



Series 3

State of West Virginia

Charleston 5

G. THOMAS BATTLE
STATE TAX COMMISSIONER

June 2, 1964

Mr. Joe F. Burdett
Secretary of State
State of West Virginia
Capitol Building
Charleston, West Virginia

Dear Sir:

Enclosed are two (2) copies of regulations issued by this Commission regarding the Consumers Sales and Service Tax and Use Tax. These regulations are designated Series III of Chapter 11-15 and 15A of the West Virginia Administrative Regulations.

I hereby certify that the attached regulations are true and accurate copies of official regulations adopted by this Commission on June 2, 1964.

Very truly yours,

G. Thomas Battle
State Tax Commissioner

MLB:bbm

Enclosures (2)

Filed in Office of the Secretary of State
of West Virginia June 2, 1964
JOE F. BURDETT
SECRETARY OF STATE

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

CONSUMERS SALES AND USE TAXES
(Chapter 11, Article 15 and 15A of the Code)

RULES AND REGULATIONS

G. Thomas Battle
State Tax Commissioner

Effective
August 1, 1964

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER
Chapter 11-15 and 15A
(1964)

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-15 and 15A
(1964)

Subject: Consumers Sales and Service Tax and Use Tax regulations are designed to acquaint the taxpayer with the numerous interpretive problems which must be solved in reporting the true sales tax liability to the State Tax Commissioner. These regulations are described as Consumers and Use Tax, abbreviated CUT, identified by title, for example CUT § 1.06 - Definitions, and where used in the body of the regulations they will appear thus, Consumers Tax, Use Tax, or if applicable to both taxes as Consumers and Use Tax.

Section 1. General

CUT § 1.01. Scope.--These regulations establish general operating rules and procedures in the offices of the Consumers and Use Tax Division.

CUT § 1.02. Authority.--These regulations are issued under authority of West Virginia Code, Chapter 11, Article 15, Section 28, and Chapter 11, Article 15A, Section 25.

CUT § 1.03. Effective Date.--These regulations are promulgated on June 2, 1964, and become effective sixty days thereafter.

CUT 1.04. Filing Date of Regulations.--These regulations were filed in the Office of the Secretary of State on June 2, 1964.

CUT § 1.05. Certification.--These regulations are certified authentic by the State Tax Commissioner by certification number III.

CUT § 1.06. Definitions.--When used in these regulations:
(a) "Person" or "persons" shall mean any individual, firm, co-partnership, joint venture, 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.

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

(c) "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 purchaser but title is retained by 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.

(d) "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.

(e) "Taxpayer" shall mean any person liable for any tax imposed by the Consumers and Use Tax Statutes.

(f) "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.

(g) "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.

(h) "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, except that it shall not include (1) Processing, or (2) the sale of that property in the regular course of business. Property used in "processing" within the meaning of this subsection shall mean and include (a) any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property, intended to be sold ultimately at retail, (b) fuel which is consumed in creating power, heat, or steam for processing or for generating electric current, (c) industrial materials and equipment, which are not readily obtainable in West Virginia, and which are directly used in the actual fabricating, compounding, manufacturing or servicing of tangible personal property intended to be sold ultimately at retail.

CUT § 1.07. Record Retention and Examination. --Persons engaged in selling tangible personal property and rendering services subject to the Consumers Tax 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 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 Commissioner shall consent, in writing, to their destruction within that period. The Commissioner may direct that such records be retained for a longer period than five years.

All persons subject to the Use Tax shall make such records available for inspection by the Commissioner or his representatives upon request. If such records are maintained outside this State, the taxpayer, upon being notified by the Commissioner that an examination is to be made, may be requested to do one of the following: (1) Forthwith transport the required records to a convenient point in West Virginia and notify the Tax Commissioner that they are available; or (2) pay the reasonable traveling expenses of the Tax Commissioner's representatives from Charleston, West Virginia, to the out-of-state place where the records are kept, and return, and reasonable living expenses of such representatives while engaged in their examination.

The Commissioner, by virtue of the Consumers and Use Tax Statutes, 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 Commissioner or his representatives upon request. If a taxpayer refuses to permit an examination, the Tax Commissioner 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 Commissioner, 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 Commissioner will notify the taxpayer, in writing, of such assessment.

CUT § 1.08. Penalties for Nonpayment and Noncompliance.-- Any taxpayer who fails to file a return, sign the return and pay the Consumers Tax imposed by law within the time provided shall be considered delinquent and shall be required to pay a penalty of six per cent of the tax for the first month, or fraction thereof, during which he is delinquent, and one per cent of the tax for each succeeding month, or fraction thereof, during which he is delinquent. For purposes of the imposition of this penalty, 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 a part of the tax. For example, the regular penalty due on tax for the period ending June thirtieth, \$10.00, and paid on August second is seven per cent or seventy (70) cents.

<u>Period Ending</u>	<u>July</u>		<u>Aug.</u>
	<u>1st to 15th</u>	<u>16th to 31st</u>	<u>1st to 31st</u>
June 30	Filing Period	6%	1% Add.
\$10.00		60¢	10¢ Add.

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 per cent 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.

When tax returns are not available the taxpayer must submit the sales figures and the tax due on a plain sheet of paper. Failure to receive forms is not considered reasonable cause for delay in paying the tax.

Any person failing to file a return or corrected return or to pay any tax and/or amount required to be paid by the Use Tax Law within the time required shall be subject to a penalty of five per cent of the amount due plus one per cent of such amount for each month of delay or fraction thereof, after such return was required to be filed or such tax or amount became due.

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 Commissioner, 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.

CUT § 1.09. Vendors Must Collect and Pay Consumers Tax.--
The vendor is personally liable for payment of Consumers Tax. He is required by law to add the tax to the sale price and to

collect it from the purchaser. He shall account to the State for all tax paid by the purchaser, and he shall keep the amount of tax paid separate from the proceeds of sale, unless authorized, in writing, by the Tax Commissioner, to keep such amount of tax in a different manner.

If the purchaser refuses to pay the tax, the vendor is required to notify the Tax Commissioner so that appropriate collection action may be instituted.

CUT § 1.10. Retailers Who Are Required to Collect Use Tax. Every retailer, as defined in Regulation CUT 1.06 - Definitions, 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 delivery of tangible personal property for use, storage, 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 Law.

Any retailer not maintaining a place of business within this State may be authorized by the Commissioner upon application to collect Use Tax. Retailers desiring to obtain authorization should address all correspondence to the Consumers and Use Tax Division, State Capitol Building, Charleston,

West Virginia.

CUT § 1.11. Services Rendered by an Employee.--Services rendered by an employee for his employer are not subject to the Consumers Tax. An employee or servant is one whose services and the manner in which they are performed are controlled by the employer.

It is presumed that services are subject to the tax; therefore, the burden is upon the employee to prove that his services are not subject to the tax. The Tax Commissioner will recognize that a person is a bona fide employee when his wages are subject to the provisions imposed upon his employer by the State Unemployment Compensation Act, Federal Social Security Act, Federal Internal Revenue Act, or the West Virginia Income Tax Act.

CUT § 1.12. 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 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 Commissioner 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 Commissioner showing that they have been paid or a certificate from the Tax Commissioner 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 § 1.13. Receivers.--A receiver who operates a business which is subject to the Consumers Tax is required to collect and remit the tax the same as any other person.

CUT § 1.14. Bankruptcy, Insolvency and Assignment.--The fact that a taxpayer, whether it be an individual, association or a corporation is adjudged bankrupt, becomes insolvent or makes an assignment for the benefit of creditors, does not relieve the taxpayer from liability for Consumers Tax nor diminish his civil liability. Consumers Tax due and unpaid is a debt due the State and shall be a personal obligation of the taxpayer, provided, if the taxpayer is an association or corporation, the officers thereof shall be personally liable, jointly and severally, for any default on the part of the association or corporation, and payment of the tax may be enforced against them as against the association or corporation which they represent.

CUT § 1.15. Bracket System or Rate - Computation of Tax. Exclusive of the first five cents the tax shall be computed as follows: One cent on each 50 cents or fractional part thereof plus one cent on each dollar or fractional part thereof in excess of the first dollar of each transaction.

<u>Examples:</u>	(1)	(2)
Sale total	\$10.00	\$5.25
Present tax	.20	.11
Additional tax on sales in excess of \$1.00	<u>.09</u>	<u>.05</u>
Total including tax	\$10.29	\$5.41

When a charge sale is made as distinguished from a cash sale, as for example the sale of milk or ice on a contract for delivery on a daily, two-day, weekly or other basis, the tax shall be computed on each delivery in the same manner the tax is imposed upon a cash sale.

