Title 110
Legislative Rule

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~

STATE TAX DEPARTMENT

~~LEGISLATIVE~~

~~Chapter 11-10~~
Series ~~XV~~ 15
~~(1973, amended 1979)~~

Subject: Consumers Sales and Service Tax and Use Tax

PART I

GENERAL, CONSUMERS AND USE TAXES

Section 1. General.

1.01. Type of Regulations. -- These regulations are "legislative rules as defined in W. Va. Code §29A-1-2(d) (1982).

1.02. Scope. -- These regulations explain and clarify the West Virginia consumers sales and service tax, W. Va. Code §11-15-1 et. seq., and use tax, W. Va. Code §11-15A-1 et. seq.

1.03. Authority. -- These ~~regulations are issued under authority of W. Va. Code §11-10-5(a).~~ W. Va. Code §11-10-5(a)

1.04. Filing Date. -- These regulations were promulgated on August 31, 1973, and filed on August 31, 1973 in the office of the Secretary of State. They were refiled with the Secretary of State on December 29, 1982 in compliance with W. Va. Code §29A-2-5 (1982).

1.05. Effective Date. -- These regulations became effective on January 1, 1974.

1.06. Citation. -- These regulations may be cited as: W. Va. Leg. Reg. (CUT) 11-10 Ser. XV §______, page_____ (1973, as amended).

1.07. Overview of regulations

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

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

(c) Certain types of sales and services are exempt from the imposition of consumers sales and service tax and use tax. These exemptions are explained within these rules and regulations at section 9.

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

Section 2. Definitions.

2.01. When used in these regulations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) personal services,

(2) services rendered by an employee to his employer,

(3) services rendered for resale, or

(4) services rendered by a corporation subject to control of the Public Service Commission.

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

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

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

Section 3. Amount of Tax and Tax Computation.

3.01. Computation of Consumers Tax.

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

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

A

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

A

Section 3.01(b)

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

A

Sales Price			Tax	Sales Price			Tax
39.01	-	39.35	1.18	45.01	-	45.35	1.36
39.36	-	39.70	1.19	45.36	-	45.70	1.37
39.71	-	40.00	1.20	45.71	-	46.00	1.38
40.01	-	40.35	1.21	46.01	-	46.35	1.39
40.36	-	40.70	1.22	46.36	-	46.70	1.40
40.71	-	41.00	1.23	46.71	-	47.00	1.41
41.01	-	41.35	1.24	47.01	-	47.35	1.42
41.36	-	41.70	1.25	47.36	-	47.70	1.43
41.71	-	42.00	1.26	47.71	-	48.00	1.44
42.01	-	42.35	1.27	48.01	-	48.35	1.45
42.36	-	42.70	1.28	48.36	-	48.70	1.46
42.71	-	43.00	1.29	48.71	-	49.00	1.47
43.01	-	43.35	1.30	49.01	-	49.35	1.48
43.36	-	43.70	1.31	49.36	-	49.70	1.49
43.71	-	44.00	1.32	49.71	-	50.00	1.50
44.01	-	44.35	1.33				
44.36	-	44.70	1.34				
44.71	-	45.00	1.35				

3.02. Computation of Use Tax.

(a) Tangible personal property furnished or delivered within this State to consumers or users is subject to use tax. Use tax is imposed at the rate of three percent (3%) of the purchase price of the article. The determination or computation of use tax differs from consumers tax in that the amount of use tax is not determined by a bracket system but is a percentage of the purchase price. When applying the three percent (3%) rate to the purchase price, the resultant amount of tax may be expressed by disregarding fractions of less than one-half cent and by increasing fractions over one-half cent to the next even cent. To illustrate: The amount of use tax on a $20.40 sale is sixty-one cents (.61¢); the tax on a $20.60 sale is sixty-two cents (.62¢).

(b) The use tax is imposed upon every person using such property until the tax has been paid directly to the retailer or to the State Tax Department. See section 4C(c) of these rules and regulations.

Section 4. Collection of Consumers Tax.

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

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

4.03. Liability of Vendor

(a) If any vendor fails to collect consumers tax from a purchaser, the vendor shall be personally liable for the payment of such tax. In certain instances where a purchaser does not pay the consumers tax, the vendor is relieved from liability therefor. These instances are those provided in section 4B of these regulations.

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

4.04. Liability of purchaser.

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

(1) refuses to pay the tax to the vendor, or

(2) refuses to sign and present to the vendor a proper exemption certificate indicating such sale is not subject to tax, or

(3) signs and presents a false exemption certificate to the vendor, or

(4) after signing and presenting a proper exemption certificate to the vendor uses the purchased item in such manner that the sale would be subject to tax, he shall be personally liable for the amount of consumers tax applicable to the transaction. In such case the Tax Department shall issue an assessment against the purchaser.

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

(c) If situations (3) and (4) above occur, the vendor shall be relieved from liability for consumers tax on those particular transactions. It shall be presumed that all sales and services are subject to the consumers tax until the contrary is clearly established and the burden of proving that sales or services were not subject to tax rests upon the vendor unless he takes an exemption certificate from the purchaser.

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

Section 5. Collection of Use Tax.

5.01. Retailers Who Are Required to Collect Use Tax.

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

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

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

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

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

5.03. Manner of Collection, Use Tax.

(a) Every retailer, as defined in subsection 5.01 of this regulation, and every authorized foreign retailer shall collect use tax upon sale of all tangible personal property sold for delivery into this State. Said tax shall be remitted to the Tax Department by the retailer and authorized foreign retailer.

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

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

Section 6. Exemption Certificates.

6.01. It is presumed that all sales and purchases of tangible personal property and services are subject to consumers tax or use tax, unless it is established to the contrary. The burden of proving that a sale of tangible personal property or services is to an exempt purchaser is upon the vendor, unless he requires the purchaser to sign a certificate at the time of sale to the effect that the tangible personal property is purchased by an exempt organization or for an exempt purpose. See section 9.01(c) and section 9.02(a) of these rules and regulations.

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

6.03. An exemption certificate is set forth herein. A sample exemption certificate will be furnished by the Tax Department to any vendor or organization upon request, which desires to reproduce the same for the convenience of its customers.

6.04. In order that the Tax Department may verify a vendor's nontaxable sales upon audit, it is necessary that vendors retain executed exemption certificates for five (5) years. An exemption certificate, to be valid, must be given by the vendee and accepted by the vendor at the time of the sale and not thereafter. If a vendor lists nontaxable sales or services for which he has no exemption certificates, the Tax Department will presume such sales were taxable and make an assessment of tax against the vendor. Of course, the preceding sentence is not applicable to sales of articles and types of services enumerated in section 9.01(a) and (b) of these rules and regulations.

EXEMPTION CERTIFICATE BULLETIN

The West Virginia consumers sales and use tax statutes provide that these taxes shall not apply to services and tangible personal property when purchased for the purposes set out below. The purchaser *must select* the category or categories indicating the proposed use of the service or item purchased and prepare a certificate for each supplier. Failure to obtain certificates will make the vendor personally liable. Persons liable for business and occupation tax or consumers sales tax must show their account identification numbers. Persons just beginning business must furnish a certificate applicable to their business with each separate purchase until an account number is assigned by the State Tax Department.

Conditions for Exemption

Purchased by wholesaler, jobber or distributor for resale.

