



ABCs Of Sales And Use Tax For Public Schools

In light of major changes to the West Virginia sales and use tax laws that affect elementary and secondary schools, each public elementary and secondary school must review its tax practices to assure proper compliance. Each individual school must register with the Department of Tax and Revenue to establish a sales tax account for remittance of taxes collected upon taxable sales. Schools that directly purchase also must register to claim exemption from tax upon their purchases. Registration forms and information may be obtained by contacting the Taxpayer Services Division as indicated at the end of this publication. This publication provides general information regarding typical transactions of public schools, and is not a substitute for sales and use tax laws or regulations. Publication TSD-312A discusses private elementary and secondary schools.

PURCHASES

All purchases of tangible personal property and services by public schools are exempt from sales tax if the school issues a properly completed Certificate of Exemption (Form F0003) to the vendor.

SALES, GENERALLY

Unlike **purchases** by public schools, **sales** by public schools are taxable in many instances. Unless there is a specific exemption in the sales tax law, all sales, leases and services in West Virginia are taxable, even sales by or through public schools. The burden of proving that a sale was exempt from tax is upon the seller. School officials should ensure that sales tax is imposed on all sales of items that are not specifically exempt.

Sales tax applies not only to sales by schools themselves, but to sales by school employees, school related organizations like the PTA, and businesses when the sales are made at or through the schools or school children. As a result of recent changes in the laws, retail sales by many out-of-state businesses (including mail order sales) in this state are now subject to use tax when the out-of-state retail business has agents or other physical presence in the State. When school officials and school personnel assist such businesses in making sales and receive benefits from such sales, they become agents of the businesses. The safest way to ensure that tax is imposed is for the school itself to collect and remit the tax whenever the school, students or other related persons are involved in a nonexempt sale.

The following discussion outlines some of the major sales tax exemptions applying to typical school-related transactions.

SALES OF ITEMS OTHER THAN FOOD

The following sales by public schools are exempt from sales tax:

- (1) Sales of textbooks, workbooks, instructional aids, and standardized examination materials required in any public elementary or secondary school in this State are exempt per se, so no sales tax or use tax is collected upon such sales. However, sales of other school materials, school supplies and books that are not required textbooks are taxable, as are sales of jewelry, candy, clothing items, posters, magazines, greeting cards, and all other items not specifically exempt. The school must keep sufficient books and records to differentiate between taxable and exempt sales.
- (2) School newspapers and yearbooks compiled and edited by students of the school are exempt when sold to students or school employees. However, such sales are taxable when sold to others. Sales of advertising space in school newspapers and yearbooks are exempt from sales tax.
- (3) Rentals of locks, lockers, storage space, clothing and other materials and equipment owned by public schools and furnished solely to students of the school are exempt from sales tax.
- (4) Class dues and library fines are exempt from sales tax.
- (5) Sales of tickets for activities sponsored by elementary and secondary public schools located within this State are exempt from sales tax. This exemption applies only to sales of tickets to such activities; it does not apply to sales of anything else, such as sales of merchandise. Sales of tickets to athletic, cultural and social events, as well as fund raising events, would be exempt as long as they are sponsored by the school. But sales to such events would not be exempt if they are not sponsored by the school, even if the event occurs on school property. For an activity to be sponsored by a school, it should be an activity which is organized solely to benefit the school's students, and which would not otherwise occur. For example, sales of tickets for admission to a school carnival held by parents to raise money for such things as art supplies and air conditioners for classrooms are exempt as fund raising events if the carnival was held on

the school grounds and the carnival was promoted as an activity to raise money for the school or for some school related purpose, such as a school sponsored class trip. On the other hand, sales of tickets to carnivals, concerts, circuses, ball games and other such events are subject to tax when conducted by businesses for profit, even if the school receives a share of the proceeds from the event.

