



State Tax Department
of West Virginia

Charleston 25305

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DAVID C. HARDESTY, JR.
COMMISSIONER

November 2, 1979 STATE

The Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Manchin:

Pursuant to the provisions of Chapter 29A, Article 3 of the West Virginia Code of 1931, as amended, I hereby submit three (3) copies of the proposed rules and regulations as adopted by the Tax Department, which explain and implement the provisions of W. Va. Code § 11-15-11, which contains the exemption from consumers sales tax for food intended for human consumption.

These proposed regulations were originally filed in your office on June 29, 1979. A public hearing was held, as required by W. Va. Code § 29A-3-8, on August 23, 1979 in Charleston, West Virginia. Additional public hearings were held in Wheeling and in Martinsburg on September 18 and 19, 1979, respectively. No one appeared.

Copies of these adopted regulations are also being filed with the Legislative Rulemaking Review Committee as required by W. Va. Code § 29A-3-11.

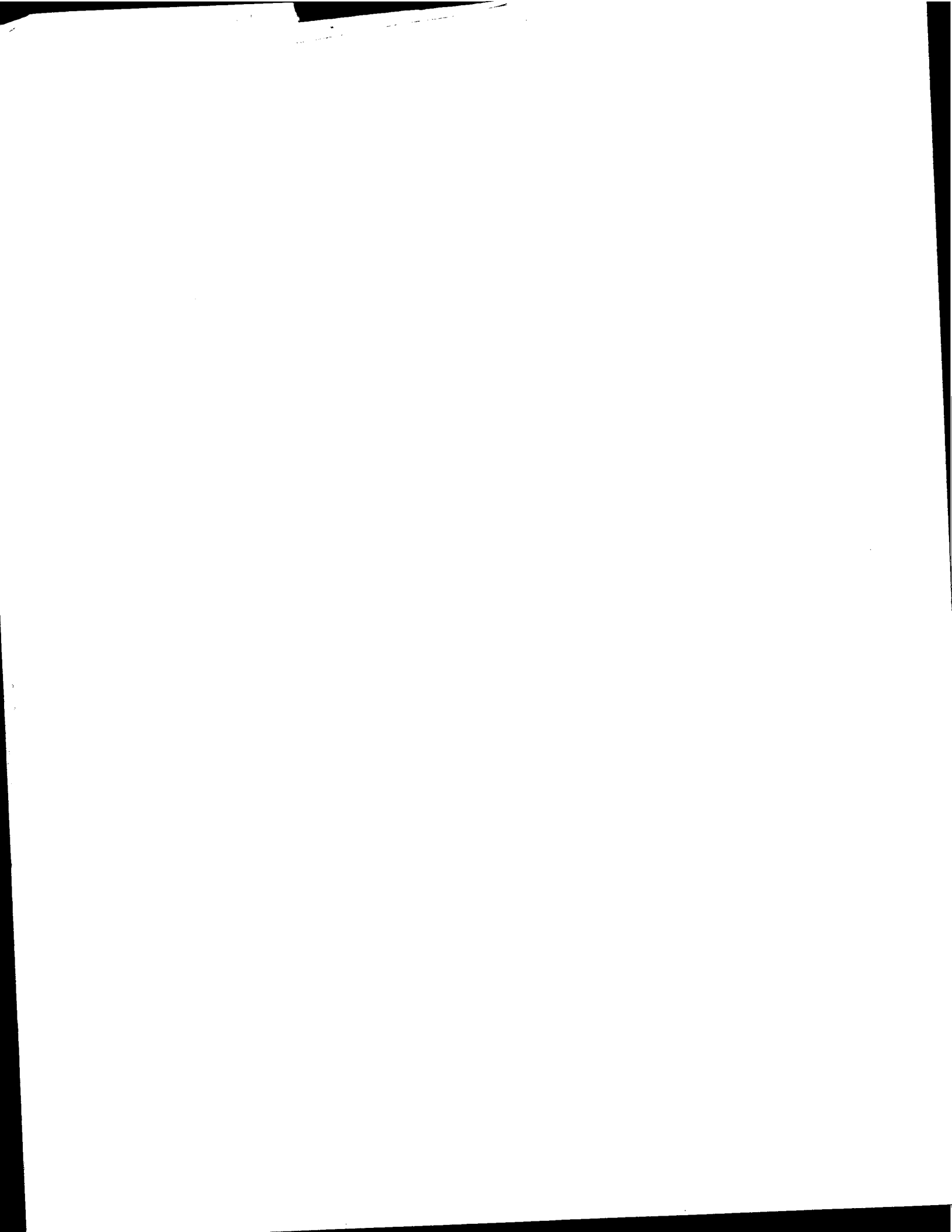
These adopted regulations will take effect and supersede our temporary regulations, which are currently in effect, thirty (30) days after they are approved by the Legislative Rulemaking Review Committee.

Sincerely,

David C. Hardesty, Jr.
State Tax Commissioner

DCHJr/dsi

Enclosure





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David C. Hardesty, Jr.
State Tax Commissioner

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Enclosure

West Virginia
Consumers Sales and Service Tax
and Use Tax
Rules and Regulations

Chapter 11-15 and 11-15A
Series III-IV
1973
Amended 1979

SUBJECT:

The following regulations concern the consumers sales and service tax and the use tax. Specifically, they explain and implement W. Va. Code § 11-15-11.

AUTHORITY:

These regulations are issued under authority of W. Va. Code § 11-10-5(a), which authorizes the Tax Commissioner to promulgate administrative regulations.

FILING DATE:

On June 29, 1979, these regulations were filed in the Office of the Secretary of State, State of West Virginia. A public hearing pursuant to W. Va. Code § 29A-3-8 was held in Charleston, West Virginia on August 23, 1979. Additionally, the public was given the opportunity to file written responses through October 1, 1979. These regulations as adopted by the Tax Department were again filed with the Secretary of State on November 2, 1979 as required by W. Va. Code § 29A-3-10.

CERTIFICATION:

These regulations were certified as being received and on file in the Office of the Secretary of State.

EFFECTIVE DATE:

These regulations shall be in full force and effect thirty (30) days after they are approved by the Legislative Rulemaking Review Committee.



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CUT § 11. Sale of food intended for human consumption.

(a) General. -- Retail sales of food intended for human consumption made by certain vendors after June 30, 1979, will be treated differently from other sales of tangible personal property. Not all sales of food will receive this different or special tax treatment. The purpose of these regulations is to provide the clarification and guidance necessary for correct implementation and application of the so-called "food exemption".

(b) Exemption from tax; transition rules. -- Retail sales of food intended for human consumption (as defined in CUT § 11.01) made on or after July 1, 1981, are exempt from sales tax. Retail sales of food made after June 30, 1979, but before July 1, 1981, are subject to the following transition rules.

(1) Sales made after June 30, 1979, but before July 1, 1980. -- Retail sales of food intended for human consumption (as defined in CUT § 11.01) made after June 30, 1979, but before July 1, 1980, are taxed as follows:

- (A) There is no tax on sales where the monetary consideration is twenty-five cents (\$0.25) or less.
- (B) On each sale where the monetary consideration is from twenty-six cents (\$0.26) to fifty cents (\$0.50), both inclusive, the tax is one cent (\$0.01).
- (C) On each sale where the monetary consideration is from fifty-one cents (\$0.51) to one dollar (\$1.00), both inclusive, the tax is two cents (\$0.02).
- (D) On each fifty cents (\$0.50) of monetary consideration or fraction thereof in excess of one dollar (\$1.00), the tax is one cent (\$0.01).

(2) Sales after June 30, 1980, but before July 1, 1981. -- Retail sales of food intended for human consumption (as defined in CUT § 11.01) made after June 30, 1980, but before July 1, 1981, are taxed as follows:

- (A) There is no tax on sales where the monetary consideration is twenty-five cents (\$0.25) or less.

- (B) On each sale where the monetary consideration is from twenty-six cents (\$0.26) to one dollar (\$1.00), both inclusive, the tax is one cent (\$0.01).
- (C) On each one dollar (\$1.00) of monetary consideration or fraction thereof in excess of one dollar (\$1.00), the tax is one cent (\$0.01).

(3) Application of transition rules. -- Separate sales such as daily or weekly deliveries may not be aggregated for purpose of computation of this tax even though the sales are aggregated in the billing of the customer or in the payment made by the customer.

(c) Alternate computation of tax. -- Where the cash register equipment owned by the vendor does not possess the technological capability and cannot be easily modified to calculate the tax in the manner provided in subsection (b) of this section, the vendor may determine the amount of tax due in one of the following ways.

(1) July 1, 1979 - June 30, 1980. -- During the period beginning on the 1st day of July, 1979, and ending with the 30th day of June, 1980, vendors may calculate the amount of sales tax due by first determining the total value of all purchases subject to sales tax at the higher rate and then apply to the total a one percent (1%) tax rate. No tax is to be charged when this total is five cents (\$0.05) or less. When this total (of purchases subject to tax at the high rate) is greater than five cents (\$0.05) the tax to be charged is one cent (\$0.01) on each dollar or fraction thereof. Next, the total value of all purchases (food and nonfood) shall be determined, either including or excluding the amount of the one percent (1%) tax depending on the capability of the cash register equipment. To this total a two percent (2%) tax rate shall be applied. This method of tax computation will be permitted and is acceptable provided that the margin of error in computation of the sales tax charged on each customer transaction does not exceed one penny, plus or minus.

Example 1. -- The market basket of a customer at the local grocery store contains \$20.00 of nonfood items that are subject to sales tax at the 3% tax rate and \$40.00 of food items that are subject to sales tax at the 2% tax rate. The cashier when determining total sales price, first subtotals the nonfood items (\$20.00) and then calculates sales tax at the 1% tax rate (\$0.20). Next, this subtotal (\$20.20) is added to the amount of food items being purchased (\$40.00); and to this subtotal of \$60.20, the 2% tax rate is applied. A total of \$61.41 (\$60.00 in commodities and \$1.41 in tax) is then collected from the customer.

| | | |
|--------------------|--------------------|----------------------|
| nonfood, add 1% -- | \$20.00 + .20 (1%) | = \$20.20 |
| food | <u>+\$40.00</u> | = <u>\$40.00</u> |
| total, add 2% | | = \$60.20 + 1.21(2%) |
| | | = <u>\$61.41</u> |

Example 2. -- The market basket of a customer at the local grocery store contains \$20.00 of nonfood items that are subject to sales tax at the 3% tax rate and \$40.00 of food items that are subject to sales tax at the 2% tax rate. The cashier when determining total sales price, first subtotals the nonfood items (\$20.00) and then calculates sales tax at the 1% tax rate (\$0.20). Next, this subtotal (\$20.20) is added to the amount of food items being purchased (\$40.00); and to this subtotal of \$60.20, the 2% tax rate is applied. A total of \$61.40 (\$60.00 in commodities and \$1.40 in tax) is then collected from the customer.

| | |
|---------------|-----------------------------------|
| nonfood | -- \$20.00 x 1% = \$.20 |
| 1% tax | |
| food | ---+ <u>\$40.00</u> |
| total, 2% tax | -- \$60.00 x 2% = <u>\$1.20</u> |
| | \$60.00 + \$1.40 = <u>\$61.40</u> |

(2) July 1, 1980 - June 30, 1981. -- During the period beginning on the 1st day of July, 1980, and ending with the 30th day of June, 1981, vendors may calculate the amount of sales tax due by first determining the total value of all purchases subject to sales tax at the higher rate and then apply to the total a two percent (2%) tax rate. No tax is to be charged when this total is five cents (\$0.05) or less. When this total (of purchases subject to tax at the high rate) is greater than five cents (\$0.05) the tax to be charged is two cent (\$0.02) on each dollar or fraction thereof. Next, the total value of all purchases (food and nonfood) shall be determined, either including or excluding the amount of the two percent (2%) tax depending on the capability of the cash register equipment. To this total a one percent (1%) tax rate shall be applied. This method of tax computation will be permitted and is acceptable provided that the margin of error in computation of the sales tax charged on each customer transaction does not exceed one penny, plus or minus.

Example 3. -- The market basket of a customer at the local grocery store contains \$20.00 of nonfood items that are subject to sales tax at the 3% tax rate and \$40.00 of food items that are subject to sales tax at the 1% tax rate. The cashier when determining total sales price including tax, first subtotals the nonfood items (\$20.00) and then calculates sales tax at the 2% tax rate (\$0.40). Next, this subtotal (\$20.40) is added to the amount of food items being purchased (\$40.00); and to this subtotal of \$60.40, the 1% tax rate is applied. A total of \$61.01 (\$60.00 in commodities and \$1.01 in tax) is then collected from the customer.

| | | |
|-----------------|-----------------------|-------------------------|
| nonfood, add 2% | -- \$20.00 + .40 (2%) | = \$20.40 |
| food | + \$40.00 | = <u>\$40.00</u> |
| total, add 1% | | = \$60.40 = .61(1%) |
| | | = <u><u>\$61.01</u></u> |

Example 4. -- The market basket of a customer at the local grocery store contains \$20.00 of nonfood items that are subject to sales tax at the 3% tax rate and \$40.00 of food items that are subject to sales tax at the 1% tax rate. The cashier when determining total sales price including tax, first subtotals the nonfood items (\$20.00) and then calculates sales tax at the 2% tax rate (\$0.40). Next, this subtotal (\$20.40) is added to the amount of food items being purchased (\$40.00); and to this subtotal of \$60.40, the 1% tax rate is applied. A total of \$61.00 (\$60.00 in commodities and \$1.00 in tax) is then collected from the customer.

| | |
|---------------|-----------------------------------|
| nonfood | -- \$20.00 x 2% = \$.40 |
| 2% tax | |
| food | --+\$40.00 |
| total, 1% tax | -- \$60.00 x 1% = <u>\$.60</u> |
| | \$60.00 + \$1.00 = <u>\$61.00</u> |

(d) Payment of collected tax. -- No profit shall accrue to any vendor for collecting the sales tax. The total amount of all sales taxes collected by the vendor shall be remitted to the Tax Commissioner.

(e) Reporting and recordkeeping. -- Vendors are required to keep such permanent books and records, including records of inventories, as are sufficient to establish the amount of tax due the State of West Virginia. During the period beginning July 1, 1979 and ending June 30, 1981, it will be very difficult for some vendors of food to separate for reporting purposes three percent (3%) sales from sales taxable at the lower rate. Vendors in this situation may report only the total gross proceeds of sales and the amount of sales tax collected provided that cash register tapes or other records are maintained to verify the accuracy of the return through audit. This alternate method of reporting is permitted only for the period July 1, 1979 - June 30, 1981, when the vendor cannot separate food and nonfood sales. As soon as the vendor has the capability to separately report gross proceeds from sales of food and from sales of nonfood, he must do so.