Following is a computation chart for Consumers and Use Tax for sales up to and including One Hundred (\$100.00) Dollars:

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
.06 thru .50	.01	10.01 - 10.50	.31
.51 - 1.00	.02	10.51 - 11.00	.32
1.01 - 1.50	.04	11.01 - 11.50	.34
1.51 - 2.00	.05	11.51 - 12.00	.35
2.01 - 2.50	.07	12.01 - 12.50	.37
2.51 - 3.00	.08	12.51 - 13.00	.38
3.01 - 3.50	.10	13.01 - 13.50	.40
3.51 - 4.00	.11	13.51 - 14.00	.41
4.01 - 4.50	.13	14.01 - 14.50	.43
4.51 - 5.00	.14	14.51 - 15.00	.44
5.01 - 5.50	.16	15.01 - 15.50	.46
5.51 - 6.00	.17	15.51 - 16.00	.47
6.01 - 6.50	.19	16.01 - 16.50	.49
6.51 - 7.00	.20	16.51 - 17.00	.50
7.01 - 7.50	.22	17.01 - 17.50	.52
7.51 - 8.00	.23	17.51 - 18.00	.53
8.01 - 8.50	.25	18.01 - 18.50	.55
8.51 - 9.00	.26	18.51 - 19.00	.56
9.01 - 9.50	.28	19.01 - 19.50	.58
9.51 - 10.00	.29	19.51 - 20.00	.59

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
20.01 - 20.50	.61	37.51 - 38.00	1.13
20.51 - 21.00	.62	38.01 - 38.50	1.15
21.01 - 21.50	.64	38.51 - 39.00	1.16
21.51 - 22.00	.65	39.01 - 39.50	1.18
22.01 - 22.50	.67	39.51 - 40.00	1.19
22.51 - 23.00	.68	40.01 - 40.50	1.21
23.01 - 23.50	.70	40.51 - 41.00	1.22
23.51 - 24.00	.71	41.01 - 41.50	1.24
24.01 - 24.50	.73	41.51 - 42.00	1.25
24.51 - 25.00	.74	42.01 - 42.50	1.27
25.01 - 25.50	.76	42.51 - 43.00	1.28
25.51 - 26.00	.77	43.01 - 43.50	1.30
26.01 - 26.50	.79	43.51 - 44.00	1.31
26.51 - 27.00	.80	44.01 - 44.50	1.33
27.01 - 27.50	.82	44.51 - 45.00	1.34
27.51 - 28.00	.83	45.01 - 45.50	1.36
28.01 - 28.50	.85	45.51 - 46.00	1.37
28.51 - 29.00	.86	46.01 - 46.50	1.39
29.01 - 29.50	.88	46.51 - 47.00	1.40
29.51 - 30.00	.89	47.01 - 47.50	1.42
30.01 - 30.50	.91	47.51 - 48.00	1.43
30.51 - 31.00	.92	48.01 - 48.50	1.45
31.01 - 31.50	.94	48.51 - 49.00	1.46
31.51 - 32.00	.95	49.01 - 49.50	1.48
32.01 - 32.50	.97	49.51 - 50.00	1.49
32.51 - 33.00	.98	50.01 - 50.50	1.51
33.01 - 33.50	1.00	50.51 - 51.00	1.52
33.51 - 34.00	1.01	51.01 - 51.50	1.54
34.01 - 34.50	1.03	51.51 - 52.00	1.55
34.51 - 35.00	1.04	52.01 - 52.50	1.57
35.01 - 35.50	1.06	52.51 - 53.00	1.58
35.51 - 36.00	1.07	53.01 - 53.50	1.60
36.01 - 36.50	1.09	53.51 - 54.00	1.61
36.51 - 37.00	1.10	54.01 - 54.50	1.63
37.01 - 37.50	1.12	54.51 - 55.00	1.64

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
55.01 - 55.50	1.66	72.51 - 73.00	2.18
55.51 - 56.00	1.67	73.01 - 73.50	2.20
56.01 - 56.50	1.69	73.51 - 74.00	2.21
56.51 - 57.00	1.70	74.01 - 74.50	2.23
57.01 - 57.50	1.72	74.51 - 75.00	2.24
57.51 - 58.00	1.73	75.01 - 75.50	2.26
58.01 - 58.50	1.75	75.51 - 76.00	2.27
58.51 - 59.00	1.76	76.01 - 76.50	2.29
59.01 - 59.50	1.78	76.51 - 77.00	2.30
59.51 - 60.00	1.79	77.01 - 77.50	2.32
60.01 - 60.50	1.81	77.51 - 78.00	2.33
60.51 - 61.00	1.82	78.01 - 78.50	2.35
61.01 - 61.50	1.84	78.51 - 79.00	2.36
61.51 - 62.00	1.85	79.01 - 79.50	2.38
62.01 - 62.50	1.87	79.51 - 80.00	2.39
62.51 - 63.00	1.88	80.01 - 80.50	2.41
63.01 - 63.50	1.90	80.51 - 81.00	2.42
63.51 - 64.00	1.91	81.01 - 81.50	2.44
64.01 - 64.50	1.93	81.51 - 82.00	2.45
64.51 - 65.00	1.94	82.01 - 82.50	2.47
65.01 - 65.50	1.96	82.51 - 83.00	2.48
65.51 - 66.00	1.97	83.01 - 83.50	2.50
66.01 - 66.50	1.99	83.51 - 84.00	2.51
66.51 - 67.00	2.00	84.01 - 84.50	2.53
67.01 - 67.50	2.02	84.51 - 85.00	2.54
67.51 - 68.00	2.03	85.01 - 85.50	2.56
68.01 - 68.50	2.05	85.51 - 86.00	2.57
68.51 - 69.00	2.06	86.01 - 86.50	2.59
69.01 - 69.50	2.08	86.51 - 87.00	2.60
69.51 - 70.00	2.09	87.01 - 87.50	2.62
70.01 - 70.50	2.11	87.51 - 88.00	2.63
70.51 - 71.00	2.12	88.01 - 88.50	2.65
71.01 - 71.50	2.14	88.51 - 89.00	2.66
71.51 - 72.00	2.15	89.01 - 89.50	2.68
72.01 - 72.50	2.17	89.51 - 90.00	2.69

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
90.01 - 90.50	2.71	95.01 - 95.50	2.86
90.51 - 91.00	2.72	95.51 - 96.00	2.87
91.01 - 91.50	2.74	96.01 - 96.50	2.89
91.51 - 92.00	2.75	96.51 - 97.00	2.90
92.01 - 92.50	2.77	97.01 - 97.50	2.92
92.51 - 93.00	2.78	97.51 - 98.00	2.93
93.01 - 93.50	2.80	98.01 - 98.50	2.95
93.51 - 94.00	2.81	98.51 - 99.00	2.96
94.01 - 94.50	2.83	99.01 - 99.50	2.98
94.51 - 95.00	2.84	99.51 - 100.00	2.99

For computation of the tax on sales in excess of \$100.00 multiply the even dollar by three and add one cent for each additional fifty cents or fraction thereof. If the sale is an even dollar amount multiply by three and deduct one cent.

CUT § 1.16. Cash Sales and Credit Sales.--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.

A sales transaction is completed when the property is handed or otherwise delivered to the purchaser and the purchase price paid or charged. Separate sales transactions to the same purchaser may not be aggregated for purposes of computing Consumers Tax.

CUT § 1.17 Aggregating Purchases.—Delivery of the merchandise marks the occurrence of a sale. When several items are delivered simultaneously, the tax may be computed on the total sale price of the items so delivered. 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.

CUT § 1.18. Conditional Sales.—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 Commissioner 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 actually received during a quarterly period shall be remitted to the Tax Commissioner by the retailer.

CUT § 1.19. Finance, Interest and Carrying Charges.--- The sale price upon which the Consumers Tax or Use Tax is to be computed shall not include carrying charges, interest, 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 § 1.20. Discounts.---Any discount allowed at the time of sale which establishes the final selling price for the article at 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 § 1.21. Rentals.--The statutory definition of "sale" in the Consumers Tax Law includes the transfer of possession. Thus renting or leasing tangible personal property is an activity subject to the tax. The tax is to be computed on the total charge made for the rental.

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.

The Consumers Tax does not apply to the renting of a furnished or unfurnished apartment, house, office rooms or other real estate.

CUT § 1.22. 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 § 1.23. 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 § 1.24. 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 § 1.25. 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 Commissioner. Returns shall be filed and tax remitted on or before the fifteenth day of the month next succeeding the month in which the tax accrued.

CUT § 1.26. 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 § 1.27. State Banks.---State banks are not exempt from the Consumers or Use Taxes. Tangible personal property and services purchased by such banks are taxable on the basis that they are the ultimate consumer. The fact that a state bank is a member of the Federal Reserve System or the Federal Deposit Insurance Corporation does not exempt it from the tax.

CUT § 1.28. National Banks.---Sales of tangible personal property and services to national banks to be used in the conduct of their banking business as instrumentalities of the United States Government are exempt from the Consumers and Use Taxes. This exemption includes services and tangible personal property purchased for use in the repair or maintenance of real property used by the bank in carrying out the powers granted to a national bank.

Sales to national banks in their fiduciary capacity are not exempt from the Consumers or Use Taxes unless the estate for which the bank is acting as fiduciary is otherwise exempt.

Sales of tangible personal property to national banks in behalf of an individual depositor or depositors are subject to the tax unless otherwise exempt.

