



Series 3-4

31 at

**State Tax Department
of West Virginia**

Charleston 25305

**RICHARD L. DAILEY
COMMISSIONER**

November 30, 1973

FILED

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11/30/73

The Honorable Edgar F. Heiskell, III
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Heiskell:

Enclosed are two copies of regulations promulgated by the Tax Commissioner concerning consumers sales and service tax and use tax.

Please note that these regulations are being filed in Chapters 11-15 and 11-15A rather than in Chapter 11-12 as required by Sections 9.01 and 9.02 of the West Virginia Administrative Regulations, Secretary of State, Chapter 5-2, Series I (1965). The Tax Commissioner is authorized to promulgate administrative regulations for many of the taxes he administers. To file all such regulations in Chapter 11-12 will only serve to confuse the taxpayers who must work with them and who are expecting the filing chapter to correspond with the article and chapter numbers wherein the tax may be found in the West Virginia Code.

I hereby certify that the attached regulations are true and accurate copies of official regulations promulgated by the Tax Commissioner on November 30, 1973.

Very truly yours,

Richard L. Dailey
Richard L. Dailey
State Tax Commissioner

RLD/jst

Enclosures



State Tax Department
of West Virginia

Charleston 25305

RICHARD L. DAILEY
COMMISSIONER

November 30, 1973

FILED IN THE OFFICE

EDGAR F. HEISKELL, III

SECRETARY OF STATE

THIS DATE 11/30/73

*obsolete
vaid Dec 30, 1973
to Feb 14, 1980*

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Secretary of State
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Enclosures

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

RECEIVED
RECORDS SECTION
SECRETARY OF STATE
THIS DATE 11/30/73

CONSUMERS SALES AND SERVICE TAX
AND USE TAX

Chapter 11, Articles 15 and 15A, West Virginia Code of 1931, as amended

Richard L. Dailey
State Tax Commissioner

Effective: January 1, 1974

FOREWORD

The consumers sales and service tax and use tax rules and regulations contained herein supersede those regulations relative the aforementioned taxes which were promulgated in 1964.

These regulations are presented in three (3) parts and attempt to answer the problem situations most often confronted by taxpayers when preparing consumers tax and use tax reports.

If you have any questions in regard these rules and regulations, please direct your inquiry to the Business Tax Division of the State Tax Department which will make every effort to provide a satisfactory solution to your inquiry.

Very truly yours,

Richard L. Dailey
State Tax Commissioner

INTRODUCTION

The West Virginia consumers sales and service tax is a tax levied for the privilege of selling tangible personal property and of dispensing certain selected services. The use tax is a complementary tax to the consumers sales and service tax and is levied on the use of tangible personal property delivered or furnished within this State.

Although primary responsibility for the consumers tax is placed upon the vendor, the tax is separately set forth on the billing to the purchaser and must be paid by the purchaser. In most situations, collection of use tax is analogous to collection of consumers tax; however, in those cases where the vendor is not authorized to collect use tax, said tax must be remitted directly to the Tax Department by the purchaser or user of the property.

The law of each tax provides exemptions from consumers tax and use tax. The exemptions are of three types:

- (1) The article or service which is sold may be exempt,
- (2) The person making the sale (vendor) is exempt on what he sells, and
- (3) The person purchasing the product or service is exempt on certain purchases for certain uses.

Generally, when an exempt transaction occurs, the vendor, in lieu of collecting tax, accepts a properly executed exemption certificate from the purchaser. Said certificate, in most situations, relieves the vendor from liability for the tax if it is later determined that such transaction was not an exempt transaction.

The consumers tax is computed on a three percent (3%) bracket system, whereas the use tax is computed at a flat percentage rate of three percent (3%). This means, of course, that normally a vendor's tax collections, for consumers tax, will be more than three percent of his

total taxable sales. The excess collections over and above three percent of taxable sales shall not inure to the vendor but must be remitted to the Tax Department. At no time may a vendor profit from the collection of the tax.

Returns are to be filed on a monthly basis by taxpayers for consumers tax. Said returns are due on or before the fifteenth (15th) day of the month next succeeding the month in which the tax accrued. Use tax returns are filed on a quarterly basis. Use tax returns are due on or before the fifteenth (15th) day of the month next succeeding the quarterly period.

Inasmuch as these taxes are collected from purchasers by vendors, the State of West Virginia considers such vendors to be trustees of the funds. Therefore, failure to properly remit such trust funds will cause the State to impose severe penalties.

Every effort will be made to collect delinquent consumers taxes from corporations; however, if the efforts of the Tax Department prove to no avail, said Department will be obliged to institute proceedings against the officers of such corporation for the collection of delinquent taxes. This procedure is authorized by statute and has been upheld by the courts of this State.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX DEPARTMENT

Chapter 11-15 and 15A
1973

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-15 and 15A
Series III - IV
1973

Subject: The following regulations concern the West Virginia
consumers sales and service tax and West Virginia
use tax.

These regulations are issued under authority of West
Virginia Code Ch. 11, Art. 15, Sec. 28 and Ch. 11,
Art. 15A, Sec. 25. These regulations are promulgated
on November 30, 1973, and become effective thirty (30)
days thereafter.

These regulations were filed in the office of the
Secretary of State on November 30, 1973, and are
certified authentic by the State Tax Commissioner by
certification number III - IV.

PART I

GENERAL, CONSUMERS AND USE TAXES

CUT. §1.1 GENERAL.

Chapter 11, Articles 15 and 15A of the West Virginia Code impose a consumers sales and service tax and a complementary use tax.

The consumers sales and service tax is imposed on the privilege of selling tangible personal property and dispensing certain selected services within this State. The use tax is imposed on the use within this State of tangible personal property furnished or delivered to consumers or users within this State. Even though the consumers sales and service tax is imposed for the privilege of selling tangible personalty and for dispensing certain services, the use tax is applicable to the use or consumption, within this State, of tangible personal property only. Services purchased outside this State by residents of West Virginia are not subject to the use tax.

Certain types of sales and services are exempt from the imposition of consumers sales and service tax and use tax. These exemptions are explained within these rules and regulations at §1.6.

The two tax laws (consumers sales and service tax and use tax) are complementary and whenever possible are to be construed and applied to accomplish such intent as to the imposition, administration and collection of these two taxes. Therefore, within these rules and regulations, the terms "consumers sales and service tax" and "use tax", if applicable to both taxes, will appear as "consumers and use tax". Where a particular rule or regulation is applicable to only one, it appears as "consumers tax" or "use tax". In the absence of a heading or designation, the material is applicable to both taxes.

CUT. §1.2 DEFINITIONS.

When used in these regulations:

(1) "Person" or "persons" shall mean any individual, firm, joint adventure, partnership, copartnership, association, club, fraternal organization, municipal or private corporation, whether organized for profit or not, company, estate, trust, receiver, committee, administrator, trustee, guardian, executor, syndicate, society, assignee, trustee in bankruptcy, joint stock company, business trust, the United States, the State of West Virginia, county, or any other group or combination acting as a unit.

(2) "Commissioner" or "Tax Commissioner" shall mean the State Tax Commissioner of West Virginia.

(3) "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property or by any transaction in which possession of tangible personal property is acquired for a consideration, including any lease, rental or conditional sale of tangible personal property.

(4) "Sale," "sales" or "selling" shall include any transfer of the possession or ownership of tangible personal property for a consideration

when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose. The term embraces renting or leasing, conditional sales contracts, leases with options to purchase, contracts under which possession of property is given to the purchaser but title is retained by the vendor as security for payment of purchase price. The term does not include isolated transactions in which tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of the owner's business activities. Repeated sales of tangible personal property will not be deemed an isolated sale.

(5) "Vendors" shall include any person engaged in this State in making sales of tangible personal property, furnishing or rendering services, the sale or use of which is taxable by the consumers tax statute.

(6) "Purchaser" shall mean any person who purchases tangible property which is taxable under the use tax or who purchases tangible property or a service taxable under the consumers tax.

(7) "Retailer" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of the use tax law: Provided, however, that when in the opinion of the Tax Commissioner it is necessary for the efficient administration of this law to regard any salesmen, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this law. Retailers shall include persons who make taxable sales of tangible personal property and services to consumers.

(8) "Taxpayer" shall mean any person liable for any tax imposed by the consumers and use tax statutes.

(9) "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

(10) "Purchase price" means the total amount for which tangible personal property is sold, valued in money, whether paid in money or otherwise; provided that cash discounts allowed and taken on sales shall not be included. The value of business stimulants, gifts or promotions given to induce consumers to patronize a particular establishment are not considered cash discounts.

(11) "Tangible personal property" means tangible goods, wares, and merchandise when sold, furnished or delivered within this State to consumers or users within this State.

(12) "Retailer maintaining a place of business in this State" or any like term shall mean and include any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution houses, sales house, warehouse, or other place of business, or any agent operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such retailer or subsidiary is admitted to do business within this State pursuant to section seventy-nine, article one, chapter thirty-one of the Code of West Virginia, one thousand nine hundred thirty-one.

(13) "Ultimate consumer" or "consumer" shall mean a person who uses or consumes services or personal property.

(14) "Business" shall include all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect. "Business" shall also include all activities of the State and its political subdivisions which involve sales of tangible personal property or the rendering of services when those services compete with or may compete with the activities of other persons.

(15) "Service" or "selected service" shall include all activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property.

"Service" or "selective service" shall not include:

- (a) personal services,
- (b) services rendered by an employee to his employer,
- (c) services rendered for resale, or
- (d) services rendered by a corporation subject to control of the Public Service Commission.

(16) "Personal services" shall mean and include, but shall not be limited to, barbering, manicuring, hair setting, washing and dyeing, nursing, massaging, shoe shining, et cetera. Services to be personal must be done in person without the intervention of another and must be rendered to the person of an individual without, at the same time, selling tangible personal property.

(17) "Drugs" shall include all sales of drugs or appliances to a purchaser, upon prescription of a physician or dentist or any other professional person licensed to prescribe.

(18) "Tax department" shall mean the Tax Department of the State of West Virginia, and such term is herein used interchangeably with Tax Commissioner.

CUT. §1.3 AMOUNT of TAX and TAX COMPUTATION.

A. Computation of Consumers Tax.

For the privilege of selling tangible personal property and for the privilege of dispensing services, the vendor must collect from the purchaser, the consumers tax in the following amounts: On each sale from six cents to thirty-five cents, both inclusive, one cent; on each sale from thirty-six cents to seventy cents, both inclusive, two cents; on each sale from seventy-one cents to one dollar, both inclusive, three cents. When the sale price is in excess of one dollar, the tax is three cents on each whole dollar and upon any fractional part of a dollar in excess of whole dollars, as follows: One cent on the fractional part of the dollar if less than thirty-six cents; two cents on the fractional part of the dollar if in excess of thirty-five cents but less than seventy-one cents; and three cents on the fractional part of a dollar if in excess of seventy cents. For example, the tax on sales from one dollar and one cent to one dollar and thirty-five cents, both inclusive, four cents; on sales from one dollar and thirty-six cents to one dollar and seventy cents, both inclusive, five cents; and on sales from

one dollar and seventy-one cents to two dollars, both inclusive, six cents.

