



## Vendor Responsibilities: Questions And Answers About West Virginia Sales Tax Collection And Recordkeeping Rules

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If you sell or lease tangible personal property or provide a service in West Virginia, you are generally considered to be a vendor required to collect West Virginia Sales Tax on each sale, service or lease unless an exception applies. All sales, leases and services are presumed taxable. The burden of proof that a sale is exempt from the tax rests with you, the vendor. You must collect Sales Tax regardless of whether you make sales as an individual, a partnership, a corporation, a governmental agency or any other entity. Even non-profit organizations that are exempt from federal and state income taxes must collect West Virginia Sales Tax in many cases.

If you are a vendor required to collect West Virginia Sales Tax, you are a trustee of the State. Whether you file monthly or quarterly tax returns, you must keep accurate records that contain all the information you need to prepare your returns and to verify their accuracy in case you are audited. No one set of recordkeeping rules can apply to all vendors. However, as discussed in this Publication, your records must be geared to your particular operation and any recordkeeping equipment you use. Remember, the burden of proof that a sale is exempt from the tax rests with the vendor. If you fail to collect tax you may be held personally liable for payment of the tax.

This Publication provides general information about West Virginia Sales Tax responsibilities arising from selling or leasing tangible personal property or providing services in West Virginia. Basic collection and recordkeeping rules for West Virginia Sales Tax vendors are discussed in a question and answer format. The rules discussed in this Publication do not apply to sales of gasoline or special fuels. This Publication is not a substitute for tax laws or regulations.

### Q1. Who is required to collect Sales Tax?

Every vendor selling or leasing tangible personal property or rendering a service in West Virginia is required to collect West Virginia Sales Tax on each sale, lease or service unless a specific exception applies.

### Q2. What are the exceptions to the collection requirement?

There are only two exceptions to the requirement that vendors must collect Sales Tax on each sale, lease or service in West Virginia. You are not required to collect Sales Tax (1) if the sale, lease or service is classified in the Sales Tax Regulations as a "per se" exemption or (2) if you obtain from your customer in good faith and thereafter retain a properly completed exemption document that is applicable to that type of transaction. West Virginia vendors of tangible personal property and services must collect Sales Tax in all other transactions.

### Q3. What does the term "per se exemption" mean and what qualifies under this exemption?

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 special exemption document as proof of its exempt status. Generally, the normal documentation of the sale is sufficient proof of exemption. For a more detailed discussion of "per se" exemptions see Publication TSD-300.

Even if you engage solely in transactions that are per se exempt from the West Virginia Sales Tax, you must still keep sufficient books and records to substantiate the exemption for each sale and service in order to overcome the presumption that each sale and service in West Virginia is subject to Sales Tax. Please refer to Publication TSD-300 for a more detailed discussion of the per se exemptions and associated recordkeeping considerations.

### Q4. What are exemption documents and how are they used?

If a transaction is not per se exempt, you are not required to collect Sales Tax if you obtain from your customer (in good faith) a properly completed exemption document that is applicable to that type of transaction. The three types of exemption documents recognized in West Virginia are: (1) the tax exemption certificate, (2) the direct pay permit and (3) the material purchase certificate. Generally, you must retain these documents in your files as proof of exemption. There is no such thing as a "tax exempt number" for West Virginia Sales Tax purposes.

### Q5. What is the vendor's responsibility if a customer cannot or does not present an authorized exemption document and also refuses to pay the sales tax?

If the vendor notifies the Tax Commissioner in writing of such refusal by the customer, the vendor may be relieved of any liability. The notification must include the name and, if known, address of the purchaser, the purchase price of the item, and the amount of tax not collected. The vendor may also be relieved of any liability if he has accepted IN GOOD FAITH false, expired, cancelled or otherwise ineffective or unlawful exemption documentation.

If a customer gives you any of the following exemption documents instead of paying the tax, keep it on file for future reference and observe the following rules:

#### Form F0003 - Certificate of Exemption

**The current exemption certificate form must be used beginning January 1, 2008. Retain all exemption certificates covering transactions for all periods open to audit.**

**Your customer must complete the exemption certificate. If you accept an incomplete or improperly prepared exemption certificate, you become liable for any tax not collected that should have been collected.**

**You must maintain your records to clearly associate sales for which no tax is collected (because your customer gave you an exemption certificate) with receipts, invoices, cash register tapes or other documents of original entry or supporting entries in your books of account. Remember that all sales, leases and services are presumed taxable.**

#### DIRECT PAY PERMIT

Direct pay permits may not be used in the case of purchases of food.

You must take your customer's current direct pay permit number in good faith. A direct pay permit number is not a tax exempt number. To protect yourself, you should obtain and retain a copy of the direct pay permit issued to your customer by the Department. Direct pay permit numbers have changed for the past three years. Each invoice for the customer must clearly reflect the direct pay permit number in effect at the time of the purchase.

#### MATERIAL PURCHASE CERTIFICATE

The material purchase certificate is for very limited use. The certificate is issued to certain contractors who perform contracts for government agencies and may only be used to purchase construction supplies and materials. As a vendor you are relieved of the duty to collect sales tax when you accept in good faith the contractor's material purchase certificate number and reference the number on all relevant documents. For your protection, it is recommended that you obtain a photo copy of your customer's material purchase certificate and retain it in your files.

Q6. Ok, so an exception does not apply, how do I collect the tax?

