



RADIO AND TELEVISION BROADCASTERS AND SALES AND USE TAX

The West Virginia sales and use tax laws and regulations contain special provisions which affect the tax responsibilities of radio and television broadcasters. This publication provides general information on those responsibilities. It is not a substitute for tax laws or regulations.

Sales by Broadcasters

All sales of property and services are presumed to be subject to the sales and use tax and broadcasters should collect the tax on their sales unless a specific exemption applies to the transaction. Broadcasters are required to maintain sufficient documentation and records to substantiate their exempt sales.

Taxable Sales

Radio and television broadcasters located in West Virginia that make sales of their own products or services to West Virginia residents must collect the West Virginia sales tax or obtain from their customers documented proof of the customer's exemption from paying the tax.

The sales and use tax laws contain a "per se" exemption for sales of radio and television broadcasting time. Broadcasters must maintain records indicating that the appropriate charges are exempt from tax pursuant to this special radio and television broadcasting time exemption.

This special exemption does **not** extend to other sales and services by broadcasters. For instance, broadcasters must generally collect tax on sales of products directly to consumers; sales of audio and video tapes; rental of recording studios; providing actors, technicians or props, and providing order acceptance, recordkeeping and similar services. Furthermore, sales of advertising services and materials (including artwork, layout, writing, scripting, directing and recording broadcast announcements) that are **not** performed in conjunction with the sale of broadcasting time are generally taxable.

Out-of-State Broadcasters

Broadcasters located outside West Virginia who have representatives that visit the State to solicit sales, service accounts or engage in any other type of business activity or who have any other physical contact with the State, are required by law to register with the West Virginia Department of Tax and Revenue and to collect the West Virginia sales tax on their taxable sales to West Virginia customers.

Broadcasters that are located outside West Virginia who have absolutely no physical contact within the State should register with the West Virginia Department of Tax and Revenue to voluntarily collect the West Virginia use tax on their taxable sales to West Virginia customers. The State of West Virginia will aggressively pursue the collection of the use tax from taxpayers who make purchases from out-of-state broadcasters that do not collect the West Virginia use tax.

The reverse of this situation is true for broadcasters located within West Virginia who make sales to residents of other states. These West Virginia broadcasters may be subject to the tax laws of other states and should contact these states to explore their tax responsibilities.

Agency Relationships

The sale of broadcast time for the advertisement of goods and services alone is not sufficient to require a radio or television broadcaster to be responsible for the sales tax obligations on sales by their advertisers.

Generally, when a broadcaster enters into an agreement with an out-of-state advertising client to accept orders on behalf of the client, the broadcaster establishes an agency relationship with the advertiser. This agency relationship is sufficient contact with the State to subject the out-of-state advertiser to West Virginia's sales and use tax collection requirements.

Purchases by Broadcasters

For sales and use tax purposes, radio and television broadcasters are considered to be engaged in a communications activity. Purchases by broadcasters for direct use and consumption in their communications activities are exempt from sales and use taxes. Purchases that are not for direct use and consumption in the communication activity are subject to the tax.

Generally, exempt purchases are an integral and essential part of the communications activity while purchases which are incidental, convenient or remote to the communications activity are subject to the tax. For example, broadcasters may purchase exempt from sales and use tax, machinery, equipment, materials and supplies that are used to transmit, receive, record or edit audio and visual signals, cameras, microphones, lighting fixtures, furniture, equipment and props necessary to stage performances to be broadcast and any other purchases that are an essential part of their communications activities. However, broadcasters must pay sales and use tax on their purchases of office machinery, equipment, furniture and supplies, computer equipment and software, trade publications, promotional and sales materials and supplies and any other purchases that are incidental to their communication activities.

In order to claim the exemption from sales or use tax on their exempt purchases of items directly used or consumed in the communications activity, broadcasters should apply to the Department of Tax and Revenue for a direct pay permit and provide their direct pay permit number to vendors from whom they make tax exempt purchases. Broadcasters should not use their direct pay permit when making taxable purchases but should pay the tax to their vendors at the time of purchase or billing. If the direct pay permit is used to purchase taxable items, the broadcaster must report the purchase on their direct pay tax return and pay any tax due.

Use Tax

Broadcasters that make taxable purchases from vendors who do not collect the West Virginia tax (including out-of-state vendors) must report their purchases and pay any use tax due. The use tax is a companion tax to the sales tax and is levied on tangible personal property and taxable services purchased outside the State for use in this State on which the sales tax has not been paid. These purchases may be reported on the direct pay permit tax return. The use tax is to be paid quarterly and the rate is 6%. Broadcasters who make exempt purchases for direct use or consumption in their communications activities and subsequently use these items in a taxable manner must also report and pay use tax on these purchases.

If you have questions concerning this publication, please contact:

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Taxpayer Services Division
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