The amount of consumers tax due and payable is computed on a bracket system and is not a flat percentage rate applied against purchase price. Therefore, whenever possible, the vendor must compute the amount of tax from the computation chart which follows:

| Sales Price | | Tax | Sales Price | | Tax |
|-------------|------|-----|-------------|-------|-----|
| .06 thru | .35 | .01 | 8.01 - | 8.35 | .25 |
| .36 - | .70 | .02 | 8.36 - | 8.70 | .26 |
| .71 - | 1.00 | .03 | 8.71 - | 9.00 | .27 |
| 1.01 - | 1.35 | .04 | 9.01 - | 9.35 | .28 |
| 1.36 - | 1.70 | .05 | 9.36 - | 9.70 | .29 |
| 1.71 - | 2.00 | .06 | 9.71 - | 10.00 | .30 |
| 2.01 - | 2.35 | .07 | 10.01 - | 10.35 | .31 |
| 2.36 - | 2.70 | .08 | 10.36 - | 10.70 | .32 |
| 2.71 - | 3.00 | .09 | 10.71 - | 11.00 | .33 |
| 3.01 - | 3.35 | .10 | 11.01 - | 11.35 | .34 |
| 3.36 - | 3.70 | .11 | 11.36 - | 11.70 | .35 |
| 3.71 - | 4.00 | .12 | 11.71 - | 12.00 | .36 |
| 4.01 - | 4.35 | .13 | 12.01 - | 12.35 | .37 |
| 4.36 - | 4.70 | .14 | 12.36 - | 12.70 | .38 |
| 4.71 - | 5.00 | .15 | 12.71 - | 13.00 | .39 |
| 5.01 - | 5.35 | .16 | 13.01 - | 13.35 | .40 |
| 5.36 - | 5.70 | .17 | 13.36 - | 13.70 | .41 |
| 5.71 - | 6.00 | .18 | 13.71 - | 14.00 | .42 |
| 6.01 - | 6.35 | .19 | 14.01 - | 14.35 | .43 |
| 6.36 - | 6.70 | .20 | 14.36 - | 14.70 | .44 |
| 6.71 - | 7.00 | .21 | 14.71 - | 15.00 | .45 |
| 7.01 - | 7.35 | .22 | 15.01 - | 15.35 | .46 |
| 7.36 - | 7.70 | .23 | 15.36 - | 15.70 | .47 |
| 7.71 - | 8.00 | .24 | 15.71 - | 16.00 | .48 |

| Sales Price | | | Tax | Sales Price | | | Tax |
|-------------|---|-------|-----|-------------|---|-------|------|
| 16.01 | - | 16.35 | .49 | 28.01 | - | 28.35 | .85 |
| 16.36 | - | 16.70 | .50 | 28.36 | - | 28.70 | .86 |
| 16.71 | - | 17.00 | .51 | 28.71 | - | 29.00 | .87 |
| 17.01 | - | 17.35 | .52 | 29.01 | - | 29.35 | .88 |
| 17.36 | - | 17.70 | .53 | 29.36 | - | 29.70 | .89 |
| 17.71 | - | 18.00 | .54 | 29.71 | - | 30.00 | .90 |
| 18.01 | - | 18.35 | .55 | 30.01 | - | 30.35 | .91 |
| 18.36 | - | 18.70 | .56 | 30.36 | - | 30.70 | .92 |
| 18.71 | - | 19.00 | .57 | 30.71 | - | 31.00 | .93 |
| 19.01 | - | 19.35 | .58 | 31.01 | - | 31.35 | .94 |
| 19.36 | - | 19.70 | .59 | 31.36 | - | 31.70 | .95 |
| 19.71 | - | 20.00 | .60 | 31.71 | - | 32.00 | .96 |
| 20.01 | - | 20.35 | .61 | 32.01 | - | 32.35 | .97 |
| 20.36 | - | 20.70 | .62 | 32.36 | - | 32.70 | .98 |
| 20.71 | - | 21.00 | .63 | 32.71 | - | 33.00 | .99 |
| 21.01 | - | 21.35 | .64 | 33.01 | - | 33.35 | 1.00 |
| 21.36 | - | 21.70 | .65 | 33.36 | - | 33.70 | 1.01 |
| 21.71 | - | 22.00 | .66 | 33.71 | - | 34.00 | 1.02 |
| 22.01 | - | 22.35 | .67 | 34.01 | - | 34.35 | 1.03 |
| 22.36 | - | 22.70 | .68 | 34.36 | - | 34.70 | 1.04 |
| 22.71 | - | 23.00 | .69 | 34.71 | - | 35.00 | 1.05 |
| 23.01 | - | 23.35 | .70 | 35.01 | - | 35.35 | 1.06 |
| 23.36 | - | 23.70 | .71 | 35.36 | - | 35.70 | 1.07 |
| 23.71 | - | 24.00 | .72 | 35.71 | - | 36.00 | 1.08 |
| 24.01 | - | 24.35 | .73 | 36.01 | - | 36.35 | 1.09 |
| 24.36 | - | 24.70 | .74 | 36.36 | - | 36.70 | 1.10 |
| 24.71 | - | 25.00 | .75 | 36.71 | - | 37.00 | 1.11 |
| 25.01 | - | 25.35 | .76 | 37.01 | - | 37.35 | 1.12 |
| 25.36 | - | 25.70 | .77 | 37.36 | - | 37.70 | 1.13 |
| 25.71 | - | 26.00 | .78 | 37.71 | - | 38.00 | 1.14 |
| 26.01 | - | 26.35 | .79 | 38.01 | - | 38.35 | 1.15 |
| 26.36 | - | 26.70 | .80 | 38.36 | - | 38.70 | 1.16 |
| 26.71 | - | 27.00 | .81 | 38.71 | - | 39.00 | 1.17 |
| 27.01 | - | 27.35 | .82 | 39.01 | - | 39.35 | 1.18 |
| 27.36 | - | 27.70 | .83 | 39.36 | - | 39.70 | 1.19 |
| 27.71 | - | 28.00 | .84 | 39.71 | - | 40.00 | 1.20 |

| Sales Price | | Tax | Sales Price | | Tax |
|-------------|-------|------|-------------|-------|------|
| 40.01 - | 40.35 | 1.21 | 45.01 - | 45.35 | 1.36 |
| 40.36 - | 40.70 | 1.22 | 45.36 - | 45.70 | 1.37 |
| 40.71 - | 41.00 | 1.23 | 45.71 - | 46.00 | 1.38 |
| 41.01 - | 41.35 | 1.24 | 46.01 - | 46.35 | 1.39 |
| 41.36 - | 41.70 | 1.25 | 46.36 - | 46.70 | 1.40 |
| 41.71 - | 42.00 | 1.26 | 46.71 - | 47.00 | 1.41 |
| 42.01 - | 42.35 | 1.27 | 47.01 - | 47.35 | 1.42 |
| 42.36 - | 42.70 | 1.28 | 47.36 - | 47.70 | 1.43 |
| 42.71 - | 43.00 | 1.29 | 47.71 - | 48.00 | 1.44 |
| 43.01 - | 43.35 | 1.30 | 48.01 - | 48.35 | 1.45 |
| 43.36 - | 43.70 | 1.31 | 48.36 - | 48.70 | 1.46 |
| 43.71 - | 44.00 | 1.32 | 48.71 - | 49.00 | 1.47 |
| 44.01 - | 44.35 | 1.33 | 49.01 - | 49.35 | 1.48 |
| 44.36 - | 44.70 | 1.34 | 49.36 - | 49.70 | 1.49 |
| 44.71 - | 45.00 | 1.35 | 49.71 - | 50.00 | 1.50 |

B. Computation of Use Tax.

Tangible personal property furnished or delivered within this State to consumers or users is subject to use tax. Use tax is imposed at the rate of three percent (3%) of the purchase price of the article. The determination or computation of use tax differs from consumers tax in that the amount of use tax is not determined by a bracket system but is a percentage of the purchase price. When applying the three percent (3%) rate to the purchase price, the resultant amount of tax may be expressed by disregarding fractions of less than one-half cent and by increasing fractions

over one-half cent to the next even cent. To illustrate: The amount of use tax on a \$20.40 sale is sixty-one cents (.61¢); the tax on a \$20.60 sale is sixty-two cents (.62¢).

The use tax is imposed upon every person using such property until the tax has been paid directly to the retailer or to the State Tax Department. See §1.5 B.3. of these rules and regulations.

CUT. §1.4 PURCHASER to PAY CONSUMERS TAX, VENDOR to COLLECT
SAME.

The consumers tax shall be added to and shall constitute part of the sales price, and the vendor must collect such tax from the purchaser. The vendor must keep the amount of consumers tax paid separate from the proceeds of sale exclusive of the tax. The vendor is personally liable for the payment of consumers tax.

If a purchaser refuses to pay the consumers tax, the vendor must notify the Tax Department in order that appropriate action may be taken against the purchaser. Such notification will relieve the vendor from liability for the tax.

CUT. §1.5 LIABILITY of VENDOR and of PURCHASER.

A. Collection of Consumers Tax.

1. Liability of Vendor.

If any vendor fails to collect consumers tax from a purchaser, the vendor shall be personally liable for the payment of such tax. In certain instances where a purchaser does not pay the consumers tax, the vendor is relieved from liability therefor. These instances are those provided in subsection A.2. of this (§1.5) regulation.

No profit shall accrue to any vendor for collecting consumers or use taxes. The total of all taxes collected by the vendor shall be remitted to the State Tax Department.

2. Liability of Purchaser.

Every purchaser shall pay to the vendor the amount of consumers tax imposed on the sale. If any purchaser

- (1) refuses to pay the tax to the vendor, or
- (2) refuses to sign and present to the vendor a proper exemption certificate indicating such

sale is not subject to tax, or

- (3) signs and presents a false exemption

certificate to the vendor, or

- (4) after signing and presenting a proper

exemption certificate to the vendor

uses the purchased item in such

manner that the sale would be

subject to tax, he shall be

personally liable for the amount of consumers tax applicable to the transaction. In such case the Tax Department shall issue an assessment against the purchaser.

The vendor is relieved from the liability for the tax if situations numbered (1) and (2), above occur, but only if the vendor informs the Tax Department of the purchaser's refusal.