CUT § 1.29. 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	Motorcycle Repair
Automobile Repair	Oilers
Airplane Pleasure Trips	Office and Business Machine
Alterations	Repairs
Battery Stations	Photography
Billiards, Pool	Painting
Bowling and Ten Pin Alleys	Planing Mills
Carpentry	Printing
Cleaning, Pressing, Dyeing	Pipe Fitting
Creosoting	Recapping, Roofing
Delivering	Shoe Repair
Electrical Repair, Installation	Sewing
Engraving	Storage Warehouses and
Excavating	Storage Lockers
Foundries	Termite and Pest Control
Furniture Repair	Tin and Sheet Metal Repair
Grading	Shops
Hauling	Vulcanizing
Hotels, Motels, Tourist Courts	Warehouses
House Moving	Washing Cars
Jewelry Repair	Watch Repair
Labor	Weighing
Laundries	Welding
Machine Operators	Well Drillers
Meat Cutting	Winding
Motor Repair	Wrapping Merchandise

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

CUT § 1.30. Sales by the State, Counties and Municipalities. Governmental units which make sales and services subject to competition from other persons are required to collect Consumers Tax upon such sales and services. For example, the sales of admission tickets to a municipally operated swimming pool are subject to tax. Likewise, the services

rendered by a county or municipal hospital are subject to tax. See Regulation CUT § 1.36 - "Hospitals."

If services are rendered in the operation of a municipal parking facility, the charge for parking is subject to tax. Sewage fees, license fees, inspection fees, and the like are not subject to the tax.

CUT § 1.31. Sales to and Services by Professional Persons. The Consumers Tax does not apply to the fee for professional services rendered by doctors, dentists, lawyers, engineers, ophthalmologists, optometrists, oculists, osteopaths, veterinarians, etc. If, apart from their professional services, they are engaged in selling to the public such articles as medical supplies, mouth wash, dentifrices, nonprescription sunglasses and the like, they are vendors and must collect the Consumers Tax on all such sales.

Such professional persons are the consumers of the various items of tangible personal property and services which they use in the rendition of their professional services, and the Consumers and Use Taxes will apply upon their purchases of all such services and property, including equipment.

CUT § 1.32. 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.

CUT § 1.33. Druggists and Pharmacists.---Pharmacists and registered prescription druggists engaged in the business of selling drugs and medicines on prescription and other merchandise to consumers are liable for the Consumers Tax. Sales to physicians, surgeons, dentists, veterinarians and other professional persons are sales made to the consumer and are subject to the tax.

CUT § 1.34. Opticians.---Opticians are liable for Consumers Tax with respect to their receipts from sales of spectacles, eyeglasses or lenses, on prescriptions or otherwise, irrespective of whether the sale is to the ultimate consumer or to an optometrist, oculist, etc.

CUT § 1.35. Barber and Beauty Shops.---Barber and beauty shop operators are engaged primarily in a personal service occupation, and they are not required to collect Consumers Tax on such services. However, when they engage in the business of selling such items as cosmetics, hair tonics, lotions or other merchandise to the consumer they are required to collect the tax on all such sales.

CUT § 1.36. 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 commingled with professional and personal services, which are not subject to the tax, that a ruling was issued by the Commissioner November 15, 1953, authorizing hospitals to make a lump sum report of all items, computing the Consumers Tax on fifty per cent of the total charge. Charges to outpatients are not subject to the tax unless items of tangible personal property are delivered to the patient.

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 and they are not subject to a proration.

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 subject to tax, they are exempt from payment of the 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 § 1.37. Embalmers and Funeral Directors.---Embalming is a personal service and is not subject to Consumers Tax. Funeral directors are considered to be engaged in a personal service. As a general practice, such persons also engage in selling tangible personal property and rendering services other than professional and personal services. These activities are subject to the Consumers Tax. In the event such persons make a single charge which includes both taxable and nontaxable receipts, the Consumers Tax is to be computed on fifty per cent of such charge and collected and remitted accordingly. If the charge is itemized, the tax must be computed on the total of the taxable receipts. Ambulance service is subject to the Consumers Tax.

Embalmers and funeral directors are exempt from payment of Consumers and Use Taxes on their purchases of property or services for direct use in their businesses or for resale. They are not exempt on purchases for improvement of business property. Such persons may obtain exemption certificates by writing to the Consumers Sales and Use Tax Division of the State Tax Department, Charleston, West Virginia.

If such persons make purchases as agents for others, the tax applies to the total of such sales or services.

CUT § 1.38. Boarding Houses.—The term "boarding house," as used in this ruling, means any establishment regularly serving meals to three or more customers. Persons who operate boarding houses are considered to be engaged in a business subject to Consumers Tax. The tax applies to each meal if the charge is on an individual basis. The tax may be computed on a weekly, semi-monthly or monthly charge, if the charge is made without regard for meals not consumed during the period.

CUT § 1.39. Nursing, Rest and Convalescent Homes.—Persons who operate nursing, rest or convalescent homes are engaged in selling tangible personal property and services subject to the Consumers Tax; however, said persons also are engaged in rendering personal services, i.e., services rendered to the person of an individual which are not subject to the Consumers Tax.

In filing a return under this regulation a person has the option to select one of the following methods for reporting his sales subject to Consumers Tax: (1) If the charges for selling tangible personal property and services and the charges for rendering personal services are itemized, those charges itemized as personal services, subject to the review and approval of the State Tax Commissioner, may be deducted from the total charges and the Consumers Tax computed on the balance. (2) If the charges for selling tangible property and services and the charges for rendering personal services are not itemized, said person shall be entitled to an exemption of thirty-three and one-third ($33\frac{1}{3}$) per cent of the total charges and the Consumers Tax must be computed on the balance.

CUT § 1.40. Rooming House.—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. Rooming

houses entertaining transient guests are subject to the rule applicable to hotels, motels and tourist homes contained in Regulation CUT § 1.41 - "Hotels, Motels and Tourist Homes or Courts."

CUT § 1.41. Hotels, Motels and Tourist Homes or Courts. Persons engaged in renting rooms in hotels, motels and tourist homes or courts 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. If persons contract with the owner or management for the use of a room as a permanent residence, the tax may be computed upon the total charge of each billing.

Persons primarily engaged in the business of renting rooms or serving meals 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 § 1.42. Dormitory Charges. 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, semi-annual 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.

CUT § 1.43. Fraternity and Sorority Houses. 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 § 1.44. Summer Camps.--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.

When campers receive religious, vocational and educational training, that portion of receipts, if they are separately stated, is not subject to the tax.

CUT § 1.45. Trailer Parks.--The mere leasing of space upon which to park a trailer is an activity which is not subject to the Consumers Tax. However, if the lessor renders services for the lessee or 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.

CUT § 1.46. Trailers.--The Consumers Tax applies to sales of house trailers, commercial trailers, boat trailers, farm trailers and the like.

Use Tax applies when such trailers are purchased outside the State of West Virginia for use in this State.

CUT § 1.47. Schools.--(Educational School Activities within the School Being Exempt; Activities of the School Which Are of a Business Nature Not Being Exempt)--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 student. (This includes the Federal Special Milk Program.)
- B. School textbooks, workbooks, instructional aids, standardized examination material required to be used in any of the public schools of the 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.

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.

Taxable and Tax-Exempt Purchases: Exemption Certificates:

Purchases of food and supplies for hot lunch programs sold on a nonprofit basis for the health and welfare of students are exempt. Purchases of school textbooks, workbooks, instructional aids, and standardized examinations are exempt.

Whether or not exemption certificates can be issued for other purchases or services depends solely on whether or not the activity, for which the purchases are made or services are rendered, is an activity on which the tax is collected. If

the tax is not collected, then the activity cannot issue an exemption certificate for its purchase.

Schools are classified as vendors of tangible property and services and may furnish Exemption Certificate No. 3 to suppliers subject to the limitations outlined in the two preceding paragraphs. For example, purchases of athletic equipment and supplies for use in interscholastic activities are exempt transactions; but the purchase of materials for use in yearbooks and class plays are not exempt transactions.

CUT § 1.48. 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. Each church may obtain an exemption certificate by writing to the Consumers Sales and Use Tax Division, State Capitol, Charleston, West Virginia.

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 § 1.49. Bona Fide Charitable Organizations.--To be exempt from the payment of Consumers Tax as a bona fide charitable organization the purchaser representing the organization shall furnish to the vendor an exemption certificate authorized and issued by the Commissioner.

If such an organization desires to obtain a certificate of exemption, it shall file a written request with the Commissioner stating all the facts relating to the organization, such as activities and other information that will be of value to him in determining the character of the organization.

Charitable organizations shall, with respect to sales of tangible personal property and services, be classified as vendors and required to collect tax on all sales.

CUT § 1.50. 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 direct to the Tax Commissioner.

CUT § 1.51. 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 § 1.52. Purchase from Out-of-State Vendor for Use in Another State.---If a person purchases tangible personal property for use in another state and later brings these purchases into West Virginia, the West Virginia Use Tax does not apply.

However, it will be presumed that the use of property in this State is subject to the Use Tax. The burden is upon the taxpayer to prove that the property was not purchased for use in West Virginia.