Industrial materials, machinery, supplies and services purchased for direct use or consumption in this state in the business of (check one) ....contracting, ...manufacturing, ...transportation, ... transmission, ...communication, or ....production of natural resources.

Purchased for resale or for use in a retail or service business which sells its property or service to ultimate consumers subject to consumers sales tax. Purchases for repair, construction or improvement to real property are not exempt under this certificate.

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

Purchased by a bona fide charitable organization which makes no charge for services rendered and has been approved for exemption by the State Tax Department.

Purchased by a church with funds of the church treasury.

Purchased by a corporation or organization qualified, either in fact or by ruling of the Tax Commissioner, under I. R. C. §§ 501(c)(3) or 501(c)(4), who make casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions or like character.

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

EXEMPTION CERTIFICATE BULLETIN

Purchased by a commercial producer of agricultural products. Purchases for repair, construction or improvement to real property are not exempt under this certificate.

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

To .... Date ....

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

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

....

....

....
Name of Purchaser Account Identification Number

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

Kind of business engaged in by purchaser ....

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

By .... Title ....

SECTIONS 7 AND 8 RESERVED FOR FUTURE USE.

Section 9. Exemptions.

9.01. Consumers Tax, Exemptions.

(a) Sales of the following articles are exempt from the imposition of consumers tax:

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

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

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

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

(D) The terms "gasoline" and "special fuels" shall not include oil sold for use or consumption in furnaces; not shall said terms include bottled gas or any special fuel used for other than fuel in internal combustion engines.

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

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

For sales of gas, steam and water to be exempt from consumers tax, it is necessary that delivery be made through pipes and mains. Therefore, sales of bottled gas, bottled water, etc., will not qualify for this exemption.

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

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

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

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

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

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

(6) Sales and services performed by day care centers.

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

(8) Sales of drugs, medicines or appliances to a purchaser upon prescription of a physician or

dentist or any other professional person licensed to prescribe. Appliances shall include braces, prosthetics, special shoes, etc., which are prescribed by a person licensed to prescribe.

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

(10) Sales of motor vehicles which are titled by the West Virginia Department of Motor Vehicles and which are subject to the West Virginia motor vehicle privilege tax (see West Virginia Code ch. 17A, art. 3, sec. 4).

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

Since the burden of proving that a sale is not subject to consumers tax rests upon the vendor, it is the intention of the Tax Department to assist him by these rules and regulations and to eliminate the necessity for requiring an exemption certificate where it is not deemed necessary. Therefore, on those exempt articles which are enumerated above, (1) through (8), the Tax Department does not deem it necessary for the vendor to require an exemption certificate from the purchaser of such articles.

(b) Sales of the following services are exempt from the imposition of the consumers tax:

(1) Professional services.

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

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

(C) Professional persons who make sale of tangible personal property or who engage in activities which are not professional services shall collect consumers tax on such sales or services. For example, kennel services provided by a veterinarian are subject to tax.

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

(2) Personal services.

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

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

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

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

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

On those services which are exempt from the imposition of consumers tax, enumerated (1) through (3) above, the Tax Department does not deem it necessary for the vendor to require an exemption certificate from the purchaser of such services. However, the burden of proving that a service is exempt rests upon the vendor.

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

(1) Sales of property or services to churches and bona fine chartible organizations are exempt from the imposition of consumers tax if the church or such organization makes no charge whatever for the services they render. For example, the purchase of pamphlets relating to drug abuse are not subject to consumers tax if the church makes no

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

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

(A) For example:

(i) Sales of janitor services to a person who manufactures chemicals are exempt;

(ii) sales of pens and paper to a telephone or telegraph company are exempt;

(iii) sales of explosives or drilling bits to a coal producer are exempt;

(iv) and sales of tools to a contractor are exempt.

(B) The sale, to be exempt, must be used in the business of the individual. In other words, a person who owns a contracting business cannot purchase tools for another or for personal use at home without payment of consumers tax.

(C) Persons in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources may purchase tangible personal property and services to be used or consumed in the construction of or permanent improvement of real purchases. All other persons, including but not limited to speculative builders or persons constructing for resale, must pay consumers tax on purchases of tangible personalty and services to be used or consumed in the construction of or permanent improvement of real estate.

(3) 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.

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

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

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

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

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

(A) For example, persons who repair appliances, clean carpets, repair automobiles, etc., may purchase tangible personalty and services without imposition of consumers tax. To illustrate: A company which cleans carpets may purchase shampoo, soap, vacuum cleaners and repairs to its vehicles without payment of consumers tax; for this company collects consumers tax on the services it renders.

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

(C) Persons who dispense services not subject to consumers tax are not eligible for this exemption and must pay consumers tax on purchases for use or consumption in business. To illustrate: Doctors do not charge or collect consumers tax on professional services to patients. Therefore, any tangible personal property (such as bandages, disinfectants, drugs, pens, typewriteres, stethoscopes, etc.) purchased by a doctor is subject to consumers tax, and any services (janitorial services, typewriter repair, etc.) purchased by a doctor are subject to consumers tax.

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

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

(5) Sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to consumers tax.

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

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

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

(A) Persons who purchase tangible personal property which is to be resold in the form of tangible personal property are not required to pay consumers tax on the purchase of such property. The sale price, whether wholesale or retail, is immaterial. In order to come within this exemption, the property must be tangible personalty and must be purchased for resale.

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

(C) The exemption within this subsection permits wholesalers, distributors, jobbers, etc., to purchase tangible personal property for the purpose of resale in the form of tangible personal property without such purchase being subject to consumers tax. However, wholesalers, distributors, jobbers, etc., who purchase tangible personal property or services for use or consumption in their business must pay consumers tax on such purchases. Therefore, purchases of janitor services, refrigerator repairs, adding machines, etc., by a wholesaler, are subject to consumers tax. In other words, wholesalers may avoid consumers tax only on purchases of tangible personalty for the purpose of resale in the form of tangible personalty.

(7) Services rendered for resale.

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

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

(8) Sales to volunteer fire departments.

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

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

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

(10) Sales to the State or United States.

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

(B) It is necessary that the vendor require properly executed exemption certificates from all purchasers claiming exemption from tax on any sale or services enumerated (1) through (10) above. See 6 of these rules and regulations as to the proper treatment of exempt certificates.

9.02. Use Tax, Exemptions.

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

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

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

here

As to tangible personal property exempt from use tax under this subsection, see section 9.01(a) of these rules and regulations. Those articles or products enumerated (1) through (8) therein are eligible for use tax exemption.

(3) Use of tangible personal property which the receipts from the sale of are not subject to consumers tax. In other words, that tangible personal property which is exempt from consumers tax by reason of section 9.01(c) of these rules and regulations is also exempt from use tax. See, within the aforesaid regulation, subsections enumerated (1) through (10) therein.

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

SECTION 10 RESERVED FOR FUTURE USE

Section 11. Sale of Food Intended for Human Consumption.

11.01. 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".

11.02. Exemption from tax; transition rules. Retail sales of food intended for human consumption (as defined in section 11.06) 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.

(a) Sales made after June 30, 1979, but before July 1, 1980. Retail sales of food intended for human consumption (as defined in section 11.06) made after June 30, 1979, but before July 1, 1980, are taxed as follows:

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

(2) 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).

(3) 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).

(4) 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).

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

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

(2) 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).

(3) 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).

(c) 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.

11.03. 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.