If situations numbered (3) and (4), above occur, the vendor shall be relieved from liability for consumers tax on those particular transactions. It shall be presumed that all sales and services are subject to the consumers tax until the contrary is clearly established and the burden of proving

that sales or services were not subject to tax rests upon the vendor unless he takes an exemption certificate from the purchaser.

B. Collection of Use Tax.

1. Retailers Who Are Required to Collect Use Tax.

Every retailer having or maintaining within this State, directly or by a subsidiary, a place of business and making sales of tangible personal property for use in this State, shall collect the use tax from the purchaser. The use tax shall be collected at the time of making the sale and shall be collected whether the sale was made within or without the State. Evidence that tangible personal property was sold by any person for delivery into this State shall be prima facie evidence that such property was sold for use in this State.

"Having or maintaining a place of business within this State" shall include, but shall not be limited to, having an office, distribution house, warehouse, or other place of business, or any agent of general or restricted authority, irrespective of whether the place of business or agent is located here permanently or temporarily.

Every retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, warehouse, or other place of business, or any agent of general or restricted authority, irrespective of whether the place of business or agent is located here permanently or temporarily or whether the person or subsidiary maintaining such place of business or agent is authorized to do business within this State; or the engaging in any activity as a business within this State by any person directly or by a subsidiary in connection with the lease, sale, or consumption including but not limited to having, maintaining, or using any office, distribution house, sales house, warehouse, or other place of business of any stock of goods or any solicitor, salesman, agent or representative under its authority, at its direction, or with its permission, regardless of whether the person or subsidiary is authorized to do business in this State shall at the time of making such sale or delivery of tangible personal property, whether within or without the State, collect the tax imposed by the use tax statute.

Any retailer not maintaining a place of business within this State may be authorized by the Tax Department upon application to collect use tax. Retailers desiring to obtain authorization should address all correspondence to the Tax Department.

2. Foreign Retailers, Collection of Use Tax.

Any retailer not maintaining a place of business within this State may be authorized by the Tax Department to collect use tax. A foreign retailer, to obtain such authority, must make written application.

3. Manner of Collection, Use Tax.

Every retailer, as defined in subsection B.1. of this regulation, and every authorized foreign retailer shall collect use tax upon sale of all tangible personal property sold for delivery into this State. Said tax shall be remitted to the Tax Department by the retailer and authorized foreign retailer.

If such use tax is not collected by the retailer or authorized foreign retailer, the tax shall be paid directly to the

Tax Department by the person using such property within West Virginia. To illustrate: XY, a resident of West Virginia, purchases furniture in Ohio for \$1,000. The sale was consummated in Ohio, and the furniture company agrees to deliver the goods into West Virginia. The furniture dealer maintains no place of business within West Virginia and has never made application to the Tax Department to be an authorized foreign retailer. Therefore, the vendor is not permitted to collect the use tax. However, XY, the purchaser, must compute the tax and remit the same to the Tax Department. The amount of tax on this purchase is \$30 ($3\% \times \$1,000 = \30).

C. Absorbing Consumers and Use Tax.

A retailer or vendor may not represent to the public or to any purchaser, consumer or user, in any manner, directly or indirectly that the consumers or use tax will be assumed or absorbed by him or that the consumers tax or use tax is not to be considered an element in the price to the purchaser.

CUT. §1.6 EXEMPTIONS.

A. Consumers Tax, Exemptions.

1. Sales of the following articles are exempt from the imposition of consumers tax:

(a) Sales of gasoline and special fuels which are taxable under Article 14, Chapter 11, of the West Virginia Code.

"Gasoline" means any product commonly or commercially known as gasoline, regardless of classification, suitable for use as a fuel in an internal combustion engine.

"Special fuel" means any gas or liquid, other than gasoline, used or suitable for use as fuel in an internal combustion engine. The term "special fuel" shall include products commonly known as natural or casing-head gasoline, but shall not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not commonly used nor practically suited for use as fuel in an internal combustion engine. Special fuels shall include diesel fuel and kerosene.

when sold for use as a fuel in an internal combustion engine.

Sales of products which come within the definitions above and which are taxable under the West Virginia gasoline and special fuel excise tax act are not subject to the imposition of consumers tax.

The terms "gasoline" and "special fuels" shall not include oil sold for use or consumption in furnaces; nor shall said terms include bottled gas or any special fuel used for other than fuel in internal combustion engines.

Sales of gasoline or special fuel within this State, which are not taxable under the West Virginia gasoline and special fuel excise tax act (West Virginia Code ch. 11, art. 14) are subject to the consumers tax.

(b) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity.

For sales of gas, steam and water to be exempt from consumers tax, it is necessary that delivery be made through pipes and mains. Therefore, sales of bottled gas,

bottled water, etc., will not qualify for this exemption.

(c) Sales of textbooks required to be used in any of the schools of this State.

This exemption applies to the sale of any textbook which is required to be used in any school, public or private, within West Virginia.

A textbook is a book or manual of instruction containing a presentation of the principles of a subject and which is used as a basis of instruction.

This exemption shall not extend to pens, paper, supplies, outlines, etc.; nor shall said exemption apply to books which are not textbooks or to textbooks which are not required to be used by the school.

(d) Sales of school lunches to school children by school officials.

(e) Sales of newspapers which are delivered by route carriers.

(f) Sales of drugs, medicines or appliances to a purchaser upon prescription of a physician or dentist or any other professional person licensed to prescribe. Appliances shall include braces, prosthetics, special shoes, etc., which are prescribed by a person licensed to prescribe.

(g) An isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by such owner or on his account by such representative. To illustrate: A person sells his used furniture. Since such person is not regularly engaged in selling to the public, his sales of used furniture are isolated transactions upon which no consumers tax is imposed.

(h) Sales of motor vehicles which are titled by the West Virginia Department of Motor Vehicles and which are

subject to the West Virginia motor vehicle privilege tax
(see West Virginia Code ch. 17A, art. 3, sec. 4).

All sales of highway equipment (trailers, mobile homes, U-hauls, etc.) are subject to consumers sales tax unless two conditions are met: (1) the equipment purchased must be a motor vehicle and (2) said equipment must be subject to the motor vehicle privilege tax. Any article or vehicle which is licensed or titled by the Department of Motor Vehicles but which is not subject to the West Virginia motor vehicle privilege tax is subject to consumers tax or use tax whichever is applicable.

Since the burden of proving that a sale is not subject to consumers tax rests upon the vendor, it is the intention of the Tax Department to assist him by these rules and regulations and to eliminate the necessity for requiring an exemption certificate where it is not deemed necessary. Therefore, on those exempt articles which are enumerated above, (a) through (h), the Tax Department does not deem it necessary for the vendor to require an exemption certificate from the purchaser of such articles.

2. Sales of the following services are exempt from the imposition of the consumers tax:

(a) Professional services.

"Professional services" shall mean and include those activities which were recognized as professional under common law, their natural and logical derivatives and any expansion of the term made by the West Virginia Legislature. Professional services are rendered by physicians, dentists, lawyers, certified public accountants, public accountants, optometrists, architects, engineers, registered professional nurses and veterinarians.

Services rendered by corporations are not professional services unless the Legislature has enacted legislation providing that the particular profession may incorporate. Therefore, engineering corporations, dental corporations and medical corporations may provide professional services.

Professional persons who make sale of tangible personal property or who engage in activities which are not

professional services shall collect consumers tax on such sales or services. For example, kennel services provided by a veterinarian, not related to medical treatment, are subject to tax.

Professional services shall not be related to the quality of performance or expertise of the person performing the service. Professional, when used in these rules and regulations, is not synonymous with excellence. It is the type of service which must be professional, not the quality or manner in which the service is performed. To illustrate: A doctor's services to his patients are professional services whether or not his patients are satisfied with his performance; or, an individual may excel at repairing television sets, but his type of services (repair of television sets) are not considered professional under these rules even though the manner in which he performs is considered "professional" by his customers or by other television repairmen.

(b) Personal services.

Personal services shall include those services done

to or performed on the person of an individual, and such services must be directly from one person to another. Personal services include barbering, massaging, nursing, shoe shining, manicuring, hair setting, washing and dyeing, services of dental hygienists and similar services.

Services performed by embalmers and funeral directors are not personal services, and tax must be collected on such services.

(c) Services rendered by corporations which are subject to the control of the West Virginia Public Service Commission.

To illustrate: Services rendered by taxi companies and bus companies (carrying of passengers) are not subject to consumers tax.

Any person which is subject to the control of the West Virginia Public Service Commission may perform services without charging and collecting consumers tax.

On those services which are exempt from the imposition of consumers tax, enumerated (a) through (c) above, the Tax

Department does not deem it necessary for the vendor to require an exemption certificate from the purchaser of such services. However, the burden of proving that a service is exempt rests upon the vendor.

3. Sales of certain articles and services to certain purchasers are exempt.

Certain persons, doing business within this State, can purchase certain articles or services without imposition of consumers tax. These exemptions are listed below. Any purchase of property or services by persons in business which is not set forth below is subject to consumers tax.

- (a) Sales of property or services to churches and bona fide charitable organizations are exempt from the imposition of consumers tax if the church or such organization makes no charge whatever for the services they render. For example, the purchase of pamphlets relating to drug abuse are not subject to consumers tax if the church makes no charge in rendering services to persons with

drug problems; or, purchases of supplies and equipment by a church to operate a kindergarten are exempt from consumers tax if such church operates such school without charge to its students.

(b) Sales of property or services to persons engaged in this State in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources. Said sales, to be exempt, must be confined to services, machinery, supplies and materials directly used or consumed in the businesses named in the preceding sentence.

For example: (1) Sales of janitor services to a person who manufactures chemicals are exempt; (2) sales of pens and paper to a telephone or telegraph company are exempt; (3) sales of explosives or drilling bits to a coal producer are exempt; (4) and sales of tools to a contractor are exempt.

The sale, to be exempt, must be used in the business of the individual. In other words, a person who

owns a contracting business cannot purchase tools for another or for personal use at home without payment of consumers tax.

Persons in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources may purchase tangible personal property and services to be used or consumed in the construction of or permanent improvement of real estate without imposition of consumers tax on such purchases. All other persons, including but not limited to speculative builders or persons constructing for resale, must pay consumers tax on purchases of tangible personalty and services to be used or consumed in the construction of or permanent improvement of real estate.

(c) Sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers.

Persons who make taxable sales of tangible personalty to consumers may purchase, without imposition of consumers tax, tangible personal property and services for consumption in their businesses. In other words, this subsection refers to retailers, persons who sell to the public and collect consumers tax on such sales.

Therefore, a supermarket or grocery store may purchase janitor services or refrigerator repairs without imposition of consumers tax. Also, a jewelry store may purchase a display case without imposition of tax.