CUT § 1.53. 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 unless the lessor executes and forwards Form CST 200-1 to the Commissioner. When a lessor elects to report the sales and tax collections for the leased department this information must be shown on schedule Form 2.17J and shall accompany the tax return. Execution of this form does not in any manner relieve the operator of the leased department from liability under the Consumers Law.

CUT § 1.54. Exemption Certificates.--It will be presumed for the administration of the Consumers and Use Tax that all gross receipts are subject to tax, unless it is established to the contrary. The burden of proving that a sale of tangible personal property is to an exempt purchaser is upon the seller or 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.

The exemption certificate relieves the seller from the burden of proof only if taken in good faith from a person engaged in an activity which is specifically exempt from the tax imposed by the law.

Any person who gives an exemption certificate to the seller for tangible personal property which he knows, at the time of purchase, will be used in a manner other than expressed in the exemption certificate is guilty of a misdemeanor and shall, upon conviction, be fined not more than \$500.00 for each offense.

There are two basic types of certificates, unit exemption certificates and blanket exemption certificates, as follows:

- (1) Unit Exemption Certificates are of two types.
 - (a) Unit certificate designed for use with individual purchases by all resident business organizations exempt from Consumers

and Use Tax. It must show the article purchased and the basis for claiming exemption. The form for this unit exemption certificate should be as follows:

W E S T V I R G I N I A
CONSUMERS SALES AND USE TAX EXEMPTION CERTIFICATE
UNIT CERTIFICATE

The undersigned certifies that the merchandise or services listed below, or on the attached invoice, purchased at a cost of \$ _____ were purchased for _____

(State the proposed use of the merchandise or service)

(Merchandise or service purchased)

(Name of purchaser's business or organization)

(Business or organization address)

(Purchaser's Signature)

Date _____

(b) Unit certificate designed for use by nonresident wholesalers, jobbers, distributors and retailers. This certificate may be made into a rubber stamp and should be as follows:

The undersigned certifies that the merchandise listed on this invoice is being purchased for resale in the form in which it is received.

(Purchaser's Signature)

(2) Blanket Exemption Certificates are designed for use by resident persons entitled to exemption who make repeated purchases from the same vendor. Blanket certificates must be retained by the vendor. These certificates remain in force so long as the purchaser continues the tax-exempt business or until such certificate is revoked by the Tax Commissioner. Blanket Exemption Certificates Nos. 1, 2 and 3 require the purchaser's West Virginia account identification number, whereas certificates Nos. 4, 5, 6, 7 and 8 do not require such numbers. Persons beginning in a business which would entitle them to use either Blanket Exemption Certificates Nos. 1, 2 or 3 must furnish a Unit Exemption Certificate with each purchase until they have been assigned a West Virginia account identification number by the Consumers Tax or the Business and Occupation Tax Division, at which time they may execute a Blanket Exemption Certificate.

Blanket Exemption Certificates Nos. 1 through 8 should be reproduced as follows:

WEST VIRGINIA
CONSUMERS SALES AND USE TAX
BLANKET EXEMPTION CERTIFICATE--NO. 1
FCR
WHOLESALEERS, JOBBERS, AND DISTRIBUTORS

The undersigned hereby certifies that the merchandise purchased under this Exemption Certificate is purchased for resale in the form of tangible personal property. The undersigned is informed that falsification or unlawful use of this certificate or use of the goods or services purchased in another manner than that indicated on the certificate will subject him to a fine and penalties.

Given under my hand this _____ day of _____, 19____.

(Name of Wholesaler, Jobber or Distributor)

By _____

Address _____

West Virginia Account Identification Number

WEST VIRGINIA
CONSUMERS SALES AND USE TAX
BLANKET EXEMPTION CERTIFICATE--NO. 2
FOR
CONTRACTORS, MANUFACTURERS, ETC.

The undersigned hereby certifies that he is engaged in this State in the business of () Contracting, () Manufacturing, () Transportation, () Transmission, () Communication, () Production of Natural Resources (check appropriate business), and that the purchases made under the Exemption Certificate will be used directly in such business. The undersigned is informed that falsification or unlawful use of this certificate or use of the goods or services purchased in another manner than that indicated on the certificate will subject him to a fine and penalties.

Given under my hand this ____ day of _____, 19 ____.

(Name of Contractor, Manufacturer, etc.)

By _____

Address _____

West Virginia Account Identification Number

WEST VIRGINIA
CONSUMERS SALES AND USE TAX
BLANKET EXEMPTION CERTIFICATE NO.--3
FOR
RETAILERS AND SERVICE BUSINESSES

The undersigned certifies that he is engaged in the business of selling tangible personal property to consumers and/or dispensing a service subject to Consumers Sales Tax, and that the purchases made under this Exemption Certificate will be used in connection with the conduct of such business, but will not be used in the construction, repair or permanent improvement to real estate. The undersigned is informed that falsification or unlawful use of this certificate or use of goods or services purchased in another manner than that indicated on the certificate will subject him to a fine and penalties.

Given under my hand this ____ day of _____, 19 ____.

(Name of Retailer)

By _____

Address _____

West Virginia Account Identification Number

WEST VIRGINIA
CONSUMERS SALES AND USE TAX
BLANKET EXEMPTION CERTIFICATE NO.--4
FOR
FEDERAL, STATE, COUNTY OR MUNICIPAL GOVERNMENTS
AND VOLUNTEER FIRE DEPARTMENTS

The undersigned certifies that all purchases made under
this certificate are for the use of _____

(Insert name of governmental unit or agency)

The undersigned is informed that falsification or unlaw-
ful use of this certificate or use of the goods or services
purchased in another manner than that indicated on the certifi-
cate will subject him to a fine and penalties.

Given under my hand this ____ day of _____, 19__.

(Signature of person making purchase)

(Address of person making purchase)

WEST VIRGINIA
CONSUMERS SALES AND USE TAX
BLANKET EXEMPTION CERTIFICATE--NO. 5
FOR
BONA FIDE CHARITABLE ORGANIZATIONS

The undersigned certifies that _____
is a bona fide charitable organization which makes no charge
for the services it renders, and, that the purchases made
under this exemption certificate will be used in the further-
ance of the charitable services of the charitable services
of said organization. The undersigned is informed that
falsification or unlawful use of this certificate or use of
the goods purchased in another manner than that indicated
on the certificate will subject him to a fine and penalties.

Given under my hand this ____ day of _____, 19____.

(Signature of person making purchase)

(Address of person making purchase)

WEST VIRGINIA
CONSUMERS SALES AND USE TAX
BLANKET EXEMPTION CERTIFICATE--NO. 6
FOR
CHURCHES

The undersigned hereby certifies that the purchases made under this exemption certificate by the _____ Church will be paid for out of the treasury of said church. The undersigned is informed that falsification or unlawful use of this certificate or use of the goods purchased in another manner than that indicated on the certificate will subject him to a fine and penalties.

Given under my hand this ____ day of _____, 19 ____.

(Signature of person making purchase)

(Address of person making purchase)

WEST VIRGINIA
CONSUMERS SALES AND USE TAX
BLANKET EXEMPTION CERTIFICATE--NO. 7
FOR
NATIONALLY CHARTERED FRATERNAL AND SOCIAL ORGANIZATIONS

The undersigned hereby certifies that all purchases made
under this exemption certificate for _____

_____ are made for free distribution in public
(Name of organization)

welfare and relief work. The undersigned is informed that
falsification or unlawful use of this certificate or use of
the goods purchased in another manner than that indicated on
the certificate will subject him to a fine and penalties.

Given under my hand this ____ day of _____, 19____.

(Signature of person making purchase)

(Address of person making purchase)

WEST VIRGINIA
CONSUMERS SALES AND USE TAX
BLANKET EXEMPTION CERTIFICATE--NO. 8
FOR
COMMERCIAL PRODUCERS OF AGRICULTURAL PRODUCTS

The undersigned hereby certifies that he is engaged in the commercial production of agricultural products, the sale of which exceeds the amount of One Thousand (\$1,000.00) Dollars annually, and that the property or services purchased under this certificate will be used in such business and will not be used in the construction, repair or permanent improvement of real estate. The undersigned is informed that falsification or unlawful use of this certificate or use of the goods or services purchased in another manner than that indicated on the certificate will subject him to a fine and penalties.

Given under my hand this ____ day of _____, 19__.

(Signature of person making purchase)

(Address of person making purchase)

If the purchaser refuses to pay the tax, or to furnish a properly executed exemption certificate, or if the vendor has reason to believe that the information set forth in the exemption certificate presented by the purchaser is not true, the vendor shall immediately notify the Commissioner of these circumstances.

Both the Blanket and Unit Exemption Certificates must be signed by the purchaser and bear the address of the purchaser. All certificates shall be retained by the vendor for a period of at least five years. Blanket Exemption Certificates must be retained so long as the purchaser continues to make purchases thereunder and for five years after the purchaser stops purchasing under the blanket certificate. Blanket certificates shall be filed alphabetically. Unit certificates shall be filed chronologically in the order in which the sales are made, invoices are filed, or they may be printed or stamped on the vendor's invoice. Sales which cannot be identified as being exempt and covered by a certificate will be treated as sales subject to tax.