(a) 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	+$40.00	= $40.00
total, add 2%		= $60.20 + 1.21(2%)
		= $61.41

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 ($20.00) is added to the amount of food items being purchased ($40.00); and to this subtotal of $60.00, 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 1% tax	-- \$20.00 x 1% =	\$ .20
food	--+\$40.00	
total, 2% tax	-- \$60.00 x 2% =	\$1.20
	\$60.00 +	\$1.40 = \$61.40

(b) 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	= $40.00
total, add 1%		= $60.40 = .61(1%)
		= $61.01

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 2% tax	-- $20.00 x 2% =	$ .40	
food	--+$40.00		
total, 1% tax	-- $60.00 x 1% =	$ .60	
	$60.00 +	$1.00 =	$61.00

11.04. 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.

11.05. 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.

11.06. 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 section 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 section 11.12) or from vending machines.

(c) Tests for determining whether "food" is intended for human comsumption. 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.

11.07. 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 section 11.06 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 section 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 sweetners 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, decafinated 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) <u>Gelatins</u>.

(17) <u>Meat and meat products</u>.

(18) <u>Milk and milk products</u>.

(19) <u>Mixes for alcoholic and nonalcoholic beverages</u>. 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) <u>Mushrooms</u>.

(21) <u>Nuts</u>.

(22) <u>Oleomargarine</u>.

(23) <u>Poultry and poultry products</u>.

(24) <u>Relishes</u>.

(25) <u>Seeds (edible)</u>.

(26) <u>Shortening</u>.

(27) <u>Soft drinks and soft drinks mixes and syrups</u>.

(28) <u>Spreads</u>.

(29) <u>Sugar and sugar products</u>. 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.

11.08. 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 section 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 section 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 section 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.

11.09. 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,

Linoleic acid,

Biotin,

Calcium carbonate,

Calcium citrate,

Calcium glycerophosphate,

Calcium oxide,

Calcium pantothenate,

Calcium phosphate,

Calcium pyrophosphate,

Calcium sulfate,

Carotene,

Choline bitartrate,

Choline chloride,

Copper gluconate,

Cuprous iodide,

Ferric phosphate,

Ferric pyrophosphate,

Ferric sodium pyrophosphate,

Ferrous gluconate,

Ferrous lactate,

Ferrous sulfate,

Inositol,

Iron reduced,

Magnesium oxide,

Magnesium phosphate,

Magnesium sulfate,

Manganese chloride,

Manganese citrate,

Manganese gluconate,

Manganese glycerophosphate,

Manganese hyphoposphite,

Manganese sulfate,

Manganous oxide,

Niacin,

Ciacinamide,

D-Pantothenyl alcohol,

Potassium chloride,

Potassium glycerophosphate,

Potassium iodide,

Pyridoxine hydrochloride,

Riboflavin,

Riboflavin-5-phosphate,

Sodium pantothenate,

Sodium phosphate,

Thiamine hydrochloride,

Thiamine mononitrate,

Tocopherols,

a-Tocopherol acetate,

Vitamin A,

Vitamin A acetate,

Vitamin A palmitate,

Vitamin B12,

Vitamin D2,

Vitamin D3,

Zinc chloride,

Zinc gluconate,

Zinc oxide,

Zinc stearate,

Zinc sulfate.

(g) Application of regulations

(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.

11.10. Medicines

(a) Taxability. Patented medicines and other products used primarily as health aids or theraputic 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,

Analgesics,

Antacids,

Antidiarrheal products,

Antiemetics,

Antimicrobial products,

Antipersperants,

Antirheumatic products,

Antiseptics,

Antitussives,

Bronchodilators,

Cold remedies,

Contraceptive products,

Dandruff products,

Dentifrices and dental products,

Dermatologic products,

Emetics,

Hermatinics,

Hemorrhoidal products,

Laxatives,

Ophthalmic products,

Oral hygiene products,

Sedatives and sleeping aids,

Stimulants,

Sunburn prevention and treatment products,

Vitamin - mineral products,

Miscellaneous.

(c) Application of regulations.

(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.

11.11. 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 theraputic 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.

11.12. 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) <u>Special rule for delicatessens, dairies and bakery stores</u>. 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 section 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.

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(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 section 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.

11.13. 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.

11.14. 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) <u>Purchase for use in business or for resale</u>. 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.

11.15. 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 section 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.

11.16. 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.

11.17. 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 section 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 section 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 section 11.08.

(3) Delicatessen type sales are subject to the provisions of section 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 section 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 section 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 section 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.

11.18. 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 precent (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).

11.19. 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 section 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.

11.20. 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.

11.21. 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.

(a) The purchaser is age 60 or older.

(b) The purchaser can be classified as having low income.

(c) The sale is made by a nonprofit organization or governmental agency.

(d) The sale is under a program funded by a state or the United States.

(e) The sale is made at or below cost.

11.22. 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.

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(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 nonprofitable 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) <u>"Occasional sale of food" defined</u>.

(1) <u>Sales of restaurant-type food</u>. 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.

11.23. Food sold by religious organizations.

(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 fucntions 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.

11.24. 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.

11.25. 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.

SECTION 12 RESERVED FOR FUTURE USE.

Section 13. Cash Sales, Credit Sales, Conditional Sales and Aggregating Purchases.

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

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

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

(c) For example, if merchandise is purchased at the cosmetic counter, delivered to the purchaser and a purchase price of sixty cents paid, this is a complete sale and two cents tax must be collected. If the same purchaser goes to the candy county and makes a ten cent purchase, there is a new sale and one cent tax must be collected thereon. The cosmetic sale and the candy sale may not be aggregated so as to permit the payment of two cents tax instead of three cents.

13.02. Conditional Sales.

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

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

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

13.04. Installment Sales. -- So-called "leases" of tangible personal property wherein title is passed to the "lessee" upon completion of purchase price payments are sales, and the full tax must be collected and paid at or prior to the delivery of the tangible personal property to the purchaser or within thirty days.

13.05. Finance and Carrying Charges. -- The sale price upon which the consumers tax or use tax is to be computed shall include carrying charges, finance charges or similar items. For example, a sewing machine priced at $80.00 is sold under a conditional sales contract which provides for deferred monthly payments. A carrying charge of $5.00 is added to the sale price to cover the cost of recording the contract and billing the purchaser, thus making the total cost to the purchaser $85.00. The tax is to be computed on $85.00.

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

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

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

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

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

SECTIONS 14 AND 15 RESERVED FOR FUTURE USE.

PART II

ENFORCEMENT, COLLECTION AND ADMINISTRATION

Section 16. Tax Returns, Payment, Due Dates and Penalty.

16.01. Consumers Tax.

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

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

(2) Any taxpayer who fails to file a return or pay the tax within the time prescribed in the next preceding paragraph shall be considered delinquent and shall be charged a penalty. The penalty shall accrue at the rate of six percent (6%) of the tax

for the first month, or fraction thereof, during which the taxpayer is delinquent, and one percent (1%) of the tax for each succeeding month, or fraction thereof, during which he is delinquent. A payment postmarked after the fifteenth day of the month shall be considered delinquent.