To be exempt from the imposition of consumers tax under this subsection, the purchaser must be a retailer, the purchased article must be tangible personal property or services, the product must be used or consumed in the merchant's business and the merchant must be in the business of selling tangible personal property, subject to consumers tax, to consumers. In order to qualify for the exemption, all elements listed in the preceding sentence must be present.

Sales of tangible personal property or services, to a person qualified for exemption under this subsection, to be used or consumed in the construction or improvement of real property are not included within this exemption and are subject to consumers tax. To illustrate: A supermarket, which purchases building materials to enlarge or remodel its store or to construct a warehouse, etc., must pay consumers tax when purchasing such materials.

(d) Sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of dispensing a service subject to consumers tax. This exemption provides that persons who render taxable services may purchase tangible personalty and services for use in business without imposition of consumers tax.

For example, persons who repair appliances, clean carpets, repair automobiles, etc., may purchase tangible personalty and services without imposition of consumers

tax. To illustrate: A company which cleans carpets may purchase shampoo, soap, vacuum cleaners and repairs to its vehicles without payment of consumers tax; for this company collects consumers tax on the services it renders.

To be exempt from the imposition of consumers tax under this subsection, the purchaser must be in the business of dispensing services, the purchased article must be tangible personal property or services, the purchased article must be used or consumed in the purchaser's business and the purchaser must be in the business of dispensing services, subject to consumers tax, to consumers. In order to qualify for the exemption, all elements listed in the preceding sentence must be present.

Persons who dispense services not subject to consumers tax are not eligible for this exemption and must pay consumers tax on purchases for use or consumption in business. To illustrate: Doctors do not charge or collect consumers tax on professional services to patients. Therefore, any tangible personal property (such as bandages,

disinfectants, drugs, pens, typewriters, stethoscopes, etc.) purchased by a doctor is subject to consumers tax, and any services (janitorial services, typewriter repair, etc.) purchased by a doctor are subject to consumers tax.

Also, persons in the business of renting or leasing real estate to others do not qualify for the exemption contained within this subsection. These persons do not dispense services subject to consumers tax. Therefore, lessors who purchase items to improve realty or for use in business must pay consumers tax thereon.

Corporations, which are subject to the control of the West Virginia Public Service Commission, are not subject to consumers tax on purchases of tangible personal property and services for use and consumption in business even though the services they render to consumers are not subject to consumers tax.

(e) Sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the

ultimate sale of which will be subject to consumers tax.

This exemption applies to persons engaged in the production of agriculture products as a business and not to persons who produce such products for their own consumption. Therefore, a person in the business of farming may purchase feed, seed, fertilizer, repairs to a tractor, etc., without payment of consumers tax.

Sales of tangible personal property or services to a farmer to be used or consumed in the construction or improvement of real property are not included within this exemption and are subject to consumers tax. For example, sales to farmers of building materials to construct barns, sheds or fences are subject to consumers tax.

(f) Sales of tangible personal property for the purpose of resale in the form of tangible personal property.

Persons who purchase tangible personal property which is to be resold in the form of tangible personal property are not required to pay consumers tax on the

purchase of such property. The sale price, whether wholesale or retail, is immaterial. In order to come within this exemption, the property must be tangible personalty and must be purchased for resale.

For example, a wholesale grocery company may purchase canned foods from the manufacturer without paying consumers tax on such purchase. The wholesale grocer will in turn resell such canned goods to a person who makes sale of the products to consumers. The person (retailer) purchasing such canned foods from the wholesaler may do so without imposition of consumers tax, inasmuch as he, the retailer, resells the canned goods in the form of tangible personal property.

The exemption within this subsection permits wholesalers, distributors, jobbers, etc., to purchase tangible personal property for the purpose of resale in the form of tangible personal property without such purchase being subject to consumers tax. However, wholesalers, distributors, jobbers, etc., who purchase tangible personal property or services for use or consumption in their business

must pay consumers tax on such purchases. Therefore, purchases of janitor services, refrigerator repairs, adding machines, etc., by a wholesaler, are subject to consumers tax. In other words, wholesalers may avoid consumers tax only on purchases of tangible personalty for the purpose of resale in the form of tangible personalty.

(g) Services rendered for resale.

Services rendered to another for resale are not subject to consumers tax. For example, X, a dry cleaning company, receives articles of clothing from a customer to be cleaned. X has B, another dry cleaning company, perform the services on the clothing, and B invoices X. X pays no consumers tax on his bill from B, for B rendered services to X for resale. X will collect consumers tax from the customer.

The exemption for services under this subsection applies to services for resale only and does not apply to services purchased for use or consumption in the business of the purchaser.

(h) Sales to volunteer fire departments.

Sales and services made to volunteer fire departments organized and incorporated under the laws of this State are exempt from consumers tax. Said exemption shall extend to fire fighting equipment, station house equipment and construction of fire stations.

(i) Sales to nationally chartered fraternal or social organizations.

Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work are exempt from imposition of consumers tax.

(j) Sales to the State or United States.

Sales of property or services to this State, and to the United States, and to the institutions, agencies and political subdivisions of each, are exempt from the imposition of consumers tax.

It is necessary that the vendor require properly executed exemption certificates from all purchasers claiming exemption from tax on any sale or services enumerated (a) through (j) above. See §1.7 of these rules and regulations as to the proper treatment of exempt certificates.

B. Use Tax, Exemptions.

1. Use, within West Virginia, of the following tangible personal property is exempt from the imposition of use tax. Basically, any item of tangible personal property which the sale of or purchase of is exempt from consumers tax is also exempt from use tax.

(a) All articles of tangible personal property brought into this State by a nonresident individual for his use or enjoyment while within the State. In other words, vacationers, visitors or other nonresident individuals may bring tangible personal property into this State for their own use without imposition of use tax.

(b) All articles of tangible personal property which if purchased within this State would not have been subject to consumers tax. The exemption contained herein is related directly to purchase or use of a particular item of tangible personal property and not to the status of the vendee. In other words, it is use or sale of the particular article or property which is exempt. For example, X, a resident of West Virginia, purchases, by prescription, drugs and medicines from an Ohio pharmacy. X uses such articles within West Virginia but pays no use tax thereon, for the purchase within West Virginia of such products would not have been subject to consumers tax.

As to tangible personal property exempt from use tax under this subsection, see §1.6 A.1. of these rules and regulations. Those articles or products enumerated (a) through (h) therein are eligible for use tax exemption.

(c) Use of tangible personal property which the receipts from the sale of are not subject to consumers tax. In other words, that tangible personal property which is

exempt from consumers tax by reason of §1.6 A.3. of these rules and regulations is also exempt from use tax. See, within the aforesaid regulation, subsections enumerated (a) through (j) therein.

This exemption includes the use of tangible personal property by persons engaged within this State in the business of transportation, manufacturing, transmission, communication, or in the production of natural resources.

CUT. §1.7 EXEMPTION CERTIFICATES.

It is presumed that all sales and purchases of tangible personal property and services are subject to consumers tax or use tax, unless it is established to the contrary. The burden of proving that a sale of tangible personal property or services is to an exempt purchaser is upon the vendor, unless he requires the purchaser to sign a certificate at the time of sale to the effect that the tangible personal property is purchased by an exempt organization or for an exempt purpose. See §1.6 A.3. and §1.6 B.1. of these rules and regulations.

The acceptance of a properly executed exemption certificate relieves the vendor from the burden of proof only if accepted in good faith from a person engaged in an activity which is specifically exempt from the consumers tax. Any person who gives an exemption certificate to the vendor and knows, at the time of purchase, that the article will be used in a manner other than expressed in the exemption certificate is guilty of a misdemeanor.

An exemption certificate is set forth herein at page 46. A sample exemption certificate will be furnished by the Tax Department to any vendor or organization upon request, which desires to reproduce the same for the

convenience of its customers.

In order that the Tax Department may verify a vendor's nontaxable sales upon audit, it is necessary that vendors retain executed exemption certificates for five (5) years. An exemption certificate, to be valid, must be given by the vendee and accepted by the vendor at the time of the sale and not thereafter. If a vendor lists nontaxable sales or services for which he has no exemption certificates, the Tax Department will presume such sales were taxable and make an assessment of tax against the vendor. Of course, the preceding sentence is not applicable to sales of articles and types of services enumerated in §1.6 A.1. and §1.6 A.2. of these rules and regulations.

EXEMPTION CERTIFICATE BULLETIN

The West Virginia consumers sales and use tax statutes provide that these taxes shall not apply to services and tangible personal property when purchased for the purposes set out below. The purchaser must select the category indicating the proposed use of the service or item purchased and prepare a certificate for each supplier. Failure to obtain certificates will make the vendor personally liable.

CONDITIONS FOR EXEMPTION

Purchased by a retailer, wholesaler, jobber or distributor for resale.

Industrial materials, machinery, supplies and services purchased for direct use or consumption in this State in the business of contracting, manufacturing, transportation, transmission, communication, or production of natural resources. Purchases for repair, construction or improvement to real estate are exempt only when purchased for direct use in the business of manufacturing, contracting, transportation, transmission, communication or production of natural resources.

Purchased for resale or for use in a retail business of selling to ultimate consumers subject to consumers sales tax.

Purchased by the state, county, municipal or federal government, volunteer fire departments and public service districts.

Purchased by a bona fide charitable organization or church which makes no charge for services rendered. Payment must be made with funds of the church treasury.

Purchased by a church with funds of the church treasury.

Purchased by a national chartered fraternal or social organization to be given away in public welfare or relief work.

Purchased by a commercial producer of agricultural products.

State of West Virginia
Consumers Sales and Service Tax
and Use Tax Exemption Certificate

To _____ Date _____

Street, Route or Post Office City - Town State - Zip Code

The undersigned purchaser hereby certifies that all services and tangible personal property purchased or leased from the above-named supplier on and after this date will be purchased for the purposes indicated below, unless otherwise specified on each order.

Purpose of purchases: _____

Name of Purchaser Account Identification Number

Street, Route or Post Office City - Town State - Zip Code

Kind of business engaged in by purchaser _____

I certify that I am authorized to sign this certificate and understand that use of the service or property other than stated above will create a liability for the tax and penalties.

By _____ Title _____

CUT. §1.8 CASH SALES, CREDIT SALES, CONDITIONAL SALES and
AGGREGATING PURCHASES.

Those sales transactions in which the purchase price is paid upon delivery of the merchandise to the purchaser, or prior thereto, and those rental transactions in which the rental is paid either upon delivery of the rented property to the lessee or the return of such property, or in advance of either of these events, are cash sales. All other sales and rental transactions are credit sales.

If the sale is a cash sale, the vendor shall require the purchaser to pay the tax at the time of making the sale. If the sale is a credit sale, the vendor shall require the purchaser to pay the tax at the time such sale is made, or within thirty days thereafter.

