state or government organization provides the same exemption to the State of West Virginia and its institutions and subdivisions. Private persons doing business with the government may not claim this exemption.

Certain Nonprofit Organizations - Purchases by a corporation or organization which has a current registration certificate and which is exempt from federal income taxes under section § 501(c)(3) or (c)(4) of the Internal Revenue Code are exempt if the organization meets all of the requirements set forth in W. Va. Code § 11-15-9(f). For information concerning these requirements refer to Publication TSD-320.

Schools - Purchases by a school that has its principal campus in this State, that is approved by the State of West Virginia to award degrees, and that is exempt from federal and state income taxes under section § 501(c)(3) of the Internal Revenue Code are exempt from sales tax.

Churches - Purchases of services, equipment, supplies, food for meals and materials directly used or consumed by churches which make no charge whatsoever for the services they render are exempt from sales tax. These purchases must be paid for directly out of the church treasury.

Sales of Certain Specific Services

Purchases of electronic data processing services and software related to such purchases are exempt from sales tax, but not purchases of data processing equipment, materials and supplies.

Purchases of services by one corporation, partnership or limited liability company from another corporation, partnership or limited liability company **but only** when both corporations are members of the same controlled group are exempt from sales tax.

Purchases of motion picture films, coin-operated video arcade machines and other video arcade games for any use upon which there will be a charge subject to sales tax.

Purchases by a licensed carrier of persons or property, or by a government entity, or aircraft repair, remodeling and maintenance services for an aircraft, engine or other component part of an aircraft, or purchases of tangible personal property that is permanently affixed as a component part of an aircraft as part of the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts, and purchases by a licensed carrier of persons or property, or by a government entity, of machinery, tools or equipment, directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts.

Refundable Exemptions/Direct Pay Permit

The following exemptions **must** be claimed in one of the following ways. These exemptions may not be claimed by use of the tax exemption certificate.

Direct Pay Permit - Business entities that qualify for these exemptions may apply to the State Tax Department for issuance of a Direct Pay Permit. Only those organizations which qualify for one or more of these exemptions will be issued a Direct Pay Permit. Also, business entities which are delinquent in paying taxes to the Department will not be issued Direct Pay Permits. Direct Pay Permits may only be used to purchase exempt items and may not be used to purchase gasoline and special fuel.

Pay/Refund - Business entities that qualify for these exemptions but who have not been issued Direct Pay Permits must pay the sales tax to the vendor at the time of purchase and then apply to the Department for a refund or credit of the tax paid on their exempt purchases.

Refundable/Direct Pay Permit Exemptions

Manufacturing Exemptions - Purchases of equipment, supplies, materials and services intended for direct use or consumption in the activity of manufacturing are exempt from sales tax. Purchases which are not intended for direct use or consumption but whose use or consumption is only incidental or convenient to the manufacturing activity are not exempt. For example, the purchase of an oven to process coal into coke and the purchase of coal to be processed into coke are exempt, whereas a furnace purchased to heat the office building of a coke manufacturer and the coal used to fire that furnace are subject to sales tax. For a complete discussion of the definition of "direct use" see Publication TSD-358.

Natural Resource Production - Purchases for **direct use or consumption** in the activity of producing natural resources are exempt from sales tax. This exemption applies only to persons engaged in natural resource production who are not subject to the severance tax, such as contract miners or drillers.

Transportation and Transmission Businesses - Purchases made for direct use or consumption in the activity of transportation are exempt from sales tax. Transportation and **transmission businesses engage in the activity of hauling or delivering goods for others**. Persons who haul or deliver their own goods may not claim this exemption. Purchases which are not for direct use or consumption or whose use or consumption will only be incidental or convenient to such transportation or transmission activity are taxable.

Communication Businesses - Purchases made for **direct use or consumption** in the activity of communication (telephone, telegraph, commercial broadcast radio and television, cable television, etc.) are exempt. Purchases which are not for direct use or consumption or whose use or consumption which will only be incidental or convenient to the communications activity are taxable.

Businesses Subject to the Business and Occupation Tax, Severance Tax or Telecommunications Tax - Businesses subject to these taxes may purchase exempt from the sales tax all equipment, supplies and materials that will be used in the business activities subject to those taxes. Purchases made for use in activities not subject to those taxes do not qualify for this exemption.

Drugs, durable medical goods, mobility enhancing equipment and prosthetic devices dispensed upon prescription - The purchase by a health care provider of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment, or prevention or injury or disease in humans are exempt from sales tax. Purchases of non-prescription drugs and other over-the-counter healthcare items remain subject to sales tax just as such items are taxable when purchased by a consumer from a retailer. See Publication TSD-425 for additional information.

Other Organizations - Charitable organizations, volunteer fire departments and nationally chartered fraternal or social organizations may qualify for a refundable/direct pay permit exemption. If these organizations do not qualify for the specific exemption for non-profit (IRC §501(c)(3) or § 501(c)(4)) organizations, they may claim a limited refundable exemption. However, if these organizations qualify for the non-profit exemption, they must claim their exemption by use of the tax exemption certificate and will not be eligible to receive a direct pay permit.

- Purchases by **bona fide charitable** organizations which make no charge whatsoever for the services they render are exempt.
- Purchases by **volunteer fire departments** of station house equipment, construction and automotive equipment are exempt.
- Purchases by nationally chartered **fraternal or social** organizations for the sole purpose of **free distribution in public welfare or relief work** are exempt.

West Virginia State Tax Department
Taxpayer Services Division
P. O. Box 3784
Charleston, West Virginia 25337-3784
Telephone: (304) 558-3333
Toll free : 1-800-WVA-TAXS (1-800-982-8297)
or visit our web site:
<http://www.state.wv.us/taxdiv>
TDD service for the hearing impaired: 1-800-2TAXTDD (1-800-282-9833)