(3) The penalties so added shall be collected at the same time and in the same manner and as part of the tax. For example, for the taxable period ending on July 31, the consumers tax return and remittance are due on or before August 15. Assuming that the tax liability is one hundred dollars ($100.00) and the taxpayer files his return and remittance on September 18, he will be charged a penalty of seven dollars ($7.00) which is computed by multiplying the amount of tax ($100.00) by 6% for the first month of delinquency and by 1% for the next month of delinquency. A "month", for the purpose of penalty computation, shall be a thirty (30) day period with the first day of such period being the first day following the due date of the return. Therefore, in this case, the first month of delinquency, which imposes a penalty of 6%, began on August 16 and ended on September 14. The second month, or fraction thereof, during which

the taxpayer was delinquent, and which imposes a 1% penalty, began on September 15.

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

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

(6) Any person who willfully violates any of the consumers law, or any lawful rule or regulation promulgated under it, shall be guilty of a misde-

meanor and, upon conviction, shall be fined not less than fifty dollars nor more than three hundred dollars for the first offense; and for any second or subsequent offense shall be guilty of a felony, and, upon conviction shall be fined not less than five hundred dollars nor more than five thousand dollars and confined in the penitentiary not to exceed two years, either such fine or imprisonment, or both, in the discretion of the court.

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

(b) Returns for Other then Monthly Periods. -- Upon written request to the Tax Department a taxpayer may, if his books and records are not kept on a monthly basis, be granted permission to file consumers returns on a basis other than monthly. In order to receive said permission or authorization, the burden rests upon the taxpayer to show that monthly filing will impose an undue hardship.

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

(d) Extension of Time.

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

(2) No taxpayer will be permitted to make remittance of past or present tax liability or delinquencies by future installment payments.

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

16.02. Use Tax.

(a) Returns. -- Every retailer required or authorized (see section 5 of these rules) to collect use tax shall file a return and pay said tax on or before the fifteenth (15th) day of the month next succeeding each quarterly period. Use tax returns are due on or before the fifteenth day of April, July, October and January. The return shall be signed by the taxpayer and shall show the total sales price of all tangible personal property sold by the retailer during the quarterly period, the use of which is subject to use tax. The return shall be accompanied by a remittance for the amount of the tax.

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

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

(3) The prior three paragraphs in their entirety are equally applicable to purchasers who are subject

to use tax liability but who have not paid the same to a retailer, but who are required (see section 5 of these rules) to remit directly to the Tax Department.

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

Section 17. Liability of Corporate Officers.

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

Section 18. Liability of Successor in Interest

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

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

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

Section 19. Refunds.

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

19.02. For the purpose of filing petitions or claims for refund of consumers tax and use tax, the person making such claim must be the person against whom such tax was charged or imposed and not the person who acted as agent of the State in collecting the same. Therefore, vendors who collect more tax than is due from consumers are not in position to file a refund petition, but the overcharged consumer is in position to be refunded and if the petition is timely and proven, the Tax Department will make a refund to the consumer. To illustrate: X, a lessor of automobiles within this State, erroneously charges its customers consumers tax of five percent (5%) rather than computing the tax under the three percent (3%) bracket system. As a result of such overcharge, X remitted $10,000 to the State rather than the correct amount of $6,000. X is not in a position to make claim for the additional $4,000, even though erroneously collected. It is provided that all taxes collected must be remitted to the State (see 4A of these rules), and the vendor shall make no profit therefrom. The vendor is not required unlawfully to pay the tax in this case, but the consumer (customer of X) was; therefore, the individual customers of X may petition for refund.

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

SECTIONS 20 THROUGH 22 RESERVED FOR FUTURE USE.

Section 23. Record Retention and Examination

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

23.02. Purchasers who are subject only to the use tax (see section 4C(c) of these rules) are required to maintain complete and accurate records of all purchases from out-of-state vendors. The records shall include the purchaser's copy of sales slips, invoices, bills of lading, or similar type documents, in addition to an original record of such purchases. These records shall also reflect the payment of West Virginia use tax and shall have appearing upon the face of the record the amount of use tax paid.

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

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

Section 24. Assessments, Petitions for Reassessment, Hearings and Appeals.

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

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

24.03. Petition for Reassessment.

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

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

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

(d) The petition for reassessment shall contain (a) a statement of the amount of the deficiency or liability, as the case may be, determined by the Tax Department, the nature of the tax, the period for which determined; (b) clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Tax Department in the determination of the deficiency. Each assignment of error shall be numbered; (c) clear and concise statements of facts upon which the petitioner relies as sustaining the assignments of error; (d) a prayer, setting forth the relief sought; (e) the signature of the petitioner; (f) a verification by the petitioner; (g) a copy of the assessment shall be appended to the original of the petition.

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

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

24.04. <u>Hearings and Appeals</u>

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

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

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

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

(e) Petitioner will be given an opportunity for argument within time limits fixed by the Tax Department following submission of evidence. The Tax Department will accept briefs in lieu of argument. Briefs must be filed timely within the period prescribed by the hearing examiner.

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

SECTIONS 25 THROUGH 29 RESERVED FOR FUTURE USE.

PART III

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

Section 30. <u>Sales to and Purchases by Nonresident Individuals</u>.

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

30.02. Sale of an article within this State to a nonresident and delivery by the vendor to such purchaser outside this State shall not relieve the vendor from the responsibility for collection of the consumers tax unless his books, records and other evidence show that such delivery was indispensable to the sale and that the sale was consummated outside this State. The fact that a purchaser has an out-of-state address and the property was mailed or delivered to such address is not sufficient to relieve imposition of consumers tax; nor does such fact establish consummation of sale outside this State.

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

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

> Example 1: X, a resident of Ohio, vists a West Virginia furniture store and purchases furniture for $500. X makes payment, and the vendor delivers the goods to the purchaser in Ohio. Said sale is taxable for consumers tax and the vendor must collect consumers tax in the amount of $15.00, unless the vendor can show (via a written sales contract, etc.) that the delivery was not incidental to the sale and was, in fact, indispensable and that the sale was consummated in Ohio.
>
> Example 2: A resident of Virginia takes a toaster into West Virginia and has the same repaired by a serviceman. The person performing the service must collect the cosumers tax. However, if the person performing the services goes to the purchaser's home in Virginia

to repair the appliance, no consumers tax is applicable.

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

Section 31. Banking Business.

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

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

(a) Charges made for data processing services rendered for others,

(b) Charges made for real estate management,

(c) Fees received for rental of safety deposit boxes,

(d) Fees received for collecting notes and accounts of others,

(e) Sales to consumers of promotional items, such as, glassware, silverware, appliances, etc., and

(f) Sales to consumers of checkbooks.

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

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

Section 32. Bottle Deposits.

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

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

Section 33. Persons Rendering Services.

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

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

Put in straight line

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

Section 34. Sales by the State, Counties and Municipalities.

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

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

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

Section 35. Personal Services and Sales to Persons Rendering Such Services.

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

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

Section 36. Hospitals.

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

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

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

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

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

Section 37. Nursing and Convalescent Homes

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

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

Section 38. Hotels, Motels, Tourist Homes and Rooming Houses.

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

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

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

Section 39. Dormitory Charges, Fraternity and Sorority Houses.

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

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

Section 40. Summer Camps, Camping and Trailer Parks.

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

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

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

Section 41. Schools.

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

(a) Exempt sales by schools:

(1) Food sales to students within the schools as a part of the hot lunch program on a nonprofit basis for the health and welfare of the students.

(2) School textbooks, workbooks, instructional aids, standardized examination material required to be used in any schools of this State.

(3) School papers and yearbooks, compiled and edited by students of the school and sold only to students.