When several items are purchased simultaneously, the tax may be computed on the total sale price of the items so purchased. This is the only situation in which purchases may be aggregated in the computation of the tax. Separate sales transactions may not be aggregated.

For example, if merchandise is purchased at the cosmetic counter, delivered to the purchaser and a purchase price of sixty cents paid, this is a complete sale and two cents tax must be collected. If the same

purchaser goes to the candy counter and makes a ten cent purchase, there is a new sale and one cent tax must be collected thereon. The cosmetic sale and the candy sale may not be aggregated so as to permit the payment of two cents tax instead of three cents.

For the purpose of obtaining uniformity and consistency among all vendors in the administration of the consumers tax law with respect to conditional sales, a conditional sale is hereby defined to mean an agreement for the sale of tangible personal property pursuant to which possession is delivered to the buyer, but title is retained by the seller until the performance of some condition, usually the payment of the purchase price. A conditional sale shall be considered to be a sale made at the time of, and at the place of acceptance of the purchase offer by the seller. The tax applies to conditional sales as of the time the sale is made and must be collected in the same manner as for charge sales, i.e., within thirty days from the time sale is consummated.

Sales of tangible personal property on approval are, if a consideration is given therefor, subject to the tax. Sales with agreements to repurchase and sales for cash on delivery are subject to the tax.

So-called "leases" of tangible personal property wherein title is passed to the "lessee" upon completion of purchase price payments are

sales, and the full tax must be collected and paid at or prior to the delivery of the tangible personal property to the purchaser or within thirty days.

Purchases under conditional sales contracts with out-of-state retailers are subject to the use tax. If the conditional sale is made by an out-of-state vendor who is not authorized to collect use tax, the purchaser is required to pay such use tax to the State Tax Department on or before the fifteenth day of the month next succeeding the quarterly period in which the purchase was made. If a conditional sale is made by an out-of-state retailer who is authorized to collect use tax, three per cent of that portion of the purchase price actually received during a quarterly period shall be remitted to the Tax Department by the retailer.

CUT. §1.9 FINANCE and CARRYING CHARGES.

The sale price upon which the consumers tax or use tax is to be computed shall not include carrying charges, finance charges or similar items. For example, a sewing machine priced at \$80.00 is sold under a conditional sales contract which provides for deferred monthly payments. A carrying charge of \$5.00 is added to the sale price to cover the cost of recording the contract and billing the purchaser, thus making the total cost to the purchaser \$85.00. The tax is to be computed on \$80.00.

CUT. §1.10 DISCOUNTS.

Any discount allowed at the time of sale which establishes the final selling price for the article at the time of sale may be deducted in arriving at the base price subject to the tax. Discounts which are allowed after the sale is made or upon conditions or events happening at some future time, such as a certain percentage discount being allowed if paid within a specified period, are not deductible in determining the tax base for the consumers or use tax liability.

CUT. §1.11 EXCHANGED MERCHANDISE.

When merchandise, the sale of which has been taxed under the consumers tax or use tax, is exchanged the value of the merchandise exchanged may be deducted from the sale price of the article purchased and tax collected upon the balance.

CUT. §1.12 MERCHANDISE HELD or LAID AWAY.

When merchandise is held or laid away by the vendor pending a payment of all or part of the purchase price, the sale for consumers tax purposes occurs when the merchandise is delivered to the purchaser. If an unpaid balance remains at the time the merchandise is delivered, the sale is to be treated as a charge sale.

CUT. §1.13 BARTER.

When the consideration for a sale is goods, which have not previously been the subject of a taxable sale or use, instead of money, the tax is to be computed upon the sales value of the article or articles sold.

CUT. §1.14 SALES WHICH are RESCINDED - RETURNED or DAMAGED
MERCHANDISE.

When a sale upon which tax was collected is rescinded, the tax shall be refunded to the purchaser unless it has previously been remitted to the Tax Department. Returns shall be filed and tax remitted on or before the fifteenth (15th) day of the month next succeeding the month in which the tax accrued.

PART II
ENFORCEMENT, COLLECTION
AND ADMINISTRATION

CUT. §2.1 TAX RETURNS, PAYMENT, DUE DATES and PENALTY.

A. Consumers Tax.

1. Returns, Remittance and Penalty.

The consumers tax is a personal obligation of the taxpayer and is due and payable on or before the fifteenth (15th) day of the month next succeeding the month in which the tax accrued, except for the return due for the last month (December) of the tax year which is due on or before thirty days after the end of such year. The taxpayer shall make out a tax return for the preceding month, showing: (1) the total gross proceeds of his business for that month; (2) the gross proceeds upon which the tax is based and (3) the amount of tax for which he is liable. A remittance shall accompany the return, and the return shall be signed by the taxpayer or his duly authorized agent.

An unsigned tax return will be deemed incomplete and may be returned to the taxpayer as improperly filed.

Any taxpayer who fails to file a return or pay the tax within the time prescribed in the next preceding paragraph shall be considered delinquent and shall be charged a penalty. The penalty shall accrue at the rate of six percent (6%) of the tax for the first month, or fraction thereof, during which the taxpayer is delinquent, and one percent (1%) of the tax for each succeeding month, or fraction thereof, during which he is delinquent. A payment postmarked after the fifteenth day of the month shall be considered delinquent.

The penalties so added shall be collected at the same time and in the same manner and as part of the tax. For example, for the taxable period ending on July 31, the consumers tax return and remittance are due on or before August 15. Assuming that the tax liability is one hundred dollars (\$100.00) and the taxpayer files his return and remittance on September 18, he will be charged a penalty of seven dollars (\$7.00) which is computed by multiplying the amount of tax

(\$100.00) by 6% for the first month of delinquency and by 1% for the next month of delinquency. A "month", for the purpose of penalty computation, shall be a thirty (30) day period with the first day of such period being the first day following the due date of the return. Therefore, in this case, the first month of delinquency, which imposes a penalty of 6%, began on August 16 and ended on September 14. The second month, or fraction thereof, during which the taxpayer was delinquent, and which imposes a 1% penalty, began on September 15.

If the taxpayer's failure is due to reasonable cause, which is an affirmative plea on the part of the taxpayer, the Tax Commissioner may waive, in whole or part, the penalties imposed. Inasmuch as consumers tax becomes trust funds due and owing the State when collected from purchasers by vendors, financial hardship, failure to receive forms or returns and lack of time in which to prepare and file the consumers return will not be deemed reasonable cause by the Tax Commissioner. Destruction of records by fire, flood, etc., and incapacity of the taxpayer prior to the due date of the return, if properly

pleaded and proven, will be considered reasonable cause by the Tax Commissioner.

If the failure is due to fraud or intent to evade the consumers tax law or the rules and regulations promulgated thereunder, there shall be added an additional penalty of twenty-five percent of the amount of the tax, exclusive of regular penalty.

Any person who willfully violates any of the consumers law, or any lawful rule or regulation promulgated under it, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars nor more than three hundred dollars for the first offense; and for any second or subsequent offense shall be guilty of a felony, and, upon conviction shall be fined not less than five hundred dollars nor more than five thousand dollars and confined in the penitentiary not to exceed two years, either such fine or imprisonment, or both, in the discretion of the court.

Any retailer or other person failing or refusing within a reasonable time to furnish any return herein required to be

made, or failing or refusing within a reasonable time to furnish a supplemental return or other data required by the Tax Department, shall be guilty of a misdemeanor and subject to a fine not to exceed one hundred dollars for each such offense, or to imprisonment for not to exceed thirty days, or to both such fine and imprisonment in the discretion of the court.

2. Liability of Corporate Officers.

A tax due and unpaid under the consumers law shall be a debt due the State and shall be a personal obligation of the taxpayer and shall be a lien upon all property of the taxpayer. If the taxpayer is an association or corporation, the officers thereof shall be personally liable, jointly and severally, for any liability or default of the association or corporation, and payment may be enforced against them as against the association or corporation.

3. Returns for Other than Monthly Periods.

Upon written request to the Tax Department a taxpayer may, if his books and records are not kept on a monthly basis,

be granted permission to file consumers returns on a basis other than monthly. In order to receive said permission or authorization, the burden rests upon the taxpayer to show that monthly filing will impose an undue hardship.

When the total tax for which a taxpayer is liable does not exceed ten dollars (\$10.00) for any month, he may file returns and make remittances on a quarterly basis. Such returns and remittances will be due on or before the fifteenth (15th) day of the first month in the next succeeding quarter, with the exception of the return due for the fourth quarter of the calendar year. Such return (fourth quarter) shall be due on or before January 30. The other quarterly returns are due on or before April 15, July 15 and October 15.

The Tax Department may, for good cause shown, upon written application of a taxpayer, extend the time for filing a consumers return. Requests for extensions of time will not be considered if received after the due date of the return. No extension will be granted for a period in excess of thirty days.

No taxpayer will be permitted to make remittance of past or present tax liabilities or delinquencies by future installment payments.

Any person operating two or more places of business of like character from which are made or dispensed sales or services which are subject to consumers tax shall file a consolidated return covering all such sales and services from all locations.

B. Use Tax.

1. Returns and Penalty.

Every retailer required or authorized (see §1.5 of these rules) to collect use tax shall file a return and pay said tax on or before the fifteenth (15th) day of the month next succeeding each quarterly period. Use tax returns are due on or before the fifteenth day of April, July, October and January. The return shall be signed by the taxpayer and shall show the total sales price of all tangible personal property sold by the retailer during the quarterly period, the use of which is subject to use tax. The return shall be accompanied by a remittance for the

amount of the tax.

The Tax Department may, if it deems it necessary, require returns from any taxpayer of less than quarterly durations.

An extension of time in which to file the use tax return may be granted for a period not to exceed thirty (30) days, if the taxpayer makes a written request and shows the necessity therefor. No request for extension will be considered if received by the Tax Department after the due date of the return.

The prior three paragraphs in their entirety are equally applicable to purchasers who are subject to use tax liability but who have not paid the same to a retailer, but who are required (see §1.5 B.3. of these rules) to remit directly to the Tax Department.

Any person who is required to file a use tax return and pay such tax on or before the due date, and who fails to do so, shall be subject to a penalty of five percent (5%) of the amount due plus one percent (1%) for each month of delinquency or fraction thereof.

CUT. §2.2 RECORD RETENTION and EXAMINATION.

Persons engaged in selling tangible personal property and rendering services subject to consumers and use taxes are required to retain complete and accurate records of their purchases, sales and services, and of the consumers and use taxes collected thereon. With respect to purchases, these records shall include purchase invoices, sales slips, bills of lading, statements or other type of memoranda relating to such purchases, in addition to his own original entry record of such purchases. With respect to sales and services, these records shall include sales slips, invoices, cash register tabs or tapes, cash receipts, cash receipts records, or other documents of original entry from which the vendor's journals or ledgers are constructed, in addition to journals, ledgers, and other books of accounts, all the exemption certificates, and an original record of total tax collections. This may be a daily, weekly or monthly record.