CUT § 11.01. Definition of food intended for human consumption.

(a) General. -- The term "food" as used in section 11-15-11 of the consumers sales and service tax law and these regulations is a word of special meaning. To begin with, only retail sales of food and food products that are generally regarded as being food intended for human consumption are subject to the transition rules and exempt from sales tax after June 30, 1981. Second, food and food products purchased from food-service establishments (as defined in CUT § 11.07) or from vending machines remain subject to sales tax, at the three percent (3%) tax rate.

(b) Definition of "food". -- The term "food" is defined in section 11-15-11(c) of the consumers sales and service tax law to mean and include "all edible foodstuffs, beverages containing no alcohol and items commonly thought of as food". The term "food" does not include alcoholic liquors, beer, dietary supplements, ice, medicines, tobacco or tobacco products, or vitamins. Nor does the term "food" include food sold by food-service establishments (as defined in CUT § 11.07) or from vending machines.

(c) Tests for determining whether "food" is intended for human consumption. -- Occasionally a question may arise concerning whether a particular food or food product is intended for human consumption. This question is to be answered by application of the following two tests. If either question is answered in the negative (no), the item may not be considered as "food intended for human consumption", and sales tax at the three percent (3%) tax rate must be collected.

- (1) Test one. -- Is the product generally regarded by the public as being food intended for human consumption?
- (2) Test two. -- Do the words, statements or pictures on the label or food package suggest that the food is intended for human consumption?

The burden of proving that a particular food or product is purchased as "food intended for human consumption" rests on the purchaser. In case of any doubt as to whether the product is intended for human consumption, the tax shall be collected at the three percent (3%) tax rate. Any person claiming to be aggrieved by having to pay the sales tax at the three percent (3%) tax rate shall pay the amount of tax to the retail merchant (vendor) and file a claim for refund with the Tax Commissioner.

Example 1. -- Horse meat and horse meat products are not generally regarded by the public as food products intended for human consumption since they are primarily purchased as food for animal consumption. The fact that such products are inspected and may be suitable for human consumption is insufficient proof of exemption.

Example 2. -- Canned cat food may be purchased and eaten by human beings. Cat food is nevertheless subject to tax at the three percent (3%) tax rate. Canned tuna fish is intended for human consumption and is subject to the transition rules (and exempt after June 30, 1981) even though the canned tuna fish may be fed to the cats.

CUT § 11.02. Foods subject to transition rules and exempt after June 30, 1981.

(a) General. -- Retail sales of foods and food products intended for human consumption, except when sold by food-service establishments or from vending machines, are subject to the transition rules phasing out application of the sales tax, where the sale is made after June 30, 1979 and exempt from sales tax where the sale is made after June 30, 1981. The term "food" is broadly defined in CUT § 11.01 to include all edible foodstuffs, beverages containing no alcohol and items commonly thought of as food. This includes (by way of illustration and not by limitation):

(1) Baking and cooking ingredients. -- Certain food items are normally only consumed after being incorporated into food and other ingredients. Since these items then become part of the food intended for human consumption, they are eligible items which are subject to the transition rules and exempt from tax after June 30, 1981.

(A) Alcoholic liquor. -- Sales of alcoholic liquors, as defined in CUT § 11.03(a)(2), which are fit for beverage use, are subject to sales tax at the three percent (3%) tax rate regardless of whether the primary purpose for making the purchase is to use the alcoholic liquor as a cooking or baking ingredient.

(B) Baking soda. -- When represented on or in the labeling of the package that the product is "baking soda", it is ordinarily sold for use as an ingredient of food intended for human consumption. Accordingly, sales of "baking soda" are subject to the transition rules and exempt from sales tax after June 30, 1981, regardless of whether sold in a grocery-type store, drugstore or other retail store. However, when bicarbonate of soda is represented by the manufacturer either in the label or in the labeling that the product is for medicinal purposes, it is subject to sales tax at the three percent (3%) tax rate, regardless of where sold.

(C) Cooking oil and lard. -- Sales of oil with a vegetable or lard base, shortening and lard which are used in cooking or as an ingredient in foods such as bread and bakery products are eligible food items.

- (D) Cooking wines. -- Cooking wines containing no alcoholic content are eligible food items.
- (E) Pectin. -- The term "pectin" is generic for products marketed under various brand names and is commonly used as a base in making jams and jellies. When it is incorporated into jams and jellies, it becomes part of food intended for human consumption. Accordingly, pectin is an eligible food item.
- (F) Salted wine. -- Wine sold for use in cooking which is rendered unfit for beverage use by the adding of salt and which is withdrawn from storage under section 5362(d) of the Internal Revenue Code of 1954, as amended, is an eligible food item.
- (2) Berries.
- (3) Bottled drinking water. -- The term "bottled drinking water" means water that is sealed in bottles or other containers and which is intended for human consumption. This term includes distilled water and mineral water purchased for human consumption.
- (4) Candy and confections.
- (A) The term "candy" refers to all types of preparations commonly referred to as candy such as hard candy, caramel candy, chocolate candy, licorice, fudge and toffee, etc.
- (B) The term "confection" means candy and other food products made with sweeteners and frequently prepared with colorings, flavorings, milk products, cocoa products, nuts, fruits, starches and other materials. Such foods include but are not limited to frostings, toppings, edible cake decorations, candy-coated peanuts, caramel-coated popcorn, cotton candy and candied apples.
- (C) The term "candy and confections" does not include chewing gum, sauces, syrups, jellies, jams, preserves, cakes or cookies, although these products are

also eligible food items. This term does not include candy-type laxatives, cough drops or lozenges which contain medication, or similar products, even though they may contain significant amounts of sugar and may be consumed for pleasure rather than for treatment. These products are taxable at the three percent (3%) tax rate.

(D) Cake letters. -- Birthday cake letters consisting of sugar, albumin, acetic acid and artificial coloring are subject to the transition rules and exempt after June 30, 1981.

(E) Breath mints. -- Nonmedicated breath mints are eligible food items. These items are not considered to be medicated even though the manufacturer's claim that they prevent or lessen halitosis. Mints which contain aspirin, laxatives or anti-acidity qualities are considered to be medicated and are taxable at the three percent (3%) tax rate.

(5) Cereals and cereal products.

(6) Chewing gum.

(A) The term "gum" refers to all preparations called gum such as chiclets, chewing gum and bubble gum.

(B) Gum containing aspirin or other medication is subject to tax at the three percent (3%) tax rate even though it may be chewed for pleasure rather than for treatment.

(7) Cocoa and cocoa products. -- The term "cocoa products" means any form of chocolate, chocolate products, cocoa or cocoa products. Such foods include but are not limited to cocoa nibs, sweet chocolate, milk chocolate, chocolate syrup and so forth.

(8) Coffee and coffee substitutes. -- The term "coffee" includes but is not limited to roasted coffee beans, ground coffee beans, decaffeinated coffee and instant coffee.

(9) Condiments. -- The term "condiments" includes food accessories or adjuncts which although having little or no nutritional value, are used extensively to give flavor to foods and to furnish pleasing variety. Examples include by way of illustration and not limitation:

- (A) Flavorings and flavoring extracts.
- (B) Food colorings.
- (C) Food dressings.
- (D) Glazes.
- (E) Gravies.
- (F) Herbs (for which no medicinal qualities are claimed).
- (G) Marinades.
- (H) Mustard.
- (I) Pepper.
- (J) Salt and salt substitutes.
- (K) Sauces.
- (L) Spices.
- (M) Vinegar.

A list of condiments can be found in Appendix I. This list is intended to illustrate application of these terms and not to be an exhaustive list.

(10) Desserts.

- (A) Frozen desserts. -- The term "frozen desserts" includes ice cream, frozen custard, french ice cream, french custard ice cream, ice milk, fruit sherberts and water ices.
- (B) Dietetic cakes and cookies. -- Dietetic cakes and cookies are not dietary supplements since they are not ". . . preparations in liquid, powdered, granular, tablet, capsule, lozenge or pill form."

(11) Eggs and egg products.

- (12) Fish and fish products.
- (13) Flour and flour products.
- (14) Fresh and salt water animal products.
- (15) Fruit and fruit products.
- (16) Gelatins.
- (17) Meat and meat products.
- (18) Milk and milk products.
- (19) Mixes for alcoholic and nonalcoholic beverages. --
Mixes for alcoholic and nonalcoholic beverages,
whether in liquid or powdered form, are
eligible food products except when the mixer
contains alcoholic liquor or is a dietary
supplement, medicine or vitamin.
- (20) Mushrooms.
- (21) Nuts.
- (22) Oleomargarine.
- (23) Poultry and poultry products.
- (24) Relishes.
- (25) Seeds (edible).
- (26) Shortening.
- (27) Soft drinks and soft drink mixes and syrups.
- (28) Spreads.
- (29) Sugar and sugar products. -- The term "sugar
and sugar products" includes granulated,
powdered, confectioners, brown, raw, lump or
maple sugars; liquid sugars such as cane
syrup, corn syrup, maple syrup, molasses,
sorghum syrup, table syrup; lactose; dried
glucose syrup; glucose syrup; dextrose monohydrate
and dextrose anhydrous.
- (30) Sugar substitutes.

(31) Tea (except medicinal or dietary supplements).

(A) General. -- Teas are eligible food products except those which claim medicinal qualities or otherwise indicate specifically on their labels or packaging that they are sold as dietary supplements.

(B) Ginseng tea. -- Teas made from ginseng roots are eligible food products provided no claims of medicinal qualities are made and the label or packaging does not specifically indicate that the product is sold as a medicine or dietary supplement.

(32) Vegetable and vegetable products.

CUT § 11.03. Taxable food.

(a) General. -- Retail sales of the following items or products are subject to tax at the three percent (3%) tax rate.

- (1) Alcohol. -- The term "alcohol" shall mean ethyl alcohol whatever its origin, and shall include synthetic ethyl alcohol but not denatured alcohol.
- (2) Alcoholic liquor. -- The term "alcoholic liquor" shall include alcohol, beer, wine and spirits, and any liquid or solid containing more than three and two-tenths percent of alcohol by weight and capable of being used as a beverage.
- (3) Beer. -- The term "beer" shall mean any beverage obtained by the fermentation of barley, malt hops, or any other similar product or substitute regardless of whether categorized as "beer" or "nonintoxicating beer" under W. Va. Code § 60-1-5. Examples by way of illustration include ale, beer, lager beer, and malt liquor.
- (4) Dietary supplements. -- See CUT § 11.04.
- (5) Ice. -- All sales of ice are subject to sales tax at the three percent (3%) tax rate, regardless of the purpose or intended use for which the ice is being purchased or whether the ice is in blocks, chunks, chips or cubes or in the form of an ice sculpture.
- (6) Malt liquor. -- See Alcoholic liquor.
- (7) Medicines. -- See CUT § 11.05.
- (8) Seeds for growing fruits and vegetables.
- (9) Spirituous liquor. -- The term "spirituous liquor" shall mean any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes by way of illustration and not limitation, brandy, cordials, gin, rum, vodka and whiskey.
- (10) Vinous liquors. -- See Alcoholic liquor.
- (11) Vitamins. -- See CUT § 11.06.

(12) Wine. -- The term "wine" shall mean any alcoholic beverage obtained by fermentation of the natural content of fruits, or other agricultural products, containing sugar.

CUT § 11.04. Dietary supplements.

(a) Taxability. -- Dietary supplements or adjuncts which are sold in liquid, powdered, granular, tablet, capsule, lozenge or pill form are subject to sales tax at the three percent (3%) tax rate. Health foods and dietetic foods are generally not considered to be dietary supplements or adjuncts. Accordingly, most sales of health foods and dietetic foods are subject to the transition rules and will be exempt from sales tax after June 30, 1981. Special care must be exercised when the health food or dietetic food is in liquid, powdered, granular, tablet, capsule, lozenge or pill form. This is because eligible food items as well as dietary supplements, vitamins and medicines which are ineligible items may be purchased in one or more of these forms.

(b) Definition of dietary supplement. -- The term "dietary supplement" means and includes any product:

- (1) That is represented to be for special dietary use;
- (2) Which is or which contains any essential nutrient, natural or synthetic vitamin or mineral (or combination thereof); and
- (3) Which is intended for ingestion in liquid, powdered, granular, tablet, capsule, lozenge or pill form.

Any product that does not meet all three of these criteria is not deemed to be a dietary supplement.

(c) Representation that product is for special dietary use. -- A product is represented as being for special dietary use when direct or implied representation is made on the label, in the labeling, or in advertising, that the product is a dietary supplement, or that the product is adequate or appropriate for supplementing the diet with essential nutrients, vitamins or minerals.

(d) Application of definition. -- A product is considered to be a dietary supplement if it is in liquid, powdered, granular, tablet, capsule, lozenge or pill form and if it purports or represents that it is to be used:

- (1) To supply a special dietary need that exists by reason of a physical, physiological, pathological or other condition, including but not limited to the condition of:
 - (A) Disease,
 - (B) Convalescence,
 - (C) Pregnancy,

- (D) Lactation,
- (E) Infancy,
- (F) Allergic hypersensitivity to food,
- (G) Underweight,
- (H) Overweight; or

- (2) To supply a vitamin, mineral or other ingredient for use to supplement the diet by increasing the total dietary intake of that vitamin, mineral or other ingredient to a total level per single serving which attains or exceeds fifty percent (50%) of the United States Recommended Daily Allowance for adults and children four (4) years or more of age.

(e) When a supplement is intended for ingestion in liquid form. -- A dietary supplement is considered to be intended for ingestion in liquid form only if it is intended for ingestion in daily quantities measured in drops or other similar units of measure.

(f) Examples of nutrients and dietary supplements.

| | |
|------------------------------|-----------------------------|
| Ascorbic acid, | Manganese glycerophosphate, |
| Linoleic acid, | Manganese hyphosphite, |
| Biotin, | Manganese sulfate, |
| Calcium carbonate, | Manganous oxide, |
| Calcium citrate, | Niacin, |
| Calcium glycerophosphate, | Ciacinamide, |
| Calcium oxide, | D-Pantothenyl alcohol, |
| Calcium pantothenate, | Potassium chloride, |
| Calcium phosphate, | Potassium glycerophosphate, |
| Calcium pyrophosphate, | Potassium iodide, |
| Calcium sulfate, | Pyridoxine hydrochloride, |
| Carotene, | Riboflavin, |
| Choline bitartrate, | Riboflavin-5-phosphate, |
| Choline chloride, | Sodium pantothenate, |
| Copper gluconate, | Sodium phosphate, |
| Cuprous iodide, | Thiamine hydrochloride, |
| Ferric phosphate, | Thiamine mononitrate, |
| Ferric pyrophosphate, | Tocopherols, |
| Ferric sodium pyrophosphate, | a-Tocopherol acetate, |
| Ferrous gluconate, | Vitamin A, |
| Ferrous lactate, | Vitamin A acetate, |
| Ferrous sulfate, | Vitamin A palmitate, |
| Inositol, | Vitamin B12, |
| Iron reduced, | Vitamin D2, |
| Magnesium oxide, | Vitamin D3, |
| Magnesium phosphate, | Zinc chloride, |
| Magnesium sulfate, | Zinc gluconate, |
| Manganese chloride, | Zinc oxide, |
| Manganese citrate, | Zinc stearate, |
| Manganese gluconate, | Zinc sulfate. |

(g) Applications of regulation.