(4) Admission tickets to students only for events produced solely by talent of the school involved.

(5) Rental of locks, lockers, storage space, clothing, other materials and equipment owned by schools and furnished solely to students.

(6) Class dues and library fines.

(7) Tuition payments.

(b) Taxable sales and services by schools:

(1) Sales at concession stands and snack bars.

(2) Sales of school supplies at bookstores except as exempted under Item (a)(2) above.

(3) Sales through the use of vending machines; the tax must be computed on each sale.

(4) Sales of class jewelry, pictures, banners, etc.

(5) Sale of food not exempt under Item (a) A, above, for consumption in the school or in the home.

(6) Sales of admission tickets to nonstudents for all school events.

(7) Sales of tickets to students and nonstudents for all interscholastic events.

(8) Sales by and activities of the P.T.A., booster groups, etc.

(9) School papers, yearbooks, etc., sold to non-students.

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

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

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

Section 42. Churches.

42.01. Sales to Churches and Religious Groups.

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

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

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

Section 43. Nonprofit Organizations.

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

Section 44. Out-of-State Purchases.

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

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

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

Section 45. Leased Departments.

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

Section 46. Rentals.

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

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

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

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

Section 47. Coin-Operated Machines and Devices.

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

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

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

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

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

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

Section 48. Repairs to Tangible Personal Property.

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

Section 49. Advertising Agencies, Radio and Television Broadcasting Stations.

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

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

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

Section 50. Printers, Lithographers, Mimeographers, Multigraphers.

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

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

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

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

Section 51. Newspapers and Magazines.

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

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

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

Section 52. Florists.

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

Section 53. Places of Amusement.

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

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

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

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

Section 54. Employees' Meals.

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

Section 55. Building Materials.

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

Section 56. Speculative Builders.

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

Section 57. Trading Stamps, Coupons and Meal Tickets.

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

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

Section 58. Public Assistance.

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

Section 59. Collection Agencies.

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

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

Appendix 1. <u>List of Condiments</u>

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. <u>Essential oils, oleoresins (solvent-free) and natural extractives</u>.

Alfalfa
Allspice
Almond, bitter (free from prussic acid)
Ambrette (seed)
Angelica root
Angelica seed
Angelica steam
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 Engligh
Cananga
Capsicum
Caraway
Cardamom seed
Carbo bean
Carrot
Cascarilla bark
Cassis 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

Appendix 1

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, ammoninated
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

Appendix 1

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, biller, 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

Appendix 1

Bays
Borage
Bunnet
Camomile
Capers
Caraway
Celenes
Chervil
Chives
Coriander
Dill
Fennels
Fenugreek
Geranum
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.

Appendix 1

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 sause
Shrimp cocktail sauce

14. Spices and other natural seasonings and flavorings.

Alfalfa herb and seep
Allspice
Ambrette seed
Angelica
Angelica root
Angelica seed

Appendix 1

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)
Cardamon
Bassia, Chinese
Cassia, Padang or Batavia
Cassia, Saigon
Cayene 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
Bay 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

Appendix 2

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
Desenix
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

Appendix 2

Liquid stockings
Listerine
Manicure preparations
Mascara
Massage creams
Mercurochrome
Merthiolate
Milk or Magnesia
Milk or 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
Rolaids
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

Appendix 2

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
Automative 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 dishwater 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 repellant
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

Appendix 3

Picture frames
Plant supplies (pots, food)
Plastic products (trash bags, waste cans, storage containers)
Potted plants
Raxor 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 .01¢ 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	.25	23.01	TO	23.50	.47
1.51	TO	2.00	.04	12.51	TO	13.00	.26	23.51	TO	24.00	.48
2.01	TO	2.50	.05	13.01	TO	13.50	.27	24.01	TO	24.50	.49
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	.95	58.51	TO	59.00	1.18
36.51	TO	37.00	.74	47.51	TO	48.00	.96	59.01	TO	59.50	1.19
37.01	TO	37.50	.75	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	62.50	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	37.00	.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

State Tax Department
of West Virginia
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I, Herschel H. Rose III, Commissioner of the West Virginia State Tax Department do hereby resubmit to the Office of the Secretary of State two copies of existing rules and regulations to be refiled pursuant to W. Va. Code § 29A-2-5. This refiling pertains to the Consumers Sales and Service and Use Tax, Chapter 11, Article 10, Series XV and XV-A.

Herschel H. Rose III
State Tax Commissioner

Date Submitted: December 29, 1982

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XV and XV-A
(1973, amended 1979)

Subject: Consumers Sales and Service Tax and Use Tax

Refiled: December 29, 1982

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XV and XV-A
(1973, amended 1979)

Subject: CONSUMERS SALES AND SERVICE TAX AND USE TAX

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TABLE OF PARALLEL REFERENCES

This table shows where the subject matter of various sections in these regulations is treated in the West Virginia Code of 1931, as amended.

Regulations	Code §§
Section 1	11-10-5(a)
Section 2	11-15-2, 11-15A-1
Section 3	11-15-3, 11-15A-2
Section 4	11-15-4, 4a, 4b, 5
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WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XV
(1973, amended 1979)

Subject: Consumers Sales and Service Tax and Use Tax

PART I

GENERAL, CONSUMERS AND USE TAXES

Section 1. General.

1.01. Type of Regulations. -- These regulations are "legislative rules as defined in W. Va. Code §29A-1-2(d) (1982).

1.02. Scope. -- These regulations explain and clarify the West Virginia consumers sales and service tax, W. Va. Code §11-15-1 et. seq., and use tax, W. Va. Code §11-15A-1 et. seq.

1.03. Authority. -- These regulations are issued under authority of W. Va. Code §11-10-5(a).

1.04. Filing Date. -- These regulations were promulgated on August 31, 1973, and filed on August 31, 1973 in the office of the Secretary of State. They were refiled with the Secretary of State on December 29, 1982 in compliance with W. Va. Code §29A-2-5 (1982).

1.05. Effective Date. -- These regulations became effective on January 1, 1974.

1.06. Citation. -- These regulations may be cited as: W. Va. Leg. Reg. (CUT) 11-10 Ser. XV §______, page_____ (1973, as amended).

1.07. Overview of regulations

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

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

(c) Certain types of sales and services are exempt from the imposition of consumers sales and service tax and use tax. These exemptions are explained within these rules and regulations at section 9.

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

Section 2. Definitions.

2.01. When used in these regulations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) personal services,

(2) services rendered by an employee to his employer,

(3) services rendered for resale, or

(4) services rendered by a corporation subject to control of the Public Service Commission.

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

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

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

Section 3. Amount of Tax and Tax Computation.