Purchasers who are subject only to the use tax (see §1.5 B.3. of these rules) are required to maintain complete and accurate records of all purchases from out-of-state vendors. The records shall include the purchaser's copy of sales slips, invoices, bills of lading, or similar type documents, in addition to an original record of such purchases. These

records shall also reflect the payment of West Virginia use tax and shall have appearing upon the face of the record the amount of use tax paid.

All records relating to consumers and use tax shall be preserved for a period of five years, unless the Tax Department shall consent, in writing, to their destruction within that period. The Tax Department may direct that such records be retained for a longer period than five years.

The Tax Department has authority to examine the books, papers, memoranda, and records of a taxpayer for the purpose of verifying returns or determining the taxpayer's liability when no return has been filed. All persons subject to the consumers tax or use tax shall make such records available for inspection by the Tax Commissioner or his representatives upon request. If a taxpayer refuses to permit an examination, the Tax Department may petition a court of competent jurisdiction compelling the taxpayer to present his records and the taxpayer will bear the cost of such proceedings. The Tax Department, after examining the records of the taxpayer or after making other investigations, may assess additional tax that such examination or investigation shows to be due. The Tax Department will notify the taxpayer, in writing, of such assessment.

CUT. §2.3 LIABILITY of SUCCESSOR in INTEREST.

When any person liable for consumers tax shall sell his business or stock of goods or quit his business, he shall make a final return and pay any tax or penalty due within fifteen (15) days after the date of sale or quitting business. It is recommended that the successor of the business or stock of goods obtain from the Tax Department a written statement of the amount of any unpaid tax or penalty as at the date of sale of the business. The successor shall withhold a sufficient portion of the purchase money to cover the amount of such unpaid taxes or penalties until the seller shall produce a receipt from the Tax Department showing that they have been paid or a certificate from the Tax Department stating that no taxes or penalties are due.

If the successor of a business or stock of goods shall fail to withhold sufficient amount of the purchase money as above provided, he shall be personally liable for the payment of taxes and penalties accruing and unpaid on account of the operation of the business by any former owner, owners or assigns.

The word "successor" includes all persons who acquire the taxpayer's equipment or merchandise in bulk, whether they operate the business

or not, unless the property is acquired through insolvency proceedings or regular legal proceedings to enforce a lien, chattel deed of trust, judgment or repossession under a conditional sales contract. The landlord will be a successor unless he proceeds to foreclose his landlord's lien by posting notice and holding a sale by a sheriff or constable. If the landlord, instead of foreclosing his lien, takes a bill of sale to all the taxpayer's interest in the business or stock of goods in satisfaction of rent, he is a successor, and shall be liable for all taxes owed by the taxpayer. If the taxpayer sells his equity under the conditional sales contract to a third person, the third person is a successor.

CUT. §2.4 REFUNDS.

Any person claiming to be aggrieved through being required unlawfully to pay any tax, may, within five years from the date of the filing of the return in respect of which the tax was imposed or within four years from the date the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within four years from the time the tax was paid, and not after, file with the Tax Department a petition, in writing, to have refunded to him any such tax, or any part thereof. The petition must set forth the facts in support of the claim for refund. In the filing of a petition for refund, the taxpayer shall attach thereto amended tax returns for the periods involved and all other evidences in support thereof. The Tax Department shall review the same and make a determination. The taxpayer will be notified in writing of the determination of the Tax Commissioner.

For the purpose of filing petitions or claims for refund of consumers tax and use tax, the person making such claim must be the person against whom such tax was charged or imposed and not the person who acted as agent of the State in collecting the same. Therefore, vendors who collect more tax than is due from consumers are not in position to file a refund

petition, but the overcharged consumer is in position to be refunded and if the petition is timely and proven, the Tax Department will make a refund to the consumer. To illustrate: X, a lessor of automobiles within this State, erroneously charges its customers consumers tax of five percent (5%) rather than computing the tax under the three percent (3%) bracket system. As a result of such overcharge, X remitted \$10,000 to the State rather than the correct amount of \$6,000. X is not in a position to make claim for the additional \$4,000, even though erroneously collected. It is provided that all taxes collected must be remitted to the State (see §1.5 A.1. of these rules), and the vendor shall make no profit therefrom. The vendor is not required unlawfully to pay the tax in this case, but the consumer (customer of X) was; therefore, the individual customers of X may petition for refund.

In situations where the purchaser remits directly to the State, the purchaser may petition for refund if he has made an erroneous payment or overpaid the tax. This situation may occur when an individual purchases property for use in this State from a vendor who is not authorized to collect use tax.

CUT. §2.5 ASSESSMENT or DEFICIENCY of TAX.

If the Tax Department believes that consumers tax or use tax is insufficiently returned by a taxpayer either because the taxpayer has failed to properly remit the tax or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous, the Tax Department will proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment against him.

If the Tax Department believes that the collection of the tax will be jeopardized by the delay, it will make an assessment of the tax, noting that fact upon the assessment. Such assessment is known as a jeopardy assessment.

CUT. §2.6 PETITION for REASSESSMENT.

If a person against whom an assessment has been made desires to contest the assessment, he is required to file a petition for reassessment. The petition for reassessment must be filed with the Tax Department personally or by certified mail within thirty (30) days after service of the assessment. In the case of a jeopardy assessment the petition must be filed within twenty (20) days. The original and one copy of such petition for reassessment shall be so filed.

If the taxpayer fails to file such petition for reassessment within the time required by law, the assessment shall be conclusive and the amount thereof shall be due and payable and not subject to judicial or administrative review.

The petition for reassessment shall be in writing and shall be complete in itself so as to fully state the issues. No telegram, telephone call or similar communication will be recognized as a petition.

The petition for reassessment shall contain (a) a statement of the amount of the deficiency or liability, as the case may be, determined by the Tax Department, the nature of the tax, the period for which determined; (b) clear and concise assignments of each and every error which the

petitioner alleges to have been committed by the Tax Department in the determination of the deficiency. Each assignment of error shall be numbered; (c) clear and concise statements of facts upon which the petitioner relies as sustaining the assignments of error; (d) a prayer, setting forth the relief sought; (e) the signature of the petitioner; (f) a verification by the petitioner; (g) a copy of the assessment shall be appended to the original of the petition.

In the case of jeopardy assessment a bond with corporate surety thereon in penalty double the amount of the assessment, conditioned upon the payment of all taxes, penalties and costs legally due, shall accompany the petition for reassessment.

The Tax Department is without authority to extend the thirty-day period in which the taxpayer must file a petition for reassessment.

CUT. §2.7 HEARINGS and APPEALS.

Hearings upon petitions for reassessment shall be held at the State Capitol in Charleston, West Virginia, unless good cause be shown for conducting the hearing elsewhere within this State.

Hearings will not be delayed by a motion for continuance unless it is timely made and sets forth good and sufficient cause. Conflicting engagements of counsel or the employment of new counsel will never be regarded as grounds for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown which the State deems adequate.

The unexpected absence of the petitioner or his counsel when a petition is called for hearing will not be the occasion for delay. The hearing shall proceed and the case be regarded as submitted on the part of the absent party or parties.

The petitioner may represent himself or be represented by some other person or persons of his choosing. A record of the hearing shall be made.

Petitioner will be given an opportunity for argument within time limits fixed by the Tax Department following submission of evidence. The

Tax Department will accept briefs in lieu of argument. Briefs must be filed timely within the period prescribed by the hearing examiner.

An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged, or in which the taxpayer resides, or in the Circuit Court of Kanawha County, within thirty days after he shall have received notice from the Tax Department of its determination.

PART III

PARTICULAR PERSONS , ARTICLES , BUSINESSES
AND SITUATIONS; TAX LIABILITY THEREOF

CUT. §3.1 SALES TO and PURCHASES BY NONRESIDENT INDIVIDUALS.

Any person who makes sales within this State of tangible personal property or services to nonresident individuals must charge and collect consumers tax from said individuals. If the purchaser takes possession of the property at the time of the sale, it is considered prima facie evidence that such sale was consummated within this State and is subject to consumers tax. The burden to prove the contrary shall rest upon the vendor. Sales otherwise taxable are not exempt because such are made to nonresidents, except sales that are completed outside this State.

Sale of an article within this State to a nonresident and delivery by the vendor to such purchaser outside this State shall not relieve the vendor from the responsibility for collection of the consumers tax unless his books, records and other evidence show that such delivery was indispensable to the sale and that the sale was consummated outside this State. The fact that a purchaser has an out-of-state address and the property

was mailed or delivered to such address is not sufficient to relieve imposition of consumers tax; nor does such fact establish consummation of sale outside this State.

Vendors who complete sales outside this State to nonresidents (to residents of Ohio) are not required to collect West Virginia consumers tax but may subject themselves to sales tax liability to the state of which the purchaser is a resident. Of course, the purchaser may be subjected to use tax of his home state.

Services performed within West Virginia for nonresidents are subject to consumers tax. If a West Virginia serviceman or repairman performs a service outside this State, said person is not required to collect the tax.

Example 1: X, a resident of Ohio, visits a West Virginia furniture store and purchases furniture for \$500. X makes payment, and the vendor delivers the goods to the purchaser in Ohio. Said sale is taxable for consumers tax and the vendor must collect consumers tax in the amount of \$15.00, unless the vendor can show (via a written sales contract, etc.)

that the delivery was not incidental to the sale and was, in fact, indispensable and that the sale was consummated in Ohio.

Example 2: A resident of Virginia takes a toaster into West Virginia and has the same repaired by a serviceman. The person performing the service must collect the consumers tax. However, if the person performing the services goes to the purchaser's home in Virginia to repair the appliance, no consumers tax is applicable.

Example 3: A repairman travels to Virginia and takes possession of an appliance which he takes to his shop in West Virginia. After making the repairs at his place of business, the serviceman then delivers the appliance to the owner's residence in Virginia. The serviceman must charge and collect West Virginia consumers tax on his services, inasmuch as such services were performed within this State.

CUT. §3.2 BANKING BUSINESS.

Generally, banks, state and national, are not exempt from the imposition of consumers tax or use tax on their purchases, inasmuch as banks are the ultimate consumers of such purchases. Banks are only exempt on purchases of property and services that are resold, subject to tax, to consumers.

Banks shall collect tax from consumers on the following sales and services:

- (i) Charges made for data processing services rendered for others,
- (ii) Charges made for real estate management other than those charges made for real estate management in connection with the administration of trusts and estates,
- (iii) Fees received for rental of safety deposit boxes, and
- (iv) Sales to consumers of promotional items, such as, glassware, silverware, appliances, etc.

The above enumerations do not constitute a complete list of items or services on which banks must charge and collect consumers tax.