(6) Casual and occasional sales by a parent-teacher association (PTA) or similar organization are exempt if the organization (1) has a current business registration certificate; and (2) is exempt from federal income taxes under Internal Revenue Code § 501(c)(3) or § 501(c)(4); and (3) is an organization with no paid employees and whose gross income from fund raisers, less reasonable and necessary expenses to raise such gross income (or the tangible personal property or services purchased with such net income), is donated to the public school. If any of the foregoing conditions are not met, casual and occasional sales are taxable. For example, sales of such items as class photographs, class rings and school jackets are taxable when sold by for-profit organizations and individuals, because for-profit organizations and individuals are not exempt from federal income taxes under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code. To qualify as a casual and occasional sale, a fund raiser may last no longer than 84 consecutive hours (i.e., three and one half days) and no more than six such fundraisers may occur in any consecutive twelve months period. For more information, see Publication TSD-320, "Sales and Use Tax Considerations for Nonprofit Organizations."

ILLUSTRATION

Moe Doe, a professional photographer, takes class photographs for various schools as part of his photography business, which is subject to sales tax. Moe has a current business registration certificate and employs a secretary/receptionist. Sales tax must be charged on the sales price of the class photographs for each of the following reasons. First, since Moe is in the business of photography, his services are not casual and occasional sales. Second, Moe is not a PTA or similar organization. Third, because he is a professional photographer, Moe is not a qualified Section 501(c)(3) or Section 501(c)(4) organization. And fourth, because taking class photographs is part of his business, Moe does not donate all of his earnings from such activities to the schools. The fact that Moe's services are provided to public school students does not make his services exempt from sales tax. The school should either be sure that Moe is collecting sales tax, or the school itself should collect and remit the tax.

SALES OF FOOD

There are special exemption provisions for sales and purchases of food by public schools. Food sold by public schools, school sponsored parent-teacher associations or school sponsored student organizations, to students enrolled in the school or to employees of the school **during normal school hours** is exempt per se from sales tax.

Only two types of organizations may make such exempt sales of food during normal school hours:

- (1) Any public school which is subject to regulation by the West Virginia State Board of Education; or
- (2) Any parent-teacher association or student organization which is sponsored by a public school which is subject to regulation by the West Virginia State Board of Education.

The following sales of food **during other than normal school hours** are also exempt:

Sales of food by a school sponsored student or parent-teacher association or similar organization at athletic, cultural, social or fund raising events when the proceeds of such sales, after payment of reasonable expenses, are donated to the school or used to purchase tangible personal property or services for the school. Examples of such exempt sales are bake sales held by the school's band

boosters to raise money for new uniforms, and concession sales of hot dogs, popcorn and soft drinks by parents at athletic events to raise money for athletic equipment.

The following sales of food are always subject to sales tax:

Sales of food through vending machines, regardless of where the machine is located, who owns the machine or when the sale occurs; and

Sales of food to the general public during normal school hours unless such sales meet all of the conditions listed in Item (6) in the previous section on "Sales of Items Other Than Food."

WHEN SALES ARE TAXABLE

One other aspect of taxable sales should be kept in mind. When a taxable sale occurs, the sales tax generally must be stated separately from the sales price. In some situations, however, such as nonexempt ticket sales, admission fees and food sold at school related events such as ball games, the sale price may include the sales tax. In the case of tickets, either the sales price and sales tax must be separately stated on the ticket, or the ticket or a sign posted in plain view must state that sales tax is included in the ticket price. With respect to admission charges where tickets are not used and sales of food at school related events, a sign may also be posted in plain view stating that sales tax is included in the sales price. When the sign method is used, the sign must be legible and visible to a person with normal vision from a distance of 20 feet. When the sales price includes the sales tax, the amount of sales tax which must be imposed on each sale is as follows:

Divide the total amount received by 1.06 and multiply that amount by .06, then round the resulting amount up to the next highest cent. This last figure is the amount owed to the State on the sale.

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)