



Sales And Use Tax Travel Services, Agencies And Agents

The West Virginia State Tax Department has received many inquiries concerning the sales tax collection and sales tax payment responsibilities of travel services, travel agencies and travel agents (below generically termed "travel agents"). This publication provides general information, and is not a substitute for tax laws or regulations.

Sales By Travel Agents

For West Virginia sales and use tax purposes, travel agents are generally engaged in the activity of providing taxable services. Charges for services provided by travel agencies (such as arranging for motel accommodations, meal accommodations, reservation of rental cars, booking cruises, reserving airline tickets, arranging bus tours or selling passage on tours for their clients) are subject to tax. However, sales of, or charges for, the transportation of passengers in interstate commerce are exempt from the consumers sales and service tax and use tax. This is to be distinguished from charges for intrastate travel which remain taxable unless otherwise exempt. Commissions earned by West Virginia travel agents are taxable unless they are received by the travel agent from an out-of-state vendor. (See the discussion below).

For example, if a travel agent sells a roundtrip ticket from Charleston, West Virginia to Washington, D.C. and back, that sale would be exempt as a sale of transportation in interstate commerce, but any commission earned by the travel agent for that sale would typically not be exempt. But if the travel agent sells a roundtrip ticket from Charleston, West Virginia to Morgantown, West Virginia, then both the ticket sale and the commission would be taxable, because the transportation was in intrastate commerce. A trip is an intrastate trip if the departure point and the destination point are both in West Virginia, even though the actual route traveled between those points may incidentally cross state lines. In the case of a roundtrip, departure and destination points are analyzed based on the one-way components of the roundtrip.

If the travel agent makes a separate charge to a West Virginia customer for providing services, the travel agent must collect the sales tax from the customer on the service charge. Service fees charged to an out-of-state client who purchases the travel agent's service across state lines via telephone, fax, internet or mail are not subject to sales tax. Travel agent services provided to out-of-state residents who purchase the service in person from a travel agent in West Virginia are taxable, notwithstanding the out-of-state residence of the purchaser.

Generally, the travel agent receives a commission or fee from vendors of travel, food, or lodging accommodations for referring customers to the vendors. This fee or commission received by the travel agent from airlines, car rental companies, hotels, motels, restaurants, etc. is subject to the West Virginia sales tax if the vendor is located in West Virginia. Effective July 1, 2001, commissions received by travel agents from out-of-state vendors are exempt from the imposition of sales tax. A vendor is treated as an out-of-state vendor if the vendor is not subject to the sales taxing jurisdiction of West Virginia in accordance with the nexus standards applicable to businesses engaged in interstate commerce.

If the travel agent bills these vendors for a commission, or if the travel agent retains a portion of the customer's payment for these services as a commission, the travel agent should bill and collect the sales tax from the vendor. The sales tax should be separately stated on any billing or invoice. If the service provider pays the travel agent a commission periodically based on the agent's bookings with the vendor, the travel agent should inform the vendor that the sales tax is due on the commissions paid, and the travel agent should collect and remit the sales tax due on those commissions to the West Virginia State Tax Department.

In instances where the vendor refuses to pay the sales tax to the travel agent, the travel agent must promptly notify the West Virginia Tax Department in writing of the vendor's refusal, in order to be relieved of the responsibility of collecting and remitting the tax related to that refusal.

Sales To Government Employees

Service fees charged by a travel agent to a federal, State or local government employee are taxable. Service fees directly billed to a federal State or local government agency are exempt. When a travel agent makes a separate charge to a government employee for government related travel, and the charge is paid by a government charge card issued in the name of the employee, the fee is subject to sales tax.

Purchases By Travel Agents

Generally, all purchases made by travel agents for use or consumption in their business are taxable, and travel agents must pay sales or use tax on all such purchases. Travel agents must pay sales or use tax on all of their purchases of office supplies, furniture, machinery and equipment.

Packaged Tours

Travel agents sometimes arrange and sell packaged tours. Generally, the travel agent will arrange for their clients to purchase travel, food, lodging and entertainment accommodations, and the travel agent will typically pay sales tax at the time of purchase on behalf of their clients, either to West Virginia or to another state or jurisdiction. In this case, the travel agent must collect the sales tax from his client on the gross profit realized from the sale of the package tour. Gross profit is determined by subtracting from the gross sales price of the packaged tour the direct expense paid by the agent on behalf of the client for the travel, food, lodging and entertainment accommodations (including the sales tax already paid on these items) included in the packaged tour. The travel agent cannot deduct any overhead, indirect cost or losses incurred in arranging the tour.

In situations where the travel agent purchases travel, food, lodging and entertainment accommodations for resale, the travel agent may assert the sales tax exemption for purchases for resale, but must collect sales tax on the full sales price of the packaged tour when the tour package is sold to each of the travel agent's customers.

Use Tax

If a travel agent purchases or uses property or taxable services from a vendor that fails to collect the applicable West Virginia sales tax or use tax, then the travel agent must pay the use tax directly to the Department of Tax and Revenue. The use tax is paid quarterly, and is reported on form WV/CST-220. Travel agents who do not have a use tax account with the West Virginia Tax Department should contact the Tax Department Taxpayer Services Division immediately to establish an account and receive the proper reporting forms.

SUMMARY:

There are 4 basic types of charges or payments typically received, handled or paid by a travel agent: **(1) Commissions**, **(2) Service fees**, **(3) Vendor charges**, **(4) Purchases of tangible personal property and services**.