Any purchases by banks of property or services directly used or consumed or for resale, relative to those activities enumerated above, are not subject to consumers tax or use tax.

CUT. §3.3 BOTTLE DEPOSITS.

The consumers tax does not apply to a bottle deposit, provided that the amount of the deposit is separately stated on the invoice or sales slip.

In no event will the vendor be permitted to deduct from the sale price of an item of tangible personal property the cost of the container, unless the transaction contemplates the return of the container.

CUT. §3.4 PERSONS RENDERING SERVICES.

Persons engaged in any of the activities set out below or any similar or analogous activities are rendering a service subject to the consumers tax:

| | |
|--|--|
| Agency | Meat cutting |
| Airplane pleasure trips | Motor repair |
| Alterations | Motorcycle repair |
| Automobile repair | Painting |
| Battery stations | Photography |
| Billboards | Pipe fitting |
| Billiards, pool | Planing mills |
| Bowling and ten pin alleys | Printing |
| Business machine repair | Recapping |
| Cleaning, pressing, dyeing | Sewing |
| Creosoting | Shoe repair |
| Delivering | Storage warehouse and storage lockers |
| Engraving | Termite and pest control |
| Excavating | Tin and sheet metal repair shops |
| Foundries | Warehouses |
| Furniture repair | Washing cars |
| Grading | Watch repair |
| Hauling | Weighing |
| Hotels, motels, tourist homes, rooming houses | Welding |
| House moving | Well drillers |
| Jewelry repair | Wrapping merchandise |
| Laundries | |
| Machine operators | |

This does not constitute a complete list. Activities not appearing here may also be subject to consumers tax.

CUT. §3.5 SALES by the STATE, COUNTIES and MUNICIPALITIES.

Governmental units which render services subject to competition from other persons are required to collect consumers tax upon rendering such services to consumers. For example, the operation of a municipal parking facility in competition with others is subject to consumers tax. Sales of admission tickets to a municipally owned or operated swimming pool are subject to consumers tax, if such pool competes with the activities of others. Fees received by a municipality from on-street parking meters are not subject to consumers tax.

Governmental units which sell tangible personal property to consumers must collect tax thereon. For example, sales of city maps, sales of gifts and souvenirs, sales of food from city operated concessions at stadia, ballparks, auditoriums, etc., are subject to tax.

Sewage fees, license fees, fire service fees, inspection fees and the like are not subject to tax.

CUT. §3.6 PERSONAL SERVICES and SALES to PERSONS RENDERING
SUCH SERVICES.

The consumers tax does not apply to the charge for personal services rendered by barbers, beauticians, manicurists, etc. Personal services include those rendered to the person of an individual. If, apart from their personal services, they are engaged in selling to the public such articles as hair tonic, soap, hair nets, and the like, they are vendors and must collect the consumers tax on all such sales.

Barbers, beauticians, manicurists, etc. are the consumers of the various items of tangible personal property and services which they use in the rendition of their personal services, and the consumers and use taxes will apply upon their purchases of all such services and property, including equipment. However, articles purchased for resale to consumers may be purchased without imposition of tax by barbers, beauticians, etc.

CUT. §3.7 HOSPITALS.

The serving of meals, rental of rooms, sale of drugs, blood, oxygen, dressings, appliances and other tangible personal property to patients as a part of the services rendered by hospitals are so inter-related with professional and personal services, that such sales and services rendered to patients by hospitals are not subject to consumers sales tax.

If hospitals operate cafeterias or restaurants through which meals are sold for cash or credit to nurses, doctors, visitors and others, these sales are subject to the consumers tax.

If meals are included in the wage agreement and are not deducted from the earnings of employees, the consumers tax is not applicable.

Since hospitals are engaged in the business of selling tangible personal property and services not subject to tax, they are not exempt from payment of consumers and use taxes on purchases of property and services for use in the conduct of the business.

Purchases of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property used by hospitals shall be subject to the consumers and use taxes.

CUT. §3.8 NURSING and CONVALESCENT HOMES.

Persons who operate nursing or convalescent homes are rendering personal services which are not subject to consumers tax. If such persons make sale of tangible personal property, such as, toilet articles, etc., to consumers, such sales are subject to tax. Also, meals served to residents of the home, if separately billed or invoiced, are subject to tax.

Purchases of tangible personal property and services for use or consumption in the operation of such homes are subject to consumers tax. However, any item purchased for resale, on which tax is collected on the sale to the consumer, may be purchased by such homes without imposition of tax.

CUT. §3.9 HOTELS, MOTELS, TOURIST HOMES and ROOMING HOUSES.

Persons engaged in renting rooms in hotels, motels, tourist homes and rooming houses on a daily charge rate shall compute the consumers tax upon the daily charge in the same manner as any other charge sale. If meals are served and separate charges are made for each meal, the tax must be computed upon each sale. Motels and hotels which rent rooms or apartments on a permanent basis to persons who make such rooms or apartments their permanent place of abode need not collect consumers tax on such rentals. Therefore, the lessor of such rooms or apartments must pay tax on all purchases and services relative to such rooms or apartments.

The term "rooming house," as used in this rule, means any establishment furnishing rooms to three or more individuals by the week or month at a specified rate. Persons who operate rooming houses are required to collect and remit consumers tax. The tax may be computed on the total amount of the weekly or monthly charge.

Persons primarily engaged in the business of renting rooms or serving meals, and collecting tax thereon are exempt from the payment of consumers and use taxes on their purchases of tangible personal property and services for use in the conduct of their business; however, this exemption will not apply to the construction of or permanent improvement of real property.

CUT. §3.10 DORMITORY CHARGES, FRATERNITY and SORORITY HOUSES.

If colleges, including state, church and private schools, are engaged in the business of renting rooms and selling meals to students, they incur a consumers tax liability on their receipts from such sales. When a lump sum charge is made for monthly, semester, semiannual or annual periods, the tax may be computed on the total charge. When meals are served in cafeterias operated by the school, the consumers tax must be computed on each individual sale.

All persons who are engaged in the operation of a fraternity or sorority house selling meals or renting rooms are engaged in business and incur a consumers tax liability on their receipts from such sales.

CUT. §3.11 SUMMER CAMPS, CAMPING and TRAILER PARKS.

The amounts derived as compensation for the services rendered and tangible personal property sold to campers in the operation of a summer camp are subject to consumers tax.

The temporary leasing of space upon which to park a trailer or camper is an activity which is subject to the consumers tax. If the lessor renders services for the lessees of such space, the tax applies to such services. If a total charge is made which includes the charge for services, the consumers tax must be computed on such total charge. Persons who provide services to campers must collect consumers tax on charges made for such services. Services which may be provided by such persons are electrical hookups, temporary renting of space, water, etc.

Persons who lease space on a permanent basis to situate mobile homes are leasing real estate and are not required to collect consumers tax. However, any services rendered by the lessor to the lessee for which a separate charge is made is subject to tax.

CUT. §3.12 SCHOOLS.

All schools should file consumers tax returns in accordance with this regulation.

Exempt sales by schools:

- A. Food sales to students within the schools as a part of the hot lunch program on a nonprofit basis for the health and welfare of the students.
- B. School textbooks, workbooks, instructional aids, standardized examination material required to be used in any schools of this State.
- C. School papers and yearbooks, compiled and edited by students of the school and sold only to students.
- D. Admission tickets to students only for events produced solely by talent of the school involved.
- E. Rental of locks, lockers, storage space, clothing, other materials and equipment owned by schools and furnished solely to students.
- F. Class dues and library fines.
- G. Tuition payments.

Taxable sales and services by schools:

- 1. Sales at concession stands and snack bars.
- 2. Sales of school supplies at bookstores except as exempted under Item B, above.
- 3. Sales through the use of vending machines; the tax must be computed on each sale.

4. Sales of class jewelry, pictures, banners, etc.
5. Sale of food not exempt under Item A, above, for consumption in the school or in the home.
6. Sales of admission tickets to nonstudents for all school events.
7. Sales of tickets to students and nonstudents for all interscholastic events.
8. Sales by and activities of the P.T.A., booster groups, etc.
9. School papers, yearbooks, etc., sold to nonstudents.

Purchases of food, materials and supplies sold on a nonprofit basis for the health and welfare of students are exempt. Purchases of school textbooks, workbooks, instructional aids, standardized examinations and other materials are exempt. All purchases of property and services by schools which are institutions of this State are not subject to tax.

In lieu of payment of consumers sales tax on those purchases, a school should issue a properly executed exemption certificate.

Private schools, trade schools, vocational schools, business colleges or other schools which are not institutions of this State are subject to tax on all purchases of property or services for use in conduct of business, with the exception of purchases of property or services which are resold subject to consumers tax.

CUT. §3.13 CHURCHES.

A. Sales to Churches and Religious Groups.

Sales to and services for churches are exempt when the purchase price is paid from the church treasury.

Sales to religious groups, other than churches, are not exempt even though such purchases are for the benefit of the church, unless the purchase is for resale subject to tax.

B. Sales by Churches and Religious Groups.

Sales by churches and religious groups are subject to the consumers tax unless the sale can qualify as an isolated sale. Religious groups which sell meals are required to collect the consumers tax thereon.

CUT. §3.14 NONPROFIT ORGANIZATIONS.

Nonprofit organizations and institutions are not, by reason of their nonprofit status alone, exempt from the consumers or use tax unless otherwise exempt. They are required to comply with the provisions of the laws pertaining to the filing of returns and making payments of the taxes due on sales or on purchases.

CUT. §3.15 OUT-OF-STATE PURCHASES.

In the computation of the use tax, credit may not be taken for sales or use taxes paid in another state. The use tax is due even though sales or use tax has been paid on the purchase or use of the same property in another state.

The use tax shall be computed on the sale price of the article or articles, which sale price shall not include any sales tax which may have been added to the cost of the article or articles.

Many out-of-state vendors are not authorized by the State of West Virginia to collect the use tax. It is the responsibility of the purchaser to know whether his vendor is authorized to collect the tax. Tax paid to an unauthorized vendor may not be returned to the State. If that occurs, the State will look to the purchaser to pay the tax again. Payment of the tax to a vendor authorized to collect use tax relieves the purchaser from any further liability for the tax.

CUT. §3.16 LEASED DEPARTMENTS.

Persons who operate leased departments in which merchandise is sold or services rendered are required to collect and remit consumers tax. Such persons are required to file returns and remit tax separately from their lessors. The lessor is not permitted to file returns and pay consumers taxes in behalf of his lessee.

CUT. §3.17 RENTALS.

The definition of sale includes the transfer of possession of tangible personal property for a consideration and includes a lease or rental. Thus renting or leasing tangible personal property is an activity subject to consumers tax and use tax. The tax applies, if the rental occurs in West Virginia, irrespective of where the lessee makes use of the property. For example, the rental of an automobile from a lessor within this State, is taxable in its entirety even though the lessee may use the vehicle for travel outside this State.