- (1) Baby formula such as Similac, Enfamil, Prosobee, SMA and Neo-Mull Soy are subject to the transition rules and exempt from sales tax after June 30, 1981.
 - (2) Dietetic foods which are represented as "low-calorie" foods and replace common food items, examples being dietetic candy, canned fruits, mayonnaise, salad dressing and canned vegetables, are subject to the transition rules and exempt from sales tax after June 30, 1981.
 - (3) Dietetic foods which are represented as "low-sodium" foods and replace common food items, examples being low-sodium cookies, crackers, canned fruits, peanut butter, soups and canned vegetables, are subject to the transition rules and exempt from sales tax after June 30, 1981.
 - (4) Weight control products such as Slim-Fast Protein Formula, Metracal, Figurines, PVM Formula, etc., are subject to the transition rules and exempt from sales tax after June 30, 1981.
 - (5) Products which do not replace common food items but supplement regular meals, such as Ayds diet candy, are sold primarily as a dietary supplement.
 - (6) Yeast. -- When yeast is prepared, dried and sold in flaked, powdered or tablet form, it is usually sold as a dietary supplement and is subject to tax at the three percent (3%) tax rate. However, yeast sold in cakes and dry (granular) yeast sold in packages or envelopes is generally sold as a baking ingredient and is subject to the transition rules and exempt from sales tax after June 30, 1981.
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CUT § 11.05. Medicines.

(a) Taxability. -- Patented medicines and other products used primarily as health aids or therapeutic agents are not "food" within the meaning of that term as defined in section 11-15-11(c) of the West Virginia Code and section 11.01 of these regulations. Accordingly, sales of medicines and over-the-counter drugs, whether in liquid, powdered, granular, tablet, capsule, lozenge or pill form are subject to sales tax at the three percent (3%) tax rate, except where they are purchased under a prescription written by a medical practitioner licensed to write prescriptions. Sales of prescription medicines are exempt under section 11-15-9(13) of the West Virginia Code.

(b) Categories of taxable medicines and health aids. -- Over-the-counter drugs can be classified as follows.

| | |
|-----------------------------|--------------------------------------------|
| Allergy treatment products, | Dentifrices and dental products, |
| Analgesics, | Dermatologic products, |
| Antacids, | Emetics, |
| Antidiarrheal products, | Hermatinics, |
| Antiemetics, | Hemorrhoidal products, |
| Antimicrobial products, | Laxatives, |
| Antipersperants, | Ophthalmic products, |
| Antirheumatic products, | Oral hygiene products, |
| Antiseptics, | Sedatives and sleeping aids, |
| Antitussives, | Stimulants, |
| Bronchodilators, | Sunburn prevention and treatment products, |
| Cold remedies, | Vitamin - mineral products, |
| Contraceptive products, | Miscellaneous. |
| Dandruff products, | |

(c) Applications of regulation.

- (1) Any product used primarily for medicinal purposes is taxable at the three percent (3%) tax rate, except when sold by prescription.
- (2) All patented medicines or other products used as health aids are taxable at the three percent (3%) tax rate, except when sold by prescription.
- (3) Bicarbonate of soda. -- Bicarbonate of soda when represented on the label or in the labeling of the package that it is "baking soda" is ordinarily sold for use as an ingredient of food intended for human consumption. Accordingly, "baking soda" is subject to the transition rules and exempt from sales tax after June 30, 1981, regardless of whether sold in a grocery-type store, drugstore or other retail store. However, when bicarbonate

of soda is represented by the manufacturer either in the label or in the labeling that the product is for medicinal purposes, it is subject to sales tax at the three percent (3%) tax rate regardless of whether sold in grocery-type stores, drugstores or other retail stores. When sold for medicinal purposes, bicarbonate of soda is frequently in tablet form or in packets containing one-half (1/2) teaspoon of bicarbonate of soda.

- (4) Products to prevent dehydration. -- Products used to prevent dehydration and replace electrolytes lost in diarrheas and other cases of fluid loss are subject to tax at the three percent (3%) tax rate.
 - (5) See Appendix 2 for a list of taxable medicines and health aids. This list is intended to illustrate application of the sales tax law and is not intended to be a comprehensive listing.
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CUT § 11.06. Vitamins and minerals.

(a) General. -- Essential vitamins and minerals occur naturally in foods. Since a good diet will include a variety of foods that together will supply all the nutrients needed, a nutritionally adequate diet may be obtained without the use of specially formulated vitamin and mineral preparation or other specifically formulated therapeutic products. Accordingly, these products serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as "food".

(b) Taxability. -- Vitamins and minerals, whether sold in liquid, powdered, granular, tablet, capsule, lozenge or pill form are subject to sales tax at the three percent (3%) tax rate unless they are purchased under a prescription written by a medical practitioner licensed to write prescriptions. Vitamins sold under a prescription are exempt from sales tax under section 11-15-9(13) of the West Virginia Code.

(c) Examples.

- (1) Cod liver oil.
 - (2) Halibut oil.
 - (3) Liquid vitamins.
 - (4) Mineral oil.
 - (5) Multiple vitamin tablets.
 - (6) Vitamin tablets.
 - (7) Capsules advertised as being high in vitamin content and for use in eliminating hunger sensations normally encountered by persons on reducing diets are taxable at the 3% tax rate.
 - (8) Wheat germ oil.
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CUT § 11.07. Sales by food-service establishment.

(a) Imposition of tax. -- Sales tax at the rate of three percent (3%) is imposed on all receipts derived by food-service establishments from the sale of food or drink (or both food and drink), including sales of beer, wine or alcoholic beverages and including any cover, minimum, entertainment or other charge. This tax applies regardless of whether the purchase is for consumption on the premises of the seller or the order is "to go" or "to take-out" and whether the orders may be sold by weight or measure.

(b) Exemption and bracket system. -- Sales for a monetary consideration of five cents (\$0.05) or less are exempt from tax. Where the monetary consideration is from six cents (\$0.06) to thirty-five cents (\$0.35), both inclusive, the tax is one cent (\$0.01). Where the monetary consideration is from thirty-six cents (\$0.36) to seventy cents (\$0.70), both inclusive, the tax is two cents (\$0.02). Where the monetary consideration is from seventyone cents (\$0.71) to one dollar (\$1.00), both inclusive, the tax is three cents (\$0.03). When the sales price is in excess of one dollar (\$1.00), the tax is three cents (\$0.03) on each whole dollar and upon any fractional part of a dollar in excess of whole dollars, as follows:

- (1) One cent on the fractional part of the dollar if less than thirty-six cents (\$0.36).
- (2) Two cents on the fractional part of the dollar if in excess of thirty-five cents (\$0.35), but less than seventy-one cents (\$0.71).
- (3) Three cents on the fractional part of the dollar if in excess of seventy cents (\$0.70).

(c) Definition of "food-service establishment". -- The term "food-service establishment" means any fixed or mobile:

- (1) automat,
- (2) bar,
- (3) cafe,
- (4) cafeteria,
- (5) catering operation,
- (6) cocktail lounge,
- (7) coffee shop,

- (8) commissary,
- (9) drive-in,
- (10) fast food restaurant,
- (11) fish and chips place,
- (12) fried chicken place,
- (13) grill,
- (14) hamburger or hot dog stand,
- (15) ice cream stand,
- (16) industrial feeding establishment,
- (17) lunch cart,
- (18) lunch counter,
- (19) luncheonette,
- (20) night club,
- (21) pizzeria,
- (22) private, public or nonprofit organization or institution routinely serving food,
- (23) restaurant,
- (24) roadside ice cream and refreshment stand,
- (25) sandwich shop,
- (26) short order cafe,
- (27) snack bars (including those in bowling alleys, drive-ins, movie theaters, civic centers, student unions, etc.)
- (28) soda fountain,
- (29) tavern,
- (30) tea room,
- (31) any other similar place in which food or drink is prepared for sale or service on the premise or elsewhere, and

- (32) any food-service establishment which operates for a limited period of time in connection with events such as (but not limited to) a fair, carnival, circus public exhibition, athletic event, or similar gatherings.

(d) Special rule for delicatessens, dairies and bakery stores. -- A delicatessen, grocery, market, dairy or bakery store shall not be considered food-service establishments as defined in subsection (b) except for the sale of:

- (1) dinners,
- (2) luncheons,
- (3) barbecued chicken (except whole barbecued chicken),
- (4) sandwiches,
- (5) snacks,
- (6) hot pizza, and
- (7) other similar items which are commonly sold at snack bars, coffee shops or luncheon counters.

(e) Application of regulation to specific vendors.

- (1) Dormitories at colleges and universities. -- See CUT § 11.15.
- (2) Hospitals. -- Food and meals furnished or sold by hospitals are taxable as follows.
 - (A) Food and meals furnished to patients are not subject to sales tax. Food and food products purchased by the hospital to serve to its patients are subject to the transition rules and exempt from sales tax after June 30, 1981, except when the food and meals are purchased from a caterer.
 - (B) Food and meals sold to the general public and to employees of the hospital are subject to sales tax at the three percent (3%) tax rate. When the hospital purchases food for sale in accordance with this paragraph, it may issue an exemption certificate because the food and food products are being purchased for resale.

- (3) Hotels, motels, tourist homes and rooming houses. -- Food and meals sold by hotels, motels tourist homes and rooming houses are subject to sales tax at the three percent (3%) tax rate. When the food and meals are furnished on a daily charge rate, sales tax shall be calculated on each daily charge. If separate charges are made for each meal, sales tax must be computed on each charge.
- (4) Migrant farm workers. -- Commercially operated camps for migrant farm workers are usually owned and operated by persons who house and feed workers on a contract basis. The amount charged the worker under this contract may be subject to tax at the three percent (3%) tax rate depending upon the exact arrangements.
- (A) If the contract provides for both room and board to be furnished to the workers, both the room rent and the meals are taxable at the three percent (3%) tax rate.
- (B) If the contract provides for the rental of individual houses or apartments for a period of time in excess of thirty (30) days, and the worker buys his own groceries and prepares his own meals, then no tax is due on the rental and purchase of the groceries is subject to the transition rules and exempt after June 30, 1981.
- (C) In those instances where the workers have an arrangement between themselves whereby they appoint one worker as cook to purchase and prepare all food and to present the grocery bills to the employer who then makes a payroll deduction from the workers' earnings on a pro rata basis, without any charge for housing, no tax is due on the housing or the meals. The food purchased by the worker-cook on behalf of the group is subject to the transition rules and exempt after June 30, 1981.
- (D) If the cook is employed by the employer and he purchases all groceries charging them to the employer who then charges the workers, the sale is subject to tax at the three percent (3%) tax rate.

- (E) The sale of meals or food by an employer including sales where payment is made by payroll deduction are taxable at the three percent (3%) tax rate.
- (5) Nursing and convalescent homes. -- Food and meals furnished or sold by nursing and convalescent homes are taxable as follows.
- (A) Food and meals furnished to patients or residents of nursing homes or convalescent homes are not subject to sales tax except when the food and meals are separately billed to the patient or resident. Assuming that separate billing does not occur, the food and food products purchased by the nursing or convalescent homes to serve to their patients or residents are subject to the transition rules and exempt from sales tax after June 30, 1981, except when the food and meals are purchased from a caterer.
- (B) Food and meals furnished to patients or residents of nursing or convalescent homes are subject to sales tax at the three percent (3%) tax rate when the food and meals are separately billed to the patient or resident. When the billing is determined on a daily charge rate, sales tax shall be collected on the daily charge. Where separate charges are made for each meal or purchase, sales tax shall be collected on each charge.
- (C) Food and meals served to the general public and to employees of the nursing or convalescent home are subject to sales tax at the three percent (3%) tax rate.
- (D) Exempt purchase of food. -- When the nursing home or convalescent home purchases food for sale in accordance with paragraphs (B) or (C), it may issue an exemption certificate because the food and food products are being purchased for resale.
- (6) Schools. -- See CUT § 11.14.

- (7) Street vendors. -- Because of the nature of their operation, most street vendors must collect sales tax at the three percent (3%) tax rate on all their sales. Exceptions include sales of the following products by street vendors or door-to-door vendors:
- (A) Sales of fruit or vegetables in bulk, by the pound (or fraction thereof) or dry measure.
 - (B) Sales of prepackaged foods commonly sold in grocery-type stores without food-service sales.
 - (C) Sales of eggs, meat and fish.
- (8) Summer camps. -- Food and meals sold or furnished by summer camps to campers, employees or the general public are subject to sales tax at the three percent (3%) tax rate regardless of whether the camp is operated by governmental agency or unit; by a church or religious organization; by a school or college; by a charitable, educational or civic organization; by a nonprofit organization or corporation; or by any other person. When a summer camp purchases food and food products, it may issue an exemption certificate because the purchases are for resale subject to sales tax.
- (9) Youth organizations. -- Food sold by organizations such as the YMCA and YWCA are subject to sales tax at the three percent (3%) tax rate, except to the extent that CUT § 11.17 is applicable.
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CUT § 11.08. Grocery-type store.

(a) Taxability of sales. -- Retail sales by grocery-type stores of food and food products (as defined in CUT § 11.01) that are intended for human consumption and which are generally sold for home preparation or consumption (or both) are subject to the transition rules and exempt from sales tax after June 30, 1981. Sales of other food or food products such as beer, ice and animal food, as examples, and sales of dietary supplements, medicines, vitamins and all nonfood commodities are subject to sales tax at the three percent (3%) tax rate. Should the grocery-type store also sell dinners, luncheons, sandwiches, snacks, hot pizza and other similar items which are commonly sold at snack bars, coffee shops or luncheon counters, then as to these sales only, the grocery-type store is deemed to be a food-service establishment. These sales are subject to sales tax at the three percent (3%) tax rate and the following regulations, to the extent applicable, are to be applied in order to determine what sales are subject to the higher tax rate.