CUT § 1.55. Exemptions - No Exemption Certificate Required.--Since the burden of proving that a sale is not subject to Consumers Tax rests upon the vendor, it is the intention of the Commissioner to assist him by these rules and to eliminate the necessity for taking an exemption certificate where it is not deemed necessary.

An exemption is provided for certain services and items of tangible personal property which are specifically named in Section 2, Sub-section 11, Section 3 and certain sub-sections of Section 9 of the Consumers Tax Law.

The following are exempt and after June 30, 1955, the vendor is not required to obtain exemption certificates thereon:

- (1) Sales of gasoline;
- (2) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;

- (3) Sales of text books required to be used in any of the public schools of this State;
- (4) Sales of motor vehicles which are titled by the Department of Motor Vehicles;
- (5) Sales of services by an employee for an employer;
- (6) The sale of personal services (services done to, or on the person of an individual);
- (7) Professional services;
- (8) Services furnished by corporations subject to the control of the Public Service Commission;
- (9) Sales of school lunches to school children by school officials;
- (10) Sales of newspapers delivered by route carriers;
- (11) Isolated transactions.

CUT § 1.56. Sales and Services Rendered for Use or Consumption in the Commercial Production of an Agricultural Product.

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 the tax imposed by the Consumers Tax Law, are exempt from the Consumers Tax. Sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property are not included within this exemption and are subject to the tax.

The result is that sales and services to persons engaged in agricultural pursuits may be taxable or they may be exempt. If the purchaser claims that the sale is exempt, the vendor must require that the purchaser complete and furnish an exemption certificate.

The exemption was intended as an advantage to persons engaged in the production of agricultural products as a business activity and not as an advantage to persons who

produce such products for their own consumption. A satisfactory method of determining whether the purchaser is engaged commercially is to determine whether the gross receipts from his activities indicate that such activities exceed to a substantial extent those which would be necessary in order to sustain the consumption requirements of the average family.

Vendors may inquire of the purchaser whether the gross income which he receives annually from the sale of his agricultural products exceeds the amount of \$1,000.00. If his gross income from sales of agricultural products exceeds this amount and the property or services are to be used in connection with the production of an agricultural product, the sale or service is exempt.

Persons meeting the qualifications of a commercial producer may furnish certificate No. 8. (See CUT § 1.54)

CUT § 1.57. Exemptions - Exemption Certificates Required. --The sales and services listed below are among those that are exempt from Consumers and Use Taxes. In order to be relieved from liability for the tax, however, the vendor must take an exemption certificate from the purchaser. (See CUT § 1.54)

(a) Sales of property for resale in the form of tangible personal property. The sale price, whether wholesale or retail, is immaterial. In order to come within this exemption, the property must be sold for resale.

(b) Sales to the federal government and any agency or instrumentality of the federal government, including national banks, and sales to the state, county or municipality, and any agency thereof, public service district, and volunteer fire departments.

(c) Sales to bona fide charitable organizations which make no charge whatever for the services which they render.

(d) Sales to churches. In order to be considered a sale to the church, the purchase price must be paid from the

church treasury.

(e) Sales to persons engaged in this State in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources. In order to be exempt under this provision, however, the property and services must be used or consumed directly in the conduct of the business.

(f) Sales to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work.

(g) Sales to persons engaged in selling tangible personal property to consumers or dispensing services subject to the Consumers Tax. In order to be exempt, however, such property or services must be used or consumed in the conduct of the purchaser's business. Sales of property and services for use in the construction, repair, or permanent improvement of real estate are not exempt.

(h) Sales to persons engaged commercially in agricultural pursuits. In order to be exempt, however, the property or services must be used in connection with the commercial production of an agricultural product. Sales of property or services for use in the construction, repair, or permanent improvement of real estate are not exempt.

CUT § 1.58. Federal Excise Tax.—The Retailers Excise Tax, imposed by the federal government on October 1, 1941, which is collected by the vendor and remitted to the United States Treasury, should be excluded from the base upon which the Consumers Tax or the Use Tax is computed. However, vendors must separately state on their invoices the amount of the Retailers Federal Excise Tax in addition to the purchase price of the article. (Retailers Federal Excise Tax is imposed on such items as jewelry, cosmetics, baggage, furs and others.)

This does not apply to Manufacturer's Federal Excise Taxes paid by the vendor to the manufacturer or any other form of

"hidden taxes," even though this hidden tax is shown on the vendor's invoice to the individual purchaser. For example, tire or office machine sales to the consumer where purchase price is \$18.60, with Manufacturer's Federal Excise Tax separately noted as \$2.30, the total sales price being \$20.90, the Consumers or Use Tax shall be computed on the total sales price of \$20.90.

CUT § 1.59. Interstate and Foreign Commerce.

A. Consumers Tax

1. Exempt Transactions. Consumers Tax does not apply to sales of property which is:

(a) shipped from a point outside this State

(1) directly to the purchaser in this State, pursuant to an order sent by the purchaser directly to the vendor at a point outside this State, or

(2) directly to the purchaser in this State, pursuant to an order taken in this State by an agent of the vendor, or

(3) to the vendor's agent in this State, pursuant to the contract of sale, for delivery by the agent to the purchaser in this State,

there being no participation whatever in any of the foregoing transactions by the vendor's branch office or other place of business in this State or by an agent of the vendor having any connection with any branch office or other place of business of the vendor in this State;

(b) imported into this State from a foreign country and sold by the importer in the original package in which imported;

(c) shipped and delivered by the vendor to a point outside this State, pursuant to the contract of sale, by means of (1) facilities operated by the vendor, (2) delivery by the vendor to a common carrier for shipment to a consignee at such point, or (3) delivery by the vendor to a customs broker or forwarding agent for shipment outside this State;

(d) sold to a common carrier and shipped by the vendor via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight charges collect, to a point outside this State and actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;

(e) sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the property abroad and actually carried to a foreign destination, title and control of the property passing to the foreign purchaser upon delivery, and no portion of the property being used or consumed in the United States;

(f) purchased for use solely outside this State and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States prior to making any use thereof.

Bills of lading, certificates of out-of-state delivery or other documentary evidence of the delivery of the property to a carrier, customs broker, or forwarding agent for shipment outside the State must be retained by the vendor to support exemptions taken under (c) and (d) above. The certificate of out-of-state delivery should contain the following information:

CERTIFICATE OF OUT-OF-STATE DELIVERY

The undersigned certifies that he has delivered the merchandise listed on Sales Check No. _____ to the purchaser at _____
(Out-of-state address)
on _____.

(Driver's signature)

(Driver's employer)

(I. C. C. Permit No.)

I hereby certify that I received the merchandise described on the above sales check at the address shown above.

(Signature of person taking delivery)

Copies of U. S. Customs shippers' export declarations filed with the Collector of Customs or other documentary evidence of export must be obtained and retained by vendors to support exemptions taken under (e) above. Tax applies to the transaction if the property is diverted in transit or for any reason not delivered outside the State, pursuant to the contract of sale, or not shipped abroad by a foreign purchaser, regardless of documentary evidence held by the vendor of delivery of the property to a carrier for shipment outside the State, or to a foreign purchaser for shipment abroad.

2. Taxable Transactions. Consumers Tax applies to sales of property which is:

(a) shipped from a point outside this State to the purchaser in this State in a transaction in which

(1) the vendor's branch office or other place of business in this State is utilized in any way, as in receiving the order or distributing the goods, or

(2) the order for the goods is given in this State to an agent of an out-of-state vendor, the contract of sale not requiring, however, that the order be filled by shipment from a point outside this State;

(b) sold and delivered to the purchaser or his representative in this State (except under conditions stated in paragraph (e) above), whether or not the disclosed or undisclosed intention of the purchaser is to transport the property outside the State, and whether or not the property is actually so transported.

(c) shipped from a point in this State to another point in this State over a route, a portion of which is outside the State.

B. Use Tax

Use Tax applies with respect to any tangible personal property purchased outside this State for storage, use or other consumption in this State, the sale of which is exempt from Consumers Tax under the law and these regulations. Use tax is not imposed upon interstate commerce but upon the privilege of use after commerce is at an end.

CUT § 1.60. Coin-Operated Machines and Devices.--Sales of tangible personal property or service 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, robs it, 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.

CUT § 1.61. Sales and Services by or to Persons Subject to Control by the Public Service Commission. Sales and services by persons subject to control by the Public Service Commission are not taxable under the Consumers Tax Law. Sales to such persons and services rendered for such persons are not subject to the tax.

Persons to whom the foregoing rules apply are motor vehicle carriers, railroads, telephone and telegraph companies, water and gas companies, and similar public utilities.

CUT § 1.62. Laboratories. Laboratories are the vendors of services and products which they manufacture for doctors, dentists and others, and the tax applies to their entire charges, regardless of whether the materials and services are separately stated.

Laboratories operated by the employees or professional persons are not required to collect tax on their services when all of their services are for their employers.