3.01. Computation of Consumers Tax.

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

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

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

Section 3.01(b)

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

Sales Price			Tax	Sales Price			Tax
39.01	-	39.35	1.18	45.01	-	45.35	1.36
39.36	-	39.70	1.19	45.36	-	45.70	1.37
39.71	-	40.00	1.20	45.71	-	46.00	1.38
40.01	-	40.35	1.21	46.01	-	46.35	1.39
40.36	-	40.70	1.22	46.36	-	46.70	1.40
40.71	-	41.00	1.23	46.71	-	47.00	1.41
41.01	-	41.35	1.24	47.01	-	47.35	1.42
41.36	-	41.70	1.25	47.36	-	47.70	1.43
41.71	-	42.00	1.26	47.71	-	48.00	1.44
42.01	-	42.35	1.27	48.01	-	48.35	1.45
42.36	-	42.70	1.28	48.36	-	48.70	1.46
42.71	-	43.00	1.29	48.71	-	49.00	1.47
43.01	-	43.35	1.30	49.01	-	49.35	1.48
43.36	-	43.70	1.31	49.36	-	49.70	1.49
43.71	-	44.00	1.32	49.71	-	50.00	1.50
44.01	-	44.35	1.33				
44.36	-	44.70	1.34				
44.71	-	45.00	1.35				

3.02. Computation of Use Tax.

(a) Tangible personal property furnished or delivered within this State to consumers or users is subject to use tax. Use tax is imposed at the rate of three percent (3%) of the purchase price of the article. The determination or computation of use tax differs from consumers tax in that the amount of use tax is not determined by a bracket system but is a percentage of the purchase price. When applying the three percent (3%) rate to the purchase price, the resultant amount of tax may be expressed by disregarding fractions of less than one-half cent and by increasing fractions over one-half cent to the next even cent. To illustrate: The amount of use tax on a $20.40 sale is sixty-one cents (.61¢); the tax on a $20.60 sale is sixty-two cents (.62¢).

(b) The use tax is imposed upon every person using such property until the tax has been paid directly to the retailer or to the State Tax Department. See section 4C(c) of these rules and regulations.

Section 4. Collection of Consumers Tax.

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

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

4.03. Liability of Vendor

(a) If any vendor fails to collect consumers tax from a purchaser, the vendor shall be personally liable for the payment of such tax. In certain instances where a purchaser does not pay the consumers tax, the vendor is relieved from liability therefor. These instances are those provided in section 4B of these regulations.

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

4.04. Liability of purchaser.

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

(1) refuses to pay the tax to the vendor, or

(2) refuses to sign and present to the vendor a proper exemption certificate indicating such sale is not subject to tax, or

(3) signs and presents a false exemption certificate to the vendor, or

(4) after signing and presenting a proper exemption certificate to the vendor uses the purchased item in such manner that the sale would be subject to tax, he shall be personally liable for the amount of consumers tax applicable to the transaction. In such case the Tax Department shall issue an assessment against the purchaser.

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

(c) If situations (3) and (4) above occur, the vendor shall be relieved from liability for consumers tax on those particular transactions. It shall be presumed that all sales and services are subject to the consumers tax until the contrary is clearly established and the burden of proving that sales or services were not subject to tax rests upon the vendor unless he takes an exemption certificate from the purchaser.

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

Section 5. Collection of Use Tax.

5.01. Retailers Who Are Required to Collect Use Tax.

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

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

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

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

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

5.03. Manner of Collection, Use Tax.

(a) Every retailer, as defined in subsection 5.01 of this regulation, and every authorized foreign retailer shall collect use tax upon sale of all tangible personal property sold for delivery into this State. Said tax shall be remitted to the Tax Department by the retailer and authorized foreign retailer.

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

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

Section 6. Exemption Certificates.

6.01. It is presumed that all sales and purchases of tangible personal property and services are subject to consumers tax or use tax, unless it is established to the contrary. The burden of proving that a sale of tangible personal property or services is to an exempt purchaser is upon the vendor, unless he requires the purchaser to sign a certificate at the time of sale to the effect that the tangible personal property is purchased by an exempt organization or for an exempt purpose. See section 9.01(c) and section 9.02(a) of these rules and regulations.

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

6.03. An exemption certificate is set forth herein. A sample exemption certificate will be furnished by the Tax Department to any vendor or organization upon request, which desires to reproduce the same for the convenience of its customers.

6.04. In order that the Tax Department may verify a vendor's nontaxable sales upon audit, it is necessary that vendors retain executed exemption certificates for five (5) years. An exemption certificate, to be valid, must be given by the vendee and accepted by the vendor at the time of the sale and not thereafter. If a vendor lists nontaxable sales or services for which he has no exemption certificates, the Tax Department will presume such sales were taxable and make an assessment of tax against the vendor. Of course, the preceding sentence is not applicable to sales of articles and types of services enumerated in section 9.01(a) and (b) of these rules and regulations.

EXEMPTION CERTIFICATE BULLETIN

The West Virginia consumers sales and use tax statutes provide that these taxes shall not apply to services and tangible personal property when purchased for the purposes set out below. The purchaser *must select* the category or categories indicating the proposed use of the service or item purchased and prepare a certificate for each supplier. Failure to obtain certificates will make the vendor personally liable. Persons liable for business and occupation tax or consumers sales tax must show their account identification numbers. Persons just beginning business must furnish a certificate applicable to their business with each separate purchase until an account number is assigned by the State Tax Department.

Conditions for Exemption

Purchased by wholesaler, jobber or distributor for resale.

Industrial materials, machinery, supplies and services purchased for direct use or consumption in this state in the business of (check one) ....contracting, ...manufacturing, ...transportation, ... transmission, ...communication, or ....production of natural resources.

Purchased for resale or for use in a retail or service business which sells its property or service to ultimate consumers subject to consumers sales tax. Purchases for repair, construction or improvement to real property are not exempt under this certificate.

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

Purchased by a bona fide charitable organization which makes no charge for services rendered and has been approved for exemption by the State Tax Department.

Purchased by a church with funds of the church treasury.

Purchased by a corporation or organization qualified, either in fact or by ruling of the Tax Commissioner, under I. R. C. §§ 501(c)(3) or 501(c)(4), who make casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions or like character.

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

EXEMPTION CERTIFICATE BULLETIN

Purchased by a commercial producer of agricultural products. Purchases for repair, construction or improvement to real property are not exempt under this certificate.

* * * * * * * * * * * * * * * * * *

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

To .... Date ....

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

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

....

....

....	....
Name of Purchaser	Account Identification Number

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

Kind of business engaged in by purchaser ....

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

By .... Title ....

SECTIONS 7 AND 8 RESERVED FOR FUTURE USE.

Section 9. Exemptions.

9.01. Consumers Tax, Exemptions.

(a) Sales of the following articles are exempt from the imposition of consumers tax:

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

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

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

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

(D) The terms "gasoline" and "special fuels" shall not include oil sold for use or consumption in furnaces; not shall said terms include bottled gas or any special fuel used for other than fuel in internal combustion engines.

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

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

For sales of gas, steam and water to be exempt from consumers tax, it is necessary that delivery be made through pipes and mains. Therefore, sales of bottled gas, bottled water, etc., will not qualify for this exemption.

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

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

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

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

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

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

(6) Sales and services performed by day care centers.

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

(8) Sales of drugs, medicines or appliances to a purchaser upon prescription of a physician or

dentist or any other professional person licensed to prescribe. Appliances shall include braces, prosthetics, special shoes, etc., which are prescribed by a person licensed to prescribe.

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

(10) Sales of motor vehicles which are titled by the West Virginia Department of Motor Vehicles and which are subject to the West Virginia motor vehicle privilege tax (see West Virginia Code ch. 17A, art. 3, sec. 4).

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

Since the burden of proving that a sale is not subject to consumers tax rests upon the vendor, it is the intention of the Tax Department to assist him by these rules and regulations and to eliminate the necessity for requiring an exemption certificate where it is not deemed necessary. Therefore, on those exempt articles which are enumerated above, (1) through (8), the Tax Department does not deem it necessary for the vendor to require an exemption certificate from the purchaser of such articles.