- (1) Delicatessen, CUT § 11.09.
- (2) Bakery or pastry shop, CUT § 11.10.
- (3) Dairy store, CUT § 11.11.
- (4) Grocery store taxable sales, Appendix 3.

(b) Purchases for use in business or for resale. -- Grocery-type stores are exempt from the payment of consumers sales and service tax and use tax, on all purchases of the following goods and services. However, in order to claim this exemption, the grocery-type store must present a signed exemption certificate to the vendor who is supplying the good or service.

- (1) The purchase of food, food products and other tangible personal property for resale to consumers is exempt from tax.
- (2) The purchase of tangible personal property or services for use or consumption in the business of selling food and food products as well as other tangible personal property to consumers is exempt from tax except for the purchase of tangible personal property or services to be used or consumed in the construction or improvement of real property. These purchases are subject to tax at the three percent (3%) tax rate.

- (A) Example. -- A grocery-type store may purchase janitor services or refrigeration repairs without imposition of sales tax.
- (B) Example. -- A grocery-type store that purchases building materials to enlarge or remodel its store or to construct a warehouse, etc., must pay sales tax when purchasing such materials.
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CUT § 11.09. Delicatessen.

(a) General. -- In many cases a delicatessen operates both in the manner of a grocery-type store and that of a food-service establishment. Care must be exercised so that the three percent (3%) sales tax is collected on all food-service establishment type sales.

(b) Operation as a grocery-type store. -- When a delicatessen sells canned goods; fresh produce; frozen foods (dinners, meat pies, vegetables, etc.); cold cuts; unheated fish (including precooked or smoked products) and sells salads by weight or in prepackaged containers; or other food commonly sold in grocery stores (without delicatessens) for home preparation and consumption in the same manner and packaging as is done or found in grocery stores (without delicatessens), such sales are subject to the transition rules and exempt from tax if made after June 30, 1981.

(c) Operation as a food-service establishment. -- When a delicatessen sells dinners, luncheons, sandwiches, snacks and other similar products which are commonly sold at snack bars, coffee shops or luncheon counters, whether with or without beverage (including coffee and tea) and regardless of whether for consumption on or off the premises of the vendor, it is operating as a food-service establishment and must collect sales tax at the three percent (3%) tax rate on all such sales. All sales of hot food or drink are considered to be prepared for immediate consumption by virtue of their heated condition and are therefore subject to sales tax at the three percent (3%) tax rate regardless of the nature of the business making the sale or when the food or drink is actually consumed. Examples of taxable sales include (by way of illustration and not limitation) the sale of:

- (1) Food or drink prepared and served for immediate consumption on or near the premises of the seller.
- (2) Food or drink prepared and sold on a "take-out" or "to-go" basis for immediate consumption on or off the premises of the seller.
- (3) Hot prepared food (except barbecued chicken sold whole and unsliced).
- (4) Hot drinks such as coffee, tea and cocoa.
- (5) Cold drinks sold in paper cups or plastic cups, e.g., soft drinks, fruit juices and milk.

- (6) Food or drink arranged on a tray, plate or platter, whether intended for individual or multiple servings and whether sold by the pound or by the serving, e.g., a deli tray of cold cuts and cheese.
- (7) A sandwich, either hot or cold. A sandwich which is purchased in a frozen state and which is taken from the premises of the retailer in that state is subject to the transition rules and exempt after June 30, 1981.
- (8) A combination of hot foods, or a combination of cold foods, or a combination of both hot and cold foods, whether sold on a plate or in multiple containers, when a single price has been established for the meal or dinner, regardless of any itemization on the sales check.

(d) Prepackaged food products. -- The sale of prepackaged food products is subject to the transition rules and exempt after June 30, 1981. The term "prepackaged food products" includes but is not limited to food packaged by the preparer or food processor and sold by the retailer in unopened original containers or packages. It also includes over-the-counter sales of food sold in bulk by weight or measure and packaged by the delicatessen, grocery, market, dairy or bakery store. This term does not include meals, snacks, sandwiches and beverages, etc., sold over-the-counter by these establishments.

(e) Definitions.

- (1) Food sold for immediate consumption. -- The term "food sold for immediate consumption" means those sales of food which ordinarily are sold for immediate consumption at or near the premises of the seller and which are taxable even though the food is sold on a "take-out" or "to-go" order and is actually bagged, packaged or wrapped and taken from the premises of the seller. Where and when the customer actually eats the food is immaterial.
- (2) Hot prepared food. -- The term "hot prepared food" means those products, items or components which have been prepared for sale in a heated state and which are sold at any temperature which is higher than the air temperature of the room or place where they are sold.

- (A) Food is prepared for sale in a heated state if the vendor attempts to maintain the food at a temperature which is warmer than the surrounding air temperature by using heat lamps, warming trays, steam trays, ovens or similar units, or cooks the food to order, whether by microwave oven or more conventional means.
 - (B) If the sale is intended to be of a hot food product, the sale is of a hot food product regardless of any cooling which may incidentally occur.
 - (C) Example. -- The sale of a toasted sandwich intended to be in a heated state when sold, such as a fried ham sandwich on toast, is a sale of a hot prepared food even though it may have cooled due to delay.
- (3) Single sales price for meal. -- A single sales price is established for a combination of hot or cold foods (or both hot and cold foods) when a single price for the combination is listed on a menu, or wall sign, or is otherwise established.
 - (4) Sandwich. -- The term "sandwich" includes anything commonly thought of as a sandwich including an open-faced sandwich, Poor Boy, submarine, hoagie, or hero sandwich and, for purposes of these regulations, a hamburger, cheeseburger, barbecue, fish sandwich, hot dog, sloppy joe and other similar sandwiches.

(f) Applications.

- (1) A customer orders a sandwich and eats it on the premises. -- Taxable.
- (2) A customer orders a sandwich "to go". -- Taxable.
- (3) A customer orders a sandwich "to go" and also buys a fountain soft drink. -- All taxable.
- (4) A customer orders a sandwich "to go" and also buys a pound of potato salad. -- The sandwich is taxable while the potato salad is subject to the transition rules.

- (5) A customer orders two sandwiches, two fountain soft drinks and a pound of potato salad "to go". -- The sandwiches and soft drinks are taxable while the potato salad is subject to the transition rules.
- (6) A customer orders one sandwich "to go", one cup of coffee, one pound of sliced bologna, one-half pound of cheese and one pound of potato salad. -- The sandwich and coffee are taxable while the bologna, cheese and salad are subject to the transition rules.
- (7) A customer orders two sandwiches "to go", one cup of coffee, one small soft drink (in paper cup), one pound of sliced bologna, one-half pound of cheese and a pound of potato salad. -- The sandwiches, coffee and soft drink are subject to tax at the three percent (3%) tax rate while the bologna, cheese and salad are subject to the transition rules.
- (8) A customer purchases a loaf of bread, one-half pound of salami, one quarter pound of swiss cheese, a bag of potato chips and a canned soft drink, all of which he takes with him. -- This entire transaction is subject to the transition rules.
- (9) Sale of hot pretzels and hot popcorn are subject to tax at the three percent (3%) tax rate.
- (10) A customer orders a sandwich "to go" and a soft drink which is sold in a can. -- The sandwich is subject to tax at the three percent (3%) tax rate. The canned soft drink is subject to the transition rules except when it is sold in a paper or plastic cup.
- (11) A delicatessen advertises the sale of a hot ham and cheese sandwich, an order of potato salad and a canned soft drink for \$3.50. Although the vendor places the potato salad in a separate container and the soft drink is sold in a can, the entire sales price of \$3.50 is subject to sales tax at the three percent (3%) tax rate because all three (3) items are sold as components of an advertised meal.

(g) Purchases for use in business or for resale. -- Delicatessens are exempt from the payment of consumers sales and service tax and use tax, on all purchases of the following goods and services. However, in order to claim this exemption, the delicatessen must present a signed exemption certificate to the vendor who is supplying the good or service.

- (1) The purchase of food, food products and other tangible personal property for resale to consumers is exempt from tax.
- (2) The purchase of tangible personal property or services for use or consumption in the business of selling food and food products as well as other tangible personal property to consumers is exempt from tax except for the purchase of tangible personal property or services to be used or consumed in the construction or improvement of real property. These purchases are subject to tax at the three percent (3%) tax rate.

(A) Example. -- A delicatessen may purchase janitor services or refrigeration repairs without imposition of sales tax.

(B) Example. -- A delicatessen that purchases building materials to enlarge or remodel its store or to construct a warehouse, etc., must pay sales tax when purchasing such materials.

CUT § 11.10. Bakery store or pastry shop.

(a) Taxability. -- Sales by bakery stores or pastry shops which sell their products in the same manner as a grocery-type store selling baked goods and pastries made by a third party, are subject to the transition rules and exempt from tax after June 30, 1981, except when their products are sold as provided in subsection (b).

(b) Bakeries which are also food-service establishments. -- Bakery stores which also have food-service facilities, whether they be limited to sales of hot coffee, tea or cocoa and bakery products or include a larger menu, and regardless of whether the bakery has facilities for on-premise consumption or all orders are sold on a "to go" basis, must collect and remit tax at the three percent (3%) tax rate on all food-service sales. Examples of taxable sales include (by way of illustration and not limitation) those food-service establishment sales identified in CUT § 11.09(c).

(c) Application.

- (1) A customer has a doughnut and coffee at the lunch counter of a donut shop and also purchases a dozen doughnuts. -- The coffee and doughnut are subject to the three percent (3%) tax rate while the dozen doughnuts are subject to the transition rules and exempt after June 30, 1981.
- (2) A customer orders one or more doughnuts which are served to him at the lunch counter of a bakery store. -- This sale is taxable at the three percent (3%) tax rate.
- (3) A customer orders one or more doughnuts to take with him. -- This sale is subject to the transition rules and exempt from sales tax after June 30, 1981.
- (4) A customer orders a cup of coffee "to go" and a dozen doughnuts. -- The coffee is subject to the three percent (3%) tax rate while the doughnuts are subject to the transition rules and exempt after June 30, 1981.
- (5) A customer orders a cup of coffee "to go" and a doughnut. -- The coffee is subject to tax at the three percent (3%) tax rate while the doughnut is subject to the transition rules and exempt after June 30, 1981.

- (6) A customer orders a cup of coffee "to go" and a doughnut and also an apple pie. -- The coffee is subject to tax at the three percent (3%) tax rate while the doughnut and apple pie are subject to the transition rules and exempt after June 30, 1981.

(d) Prepackaged food products. -- The sale of prepackaged food products is subject to the transition rules and exempt after June 30, 1981. The term "prepackaged food products" includes but is not limited to food packaged by the preparer or food processor and sold by the retailer in unopened original containers or packages. It also includes over-the-counter sales of food sold in bulk by weight or measure and packaged by the delicatessen, grocery, market, dairy or bakery store. This term does not include meals, snacks, sandwiches and beverages, etc., sold over-the-counter by these establishments.

(e) Purchases for use in business or for resale. -- Bakery stores or pastry shops are exempt from the payment of consumers sales and service tax and use tax, on all purchases of the following goods and services. However, in order to claim this exemption, the bakery store or pastry shop must present a signed exemption certificate to the vendor who is supplying the good or service.

- (1) The purchase of food, food products and other tangible personal property for resale to consumers is exempt from tax.

- (2) The purchase of tangible personal property or services for use or consumption in the business of selling food and food products as well as other tangible personal property to consumers is exempt from tax except for the purchase of tangible personal property or services to be used or consumed in the construction or improvement of real property. These purchases are subject to tax at the three percent (3%) tax rate.

(A) Example. -- A bakery store or pastry shop may purchase janitor services or refrigeration repairs without imposition of sales tax.

(B) Example. -- A bakery store or pastry shop that purchases building materials to enlarge or remodel its store or to construct a warehouse, etc., must pay sales tax when purchasing such materials.

CUT § 11.11. Dairy store.

(a) Taxability. -- Retail sales by dairy stores of milk and milk products that are intended for human consumption and which are generally sold for home consumption are subject to the transition rules and exempt from sales tax after June 30, 1981.

(b) Sales of ice cream. -- Ice cream and other frozen milk products (including frozen yogurt and frozen custard) which are sold in bulk; that is, in pints, quarts and half-gallons, are subject to the transition rules and exempt from tax after June 30, 1981. Products such as ice cream cakes, ice cream pies and ice cream cake rolls, when sold whole and unsliced are eligible food items. Sales of ice cream and other frozen milk products (including frozen yogurt and frozen custard) are subject to tax at the three percent (3%) tax rate when sold:

- (1) in cones, cups, dishes or on plates;
- (2) as sundaes and banana splits, etc.;
- (3) as waffles and ice cream;
- (4) as a milkshake; or
- (5) as a piece of ice cream cake or pie.

(c) Sales of other food products. -- If the dairy store sells other food and food products such as those generally sold in a grocery-type store (without a delicatessen), these sales are subject to the transition rules and exempt from tax after June 30, 1981. If the dairy store makes sales of dinners, luncheons, sandwiches, snacks, hot pizza or other similar items which are commonly sold at snack bars, coffee shops or luncheon counters, these sales are subject to tax at the three percent (3%) tax rate and the provisions of CUT § 11.09 (c) apply.

(d) Prepackaged food products. -- The sale of prepackaged food products is subject to the transition rules and exempt after June 30, 1981. The term "prepackaged food products" includes but is not limited to food packaged by the preparer or food processor and sold by the retailer in unopened original containers or packages. It also includes over-the-counter sales of food sold in bulk by weight or measure and packaged by the delicatessen, grocery, market, dairy or bakery store. This term does not include meals, snacks, sandwiches and beverages, etc., sold over-the-counter by these establishments. Examples include (by way of illustration and not limitation) the sale of:

- (1) Popsicles, ice cream cones and ice cream sandwiches which are prepackaged by the manufacturer.
- (2) Products packaged and sold in the same form as commonly found in grocery-type stores.

(e) Purchases for use in business or for resale. -- Dairy stores are exempt from the payment of consumers sales and service tax and use tax, on all purchases of the following goods and services. However, in order to claim this exemption, the dairy store must present a signed exemption certificate to the vendor who is supplying the good or service.

- (1) The purchase of food, food products and other tangible personal property for resale to consumers is exempt from tax.
 - (2) The purchase of tangible personal property or services for use or consumption in the business of selling food and food products as well as other tangible personal property to consumers is exempt from tax except for the purchase of tangible personal property or services to be used or consumed in the construction or improvement of real property. These purchases are subject to tax at the three percent (3%) tax rate.
 - (A) Example. -- A dairy store may purchase janitor services or refrigeration repairs without imposition of sales tax.
 - (B) Example. -- A dairy store that purchases building materials to enlarge or remodel its store or to construct a warehouse, etc., must pay sales tax when purchasing such materials.
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CUT § 11.12. Other retailers of food.