1. Commissions — Commissions are paid by vendors of services or amenities to the travel agent, either directly, by retainage of a portion of the customer's payment for the vendor's services, or as a periodic payment based on bookings. Vendors typically paying commissions include, but are not limited to, providers of transportation services, lodging services, food or restaurant services, motor vehicle rental services and local excursion tour services, and exhibition or theatrical companies and amusement parks.

2. Service fees –

2.A. Service fees billed to a non-government customer — Service fees paid by the travel agent's customer directly to the travel agent for the travel agent's services.

2.B. Service fees billed directly to government employees — Service fees billed to a government employee as the travel agent's customer that are paid by the government employee directly to the travel agent for the travel agent's services.

2.C. Service fees billed directly to a Government agency — Service fees billed to a government agency as the travel agent's customer that are paid by the government agency directly to the travel agent for the travel agent's services.

3. Vendor Charges –

3.A. Vendor charges for non-transportation services and amenities — Charges for services or amenities other than transportation to be provided by vendors of such services and amenities (such as lodging, and food, purchases of event bookings or theater tickets and local motor vehicle rentals). The travel agent typically accepts payment from the customer for these charges, and passes the payment on, in whole or in part, to the vendor. Depending on the contractual arrangement between the vendor and the travel agent, the travel agent may extract a retained commission from such payments before paying the remainder over to the vendor.

3.B. Vendor charges for destination transportation — Charges for interstate and intrastate transportation to a destination (as distinguished from vehicle rental or local “transportation” charges) to be provided by vendors of transportation services such as bus lines, airlines, rail lines or steamship lines.

4. Purchases of tangible personal property and services by the travel agent —

4.A. Purchases for use in business — Purchases of tangible personal property and services to be used in the business of travel agents that are not purchased for resale.

4.B. Purchases for resale — On occasion a travel agent may undertake a “package tour” where the travel agent

1. COMMISSIONS	
Direct or retainage Commissions paid by a West Virginia vendor –Commissions paid to a travel agent by an West Virginia vendor of transportation, lodging, food or other services, either paid directly or retained out of a customer’s payment for such services	Taxable
Direct or retainage Commissions paid by an out-of-state vendor –Commissions paid to a travel agent by an out-of-state vendor of transportation, lodging, food or other services, either paid directly or retained out of a customer’s payment for such services	Exempt
Periodic Commissions paid by a West Virginia vendor – Commissions paid periodically to a travel agent by a West Virginia vendor of transportation, lodging, food or other services, based on bookings	Taxable
Periodic Commissions paid by an out-of-state vendor – Commissions paid periodically to a travel agent by an out-of-state vendor of transportation, lodging, food or other services, based on bookings	Exempt
2. SERVICE FEES	
TAXABILITY OF SERVICE FEES BASED ON CUSTOMER AND CUSTOMER LOCATION	
2.A. – NON-GOVERNMENT CUSTOMERS	
Service fees for West Virginia non-government customers – Service fees for travel agent services directly charged to a West Virginia customer	Taxable
Service fees for out-of-state non-government customers – Service fees for travel agent services directly charged to an out-of-state customer	Not Taxable
2.B and C – GOVERNMENT CUSTOMERS	
2.B.—Service fees payable by government employees in West Virginia –Service fees for travel agent services directly charged to a federal, State or local government employee in West Virginia	Taxable
2.B.—Service fees payable by government employees out-of-state – Service fees for travel agent services directly charged to a Federal, State or local government employee out-of-state	Not Taxable
2.C. – Service fees directly payable by a government agency — Service fees for travel agent services directly charged to a federal, State or local government agency	Exempt

3. VENDOR CHARGES

3.A. VENDOR CHARGES FOR NON-TRANSPORTATION SERVICES & AMENITIES

Taxability of vendor charges based on location of service rendered

West Virginia vendor's services rendered in West Virginia – Charges for services of an in-state vendor of lodging, food, rental vehicles or other services or amenities which are rendered in West Virginia

Taxable

West Virginia vendor's services rendered outside of West Virginia – Charges for services of an in-state vendor of lodging, food, rental vehicles or other services or amenities which are rendered wholly outside of West Virginia

Not Taxable

Out-of-state vendor's services rendered outside of West Virginia – Charges for services of an out-of-state vendor of lodging, food, rental vehicles or other services or amenities which are rendered wholly outside of West Virginia

Not Taxable

“Out-of-state” vendor's services rendered in West Virginia – Charges for services of a purported “out-of-state” vendor of lodging, food, rental vehicles or other services or amenities which are rendered in West Virginia are taxable. Note that any vendor rendering services in West Virginia would typically be classified as a West Virginia vendor by reason of the nexus established by the activity of rendering services in West Virginia, notwithstanding that vendor's out-of-state origins or affiliations.

Taxable

3.B. VENDOR CHARGES FOR TRANSPORTATION

Vendor charges for Transportation in West Virginia – Charges for intrastate transportation

Taxable

Vendor charges for Transportation to or from an out-of-state location – Charges for interstate transportation

Exempt

4. PURCHASES OF TANGIBLE PERSONAL PROPERTY AND SERVICES BY THE TRAVEL AGENT

4.A. Purchases of tangible personal property or taxable services for use in the travel agent's business

Taxable

4.B. Purchases of tangible personal property or services for resale

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)