CUT § 1.63. Artificial Limbs and Orthopedic Appliances. Sales of artificial limbs, orthopedic appliances and the like are subject to the Consumers Tax. The tax is to be computed on the total charge made for such items.

Purchases of such items from out-of-state vendors are likewise subject to the Use Tax.

CUT § 1.64. Libraries.—Public libraries and lending libraries are engaged in the sale or rental of tangible personal property and are required to collect the Consumers Tax. The tax shall be computed on the total sale price or charge made for the article, notwithstanding the fact a daily charge as rental may be less than six cents.

CUT § 1.65. Memorial Stones.—Persons engaged in the business of selling memorial stones are selling tangible personal property, and the receipts from such sales are taxable under the Consumers and Use Taxes. If the seller of a memorial stone agrees to erect a stone upon a foundation, the foundation is deemed to be part of the sale of the memorial stone and the total selling price is subject to the tax.

CUT § 1.66. Sales by Farmers.—Sales of grain, live-stock, or any other garden, farm or agricultural products for resale are not subject to the Consumers Tax; however, an accurate record of sales must be kept for verification of taxable and nontaxable items.

But if any such producers make sales of such products to ultimate consumers, as from a roadside stand, truck, curb stand, a market or other store, these sales are subject to the tax.

CUT § 1.67. Hawkers, Peddlers, Street Vendors, etc.—Hawkers, peddlers, street vendors, and the like, who sell and deliver merchandise or render services are required to collect

and remit Consumers Tax on all such sales and services.

CUT § 1.68. Isolated Sales.--Sales at retail shall not include an isolated transaction made other than in the ordinary course of repeated and successive transactions of a like character. Examples: A person sells his household furniture, a farmer sells his farm machinery or other farm equipment, a merchant sells his cash register, counters or other store fixtures at auction or otherwise. Such sales are "isolated transactions" and are not subject to tax. However, any person who in any manner or at any time advertises, solicits or offers tangible personal property for sale for the purpose of repeated sales is deemed to be regularly engaged in business and his sales are not considered isolated, even though they may be few or infrequent.

All sales made by officers of a court, pursuant to court orders, are isolated sales with the exception of sales made by trustees, receivers, assignees and the like in connection with the liquidation or conduct of a regularly established place of business. Examples of such isolated sales are those made by sheriffs in foreclosure proceedings and sales of confiscated property.

If a sale is an integral part of a business whose primary function is not the sale of tangible personal property, then such sale is not an isolated sale. For example, the sale of repossessed radios, refrigerators, etc., by a finance company is not an isolated sale.

CUT § 1.69. Installation Incidental to Selling.--Persons engaged in the business of selling tangible personal property who, as an incident to such sales, install the property on an hourly basis are required to collect and remit Consumers Tax on the total charge for such sale and service. Persons selling and installing the following articles are covered by this regulation:

Draperies	Cabinets	T. V. and Radio Antenna
Linoleum	Stoves	Air Conditioning Units
Carpets	Floor Furnaces	Light Fixtures
Shades	Exhaust Fans	Freezers
Fence	Washers and Driers	
Blinds	Refrigerators	

The above provisions apply only to those persons who install tangible personal property on an hourly basis.

CUT § 1.70. Installation or Repair Charges.--When, in addition to the selling price of tangible personal property, an hourly service charge is made for installing, cleaning, applying, decorating, beautifying, repairing, altering or otherwise improving real property for a customer, the vendor is required to collect the Consumers Tax upon the total charge made for the performance of such service.

CUT § 1.71. Alterations.--Persons engaged in the business of altering tangible personal property for others, which is not for resale, are rendering a service subject to the Consumers Tax. This shall include the services rendered by tailors, dressmakers, furriers and others engaged in similar services.

CUT § 1.72. 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 all such property tax free.

CUT § 1.73. Awnings, Storm Doors and Storm Windows.--Awnings, storm doors and windows are classified as tangible personal property, the sale of which is subject to the Consumers Tax. Where a service charge is made for the delivery, erection or attachment of these items to homes or other real property the tax shall be collected upon the total charge. A separate accounting must be kept of service charges, wholesale and retail sales for the convenience of filing Business and Occupation Tax returns under the proper classification.

CUT § 1.74. Antenna, Radio and Television.--The sale of radio and television antenna, parts and attachments therefor, is subject to Consumers or Use Tax, whichever is applicable.

If an antenna, along with parts and attachments therefor, is sold for a lump sum amount which includes both the antenna and the cost of erection or installation, such lump sum amount shall be used as the measure of the tax.

Charges made for cable hook-on and monthly charges for cable service are subject to the Consumers Tax.

Persons adjusting and repairing television and radio sets and antenna are required to collect Consumers Tax on such services.

CUT § 1.75. Delivery Charges.--Delivery charges are subject to the Consumers Tax. Therefore, when sales are made and delivery charges added, the Consumers Tax must be computed on the total.

In computing Use Tax, however, delivery charges are to be excluded, and the tax is to be computed on the sale price alone.

CUT § 1.76. Bulldozer and Earth-Moving Equipment.--Consumers Tax applies when a bulldozer or other earthmoving equipment is used by persons other than contractors in earth-moving work and the charge is made by the owner for the time the equipment is used, or, if the equipment is rented, the tax

is applicable to the total charge.

CUT § 1.77. Landscaping - Nurseries.--Sales of trees, plants, fertilizers, soil, etc., are subject to Consumers Tax. The services entailed in the planting, trimming, and the like, are also subject to the tax. When both a sale and a service of this nature are involved, the tax shall be computed on the total charge.

Persons engaged in the business of landscaping and persons who operate nurseries are exempt from Consumers Tax and Use Tax on any purchases for direct use in their business or for resale. Such persons may obtain exemption certificates by writing to the Consumers Tax and Use Tax Division, State Tax Department, Charleston, West Virginia.

CUT § 1.78. Top Soil, Fill Dirt, Sand, Gravel and Sod.--Sales of top soil, fill dirt, sand, gravel and sod are subject to Consumers and Use Taxes. The Consumers Tax is to be measured by the amounts received from such sales including charges made for transportation. These materials are sold in every instance where they are supplied to tenants, land-owners, and speculative builders for a consideration. Suppliers may not for tax purposes claim to furnish these materials free when charges are made for services such as "hauling," "loading" and "handling." The measure of the tax is the amount received by the supplier without any deduction for labor or services which go into producing and delivering the materials, regardless of the fact that such transportation, labor or services may be billed as separate items. The Use Tax is measured by the sale price of the top soil, etc., alone, any service charges being excluded from the computation.

CUT § 1.79. Advertising Agencies.---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 Sales 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.

CUT § 1.80. 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 even though it may be used in the business.

CUT § 1.81. Newspaper and Magazine Sales.---Sales of newspapers, magazines and periodicals by persons operating newsstands, book stores, cigar stores, drug stores, 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.

CUT § 1.82. 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 § 1.83. Auction Sales. Vendors who in the conduct of their business hold repeated auction sales at their place of business are responsible for collection and remittance of Consumers Tax, irrespective of whether the merchandise sold belongs to them or to another person.

In those instances in which a person sells the furnishings from his farm or home at auction, the sales are exempt as isolated transactions. The same is true of sheriffs' and constables' sales and sales under chattel deeds of trust.

CUT § 1.84. Hatcheries. Persons engaged in the business of hatching baby chicks, ducks, turkeys, etc., are subject to Consumers Tax on the sale of such poultry.

Persons engaged in the business of hatching eggs owned by others are engaged in a service subject to the Consumers Tax.

CUT § 1.85. Tax Returns and Schedule. (a) The Consumers Tax is a personal obligation of the taxpayer and is due and payable on or before the fifteenth day of the month next succeeding the month in which the tax accrued. The taxpayer shall make out a tax return for the preceding month on the form required by the Tax Commissioner showing the amount of the tax for which he is liable and mail the return, together with a remittance for the amount of the tax, to the Consumers Tax Division, Office of the State Tax Commissioner, Charleston,

West Virginia, on or before the fifteenth day of the month. Such monthly returns shall be signed by the taxpayer or his duly authorized agent. Unsigned tax returns are incomplete; the returns and remittance may be returned to a taxpayer as improperly filed, and a penalty shall be assessed for late filing. An annual return must be filed by each taxpayer according to instructions as given on the annual return form provided for by the State Tax Commissioner. (b) Any person engaged in business in two or more places, when such business or businesses are taxable, shall file a consolidated return covering all of his sales within this State, to which a schedule must be attached showing sales and tax collections for each place of business. (c) Each retailer required or authorized to collect Use Tax shall make out a tax return for the preceding quarterly period on the form required by the Commissioner showing the sales price of any or all tangible property sold by the retailer during such preceding quarterly period, the use of which is subject to Use Tax, (and such other information as the Commissioner may deem necessary), and mail the return, together with a remittance for the amount of the tax, to the Use Tax Division. Taxpayers remitting Use Tax are not required to file an annual return.

CUT § 1.86. Plane and Boat Rides, etc. The transportation of individuals on excursions, sight-seeing trips, business trips, and the like, by persons who are not subject to the control of the Public Service Commission are activities taxable under the Consumers Tax. Persons engaged in such activities are required to collect the tax upon each fare.