(b) Sales of the following services are exempt from the imposition of the consumers tax:

(1) Professional services.

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

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

(C) Professional persons who make sale of tangible personal property or who engage in activities which are not professional services shall collect consumers tax on such sales or services. For example, kennel services provided by a veterinarian are subject to tax.

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

(2) Personal services.

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

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

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

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

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

On those services which are exempt from the imposition of consumers tax, enumerated (1) through (3) above, the Tax Department does not deem it necessary for the vendor to require an exemption certificate from the purchaser of such services. However, the burden of proving that a service is exempt rests upon the vendor.

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

(1) Sales of property or services to churches and bona fine chartible organizations are exempt from the imposition of consumers tax if the church or such organization makes no charge whatever for the services they render. For example, the purchase of pamphlets relating to drug abuse are not subject to consumers tax if the church makes no

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

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

(A) For example:

(i) Sales of janitor services to a person who manufactures chemicals are exempt;

(ii) sales of pens and paper to a telephone or telegraph company are exempt;

(iii) sales of explosives or drilling bits to a coal producer are exempt;

(iv) and sales of tools to a contractor are exempt.

(B) The sale, to be exempt, must be used in the business of the individual. In other words, a person who owns a contracting business cannot purchase tools for another or for personal use at home without payment of consumers tax.

(C) Persons in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources may purchase tangible personal property and services to be used or consumed in the construction of or permanent improvement of real purchases. All other persons, including but not limited to speculative builders or persons constructing for resale, must pay consumers tax on purchases of tangible personalty and services to be used or consumed in the construction of or permanent improvement of real estate.

(3) 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.

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

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

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

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

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

(A) For example, persons who repair appliances, clean carpets, repair automobiles, etc., may purchase tangible personalty and services without imposition of consumers tax. To illustrate: A company which cleans carpets may purchase shampoo, soap, vacuum cleaners and repairs to its vehicles without payment of consumers tax; for this company collects consumers tax on the services it renders.

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

(C) Persons who dispense services not subject to consumers tax are not eligible for this exemption and must pay consumers tax on purchases for use or consumption in business. To illustrate: Doctors do not charge or collect consumers tax on professional services to patients. Therefore, any tangible personal property (such as bandages, disinfectants, drugs, pens, typewriteres, stethoscopes, etc.) purchased by a doctor is subject to consumers tax, and any services (janitorial services, typewriter repair, etc.) purchased by a doctor are subject to consumers tax.

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

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

(5) Sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to consumers tax.

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

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

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

(A) Persons who purchase tangible personal property which is to be resold in the form of tangible personal property are not required to pay consumers tax on the purchase of such property. The sale price, whether wholesale or retail, is immaterial. In order to come within this exemption, the property must be tangible personalty and must be purchased for resale.

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

(C) The exemption within this subsection permits wholesalers, distributors, jobbers, etc., to purchase tangible personal property for the purpose of resale in the form of tangible personal property without such purchase being subject to consumers tax. However, wholesalers, distributors, jobbers, etc., who purchase tangible personal property or services for use or consumption in their business must pay consumers tax on such purchases. Therefore, purchases of janitor services, refrigerator repairs, adding machines, etc., by a wholesaler, are subject to consumers tax. In other words, wholesalers may avoid consumers tax only on purchases of tangible personalty for the purpose of resale in the form of tangible personalty.

(7) Services rendered for resale.

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

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

(8) Sales to volunteer fire departments.

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

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

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

(10) Sales to the State or United States.

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

(B) It is necessary that the vendor require properly executed exemption certificates from all purchasers claiming exemption from tax on any sale or services enumerated (1) through (10) above. See 6 of these rules and regulations as to the proper treatment of exempt certificates.

9.02. Use Tax, Exemptions.

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

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

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

As to tangible personal property exempt from use tax under this subsection, see section 9.01(a) of these rules and regulations. Those articles or products enumerated (1) through (8) therein are eligible for use tax exemption.

(3) Use of tangible personal property which the receipts from the sale of are not subject to consumers tax. In other words, that tangible personal property which is exempt from consumers tax by reason of section 9.01(c) of these rules and regulations is also exempt from use tax. See, within the aforesaid regulation, subsections enumerated (1) through (10) therein.

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

SECTION 10 RESERVED FOR FUTURE USE

Section 11. Sale of Food Intended for Human Consumption.

11.01. 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".

11.02. Exemption from tax; transition rules. Retail sales of food intended for human consumption (as defined in section 11.06) 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.

(a) Sales made after June 30, 1979, but before July 1, 1980. Retail sales of food intended for human consumption (as defined in section 11.06) made after June 30, 1979, but before July 1, 1980, are taxed as follows:

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

(2) 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).

(3) 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).

(4) 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).

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

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

(2) 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).

(3) 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).

(c) <u>Application of transition rules</u>. 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.

11.03. 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.

(a) 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	+$40.00	= $40.00
total, add 2%		= $60.20 + 1.21(2%)
		= $61.41

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 ($20.00) is added to the amount of food items being purchased ($40.00); and to this subtotal of $60.00, 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 1% tax	-- \$20.00 x 1% =	\$ .20
food	--+\$40.00	
total, 2% tax	-- \$60.00 x 2% =	\$1.20
	\$60.00 +	\$1.40 = \$61.40

(b) 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	= $40.00
total, add 1%		= $60.40 = .61(1%)
		= $61.01

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 2% tax	-- $20.00 x 2% =	$ .40
food	--+$40.00	
total, 1% tax	-- $60.00 x 1% =	$ .60
	$60.00 +	$1.00 = $61.00

11.04. 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.

11.05. 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.

11.06. 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 section 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 section 11.12) or from vending machines.

(c) Tests for determining whether "food" is intended for human comsumption. 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.

11.07. 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 section 11.06 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 section 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 sweetners 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, decafinated 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 drinks 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.

11.08. 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 section 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 section 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 section 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.

11.09. 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,

Linoleic acid,

Biotin,

Calcium carbonate,

Calcium citrate,

Calcium glycerophosphate,

Calcium oxide,

Calcium pantothenate,

Calcium phosphate,

Calcium pyrophosphate,

Calcium sulfate,

Carotene,

Choline bitartrate,

Choline chloride,

Copper gluconate,

Cuprous iodide,

Ferric phosphate,

Ferric pyrophosphate,

Ferric sodium pyrophosphate,

Ferrous gluconate,

Ferrous lactate,

Ferrous sulfate,

Inositol,

Iron reduced,

Magnesium oxide,

Magnesium phosphate,

Magnesium sulfate,

Manganese chloride,

Manganese citrate,

Manganese gluconate,

Manganese glycerophosphate,

Manganese hyphoposphite,

Manganese sulfate,

Manganous oxide,

Niacin,

Ciacinamide,

D-Pantothenyl alcohol,

Potassium chloride,

Potassium glycerophosphate,

Potassium iodide,

Pyridoxine hydrochloride,

Riboflavin,

Riboflavin-5-phosphate,

Sodium pantothenate,

Sodium phosphate,

Thiamine hydrochloride,

Thiamine mononitrate,

Tocopherols,

a-Tocopherol acetate,

Vitamin A,

Vitamin A acetate,

Vitamin A palmitate,

Vitamin B12,

Vitamin D2,

Vitamin D3,

Zinc chloride,

Zinc gluconate,

Zinc oxide,

Zinc stearate,

Zinc sulfate.