(a) Taxability. -- Stores such as department stores, discount stores, variety stores, drugstores, gas stations and any other place of business that sells tangible personal property at retail are generally required to collect sales tax at the three percent (3%) tax rate on all sales except when the sale is specifically made exempt from tax by law (such as sales of gasoline and prescription sales of drugs) or when the purchaser presents a valid exemption certificate.

(b) Sales of food. -- Retail sales of food and food products (as defined in CUT § 11.01) that are intended for human consumption and which are generally sold for home preparation or consumption (or both) are subject to the transition rules and exempt from sales tax after June 30, 1981. Sales of other food or food products such as beer, ice and animal food, as examples, and sales of dietary supplements, medicines, vitamins and all nonfood commodities are subject to tax at the three percent (3%) tax rate. Should the retailer also sell dinners, luncheons, barbecued chicken (except when sold whole and unsliced), sandwiches, snacks, hot pizza and other similar items which are commonly sold at snack bars, coffee shops or luncheon counters, then as to these sales only, the retailer is deemed to be a food-service establishment. These sales are subject to sales tax at the three percent (3%) tax rate and the following regulations, to the extent applicable, are to be applied in order to determine what sales are subject to tax at the higher rate.

- (1) All sales from vending machines are subject to tax at the three percent (3%) tax rate. See CUT § 11.14.
- (2) All restaurant, cafeteria, snack bar and luncheon counter type sales are subject to tax at the three percent (3%) tax rate regardless of whether the food is consumed on the premises or is ordered "to go". See CUT § 11.08.
- (3) Delicatessen type sales are subject to the provisions of CUT § 11.10.
- (4) Sales of doughnuts, cup cakes, pies, cakes and other baked goods in the same manner as a bakery store or pastry shop, are subject to the provisions of CUT § 11.11.
- (5) Sales of ice cream and ice cream products in the same manner as a dairy store, are subject to the provisions of CUT § 11.12.

- (6) Sales of food and food products such as candy bars, peanuts, and other grocery-type store items are subject to the provisions of CUT § 11.08.
- (7) Sales of "hot peanuts" are subject to sales tax at the three percent (3%) tax rate. However, sales of freshly roasted peanuts which are not intended to be sold in a heated state are subject to the transition rules and exempt after June 30, 1981, even though they may be in a heated state when sold. The criteria here is whether after roasting, the vendor maintains the peanuts in a heated state.
- (8) Sales of "hot pretzels" are subject to sales tax at the three percent (3%) tax rate. However, sales of freshly baked pretzels which are not intended to be sold in a heated state are subject to the transition rules and exempt after June 30, 1981, even though they may be in a heated state when sold. The criteria here is whether after baking, the vendor maintains the pretzels in a heated state.
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CUT § 11.13. Sales of food from vending machines.

All sales of tangible personal property (including sales of food and food products) from vending machines are subject to tax at the three percent (3%) tax rate, regardless of who owns the machine or where it is located in this State. Tax applies to each individual purchase which is for an amount in excess of five cents (\$0.05).

CUT § 11.14. Food sold to school students or employees.

(a) Exempt sales. -- Sales of meals to kindergarten, elementary and secondary school students by officials of a public, private, parochial or denominational school are exempt from sales tax.

(b) Eligible sales. -- Sale of food or food products during normal school hours to kindergarten, elementary and secondary school students or employees that are not exempt under subsection (a) are subject to the transition rules and exempt from sales tax after June 30, 1981, when the sale is made:

- (1) By a public, private, parochial or denominational school which is subject to regulation by the West Virginia State Board of Education;
- (2) By an organization which is sponsored by a public, private, parochial or denominational school which is subject to regulation by the West Virginia State Board of Education; or
- (3) By a parent-teacher association which is sponsored by a public, private, parochial or denominational school which is subject to regulation by the West Virginia State Board of Education.

(c) Sales taxed at 3%. -- The following sales of food or food products subject to tax at the three percent (3%) rate.

- (1) Sales of food by vending machines regardless of where the machine is located, who owns the machine or the time of day when the sale occurs.
- (2) Sales of food to students or employees at times other than during normal school hours.
- (3) Sales of food to the general public.
- (4) Athletic, cultural and social events. -- The exemption provided in subsection (a) does not apply to sales of food items sold to students when sold within, and for consumption within, a place the entrance to which is subject to an admissions charge. Such sales are subject to tax at the three percent (3%) tax rate except where the sale is exempt under CUT § 11.17 or § 11.18. For example, when food items are sold on a repetitive basis by a student organization to students, or to both

students and nonstudents, at an event which is subject to an admission charge, such as an athletic event, the sales to both students and nonstudents are taxable at the three percent (3%) tax rate.

(d) "School employee" defined. -- The term "school employee" includes all personnel employed by a school or by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. This includes all teachers, auxiliary personnel and service personnel defined as follows:

- (1) Teacher. -- The term "teacher" means teacher, supervisor, principal, superintendent, school librarian or any other person regularly employed for instructional purposes in a school in this State.
 - (2) Auxiliary personnel. -- The term "auxiliary personnel" means those persons selected and trained as monitor aide, clerical aide, classroom aide, or general aide.
 - (3) Service personnel. -- The term "service personnel" means those persons who serve the school in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch, etc.
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CUT § 11.15. Food sold to college and university students.

(a) Taxability. -- Sales of food to students enrolled in a public or private college or university are subject to sales tax at the three percent (3%) tax rate except when the sales are made on a contract basis by:

- (1) A public or private college or university which is subject to control by the West Virginia Board of Regents, or
- (2) A student organization officially recognized by a college or university which is subject to control by the West Virginia Board of Regents.

(b) "Contract basis" defined. -- Food is sold on a contract basis only when a fixed price is paid for consumption of food products during a specific period of time without regard to the amount of food product actually consumed by the particular individual contracting for the purchase and no money is paid at the time the food product is served or consumed. The term "specific period of time" means a time period of not less than thirty (30) consecutive days.

(c) Applications.

- (1) College operated dormitory. -- A public or private college subject to the control of the West Virginia Board of Regents operates a dormitory providing room and board to its students on a semester-by-semester basis. An itemization is made for room and for board. The price for board is determined regardless of the amount of food consumed by the student or the number of missed meals. The room charge is subject to the three percent (3%) sales tax. The charge for board is subject to the transition rules and is exempt from tax after June 30, 1981.
- (2) Lump sum charge for room and board. -- If a lump sum is charged for room and board, the entire amount would be subject to tax at the three percent (3%) tax rate.
- (3) Food furnished by caterer. -- If the food service is furnished by a caterer and the contract is between the student and the caterer, the food is not being sold by the college or the university and the sale is subject to tax at the three percent (3%) tax rate.

- (4) If under (3) above, the contract is between the student and the college or university, the sale is subject to the transition rules and is exempt from sales tax after June 30, 1981.
- (5) Dormitory operated by private person. -- If room and board are furnished by a dormitory not operated by the college, the entire transaction is subject to tax at the three percent (3%) tax rate.
- (6) Fraternities and sororities. -- Sales of food and meals on a "contract basis", as defined in subsection (b), by student fraternities and sororities that are officially recognized by the college or university at which they are located, to a student enrolled at the college or university are subject to the transition rules and exempt from sales tax after June 30, 1981. Food or meals sold to the general public or on any basis other than a "contract basis", are subject to sales tax at the three percent (3%) tax rate.
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CUT § 11.16. Food sold to low income elderly persons.

Sales of meals or food products to low income elderly persons are subject to the transition rules and exempt from tax where the sale is made after June 30, 1981, provided all of the following conditions are met.

- (1) The purchaser is age 60 or older.
 - (2) The purchaser can be classified as having low income.
 - (3) The sale is made by a nonprofit organization or governmental agency.
 - (4) The sale is under a program funded by a state or the United States.
 - (5) The sale is made at or below cost.
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CUT § 11.17. Occasional sales of food by charitable or nonprofit organizations.

(a) Taxability. -- Occasional sales of food or food products (including sandwiches, meals and dinners) by charitable or nonprofit organizations are eligible for special tax treatment provided the purpose of the sale is to obtain revenue for the functions and activities of the organization and the income so obtained is actually spent for that purpose. These sales are subject to tax in the following manner.

(1) Charitable organization.

- (A) Occasional sales by a corporation or organization that is or could qualify for exemption from income tax under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, are exempt from sales tax.
- (B) The term "charitable organization" includes any corporation or organization which is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the providing of athletic facilities or equipment), or for the prevention of cruelty to children or animals provided that no part of the net earnings of the organization inures to the benefit of any private shareholder or individual, that no substantial part of the activities of the organization is carrying on propaganda or otherwise attempting to influence legislation and that it does not participate in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.

(2) Civic organization operated for social welfare.

- (A) Occasional sales by a corporation or organization that is or could qualify for exemption from income tax under section 501(c)(4) of the Internal Revenue Code of 1954, as amended, are exempt from sales tax.

(B) The term "civic league" includes any nonprofit civic organization that is operated exclusively for the promotion of social welfare.

(C) Examples of organizations that may qualify.

(1) Educational radio stations.

(2) Junior Chamber of Commerce.

(3) Civic Improvement Association.

(4) Volunteer fire department.

(5) Volunteer rescue squad.

(3) Nonprofit organization.

(A) Occasional sales by a nonprofit corporation or organization not included in subdivisions (1) and (2) of subsection (a) are exempt from sales tax.

(B) The term "nonprofit organization" means a corporation or organization no part of the income or profit of which is distributed to its shareholders, members, directors or officers.

(C) Examples of organizations that may qualify.

(1) Labor, agricultural or horticultural organizations such as those which could qualify under section 501(c)(5) of the Internal Revenue Code.

(2) Business leagues, chamber of commerce and other organizations such as those which could qualify under section 501(c)(6) of the Internal Revenue Code.

(3) Social clubs and clubs organized for pleasure, recreation and other non-profitable purposes such as those which could qualify under section 501(c)(7) of the Internal Revenue Code.

- (4) Fraternal beneficiary societies, orders or associations such as those which could qualify under section 501(c)(8) of the Internal Revenue Code.

(b) "Occasional sale of food" defined.

- (1) Sales of restaurant-type food. -- Educational, charitable and nonprofit organizations who are exempt from the licensing provisions of W. Va. Code Article 16-6, when they make temporary sales of food not exceeding two weeks in length are deemed to be making only occasional sales of food. This would be true when temporary sales of food are made in connection with carnivals, church activities, banquets, fairs, etc., involving the community and public.
 - (2) Sales of other foods. -- Educational, charitable and nonprofit corporations are deemed to be making only occasional sales of food when the sale is an isolated transaction by a corporation or organization which does not hold itself out to be engaged in the business of selling food or food products.
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CUT § 11.18. Food sold by religious organization.

(a) Taxability. -- Sales of food or food products (including sandwiches, meals and dinners) by any religious organization at a social or other gathering which is conducted by it or under its auspices is exempt from sales tax provided that:

- (1) The purpose in selling the food is to obtain revenue for the functions and activities of the organization; and
- (2) The revenue obtained from selling the food is actually used in carrying on such functions and activities.

(b) "Religious organization" defined. -- The term "religious organization" means any organization whose major activity is the furtherance of religious ideals and whose real and personal property is exempt from ad valorem property taxes under W. Va. Code § 11-3-9 and Article X, § 1 of the West Virginia Constitution.

CUT § 11.19. Caterers and catering operations.

(a) Taxability. -- The law provides that sales of food by a "food-service establishment" are subject to tax at the three percent (3%) tax rate. The term "food-service establishment" is defined in W. Va. Code § 11-15-11(e) to include a catering operation.

(b) Definition of "caterer". -- The term "caterer" means one primarily engaged in the selling, providing or furnishing of food and beverages which are essentially fully prepared and usually ready-to-eat. This food and beverage is usually intended for immediate consumption or for consumption at a specific meal, affair or social function, and generally is served at the premises of one other than the caterer. The sale is taxable regardless of whether or not the food and beverage are delivered to those premises by the caterer or whether food service is also provided by the caterer.

(c) Application of tax.

- (1) Tax applies to the entire charges made by caterers for serving meals, food and drink, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for labor of serving meals.
- (2) Tax applies to charges made by caterers for preparing and serving meals and drinks even though the food is not provided by the caterers.
- (3) Tax also applies to charges made by caterers for rental of dishes, silverware, glasses, etc., if no food is provided or served by caterers in connection with the rental.
- (4) Tax applies to the labor of serving meals, whether performed by himself or by his employees or subcontractors.
- (5) Tax applies to charges made by caterers for preparing and serving meals and drinks even though the food is not provided by the caterers.
- (6) Sales of meals by caterers to social clubs, fraternal organizations, or other persons are sales for resale if such social clubs, fraternal organizations, or other persons are the retailers of the meals subject to tax.

- (7) If a caterer makes sales to a school, or to a church, no tax would be due irrespective of location or place of sale.
- (8) Sales of meals by caterers to social clubs, fraternal organizations or other persons are sales for resale, even though prepared and served by the caterer. If such clubs, fraternal organization, or other persons are retailers of the meals and can give a valid exemption certificate to the caterer, the sale is exempt from tax. Otherwise the sale is subject to tax at the three percent (3%) tax rate unless for some other reason the purchaser can give a valid exemption certificate.
- (9) Where the sales agreement does not require the caterer to prepare and serve the food as meals but rather to serve the food buffet style, tax nevertheless applies to the total charge.
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CUT § 11.20. Package containing both food and nonfood items.

(a) Premiums. -- When a package contains both food products that are subject to the transition rules (and exempt from sales tax after June 30, 1981) and as a premium, nonfood products or food products that are taxable at the three percent (3%) tax rate, application of the sales tax depends upon the price charged to the customer and the essential character of the complete package. In other words, is the basic product being sold the eligible food product or the product taxable at the higher rate?

- (1) When an item taxable at the three percent (3%) tax rate is included as a premium with the eligible packaged food product and the basic product being sold is the eligible food product, with no additional charge being made on account of the premium, the entire sales price is subject to the transition rules and exempt after June 30, 1981.

Example 1. -- A box of pancake mix ordinarily sells for \$1.25. The manufacturer adds as a premium a incentive to buy the mix, a spatula. The sales price remains \$1.25. The purchase of the box of pancake mix and spatula for \$1.25 is subject to the transition rules and exempt after June 30, 1981.

- (2) When an item taxable at the three percent (3%) tax rate is included as a premium with the eligible packaged food product and the basic product being sold is the eligible food product with an additional charge in excess of twenty-five percent (25%) being made on account of the premium, the price differential is subject to sales tax at the three percent (3%) tax rate.