Instructing students to fly or to drive are services which are not subject to the Consumers Tax.

CUT § 1.87. 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, except that the Federal Amusement Tax collected as a separate item should not be used as a part of the measure of the Consumers Tax.

Places of amusement or entertainment include, but are not limited to, theatres, motion picture shows, auditoriums where lectures and concerts are given, amusement parks, fair grounds, race tracks, 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.

CUT § 1.88. Admissions.--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 does not include regular dues or membership fees which entitle members to usual club or similar organization privileges. However, it does include that portion of such dues or fees which are utilized in admissions to events open to the public. Entertainment purchased by clubs or other fraternal and social organizations for which an admission fee is not charged where the cost of the entertainment is paid from the membership dues, the tax shall be charged to the club. If theatres or other places of public amusement operate concessions selling tangible personal property, they are taxable on such sales. If leased concessions are operated, see CUT § 1.53 - Leased Departments.

CUT § 1.89. Fishing Ponds, Lakes.--Admission charges or fees received for fishing privileges and amounts of rentals received for the use of boats and other equipment are sales of tangible personal property and are subject to the Consumers Tax.

CUT § 1.90. Food Sales.--Sales of food in such places as restaurants, cafeterias, hospitals, hotels, drug stores, drive-ins, concession stands, grocery stores and the like are subject to the Consumers Tax.

CUT § 1.91. Diapers, Uniforms and Towel Rental.--Persons engaged in a rental business, including pickup and delivery by an out-of-state vendor of such articles of clothing as are named in the title, are engaged in the sale of tangible personal property and are required to collect Consumers Tax.

CUT § 1.92. Laundries, Dry Cleaners, Rug Cleaners, Window Washing.--Persons engaged in the operation of laundries, dry cleaning, car washing, window washing, rug cleaning establishments and like services, render services, the receipts of which are subject to Consumers Tax.

CUT § 1.93. Painters and Paper Hangers.--Persons engaged in the business of paper hanging, house painting on an hourly basis, refinishing, floor waxing, wallpaper cleaning, and the like, are rendering services and are liable for the Consumers Tax on their gross receipts from such services which may also include charges for material transferred to the customer in the performance of such services.

CUT § 1.94. Exterminators.--Persons engaged in the business of exterminating insects, rodents, or other pests are engaged in rendering a service subject to Consumers Tax. When tangible personal property is transferred to the customer in the rendition of such services the tax must be computed upon the total sale price or charge.

Persons engaged in repairing or replacing real property damaged by insects, rodents, etc., are classified as contractors.

Persons rendering exterminating services and engaged in contracting at the same time shall enter separate charges in order that Consumers Sales Tax may be computed on the exterminating services and omitted on contracting charges.

CUT § 1.95. Motor Vehicle Inspection Services.--Persons authorized by the Superintendent of the Department of Public Safety to officially inspect motor vehicles shall collect Consumers Tax on the inspection fee. However, the cost of the official certificate shall be exempt from the tax, that is, the tax shall be computed on the total fee, less cost of inspection sticker.

CUT § 1.96. Coal, Coal Mine Employees.--Persons engaged in the business of selling and delivering coal or fuel oil to individuals for home use or to business firms, who are not exempt from the Consumers Tax, are engaged in a business subject to tax on the gross receipts from such sales and services. (If coal is furnished to the employees of a coal company as a part of the wage agreement and the price of the coal is not deducted from the employees' wages, such a transaction is not subject to tax.)

When safety equipment, blacksmith services, explosives, tools and other supplies are sold to mine employees, these sales are subject to tax.

CUT § 1.97. 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 the Consumers Tax.

CUT § 1.98. 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 Tax.

CUT § 1.99. 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.

Section 2. General (Continued)

CUT § 2.01 Contracting.--A person engaged in the business of contracting is one who furnishes work, or both materials and work, in the fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property on a fixed fee or cost-plus basis.

Persons engaged in the business of contracting are exempt from the payment of Consumers Sales and Use Tax on purchases of supplies, materials and equipment directly used in the business. For exemption requirements see CUT § 1.54 - Exemption Certificates. This exemption is not available to persons engaged in the business of speculative construction or repair upon real property owned by the speculative builder for sale or rent.

CUT § 2.02. Trading Stamps, Coupons, Scrip, Meal Tickets, Complimentary Passes, etc.--The exchange of merchandise or prizes for trading stamps, scrip, 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.

The Consumers Tax upon the sale of meal tickets, season tickets and the like is to be computed on the total price of

such ticket.

CUT § 2.03. 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 § 2.04. Refunds.-- The Commissioner is authorized to refund taxes unlawfully collected. Any taxpayer claiming to be aggrieved by reason of being unlawfully required to collect and remit taxes shall file with the Commissioner a verified petition in writing setting forth the nature of his claim. He must also file with such petition amended returns for the period or periods in question. Refunds for Consumers Tax cannot be allowed unless the petition is filed within three years from date payment is made. Refunds for Use Tax cannot be allowed unless the petition is filed within two years from date payment is made. Ref. Code 11-1-2a and 11-15a-24 Use Tax.

CUT § 2.05. Revision or Abatement of Consumers Tax Assessment.--If a taxpayer against whom an assessment has been made desires abatement or revision of the assessment, he has thirty (30) days after service of the assessment to file with the Commissioner, either personally or by certified mail, a petition for reassessment. A petition filed by certified mail will be deemed to have complied with the foregoing requirements, if the postmark date thereon is clearly within said thirty (30) days, or is received within such period. If the thirtieth day falls on Sunday, or a day which is a legal holiday in the State of West Virginia, filing will be considered timely if it is done on the next succeeding secular day which is not a legal holiday. See CUT 2.06 - Petition for Reassessment Requirements. In the case of a "Jeopardy Assessment" such petition must be filed within twenty (20) days.

CAVEAT: Taxpayers are advised that the Commissioner is without authority to extend the above described statutory periods of time, and if they fail to file their petition within the time required, the assessment shall be conclusive and the amount thereof shall be due and payable.

CUT § 2.06. Petition for Reassessment Requirements. The petition for reassessment shall be in writing with an original and one copy. It 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 shall contain the following:

- (a) A statement of the amount of the deficiency or liability, as the case may be, determined by the Commissioner, the nature of the tax, the period for which determined;
- (b) clear and concise assignments of each error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency with each assignment of error in separately numbered paragraphs;
- (c) clear and concise statements of fact upon which petitioner relies as sustaining the assignments of error; (d) a prayer setting forth the relief sought; (e) the signature of petitioner; (f) a verification by the petitioner; (g) a copy of the assessment appended to the original of the petition.

CAVEAT: In the case of jeopardy assessments, a bond with corporate surety thereon in an amount to be determined by the Commissioner, conditioned upon the payment of all taxes, penalties and costs legally due, shall accompany the petition for reassessment.

The form of the petition should be as follows:

Petition for Reassessment

To: State Tax Commissioner	For Division Use Only
Consumers and Use Tax	Docket No.
Division	Date of Notice
Charleston 5, West Virginia	of Assessment
25305	Taxpayer's Account
	No.

In the Matter of:

Petitioner's Business Name
Petitioner's Real Name(s)
Address

The above named against whom you have an assessment
(Here comply with item (a) above) hereby petitions for a
Reassessment, and, in support of such petition, avers as
follows:

First: Your Petitioner admits as true and correct
all of the determinations made by your
division and set forth in the above assess-
ment and basis thereof, except the following:
(Specify here each error which the petitioner
alleges to have been committed by the Com-
missioner as required by item (b) above.)
(Attach additional sheets, if necessary.)

Second: (Set forth clear and concise statements
of fact upon which petitioner relies as
sustaining the assignments of error.)

Wherefore, your Petitioner prays (insert relief sought,
i.e., this assessment be set aside).

State of West Virginia)
) SS
County of)

Business Name
Signature of
Affiant
Title

....., being duly sworn according to law, deposes and says that the facts alleged in this petition, including any sheets attached hereto, are true and affiant is the Petitioner or is duly authorized to represent the Petitioner.

.....
By

Sworn to and subscribed
before me this ____ day
of _____ 19 ____
at _____

My commission expires _____, 19 ____.

(Notary Public)

CUT § 2.07. Place of Hearing.--Hearings upon petitions for reassessment will be held in Charleston, West Virginia, unless the Commissioner determines otherwise.

CUT § 2.08. Continuances.--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 good ground 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 Commissioner deems adequate.

CUT § 2.09. Absence of Petitioner, Counsel or His Representative.--The absence of the petitioner, his legal counsel, or his representative at a hearing, after service of notice of time, place and date, shall not be the occasion for delay or continuance. The hearing shall proceed and the case be regarded as having been submitted for decision on the part of the absent petitioner or petitioners.

CUT § 2.10. Hearing.--The Tax Commissioner may designate an examiner to conduct the hearing, and when the term "Commissioner" is used in these regulations relating to the conduct of the hearing it shall likewise mean examiner.