When there is an agreement of lease or rental of tangible personal property which grants to the lessee an option to purchase the property, the tax shall be computed upon each payment. If, at any time during the agreement, the lessee exercises the option on either a cash or charge basis, the tax must be collected on the remaining portion of the sale price at the time of option or within thirty days.

An exception to the preceding is a lease-purchase agreement for an automobile. When the lessee exercises his option to purchase the vehicle, the remaining balance or sale price is not subject to tax; for the lessee will be subject to the motor vehicle privilege tax.

The consumers tax is not applicable to the rental of apartments, houses, offices or other real estate.

CUT. §3.18 COIN-OPERATED MACHINES and DEVICES.

Sales of tangible personal property or services through the use of coin-operated machines and devices are subject to the consumers tax. Machines and devices included in this rule are vending machines, storage lockers, toilet lockers, telescopes, radios, television sets, automatic washers, photographic machines, music machines, amusement machines, and any other coin-operated machines or devices. Machines used in the conduct of a public utility business are not included.

The consumers tax shall not apply to individual sales or services rendered through machines which offer merchandise or a service at a cost of five cents or less. The consumers tax must be collected on each sale or service by a machine which offers merchandise or a service at a cost in excess of five cents. The term "machine" shall include any mechanism which functions independently. For example, a match-vending machine which has its own coin slot and delivery mechanism is a separate machine from the cigarette vending machine, although the two may be in the same unit.

The person who has control of the machine, i.e., the one who has the key, fills the machine, etc., is responsible for returning and remitting the consumers tax.

Merchandise-vending-machine operators are required to maintain accurate records of all of their purchases of merchandise for resale. All persons doing business through coin-operated machines are required to maintain accurate records of any commission or percentage paid in connection with the operation of such machines.

Vending machine operators are required to maintain records reflecting the gross proceeds of sales derived from the various denominational sales such as 10-cent machines, 25-cent machines, etc.

The reason for this is that the consumers sales tax yield will vary depending upon the amount of the sale. For example, a 10-cent vending machine will yield a 1-cent tax on each sale or a yield for consumers tax of ten percent; whereas, a 25-cent vending machine will yield consumers tax of 1-cent on each 25-cent sale or a consumers tax yield of four percent. The operator of the vending machine shall pay the full amount of consumers tax depending upon the denomination of the machine to the State. No profit on such taxes shall accrue to the vending machine operator. The operator shall compute tax on the basis of the denomination of the machine and shall treat each transaction as a separate sale.

CUT. §3.19 REPAIRS to TANGIBLE PERSONAL PROPERTY.

Persons engaged in the business of repairing property for others are engaged in a service business, the gross receipts from which are subject to the consumers tax. Those persons engaged in a repair service who are required to furnish tangible personal property which will be transferred to the purchaser shall include in their total charge, separately stated, the sale price of tangible personal property as subject to the tax. Those repairmen who are qualified vendors, when purchasing tangible personal property, a part of which they will use directly in their repair work and a part of which they will sell to their customers, will be permitted to purchase such property without imposition of consumers tax.

CUT. §3.20 ADVERTISING AGENCIES, RADIO and TELEVISION BROADCASTING STATIONS.

Advertising agencies furnish services subject to the consumers sales tax. Where the agency does not purchase the advertising for resale, it shall collect and pay consumers tax on fees, retainers and commissions charged, unless exempt under provisions of the consumers sales tax law. Where the agency purchases the advertising in any form for resale, it shall omit the consumers sales tax on such resale unless these sales are commingled with the service charge.

Radio and television broadcasting stations which render advertising services for a fee to consumers shall charge and collect consumers tax on such services. For example, a person running for public office is not in a position to give an exemption certificate; therefore, air time purchased by him for political advertisements is subject to consumers tax. The broadcaster must collect the tax and remit it to this State.

Radio and television broadcasting stations which accept orders for merchandise (records, tapes, etc.) for foreign retailers must collect and remit use tax on all such orders. In this situation, the broadcaster is deemed to be an agent of the foreign retailer.

CUT. §3.21 PRINTERS, LITHOGRAPHERS, MIMEOGRAPHERS, MULTI-
GRAPHERS.

Persons engaged in the business of printing, lithographing, mimeographing, multigraphing, and the like, are engaged in selling tangible personal property and rendering a service subject to the consumers tax.

The following representative items of tangible personal property and the services employed in the preparation of the items are taxable: Stationery, envelopes, folders, bond and stock certificates, circulars, abstracts, law briefs, business cards, matches, mechanical pencils, campaign posters, banners, etc.

If a customer furnishes his own paper, the services and materials used to imprint thereon the name, address, telephone number, etc., constitute a service subject to tax.

Persons engaged in the business of printing are exempt from the tax on their purchases of tangible personal property and services for use in the conduct of their business. However, this exemption shall not apply to the purchase of tangible personal property and services to be used in the construction of or permanent improvement of real property.

CUT. §3.22 NEWSPAPERS and MAGAZINES.

Sales of newspapers, magazines and periodicals by persons operating newsstands, bookstores, cigar stores, drugstores, depot newsstands, and the like, are subject to consumers tax if the individual sale transaction is in excess of five cents.

When newspapers are sold on a subscription basis for delivery by mail, the tax must be collected on the total subscription price. Sales of newspapers delivered to consumers by route carriers are not subject to consumers tax.

Advertising space sold to consumers by newspapers and magazines is subject to consumers tax. Therefore, when newspapers and magazines sell such advertising space and services to persons who are not eligible to present an exemption certificate for such services, the vendor must collect consumers tax and remit the same to the State of West Virginia.

CUT. §3.23 FLORISTS.

Florists are required to collect and remit consumers tax upon their gross receipts from sales of flowers, wreaths, soil, etc., and services. Those florists who participate in Florists Telegraph Delivery Association or a similar arrangement shall be governed by the following rules: (a) the West Virginia florist who takes orders for flowers, etc., shall collect consumers tax irrespective of the fact that the flowers may be delivered in another state; (b) a West Virginia florist who receives an order transmitted from another florist has no consumers tax liability on such sale irrespective of the fact that the order may be transmitted from a florist in another state.

CUT. §3.24 PLACES of AMUSEMENT.

All sales and services rendered in the operation of a place of amusement or entertainment are subject to the consumers tax, including receipts from hat-check services, toilet services, sales of popcorn, candies, cold drinks, programs, souvenirs and novelties, as well as receipts from admissions.

Places of amusement or entertainment include, but are not limited to, theatres, motion picture shows, auditoriums where lectures and concerts are given, amusement parks, fairgrounds, racetracks, baseball parks, football stadiums, athletic events, swimming pools, street fairs, carnivals, dance halls, cabarets, night clubs, golf courses, skating rinks, art exhibits, gymnasiums, riding courses, and the like. Places of amusement or entertainment also include all places where the public is charged a fee for admission to see any kind of a display or hear any kind of a program or to participate in sports, such as golf, tennis, badminton, and games of skill, such as billiards.

Nonprofit, charitable and religious organizations which sponsor amusements, entertainment, athletic events, lectures, etc., are making sales within the meaning of the consumers tax law and must collect the

tax upon all sales.

The consumers tax applies to the receipts from the sale of admissions, by tickets or fixed-fee donations whether by a season subscription or by single ticket purchases, to places at which amusements, entertainment, sports events, seasonal and exhibition games or recreation is provided. The term "admission" includes regular dues or membership fees which entitle members to usual club or similar organization privileges.

CUT. §3.25 EMPLOYEES' MEALS.

Meals served by employers as part of the employees' wages are not taxable sales. If, however, a separate charge is made for the meals by the employer, which is paid by the employee or deducted from his wages, the transaction is a sale and subject to consumers tax.

CUT. §3.26 BUILDING MATERIALS.

Sales of building materials, including such items as heating plants, electrical equipment or supplies, plumbing fixtures or supplies, lumber, miscellaneous hardware, prefabricated houses, roofing, cinder or concrete blocks, cement, pipes, tile and other materials used in building, construction, or repair trades are subject to the consumers and use taxes, unless otherwise exempt.

CUT. §3.27 SPECULATIVE BUILDERS.

Speculative or operative builders are engaged primarily in the construction or repair of real property for sale or rent and are deemed to be the ultimate consumers of all supplies, materials, or equipment used in the conduct of their business. Therefore, consumers tax is applicable to sales to such operative builders and services rendered for them, and use tax is applicable to their purchases from outside the State.

CUT. §3.28 TRADING STAMPS, COUPONS and MEAL TICKETS.

The exchange of merchandise or prizes for trading stamps, coupons, etc., shall be considered a sale of those goods. The vendor shall collect the consumers tax based upon the value of the merchandise or prize.

A person who sells meal tickets does not charge consumers tax on such sale. However, when such person redeems the meal ticket or portion thereof, the vendor shall charge and collect tax on that particular sale. To illustrate: X purchases a meal ticket with a face value of \$10.00 from Y for \$8.50. Y charges no tax on the sale of the meal ticket. X purchases a \$2.00 meal with a portion of his ticket. On this \$2.00 purchase, Y will collect consumers tax. If the next day, X purchases an \$8.00 meal with the remainder of the ticket, Y will collect tax on an \$8.00 sale. Therefore, tax is eventually collected on the full face value or redemption value of the ticket, if and when redeemed.

CUT. §3.29 PUBLIC ASSISTANCE.

Persons who are the recipients of funds distributed by federal, state or local governments in public welfare or relief work are not exempt from consumers tax. However, where the purchases are made by the federal, state and local government agencies for a person or persons in need of public assistance, the sales are exempt.

CUT. §3.30 COLLECTION AGENCIES.

Collection agencies are required to collect consumers tax on the commissions or consideration it receives as a fee for services rendered on collection transactions which originated within this State. The tax base for the collection of this tax shall be the amount of consideration received by the agency without deducting any amount paid by the collection agency to other collection agencies which may be involved in the collection process. For example: A doctor who resides and practices medicine in Clarksburg, West Virginia, is owed \$200 by a patient who refuses to pay. The doctor refers the matter to a West Virginia collection agency to effect collection of the debt and which agrees that its fee will be 50% of the amount collected. The agency is successful in its efforts and collects the full \$200; therefore, it must bill its client, the doctor, its fee of \$100 and the applicable amount of consumers sales tax on such fee. In this particular case, the agency will retain or the doctor will pay to the agency, whichever the case may be, \$103.

Any collection transaction originating outside this State will not be taxable even though a West Virginia collection agency may be involved in the collection process, and even though such local agency may receive some consideration for work which it does in the collection of a particular debt.

CONSUMERS SALES AND SERVICE TAX
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