Example 2. -- A box of pancake mix ordinarily sells for \$1.25. The manufacturer adds, as a premium or incentive to buy the mix, a spatula. On account of the premium the sales price is increased to \$1.75. The price differential of \$0.50 (which is a 40% addition) is subject to sales tax at the three percent (3%) tax rate while this price for the pancake mix only (\$1.25) is subject to the transition rules and exempt from sales tax after June 30, 1981. Had the sales price been \$1.56 or less, then the entire price would be subject to the transition rules and exempt from sales tax after June 30, 1981.

(b) Combination sales. -- When a package contains both food products that ordinarily would be subject to the transition rules (and exempt from sales tax after June 30, 1981) and also tangible personal property that is subject to tax at the three percent (3%) tax rate, the entire sales price for the combination package is subject to tax at the three percent (3%) tax rate except as follows.

(1) When the only tangible personal property in a combination package that is not a food or food product (the sale of which is ordinarily subject to the transition rules) is the packaging itself, then the entire sales price is subject to the transition rules and exempt from sales tax after June 30, 1981, unless the retail value of the food or food product in the combination package is incidental when compared to the retail selling price of the combination package. In other words, if the basic product being sold by the vendor is the product taxable at the three percent (3%) tax rate, then the entire sales price is taxable at the three percent (3%) rate.

(A) Example 1. -- An Easter basket composed of candy, plastic grass and a basket has a selling price of \$10.00. Since the Easter basket is the package and the package contains only eligible food products, the sale is subject to the transition rules and exempt after June 30, 1981, except when value of the candy is incidental to the \$10.00 combination selling price.

(B) Example 2. -- An Easter basket composed of candy, a stuffed bunny rabbit, plastic grass and a basket has a selling price of \$8.95. This is taxable at the three percent (3%) tax rate because the stuffed bunny rabbit is not a food or food product.

(C) Example 3. -- A jewelry store offers a fine cut crystal candy dish for sale for \$150.00. As a promotion for Valentine's Day, the store fills the dish with chocolate kisses. The selling price remains \$150.00. Since the retail value of the candy is incidental in contrast to the combination package sales price, the entire transaction is taxable at the three percent (3%) tax rate.

- (2) When a combination package is offered for sale and the vendor (or the manufacturer) separately states the retail value of the eligible food or food product and the retail value of all other tangible personal property in the combination package, the eligible food or food product is subject to the transition rules (and exempt from sales tax after June 30, 1981) while the other tangible personal property is taxable at the three percent (3%) tax rate.
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Appendix 1. List of Condiments

This list of condiments which are eligible food items is intended to illustrate application of these terms and is not intended to be a comprehensive listing.

1. Essential oils, oleoresins (solvent-free) and natural extractives.

Alfalfa
Allspice
Almond, bitter (free from prussic acid)
Ambrette (seed)
Angelica root
Angelica seed
Angelica stem
Angostura (cusparia bark)
Anise
Asafetida
Balm (lemon balm)
Balsam of Peru
Basil
Bay leaves
Bay (myrcia oil)
Bergamot (bergamot orange)
Bitter almond (free from prussic acid)
Bols de rose
Cacao
Camomile (chamomile) flowers, Hungarian
Camomile (chamomile) flowers, Roman or English
Cananga
Capsicum
Caraway
Cardamom seed
Carob bean
Carrot
Cascarilla bark
Cassia bark, Chinese
Cassia bark, Padang or Batavia
Cassia bark, Saigon
Celery seed
Cherry, wild, bark
Chervil
Chicory
Cinnamon bark, Ceylon
Cinnamon bark, Chinese
Cinnamon bark, Saigon
Cinnamon leaf, Ceylon
Cinnamon leaf, Chinese
Cinnamon leaf, Saigon
Citronella
Citrus peels
Clary (clary sage)
Clove bud
Clove leaf
Clove stem

Clover
Coca (decocainized)
Coffee
Cola nut
Coriander
Corn silk
Cumin (cummin)
Curacao orange peel (orange, bitter peel)
Cusparia bark
Dandelion
Dandelion root
Dog grass (quackgrass, triticum)
Elder flowers
Estragole (esdragol, esdragon, tarragon)
Estragon (tarragon)
Fennel, sweet
Fenugreek
Galanga (galangal)
Geranium
Geranium, East Indian
Geranium, rose
Ginger
Glycyrrhiza
Glycyrrhizin, ammoniated
Grapefruit
Guava
Hickory bark
Horehound (hoarhound)
Hops
Horsemint
Hyssop
Immortelle
Jasmine
Juniper (berries)
Kola nut
Laurel berries
Laurel leaves
Lavender
Lavender, spike
Lavandin
Lemon
Lemon balm (see balm)
Lemon grass
Lemon peel
Licorice
Lime
Linden flowers
Locust bean
Lupulin
Mace
Malt (extract)
Mandarin
Marjoram, sweet
Mate
Melissa (see balm)

Menthol
Menthyl acetate
Molasses (extract)
Mustard
Naringin
Netroli, bigarade
Nutmeg
Onion
Orange bitter, flowers
Orange, bitter, peel
Orange leaf
Orange, sweet
Orange, sweet, flowers
Orange, sweet, peel
Origanum
Palmarosa
Paprika
Parsley
Pepper, black
Pepper, white
Peppermint
Peruvian balsam
Pettigrain
Pettigrain lemon
Pettigrain mandarin or tangerine
Pimenta
Pimenta leaf
Pipcissewa leaves
Pomegranate
Prickly ash bark
Rose absolute
Rose (otto of roses, attar of roses)
Rose buds
Rose flowers
Rose fruit (hips)
Rose geranium
Rose leaves
Rosemary
Saffron
Sage
Sage, Greek
Sage, Spanish
St. John's bread
Savory, summer
Savory, winter
Schinus molle
Sloe berries (blackthorn berries)
Spearmint
Spike lavender
Tamarind
Tangerine
Tannic acid
Tarragon
Tes
Thyme
Thyme, white
Thyme, wild or creeping

Triticum (seed or grass)
Tuberose
Turmeric
Vanilla
Violet flowers
Violet leaves
Violet leaves absolute
Wild cherry bark
Ylang-ylang
Zedoary bark

2. Flavorings and flavoring extracts.

Oil of Lemon
Vanilla extract
Vanilla flavoring
Vanilla powder
Vanilla - vanillin extract
Vanilla - vanillin flavoring
Vanilla - vanillin powder

3. Food Colorings

4. Food Dressings.

French dressing
Mayonnaise
Mayonnaise dressing
Salad dressing

5. Glazes.

6. Gravies.

7. Herbs (for which no medicinal qualities are claimed).

Angelica
Anise
Bee balm
Basils
Bays
Borage
Bunnet
Camomile
Capers
Caraway
Celenes
Chervil
Chives
Coriander
Dill
Fennels
Fenugreek

Geranium
Horehound
Horseradish
Hyssop
Lavender
Leeks
Lemon Verbena
Lovage
Marigold
Mayorame
Mints
Mustards
Nasturtium
Onion
Parsleys
Peppers, red and green
Ramps
Rosemary
Rue
Sage
Savories
Scallions
Sesame
Shallots
Sorrels
Sweet Woodruff
Tarragon
Thymes
Waldmeister
Wild leeks

8. Marinades.

9. Mustard.

10. Natural substances and extractions (solvent-free) used in conjunction with spices, seasonings and flavorings.

Algae, brown
Algae, red
Apricot kernel (persic oil)
Dulse
Kelp (see algae, brown)
Peach kernel (persic oil)
Peanut stearine
Persic oil (see apricot kernel and peach kernel)
Quince seed

11. Pepper.

Black pepper
Cayenne pepper
Red pepper
White pepper

12. Salt and salt substitutes.

Coarse or kosher salt
Cooking or table salt
Dairy salt
Monozodium glutamate
Pickling salt
Seasoned salt - These are usually a combination of vegetable salts, spices and monozodium glutomates.
Smoked salt
Sour salt
Vegetable salt - These are sodium chloride with added vegetable extracts, celery and onion.
Salt substitute - These are chlorides in which sodium is replaced by calcium, potassium or ammonium.

13. Sauces.

Worcestershire sauce
Soy sauce
A-1 steak sauce
Barbecue sauce
Shrimp cocktail sauce

14. Spices and other natural seasonings and flavorings.

Alfalfa herb and seep
Allspice
Ambrette seed
Angelica
Angelica root
Angelica seed
Angostura (cusparia bark)
Anise
Anise, star
Balm (lemon balm)
Basil, bush
Basil, sweet
Bay
Calendula
Camomile (chamomile), English or Roman
Camomile (chamomile), German or Hungarian
Capers
Capsicum
Caraway
Caraway, black (black cumin)
Cardamom
Bassia, Chinese
Cassia, Padang or Batavia
Cassia, Saigon
Cayenne pepper
Celery seed
Chervil
Chives

Cinnamon, Ceylon
Cinnamon, Chinese
Cinnamon, Saigon
Clary (clary sage)
Clover
Cloves
Corlander
Cumin (cummin)
Cumin, black (black caraway)
Elder flowers
Fennel, common
Fennel, sweet (finocchio, Florence fennel)
Fenugreek
Galanga (galangal)
Geranium
Ginger
Glycyrrhiza
Grains of paradise
Horehound (hoarhound)
Horseradish
Hyssop
Lavender
Licorice
Linden flowers
Mace
Marjoram
Mustard, black or brown
Mustard, brown
Mustard, white or yellow
Nutmeg
Oregano (oreganum, Mexican oregano, Mexican sage, origan)
Paprika
Parsley
Pepper, black
Pepper, cayenne
Pepper, red
Pepper, white
Peppermint
Poppy seed
Rosemary
Saffron
Sage
Sage, Greek
Savory, summer
Savory, winter
Sesame
Spearmint
Star anise
Tarragon
Thyme
Thyme, wild or creeping
Turmeric
Vanilla
Zedoary

15. Vinegar.

Appendix 2. List of Taxable Medicines and Health Aids.

This list of taxable medicines and health aids is intended to illustrate application of these terms and is not intended to be a comprehensive listing.

Absorbine Jr.
Acne preparations
Alka seltzer
Alphen pills
Anacin
Analgesics
Antacids
Anti-perspirants
Antiseptics
Appetite builders
Appetite reducers
Aromatic lozenges (SEN-SEN)
Aspergum
Aspirin
Athlete's foot preparations
Baby lotions, ointments and powder
Back plasters
Bactine
Beauty creams, mask preparations, etc.
Bengay
Benzoin (tinctine)
Bisodol
Boric acid ointment
Breath sweeteners
Brewer's yeast
Brioschi
Bromo Seltzer
Bufferin
Burn ointment and lotion
Calamine Lotion
Callus plasters
Campho-phenique
Camphor ice
Castor oil
Cathartics
Chocks
Chooz
Clearasil
Cleansing creams and lotions
Cocoa butter (for healing)
Cod liver oil
Cold creams
Cold tablets
Colognes
Contraceptive creams and jellies
Corn pads
Cosmetic stocking preparations

Cosmetics
Cotton
Cough and cold items
Cough drops
Cough syrups
Cumlers
Cuprex
Curlers
Cuticle softeners and removers
Dandruff shampoos
Decongestants
Dental floss
Dentifrice
Denture adhesives, liners, stain removers
Deodorants
Depilatories
Desenex
Disinfectants
Epsom Salts
Eucalyptus oil
Ex-lax
Eye cosmetics
Eye ointment
Eye washes
Face creams, lotions, packs, powders
Facial oils
Feen-a-Mint
Fleet enema
Foot deodorizers, lotions
Foundation makeup film
Freckle removers
Gelusil
Geritol
Glycerine
Glycerine suppositories
Hair bleaches, dyes, rinses, tints
Hair removers, restoratives, straighteners
Hair sprays
Hand creams, lotions
Henna
Infrarub
Inhalants
Insect repellents
Iodine
Isodine
Laxatives
Leg makeup
Lip ices and salves
Lipsticks, refills
Liquid lip color
Liquid stockings
Listerine
Manicure preparations
Mascara
Massage creams

Mercurochrome
Merthiolate
Milk of Magnesia
Milk of Magnesia tablets
Mineral oil
Moth balls
Mouthwashes
Mustache wax
Mustard plasters
Musterole
Nail bleaches, whiteners,
Noxema
Nupercainal ointments
Oil of wintergreen (for medicinal purposes)
Olive oil (for medicinal purposes)
Perfumes
Permanent waving creams, lotions, neturalizers
Peroxide
Pessaries
Petroleum jelly
Pile ointments
Rectal preparations
Roloids
Rose water
Rouges
Rubbing Alcohol
Sachets
Salt (for purposes other than human
consumption)
Sanitary napkins
Scalp lotions and ointments
Shampoos
Shaving preparations
Skin balms, bleaches, creams, fresheners, lotions,
oils, stain removers, tonics, whiteners
Soap
Soda mint tablets
Stain removers
Styptic pencils
Sunburn remedies
Suppositories
Talcum powder
Texture creams
Tincture iodine
Tissue creams
Toilet ammonia, creams, lanolin, waters
Toothache drops
Toothbrushes
Toothpaste and tooth powder
Tums
Unguentine
Vaginal preparations
Vanishing creams
Vaseline

Vitamin A-D ointment
Vitamins
Water softeners
Wave sets
Witch hazel
Zinc-oxide ointment

Appendix 3. Grocery Store Taxable Sales.

The following list is comprised of items commonly sold by grocery stores and which are subject to tax at the three percent (3%) tax rate. This list gives examples and is not all inclusive.