The petitioner may appear individually, or by legal counsel, or by duly authorized representative. In the absence of the petitioner, written evidence of a representative's or agent's authority must be presented to the satisfaction of the Commissioner.

The petitioner, his duly authorized representative or agent, may, with the approval of the Commissioner, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. Such waivers and agreements shall be in writing.

CUT § 2.11. Argument and Briefs.--Petitioner will be given an opportunity for argument within time limits fixed by the Commissioner following submission of evidence. The Commissioner will accept briefs in lieu of argument. Briefs must be filed within ten (10) days after the hearing.

CUT § 2.12. Transcripts of Proceedings.--If in the opinion of the Commissioner a permanent record of the hearing is deemed necessary, the hearing shall be reported and a transcript thereof shall be made.

If the petitioner desires a record he shall advise the Commissioner at least ten days prior to the hearing date and bear the expense of recording.

CUT § 2.13. Informal Opinions.--Representatives and employees of the Consumers and Use Tax Division are permitted by law to furnish advice only as administrators in the State Government. Therefore, any expressions of opinion regarding the taxability of transactions, property or services, other than those contained in the Consumers and Use Tax regulations, should be regarded as representing only the personal views of the individual by whom they are given.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-15 and 15A
(1964)

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State of West Virginia

Charleston 25305

G. THOMAS BATTLE
STATE TAX COMMISSIONER

May 31, 1965

Mr. Robert D. Bailey
Secretary of State
State of West Virginia
State Capitol
Charleston, West Virginia

Dear Sir:

Enclosed are two copies of amended Regulation CUT 1.15, issued by this Commission regarding the rate-computation of Consumers Tax and Use Tax. This regulation is designated Series III of Chapter 11-15 and 15A of the West Virginia Administrative Regulations.

I hereby certify that the attached regulation is a true and accurate copy of the official regulation adopted by this Commission on May 31, 1965.

Very truly yours,

G. Thomas Battle
x G. Thomas Battle
State Tax Commissioner

MLB:bbm

Filed in Office of the Secretary of State
of West Virginia May 31, 1965

SECRETARY OF STATE

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 § 1.13. Receivers.--A receiver who operates a business which is subject to the Consumers Tax is required to collect and remit the tax the same as any other person.

CUT § 1.14. Bankruptcy, Insolvency and Assignment.--The fact that a taxpayer, whether it be an individual, association or a corporation is adjudged bankrupt, becomes insolvent or makes an assignment for the benefit of creditors, does not relieve the taxpayer from liability for Consumers Tax nor diminish his civil liability. Consumers Tax due and unpaid is a debt due the State and shall be a personal obligation of the taxpayer, provided, if the taxpayer is an association or corporation, the officers thereof shall be personally liable, jointly and severally, for any default on the part of the association or corporation, and payment of the tax may be enforced against them as against the association or corporation which they represent.

CUT § 1.15. Bracket System or Rate - Computation of Consumers Sales and Use Taxes. 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.

Separate sales, such as daily or weekly deliveries of milk, bread, ice, etc., shall not be aggregated for the purpose of computation of the tax even though such sales are aggregated in the billing or payment therefor. Each delivery constitutes a sale upon which tax must be computed.

Following is a computation chart for Consumers Tax for sales up to and including fifty-two (\$52.00) dollars:

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
.06 thru .35	.01	4.71 - 5.00	.15
.36 - .70	.02	5.01 - 5.35	.16
.71 - 1.00	.03	5.36 - 5.70	.17
1.01 - 1.35	.04	5.71 - 6.00	.18
1.36 - 1.70	.05	6.01 - 6.35	.19
1.71 - 2.00	.06	6.36 - 6.70	.20
2.01 - 2.35	.07	6.71 - 7.00	.21
2.36 - 2.70	.08	7.01 - 7.35	.22
2.71 - 3.00	.09	7.36 - 7.70	.23
3.01 - 3.35	.10	7.71 - 8.00	.24
3.36 - 3.70	.11	8.01 - 8.35	.25
3.71 - 4.00	.12	8.36 - 8.70	.26
4.01 - 4.35	.13	8.71 - 9.00	.27
4.36 - 4.70	.14	9.01 - 9.35	.28

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
9.36 - 9.70	.29	20.01 - 20.35	.61
9.71 - 10.00	.30	20.36 - 20.70	.62
10.01 - 10.35	.31	20.71 - 21.00	.63
10.36 - 10.70	.32	21.01 - 21.35	.64
10.71 - 11.00	.33	21.36 - 21.70	.65
11.01 - 11.35	.34	21.71 - 22.00	.66
11.36 - 11.70	.35	22.01 - 22.35	.67
11.71 - 12.00	.36	22.36 - 22.70	.68
12.01 - 12.35	.37	22.71 - 23.00	.69
12.36 - 12.70	.38	23.01 - 23.35	.70
12.71 - 13.00	.39	23.36 - 23.70	.71
13.01 - 13.35	.40	23.71 - 24.00	.72
13.36 - 13.70	.41	24.01 - 24.35	.73
13.71 - 14.00	.42	24.36 - 24.70	.74
14.01 - 14.35	.43	24.71 - 25.00	.75
14.36 - 14.70	.44	25.01 - 25.35	.76
14.71 - 15.00	.45	25.36 - 25.70	.77
15.01 - 15.35	.46	25.71 - 26.00	.78
15.36 - 15.70	.47	26.01 - 26.35	.79
15.71 - 16.00	.48	26.36 - 26.70	.80
16.01 - 16.35	.49	26.71 - 27.00	.81
16.36 - 16.70	.50	27.01 - 27.35	.82
16.71 - 17.00	.51	27.36 - 27.70	.83
17.01 - 17.35	.52	27.71 - 28.00	.84
17.36 - 17.70	.53	28.01 - 28.35	.85
17.71 - 18.00	.54	28.36 - 28.70	.86
18.01 - 18.35	.55	28.71 - 29.00	.87
18.36 - 18.70	.56	29.01 - 29.35	.88
18.71 - 19.00	.57	29.36 - 29.70	.89
19.01 - 19.35	.58	29.71 - 30.00	.90
19.36 - 19.70	.59	30.01 - 30.35	.91
19.71 - 20.00	.60	30.36 - 30.70	.92

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
30.71 - 31.00	.93	41.36 - 41.70	1.25
31.01 - 31.35	.94	41.71 - 42.00	1.26
31.36 - 31.70	.95	42.01 - 42.35	1.27
31.71 - 32.00	.96	42.36 - 42.70	1.28
32.01 - 32.35	.97	42.71 - 43.00	1.29
32.36 - 32.70	.98	43.01 - 43.35	1.30
32.71 - 33.00	.99	43.36 - 43.70	1.31
33.01 - 33.35	1.00	43.71 - 44.00	1.32
33.36 - 33.70	1.01	44.01 - 44.35	1.33
33.71 - 34.00	1.02	44.36 - 44.70	1.34
34.01 - 34.35	1.03	44.71 - 45.00	1.35
34.36 - 34.70	1.04	45.01 - 45.35	1.36
34.71 - 35.00	1.05	45.36 - 45.70	1.37
35.01 - 35.35	1.06	45.71 - 46.00	1.38
35.36 - 35.70	1.07	46.01 - 46.35	1.39
35.71 - 36.00	1.08	46.36 - 46.70	1.40
36.01 - 36.35	1.09	46.71 - 47.00	1.41
36.36 - 36.70	1.10	47.01 - 47.35	1.42
36.71 - 37.00	1.11	47.36 - 47.70	1.43
37.01 - 37.35	1.12	47.71 - 48.00	1.44
37.36 - 37.70	1.13	48.01 - 48.35	1.45
37.71 - 38.00	1.14	48.36 - 48.70	1.46
38.01 - 38.35	1.15	48.71 - 49.00	1.47
38.36 - 38.70	1.16	49.01 - 49.35	1.48
38.71 - 39.00	1.17	49.36 - 49.70	1.49
39.01 - 39.35	1.18	49.71 - 50.00	1.50
39.36 - 39.70	1.19	50.01 - 50.35	1.51
39.71 - 40.00	1.20	50.36 - 50.70	1.52
40.01 - 40.35	1.21	50.71 - 51.00	1.53
40.36 - 40.70	1.22	51.01 - 51.35	1.54
40.71 - 41.00	1.23	51.36 - 51.70	1.55
41.01 - 41.35	1.24	51.71 - 52.00	1.56

For computation of the tax on sales in excess of those shown in the above chart multiply the even dollar by three and add one cent for each graduated bracket, as shown above.

The use tax is imposed at the rate of three (3%) per cent of the purchase price. No bracketing rates are contemplated by the law. When applying the three (3%) per cent rate to the price, the resulting tax may be expressed by disregarding fractions less than one-half cent and by increasing fractions of tax over one-half cent to even cents. For example, the tax on a \$20.40 sale is sixty-one cents; the tax on a \$20.60 is 62 cents.

CUT § 1.16. Cash Sales and Credit Sales.--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.

A sales transaction is completed when the property is handed or otherwise delivered to the purchaser and the purchase price paid or charged. Separate sales transactions to the same purchaser may not be aggregated for purposes of computing Consumers Tax.