As a general rule, you must separately state the Sales Tax from the sales price or other consideration for a sale or lease of tangible personal property or performance of a service. Typically, you should state the amount of tax on the invoice, receipt or billing document provided to your customer. Similarly, Sales Tax should be separately stated on your documents of original entry (like receipts, invoices, cash register tapes) and the supporting entries in your books of account. It is a crime for any vendor to represent directly or indirectly to the public that Sales Tax will be absorbed by the vendor or that the tax is not added to the sales price.

Sometimes vendors will include tax in the overall sales price of items like movie tickets or a hot dog at a ball game. If a ticket or receipt is given to the customer, the ticket must either indicate the amount of tax collected or include the phrase "West Virginia Sales Tax included in price" or a substantially similar phrase. If a ticket or receipt is not given to the customer, a sign must be posted in plain view to customers that includes the phrase "West Virginia Sales Tax included in price" or a similar phrase.

Q7. What if I am required to collect tax on some transactions but not on others?

You must maintain complete and accurate records relating to all sales and leases of tangible personal property and services and these sales records must be made available to the Department of Tax and Revenue for audit upon request. The burden of proving that a particular sale, lease or service was exempt from tax and that tax was not required to be collected lies squarely with you. Accordingly, if you engage in some transactions that are per se exempt or if you receive exemption documents from your customers and do not collect tax in a particular transaction, you must keep records to show separately the gross sales, leases and services and those for which no sales tax is collected.

If you did not collect Sales Tax because of an exception requirement, follow the applicable recordkeeping rules. Your records must also consist of the normal books of account ordinarily maintained by the average prudent person engaged in your business activities, including bills, receipts, invoices, cash register tapes or other documents of original entry supporting entries in the books of account. Furthermore, all schedules or working papers used in connection with the preparation of tax returns must be maintained. These schedules should include summaries and tabulations of invoices or cash register tapes or other documents of original entry that are used to arrive at the reported figures. All of these records must generally be maintained for three years or so long as the taxable period remains open to assessment or refund, whichever is greater.

Example:

Bob Jones owns and operates a general store in West Virginia. Over the years his small store has grown to include a pharmacy, snack bar and video arcade. Bob does his own bookkeeping, it helps him keep a handle on things. His accountant comes in every quarter to check his work and prepare financial reports. This month Bob is going to have to make some changes in the way he keeps his records. He was recently audited by the Department of Tax and Revenue and had just had a meeting with the tax examiner and his accountant to go over the audit findings. The audit was going to cost him a bundle and he is determined not to let that happen again. He made a list of the things he needed to do.

I. Grocery Department

A. Sales

1. Always collect Sales Tax on the gross amount of sales paid for with manufacturers coupons. Only store coupons and promotions qualify as a discount.
2. Write a separate sales receipt for sales of cleaning supplies to city hall and the local church and be sure to get a completed and current tax exemption certificate to keep on file. A cash register receipt is not acceptable proof of a sale to an exempt purchaser.
3. Balance "food stamp" sales with food stamp receipts. Clerks have been recording certain non-food items which do not qualify as food stamp purchases and not collecting the proper amount of Sales Tax. Train clerks.
4. Collect the five percent municipal wine tax on all sales of wine. This is in addition to the six percent Sales Tax.
5. Establish separate accounts in daily sales journal for the above.

B. Grocery Department - Purchases

1. Write to Ace Office Supply Company and tell them to charge Sales Tax on my purchases. The old exemption certificate I gave them five years ago is not valid.
2. Review all invoices from out-of-state suppliers. Pay Use Tax on all purchases if they did not collect West Virginia Sales Tax (except purchases for resale).
3. Pay Use Tax on all paper and cleaning supplies taken off the store shelf for use in the store, the pharmacy and the snack bar.
4. Pay Use Tax on groceries I took home for my own personal use.
5. Pay Use Tax on the turkeys I gave my employees for Thanksgiving.

II. Pharmacy

A. Sales

1. Collect Sales Tax on all over the counter medications. Do not ring these up as "Rx".
2. Set up filing, accounting system for prescriptions to relate the prescriptions filled to my "per se" exempt sales.

B. Purchases

1. Send exemption certificate to Professional Medical Supply Company for purchases of medicine bottles used to fill prescriptions. These qualify as resale items.
2. Review invoices from all out-of-state suppliers. Pay Use Tax on all purchases if they do not collect West Virginia Sales Tax (except resale items).

III. Snack Bar/Video Arcade

A. Sales

1. There is no cash register in the snack bar and all prices were even amounts. (Hotdogs-75¢, Chips-50¢, Cokes-50¢, etc.). Tax would have to be computed using the formula given by the tax examiner. A sign would also need to be posted stating that the Sales Tax was included in the price of the products sold. (See example)\*.
2. Also the formula to compute the Sales Tax included in the price charged to play the video games would have to be used. The commission paid to the clerk who made change and supervised the gameroom could not be deducted.

**\* Example of Sign Posting**

West Virginia Sales Tax Is Included In The  
Price Of The Products Sold Here

If you have questions concerning how this law change affects your particular business, contact:

West Virginia State Tax Department  
Taxpayer Services Division  
P.O. Box 3784  
Charleston, West Virginia 25337-3784

Telephone: (304) 558-3333 or Toll free 1-800-WVA-TAXS (1-800-982-8297)

TDD Service for the hearing impaired: 1-800-2TAXTDD (1-800-282-9833)

or visit our website  
<http://www.state.wv.us/taxdiv>

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