Air fresheners and deodorizers
Ale and beer
Aluminum foil
Anti-perspirants and deodorants
Automotive supplies
Baby bottles
Batteries
Beauty supplies (hand lotion, bath oil)
Bird feeders
Bleach
Brooms, brushes and mops
Canning supplies (jars, lids)
Candles and party supplies
Charcoal briquettes and lighter
Cigar, cigarettes and tobacco
Cleaning supplies (Lysol, Pine-Sol)
Clothes pins and clothes line
Cosmetics
Dental Hygiene products
Dietary supplements (Ayds)
Dishes and cooking pans
Dishwashing liquid and dishwasher detergent
Dyes
Electric light bulbs
Extension cords
Feminine hygiene products
Fertilizer
First aid supplies
Fuses
Glassware and mugs
Greeting cards
Hardware supplies (screwdriver, hammer)
Household glue and cement
Insect and pest repellent
Hair products (hair color, sprays, permanents)
Hair removal products (Nair, Zip)
Hosiery
Kitchen utensils
Laundry supplies (detergent, starch fabric softeners)
Matches
Medicines
Mens toiletries (shaving cream)
Mouthwash
Paper products
Pet food and supplies

Picture frames
Plant supplies (pots, food)
Plastic products (trash bags, waste cans, storage containers)
Potted plants
Razor blades and razors
Sandpaper
School supplies
Scouring agents (SOS, brillo pads)
Scouring powders
Sewing supplies
Shoe laces and shoe care products
Soap and soap products
Sponges
Suntan lotions, oils, creams and screens
Thermometers
Toys
Towels (dish, hand)
Vacuum cleaner bags
Vegetable seeds
Vitamins
Waxes and polishes

**Appendix 4. West Virginia Consumers Sales and Service
Tax (3%) Rate Chart**

WEST VIRGINIA CONSUMERS SALES TAX (3%) RATE CHART: EFFECTIVE 7-1-1965

POST NEAR CASH REGISTER

| AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX |
|------------------|-------|--------------------|-----|--------------------|-------|
| \$.01 TO \$.05 | NONE | \$ 7.01 TO \$ 7.35 | .22 | \$14.36 TO \$14.70 | \$.44 |
| .06 TO .35 | \$.01 | 7.36 TO 7.70 | .23 | 14.71 TO 15.00 | .45 |
| .36 TO .70 | .02 | 7.71 TO 8.00 | .24 | 15.01 TO 15.35 | .46 |
| .71 TO 1.00 | .03 | 8.01 TO 8.35 | .25 | 15.36 TO 15.70 | .47 |
| 1.01 TO 1.35 | .04 | 8.36 TO 8.70 | .26 | 15.71 TO 16.00 | .48 |
| 1.36 TO 1.70 | .05 | 8.71 TO 9.00 | .27 | 16.01 TO 16.35 | .49 |
| 1.71 TO 2.00 | .06 | 9.01 TO 9.35 | .28 | 16.36 TO 16.70 | .50 |
| 2.01 TO 2.35 | .07 | 9.36 TO 9.70 | .29 | 16.71 TO 17.00 | .51 |
| 2.36 TO 2.70 | .08 | 9.71 TO 10.00 | .30 | 17.01 TO 17.35 | .52 |
| 2.71 TO 3.00 | .09 | 10.01 TO 10.35 | .31 | 17.36 TO 17.70 | .53 |
| 3.01 TO 3.35 | .10 | 10.36 TO 10.70 | .32 | 17.71 TO 18.00 | .54 |
| 3.36 TO 3.70 | .11 | 10.71 TO 11.00 | .33 | 18.01 TO 18.35 | .55 |
| 3.71 TO 4.00 | .12 | 11.01 TO 11.35 | .34 | 18.36 TO 18.70 | .56 |
| 4.01 TO 4.35 | .13 | 11.36 TO 11.70 | .35 | 18.71 TO 19.00 | .57 |
| 4.36 TO 4.70 | .14 | 11.71 TO 12.00 | .36 | 19.01 TO 19.35 | .58 |
| 4.71 TO 5.00 | .15 | 12.01 TO 12.35 | .37 | 19.36 TO 19.70 | .59 |
| 5.01 TO 5.35 | .16 | 12.36 TO 12.70 | .38 | 19.71 TO 20.00 | .60 |
| 5.36 TO 5.70 | .17 | 12.71 TO 13.00 | .39 | 20.01 TO 20.35 | .61 |
| 5.71 TO 6.00 | .18 | 13.01 TO 13.35 | .40 | 20.36 TO 20.70 | .62 |
| 6.01 TO 6.35 | .19 | 13.36 TO 13.70 | .41 | 20.71 TO 21.00 | .63 |
| 6.36 TO 6.70 | .20 | 13.71 TO 14.00 | .42 | 21.01 TO 21.35 | .64 |
| 6.71 TO 7.00 | .21 | 14.01 TO 14.35 | .43 | 21.36 TO 21.70 | .65 |

| AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX |
|--------------------|-------|--------------------|-------|--------------------|--------|--------------------|--------|
| \$21.71 TO \$22.00 | \$.66 | \$29.36 TO \$29.70 | \$.89 | \$37.01 TO \$37.35 | \$1.12 | \$44.71 TO \$45.00 | \$1.35 |
| 22.01 TO 22.35 | .67 | 29.71 TO 30.00 | .90 | 37.36 TO 37.70 | 1.13 | 45.01 TO 45.35 | 1.36 |
| 22.36 TO 22.70 | .68 | 30.01 TO 30.35 | .91 | 37.71 TO 38.00 | 1.14 | 45.36 TO 45.70 | 1.37 |
| 22.71 TO 23.00 | .69 | 30.36 TO 30.70 | .92 | 38.01 TO 38.35 | 1.15 | 45.71 TO 46.00 | 1.38 |
| 23.01 TO 23.35 | .70 | 30.71 TO 31.00 | .93 | 38.36 TO 38.70 | 1.16 | 46.01 TO 46.35 | 1.39 |
| 23.36 TO 23.70 | .71 | 31.01 TO 31.35 | .94 | 38.71 TO 39.00 | 1.17 | 46.36 TO 46.70 | 1.40 |
| 23.71 TO 24.00 | .72 | 31.36 TO 31.70 | .95 | 39.01 TO 39.35 | 1.18 | 46.71 TO 47.00 | 1.41 |
| 24.01 TO 24.35 | .73 | 31.71 TO 32.00 | .96 | 39.36 TO 39.70 | 1.19 | 47.01 TO 47.35 | 1.42 |
| 24.36 TO 24.70 | .74 | 32.01 TO 32.35 | .97 | 39.71 TO 40.00 | 1.20 | 47.36 TO 47.70 | 1.43 |
| 24.71 TO 25.00 | .75 | 32.36 TO 32.70 | .98 | 40.01 TO 40.35 | 1.21 | 47.71 TO 48.00 | 1.44 |
| 25.01 TO 25.35 | .76 | 32.71 TO 33.00 | .99 | 40.36 TO 40.70 | 1.22 | 48.01 TO 48.35 | 1.45 |
| 25.36 TO 25.70 | .77 | 33.01 TO 33.35 | 1.00 | 40.71 TO 41.00 | 1.23 | 48.36 TO 48.70 | 1.46 |
| 25.71 TO 26.00 | .78 | 33.36 TO 33.70 | 1.01 | 41.01 TO 41.35 | 1.24 | 48.71 TO 49.00 | 1.47 |
| 26.01 TO 26.35 | .79 | 33.71 TO 34.00 | 1.02 | 41.36 TO 41.70 | 1.25 | 49.01 TO 49.35 | 1.48 |
| 26.36 TO 26.70 | .80 | 34.01 TO 34.35 | 1.03 | 41.71 TO 42.00 | 1.26 | 49.36 TO 49.70 | 1.49 |
| 26.71 TO 27.00 | .81 | 34.36 TO 34.70 | 1.04 | 42.01 TO 42.35 | 1.27 | 49.71 TO 50.00 | 1.50 |
| 27.01 TO 27.35 | .82 | 34.71 TO 35.00 | 1.05 | 42.36 TO 42.70 | 1.28 | | |
| 27.36 TO 27.70 | .83 | 35.01 TO 35.35 | 1.06 | 42.71 TO 43.00 | 1.29 | | |
| 27.71 TO 28.00 | .84 | 35.36 TO 35.70 | 1.07 | 43.01 TO 43.35 | 1.30 | | |
| 28.01 TO 28.35 | .85 | 35.71 TO 36.00 | 1.08 | 43.36 TO 43.70 | 1.31 | | |
| 28.36 TO 28.70 | .86 | 36.01 TO 36.35 | 1.09 | 43.71 TO 44.00 | 1.32 | | |
| 28.71 TO 29.00 | .87 | 36.36 TO 36.70 | 1.10 | 44.01 TO 44.35 | 1.33 | | |
| 29.01 TO 29.35 | .88 | 36.71 TO 37.00 | 1.11 | 44.36 TO 44.70 | 1.34 | | |

FOR SALES NOT SHOWN.
MULTIPLY THE DOLLAR AMOUNT
BY 3 AND ADD .01c FOR EACH
BRACKET.

STATE TAX COMMISSIONER
CHARLESTON, WEST VIRGINIA

Appendix 5. West Virginia Consumers Sales and Service
Tax (2%) Rate Chart

Food Intended for Human Consumption

WEST VIRGINIA CONSUMERS SALES TAX (2%) RATE CHART

FOR FOOD INTENDED FOR HUMAN CONSUMPTION: EFFECTIVE JULY 1, 1979, TO JUNE 30, 1980 POST NEAR CASH REGISTER

| AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX |
|------------------|------|--------------------|-----|--------------------|-----|
| \$.01 TO \$.25 | NONE | \$10.51 TO \$11.00 | .22 | \$21.51 TO \$22.00 | .44 |
| .26 TO .50 | .01 | 11.01 TO 11.50 | .23 | 22.01 TO 22.50 | .45 |
| .51 TO 1.00 | .02 | 11.51 TO 12.00 | .24 | 22.51 TO 23.00 | .46 |
| 1.01 TO 1.50 | .03 | 12.01 TO 12.50 | .26 | 23.01 TO 23.50 | .47 |
| 1.51 TO 2.00 | .04 | 12.51 TO 13.00 | .28 | 23.51 TO 24.00 | .48 |
| 2.01 TO 2.50 | .05 | 13.01 TO 13.50 | .27 | 24.01 TO 24.50 | .48 |
| 2.51 TO 3.00 | .06 | 13.51 TO 14.00 | .28 | 24.51 TO 25.00 | .50 |
| 3.01 TO 3.50 | .07 | 14.01 TO 14.50 | .29 | 25.01 TO 25.50 | .51 |
| 3.51 TO 4.00 | .08 | 14.51 TO 15.00 | .30 | 25.51 TO 26.00 | .52 |
| 4.01 TO 4.50 | .09 | 15.01 TO 15.50 | .31 | 26.01 TO 26.50 | .53 |
| 4.51 TO 5.00 | .10 | 15.51 TO 16.00 | .32 | 26.51 TO 27.00 | .54 |
| 5.01 TO 5.50 | .11 | 16.01 TO 16.50 | .33 | 27.01 TO 27.50 | .55 |
| 5.51 TO 6.00 | .12 | 16.51 TO 17.00 | .34 | 27.51 TO 28.00 | .56 |
| 6.01 TO 6.50 | .13 | 17.01 TO 17.50 | .35 | 28.01 TO 28.50 | .57 |
| 6.51 TO 7.00 | .14 | 17.51 TO 18.00 | .36 | 28.51 TO 29.00 | .58 |
| 7.01 TO 7.50 | .15 | 18.01 TO 18.50 | .37 | 29.01 TO 29.50 | .59 |
| 7.51 TO 8.00 | .16 | 18.51 TO 19.00 | .38 | 29.51 TO 30.00 | .60 |
| 8.01 TO 8.50 | .17 | 19.01 TO 19.50 | .39 | 30.01 TO 30.50 | .61 |
| 8.51 TO 9.00 | .18 | 19.51 TO 20.00 | .40 | 30.51 TO 31.00 | .62 |
| 9.01 TO 9.50 | .19 | 20.01 TO 20.50 | .41 | 31.01 TO 31.50 | .63 |
| 9.51 TO 10.00 | .20 | 20.51 TO 21.00 | .42 | 31.51 TO 32.00 | .64 |
| 10.01 TO 10.50 | .21 | 21.01 TO 21.50 | .43 | 32.01 TO 32.50 | .65 |

| AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX |
|--------------------|-----|--------------------|------|--------------------|------|
| \$33.01 TO \$33.50 | .67 | \$44.01 TO \$44.50 | .89 | \$55.51 TO \$56.00 | 1.12 |
| 33.51 TO 34.00 | .68 | 44.51 TO 45.00 | .90 | 56.01 TO 56.50 | 1.13 |
| 34.01 TO 34.50 | .69 | 45.01 TO 45.50 | .91 | 56.51 TO 57.00 | 1.14 |
| 34.51 TO 35.00 | .70 | 45.51 TO 46.00 | .92 | 57.01 TO 57.50 | 1.15 |
| 35.01 TO 35.50 | .71 | 46.01 TO 46.50 | .93 | 57.51 TO 58.00 | 1.16 |
| 35.51 TO 36.00 | .72 | 46.51 TO 47.00 | .94 | 58.01 TO 58.50 | 1.17 |
| 36.01 TO 36.50 | .73 | 47.01 TO 47.50 | .96 | 58.51 TO 59.00 | 1.18 |
| 36.51 TO 37.00 | .74 | 47.51 TO 48.00 | .96 | 59.01 TO 59.50 | 1.18 |
| 37.01 TO 37.50 | .76 | 48.01 TO 48.50 | .97 | 59.51 TO 60.00 | 1.20 |
| 37.51 TO 38.00 | .76 | 48.51 TO 49.00 | .98 | 60.01 TO 60.50 | 1.21 |
| 38.01 TO 38.50 | .77 | 49.01 TO 49.50 | .99 | 60.51 TO 61.00 | 1.22 |
| 38.51 TO 39.00 | .78 | 49.51 TO 50.00 | 1.00 | 61.01 TO 61.50 | 1.23 |
| 39.01 TO 39.50 | .79 | 50.01 TO 50.50 | 1.01 | 61.51 TO 62.00 | 1.24 |
| 39.51 TO 40.00 | .80 | 50.51 TO 51.00 | 1.02 | 62.01 TO 62.50 | 1.25 |
| 40.01 TO 40.50 | .81 | 51.01 TO 51.50 | 1.03 | 62.51 TO 63.00 | 1.26 |
| 40.51 TO 41.00 | .82 | 51.51 TO 52.00 | 1.04 | 63.01 TO 63.50 | 1.27 |
| 41.01 TO 41.50 | .83 | 52.01 TO 52.50 | 1.05 | 63.51 TO 64.00 | 1.28 |
| 41.51 TO 42.00 | .84 | 52.51 TO 53.00 | 1.06 | 64.01 TO 64.50 | 1.29 |
| 42.01 TO 42.50 | .85 | 53.01 TO 53.50 | 1.07 | 64.51 TO 65.00 | 1.30 |
| 42.51 TO 43.00 | .86 | 53.51 TO 54.00 | 1.08 | 65.01 TO 65.50 | 1.31 |
| 43.01 TO 43.50 | .87 | 54.01 TO 54.50 | 1.09 | 65.51 TO 66.00 | 1.32 |
| 43.51 TO 44.00 | .88 | 54.51 TO 55.00 | 1.10 | 66.01 TO 66.50 | 1.33 |
| | | 55.01 TO 55.50 | 1.11 | 66.51 TO 67.00 | 1.34 |

