



MANUFACTURER/RETAILER - SALES AND USE TAX ON SAMPLES

Major legislation was enacted in 1987 that made widesweeping changes to the exemptions available to businesses from consumer sales and use tax. Under previous law, most purchases made for use in business were exempt from tax. Beginning July 1, 1987, these exemptions were curtailed dramatically. This publication is meant to be a source of general information and not a substitute for tax laws or regulations.

Q1. After the changes, what exemption from sales and use tax is available to manufacturers on their purchases for use in business?

Beginning July 1, 1987, the liability of manufacturers for sales tax on purchases for use in business became subject to the direct use concept. Under this concept, the applicability of the sales and use tax depends on the use of the property or service rather than the type of property or service purchased. The same purchase of the same item may be taxable in one instance and exempt in another, depending on its usage. The basic concept is that purchases directly used in activities or operations that are an integral and essential part of the activity are exempt from sales and use tax, while purchases that are instead used in activities or operations that are incidental, convenient, or remote to such activities are taxable for sales and use tax purposes.

Q2. After the changes, what exemption from sales and use tax is available to sellers of goods (retailers or wholesalers) on their purchases for use in business?

Wholesalers were always subject to sales and use tax on their purchases for use in business, except for purchases for resale. After the changes, retailers also lost their exemption on purchases for use in their business activities. Therefore, after July 1, 1987, the only special exemption available to either wholesalers or retailers is the exemption for purchases made for resale. Wholesalers and retailers must generally pay tax on all other purchases for use in business.

Q3. What effect do these changes have on the taxability of samples distributed by representatives of manufacturers, retailers or wholesalers without charge to customers in advertising or marketing products?

The fair market value of samples distributed in the advertising or marketing of products is subject to sales and use tax.

Use of items in marketing of products is not considered to be direct use in manufacturing under the provisions of W. Va. Code §11-15-2(n) (3) (E) and 110 C.S.R. 15§123.4.2.1.o (1989). Wholesalers and retailers are not exempt on purchases for use in business, except for purchases for resale. Purchases of items for free distribution are not purchases for resale. Purchases of items for resale which are not resold but distributed as free samples are considered to be purchased for use in business and are subject to use tax. Therefore, tangible personal property or services used in advertising or in marketing of goods, including the withdrawal of salesman's samples from inventory for distribution to potential customers, are subject to tax.

If you are in the business of selling products such as pharmaceuticals, cosmetics, tobacco, food, etc. and it is a practice to give samples of your products to your customers, you must pay sales or use tax on the fair market value of the samples when withdrawn from inventory for distribution.

If you would like additional information concerning these sales and use tax law changes you should contact:

Department of Tax and Revenue
Taxpayer Services Division
P.O. Box 3784
Charleston, WV 25337-3784

Telephone: (304) 348-3333 or
Toll free within West Virginia: 1-800-WVA-TAXS (1-800-982-8297)
TDD Service for the hearing impaired: 1-800-2TAXTDD (1-800-282-9833)
To order forms or publications please call the automated information system at:
(304) 344-2068 or
Toll free within West Virginia: 1-800-422-2075
To order by mail please use the above address.