FOR SALES NOT SHOWN:
MULTIPLY THE DOLLAR AMOUNT
BY 2 AND ADD .01* FOR EACH
BRACKET

STATE TAX COMMISSIONER
CHARLESTON, WEST VIRGINIA

Appendix 6. West Virginia Consumers Sales and Service
Tax (1%) Rate Chart

WEST VIRGINIA CONSUMERS SALES TAX (1%) RATE CHART — EFFECTIVE 7/1/79 TO 6/30/80 POST NEAR CASH REGISTER

| AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX |
|------------------|------|---------------------|-----|------------------|-----|
| \$.01 TO \$.05 | NONE | \$21.01 TO \$ 22.00 | .22 | \$43.01 TO 44.00 | .44 |
| .06 TO 1.00 | .01 | 22.01 TO 23.00 | .23 | 44.00 TO 45.00 | .45 |
| 1.01 TO 2.00 | .02 | 23.01 TO 24.00 | .24 | 45.01 TO 46.00 | .46 |
| 2.01 TO 3.00 | .03 | 24.01 TO 25.00 | .25 | 46.01 TO 47.00 | .47 |
| 3.01 TO 4.00 | .04 | 25.01 TO 26.00 | .26 | 47.01 TO 48.00 | .48 |
| 4.01 TO 5.00 | .05 | 26.01 TO 27.00 | .27 | 48.01 TO 49.00 | .49 |
| 5.01 TO 6.00 | .06 | 27.01 TO 28.00 | .28 | 49.01 TO 50.00 | .50 |
| 6.01 TO 7.00 | .07 | 28.01 TO 29.00 | .29 | 50.01 TO 51.00 | .51 |
| 7.01 TO 8.00 | .08 | 29.01 TO 30.00 | .30 | 51.01 TO 52.00 | .52 |
| 8.01 TO 9.00 | .09 | 30.01 TO 31.00 | .31 | 52.01 TO 53.00 | .53 |
| 9.01 TO 10.00 | .10 | 31.01 TO 32.00 | .32 | 53.01 TO 54.00 | .54 |
| 10.01 TO 11.00 | .11 | 32.01 TO 33.00 | .33 | 54.01 TO 55.00 | .55 |
| 11.01 TO 12.00 | .12 | 33.01 TO 34.00 | .34 | 55.01 TO 56.00 | .56 |
| 12.01 TO 13.00 | .13 | 34.01 TO 35.00 | .35 | 56.01 TO 57.00 | .57 |
| 13.01 TO 14.00 | .14 | 35.01 TO 36.00 | .36 | 57.01 TO 58.00 | .58 |
| 14.01 TO 15.00 | .15 | 36.01 TO 37.01 | .37 | 58.01 TO 59.00 | .59 |
| 15.01 TO 16.00 | .16 | 37.01 TO 38.00 | .38 | 59.01 TO 60.00 | .60 |
| 16.01 TO 17.00 | .17 | 38.01 TO 39.00 | .39 | 60.01 TO 61.00 | .61 |
| 17.01 TO 18.00 | .18 | 39.01 TO 40.00 | .40 | 61.01 TO 62.00 | .62 |
| 18.01 TO 19.00 | .19 | 40.01 TO 41.00 | .41 | 62.01 TO 63.00 | .63 |
| 19.01 TO 20.00 | .20 | 41.01 TO 42.00 | .42 | 63.01 TO 64.00 | .64 |
| 20.01 TO 21.00 | .21 | 42.01 TO 43.00 | .43 | 64.01 TO 65.00 | .65 |

| AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX | AMOUNT OF SALE | TAX |
|--------------------|-----|----------------------|------|----------------------|------|----------------------|------|
| \$65.01 TO \$66.00 | .66 | \$ 87.01 TO \$ 88.00 | .88 | \$109.01 TO \$110.00 | 1.10 | \$131.01 TO \$132.00 | 1.32 |
| 66.01 TO 67.00 | .67 | 88.01 TO 89.00 | .89 | 110.01 TO 111.00 | 1.11 | 132.01 TO 133.00 | 1.33 |
| 67.01 TO 68.00 | .68 | 89.01 TO 90.00 | .90 | 111.01 TO 112.00 | 1.12 | 133.01 TO 134.00 | 1.34 |
| 68.01 TO 69.00 | .69 | 90.01 TO 91.00 | .91 | 112.01 TO 113.00 | 1.13 | | |
| 69.01 TO 70.00 | .70 | 91.01 TO 92.00 | .92 | 113.01 TO 114.00 | 1.14 | | |
| 70.01 TO 71.00 | .71 | 92.01 TO 93.00 | .93 | 114.01 TO 115.00 | 1.15 | | |
| 71.01 TO 72.00 | .72 | 93.01 TO 94.00 | .94 | 115.01 TO 116.00 | 1.16 | | |
| 72.01 TO 73.00 | .73 | 94.01 TO 95.00 | .95 | 116.01 TO 117.00 | 1.17 | | |
| 73.01 TO 74.00 | .74 | 95.01 TO 96.00 | .96 | 117.01 TO 118.00 | 1.18 | | |
| 74.01 TO 75.00 | .75 | 96.01 TO 97.00 | .97 | 118.01 TO 119.00 | 1.19 | | |
| 75.01 TO 76.00 | .76 | 97.01 TO 98.00 | .98 | 119.01 TO 120.00 | 1.20 | | |
| 76.01 TO 77.00 | .77 | 98.01 TO 99.00 | .99 | 120.01 TO 121.00 | 1.21 | | |
| 77.01 TO 78.00 | .78 | 99.01 TO 100.00 | 1.00 | 121.01 TO 122.00 | 1.22 | | |
| 78.01 TO 79.00 | .79 | 100.01 TO 101.00 | 1.01 | 122.01 TO 123.00 | 1.23 | | |
| 79.01 TO 80.00 | .80 | 101.01 TO 102.00 | 1.02 | 123.01 TO 124.00 | 1.24 | | |
| 80.01 TO 81.00 | .81 | 102.01 TO 103.00 | 1.03 | 124.01 TO 125.00 | 1.25 | | |
| 81.01 TO 82.00 | .82 | 103.01 TO 104.00 | 1.04 | 125.01 TO 126.00 | 1.26 | | |
| 82.01 TO 83.00 | .83 | 104.01 TO 105.00 | 1.05 | 126.01 TO 127.00 | 1.27 | | |
| 83.01 TO 84.00 | .84 | 105.01 TO 106.00 | 1.06 | 127.01 TO 128.00 | 1.28 | | |
| 84.01 TO 85.00 | .85 | 106.01 TO 107.00 | 1.07 | 128.01 TO 129.00 | 1.29 | | |
| 85.01 TO 86.00 | .86 | 107.01 TO 108.00 | 1.08 | 129.01 TO 130.00 | 1.30 | | |
| 86.01 TO 87.00 | .87 | 108.01 TO 109.00 | 1.09 | 130.01 TO 131.00 | 1.31 | | |

STATE TAX COMMISSIONER
CHARLESTON, WEST VIRGINIA

Appendix 7.

REPRINT OF AMENDMENTS TO THE WEST VIRGINIA
CONSUMERS SALES AND SERVICE TAX LAW WHICH
IS EFFECTIVE JULY 1, 1979

CHAPTER 11. TAXATION

ARTICLE 15. CONSUMERS SALES TAX.

§ 11-15-9. Exemptions.

The following sales and services shall be exempt:

(1) Sales of gasoline, taxable under article fourteen, chapter eleven of the code, one thousand nine hundred thirty-one;

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

(3) Sales of textbooks required to be used in any of the schools of this state;

(4) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(5) Sales of motor vehicles which are titled by the department of motor vehicles which are subject to the tax imposed by section four, article three, chapter seventeen-A of the code;

(6) Sales of property or services to churches and bona fide charitable organizations who make no charge whatever for the services they render or sales of property or services to corporations or organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1954, as amended, who make casual and occasional sales not conducted in a repeated manner in the ordinary course of repetitive and successive transactions of like character, or sales of property or services to persons engaged in this state in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources: Provided, however, That the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the business or organizations named above;

(7) An isolated transaction in which any tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated

and successive transactions of like character by such owner or on his account by such representative;

(8) Sales of tangible personal property and services rendered for use or consumption in connection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to tax under this article or which would be subject to tax under this article but for the exemption for food provided in section eleven of this article and 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 this article or which would have been subject to tax under this article but for the exemption for food provided in section eleven of this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property shall not be exempt;

(9) Sales of tangible personal property for the purpose of resale in the form of tangible personal property;

(10) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work;

(11) Sales and services, fire fighting, or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia;

(12) Sales of newspapers when delivered to consumers by route carriers;

(13) Sales of drugs dispensed upon prescription and sales of insulin to consumers for medical purposes;

(14) Sales of radio and television broadcasting time, newspaper and outdoor advertising space for the advertisement of goods or services;

(15) Sales and services performed by day care centers;

(16) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by corporations or organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1954, as amended;

(17) Bank safety deposit boxes;

(18) Sales of property or services to a school which has approval from the West Virginia board of regents to award degrees, which has its principal campus in this state, and which is exempt from federal and state income taxes under section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

§ 11-15-11. Exemption of food intended for human consumption; transition reduction of tax; definitions and exceptions.

(a) Exemption. -- Sales of food intended for human consumption made on or after the first day of July, one thousand nine hundred eighty-one, shall be exempt from the tax imposed by this article. This exemption shall be in addition to any other exemption permitted under this article.

(b) Transition reduction of tax on July 1, 1979 and July 1, 1980. -- The amount of tax imposed by section three of this article on sales of food for human consumption shall be reduced as follows.

(1) Sales of food intended for human consumption made before the first day of July, one thousand nine hundred seventy-nine, shall be taxed as provided in section three of this article.

(2) Sales of food intended for human consumption made after the thirtieth day of June, one thousand nine hundred seventy-nine, shall be taxed as follows.

(A) There shall be no tax on sales where the monetary consideration is twenty-five cents or less.

(B) On each sale, where the monetary consideration is from twenty-six cents to fifty cents, both inclusive, one cent.

(C) On each sale where the monetary consideration is from fifty-one cents to one dollar, both inclusive, two cents.

(D) On each fifty cents of monetary consideration or fraction thereof in excess of one dollar, one cent.

(3) Sales of food intended for human consumption made after the thirtieth day of June, one thousand nine hundred eighty, but before the first day of July, one thousand nine hundred eighty-one, shall be taxed as follows:

(A) There shall be no tax on sales where the monetary consideration is twenty-five cents or less.

(B) On each sale where the monetary consideration is from twenty-six cents to one dollar, both inclusive, one cent.

(C) On each one dollar or fraction thereof in excess of one dollar, one cent. Separate sales such as daily or weekly deliveries, shall not be aggregated for purpose of computation of this tax even though such sales are aggregated in the billing or the payment.

(c) Definition of food -- For purposes of this section, and except as provided in subsection (d), the term "food" shall mean and include all edible foodstuffs, beverages containing no alcohol and items commonly thought of as food, including, by way of illustration and not by limitation, cereals and cereal products, meat and meat products, fish and fish products, poultry and poultry products, fresh and salt water animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, flour and flour products, cocoa and cocoa products, coffee and coffee substitutes, tea, herbs, spices, salt and salt substitutes, condiments, candy and confections, soft drinks, soft drink mixes and syrups, tenderizers, food coloring, bottled drinking water, sugar substitutes, oleomargarine, shortening, gelatins, baking and cooking ingredients, mushrooms, spreads, relishes, desserts, flavorings, chewing gum, edible seeds, nuts and berries.

(d) The term "food" shall not include medicines, vitamins and dietary supplements whether in liquid, powdered, granular, tablet, capsule, lozenge, or pill form; spirituous, malt or vinous liquors or beer; ice; tobacco or tobacco products; vending machine sales; or food sold by a food-service establishment.

(e) Definition of "food-service establishment". -- For purposes of this section, and except as provided in subsection (f), the term "food-service establishment" means any fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, industrial-feeding establishment, private, public or nonprofit organization or institution routinely serving food, catering operation, commissary or any other similar place in which food or drink is prepared for sale or for service on the premises or elsewhere; and any food-service establishment which operates for a limited period of time in connection with events such as, but not limited to a fair, carnival, circus, public exhibition, athletic event, or similar gathering: Provided, That delicatessen, grocery, market, dairy or bakery stores shall not be considered food-service establishments within

the meaning of this section except for the sale of dinners, luncheons, barbecued chicken other than barbecued chicken sold whole and unsliced, sandwiches, snacks, hot pizzas, and other similar items which are commonly sold at snack bars, coffee shops or luncheon counters.

(f) The term "food-service establishment" shall not include:

(1) Food sold by public or private schools, school sponsored student organizations, or school sponsored parent-teacher associations to students enrolled in such school or to employees of such school during normal school hours; but not those sales of food made to the general public.

(2) Food sold by a hospital, sanitarium, nursing home or similar institution licensed to provide care for human beings to patients, inmates or employees of such institution, but not those sales of food made to the general public.

(3) Food sold by a public or private college or university or by a student organization officially recognized by such college or university to students enrolled at such college or university when such sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed.

(4) Food sold by a nonprofit organization or a governmental agency under a program funded by a state or the United States to low-income elderly persons at or below cost.

(5) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue so obtained is actually expended for that purpose.

(6) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying on such functions and activities. For the purpose of this paragraph, "religious organizations" means any organization the property of which is exempt from taxation under article X, section 1 of the West Virginia Constitution.

ARTICLE 15A. USE TAX.

§ 11-15A-3. Exemptions.

The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this article:

1. All articles of tangible personal property brought into the State of West Virginia by a nonresident individual thereof for his or her use or enjoyment while within the state.
2. Tangible personal property, the gross receipts from the sale of which are exempted from the retail sales tax by the terms of article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one.
3. Tangible personal property, the gross receipts from the sale of which are derived from the sale of machinery, supplies and materials to contractors, or to persons engaged in the business of manufacturing, transportation, transmission communication or in the production of natural resources in this state: Provided, That the exemptions granted in this subdivision three are hereby suspended, nullified and made inoperative during the period from the first day of April, one thousand nine hundred sixty-nine to midnight of the thirty-first day of March, one thousand nine hundred seventy: Provided, further, That after midnight of the thirty-first day of March, one thousand nine hundred seventy, the exemptions granted in this subdivision three shall again be in full force and effect as if they had not been suspended, nullified and made inoperative as heretofore provided.
4. Tangible personal property, the gross receipts or the gross proceeds from the sale of which are required to be included in the measure of the tax imposed by article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one.
5. Tangible personal property, the sale of which in this state is not subject to the West Virginia consumers sales tax.