(g) Application of regulations

(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.

11.10. Medicines

(a) Taxability. Patented medicines and other products used primarily as health aids or theraputic 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,

Analgesics,

Antacids,

Antidiarrheal products,

Antiemetics,

Antimicrobial products,

Antipersperants,

Antirheumatic products,

Antiseptics,

Antitussives,

Bronchodilators,

Cold remedies,

Contraceptive products,

Dandruff products,

Dentifrices and dental products,

Dermatologic products,

Emetics,

Hermatinics,

Hemorrhoidal products,

Laxatives,

Ophthalmic products,

Oral hygiene products,

Sedatives and sleeping aids,

Stimulants,

Sunburn prevention and treatment products,

Vitamin - mineral products,

Miscellaneous.

(c) Application of regulations.

(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.

11.11. 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 theraputic 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.

11.12. 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 section 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) <u>Nursing and convalescent homes</u>. 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 section 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.

11.13. 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.

11.14. 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) Purchase 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 <u>except</u> 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) <u>Example</u>. A delicatessen may purchase janitor services or refrigeration repairs without imposition of sales tax.

(B) <u>Example</u>. 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.

11.15. 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 section 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.

11.16. 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.

11.17. 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 section 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 section 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 section 11.08.

(3) Delicatessen type sales are subject to the provisions of section 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 section 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 section 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 section 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.

11.18. 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 precent (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).

11.19. 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 section 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.

11.20. 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.

11.21. 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.

(a) The purchaser is age 60 or older.

(b) The purchaser can be classified as having low income.

(c) The sale is made by a nonprofit organization or governmental agency.

(d) The sale is under a program funded by a state or the United States.

(e) The sale is made at or below cost.

11.22. 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 nonprofitable 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.

11.23. Food sold by religious organizations.

(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 fucntions 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.

11.24. 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.

11.25. <u>Package containing both food and nonfood items</u>.

(a) <u>Premiums</u>. 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.

SECTION 12 RESERVED FOR FUTURE USE.

Section 13. Cash Sales, Credit Sales, Conditional Sales and Aggregating Purchases.

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

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

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

(c) For example, if merchandise is purchased at the cosmetic counter, delivered to the purchaser and a purchase price of sixty cents paid, this is a complete sale and two cents tax must be collected. If the same purchaser goes to the candy county and makes a ten cent purchase, there is a new sale and one cent tax must be collected thereon. The cosmetic sale and the candy sale may not be aggregated so as to permit the payment of two cents tax instead of three cents.

13.02. Conditional Sales.

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

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

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

13.04. Installment Sales. -- So-called "leases" of tangible personal property wherein title is passed to the "lessee" upon completion of purchase price payments are sales, and the full tax must be collected and paid at or prior to the delivery of the tangible personal property to the purchaser or within thirty days.

13.05. Finance and Carrying Charges. -- The sale price upon which the consumers tax or use tax is to be computed shall include carrying charges, finance charges or similar items. For example, a sewing machine priced at $80.00 is sold under a conditional sales contract which provides for deferred monthly payments. A carrying charge of $5.00 is added to the sale price to cover the cost of recording the contract and billing the purchaser, thus making the total cost to the purchaser $85.00. The tax is to be computed on $85.00.

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

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

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

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

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

SECTIONS 14 AND 15 RESERVED FOR FUTURE USE.

PART II

ENFORCEMENT, COLLECTION AND ADMINISTRATION

Section 16. Tax Returns, Payment, Due Dates and Penalty.

16.01. Consumers Tax.

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

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

(2) Any taxpayer who fails to file a return or pay the tax within the time prescribed in the next preceding paragraph shall be considered delinquent and shall be charged a penalty. The penalty shall accrue at the rate of six percent (6%) of the tax

for the first month, or fraction thereof, during which the taxpayer is delinquent, and one percent (1%) of the tax for each succeeding month, or fraction thereof, during which he is delinquent. A payment postmarked after the fifteenth day of the month shall be considered delinquent.

(3) The penalties so added shall be collected at the same time and in the same manner and as part of the tax. For example, for the taxable period ending on July 31, the consumers tax return and remittance are due on or before August 15. Assuming that the tax liability is one hundred dollars ($100.00) and the taxpayer files his return and remittance on September 18, he will be charged a penalty of seven dollars ($7.00) which is computed by multiplying the amount of tax ($100.00) by 6% for the first month of delinquency and by 1% for the next month of delinquency. A "month", for the purpose of penalty computation, shall be a thirty (30) day period with the first day of such period being the first day following the due date of the return. Therefore, in this case, the first month of delinquency, which imposes a penalty of 6%, began on August 16 and ended on September 14. The second month, or fraction thereof, during which

the taxpayer was delinquent, and which imposes a 1% penalty, began on September 15.

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

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

(6) Any person who willfully violates any of the consumers law, or any lawful rule or regulation promulgated under it, shall be guilty of a misde-

meanor and, upon conviction, shall be fined not less than fifty dollars nor more than three hundred dollars for the first offense; and for any second or subsequent offense shall be guilty of a felony, and, upon conviction shall be fined not less than five hundred dollars nor more than five thousand dollars and confined in the penitentiary not to exceed two years, either such fine or imprisonment, or both, in the discretion of the court.

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

(b) Returns for Other then Monthly Periods. -- Upon written request to the Tax Department a taxpayer may, if his books and records are not kept on a monthly basis, be granted permission to file consumers returns on a basis other than monthly. In order to receive said permission or authorization, the burden rests upon the taxpayer to show that monthly filing will impose an undue hardship.

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

(d) Extension of Time.

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

(2) No taxpayer will be permitted to make remittance of past or present tax liability or delinquencies by future installment payments.

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

16.02. Use Tax.

(a) Returns. -- Every retailer required or authorized (see section 5 of these rules) to collect use tax shall file a return and pay said tax on or before the fifteenth (15th) day of the month next succeeding each quarterly period. Use tax returns are due on or before the fifteenth day of April, July, October and January. The return shall be signed by the taxpayer and shall show the total sales price of all tangible personal property sold by the retailer during the quarterly period, the use of which is subject to use tax. The return shall be accompanied by a remittance for the amount of the tax.

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

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

(3) The prior three paragraphs in their entirety are equally applicable to purchasers who are subject

to use tax liability but who have not paid the same to a retailer, but who are required (see section 5 of these rules) to remit directly to the Tax Department.

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

Section 17. Liability of Corporate Officers.

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

Section 18. Liability of Successor in Interest

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

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

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

Section 19. Refunds.

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

19.02. For the purpose of filing petitions or claims for refund of consumers tax and use tax, the person making such claim must be the person against whom such tax was charged or imposed and not the person who acted as agent of the State in collecting the same. Therefore, vendors who collect more tax than is due from consumers are not in position to file a refund petition, but the overcharged consumer is in position to be refunded and if the petition is timely and proven, the Tax Department will make a refund to the consumer. To illustrate: X, a lessor of automobiles within this State, erroneously charges its customers consumers tax of five percent (5%) rather than computing the tax under the three percent (3%) bracket system. As a result of such overcharge, X remitted $10,000 to the State rather than the correct amount of $6,000. X is not in a position to make claim for the additional $4,000, even though erroneously collected. It is provided that all taxes collected must be remitted to the State (see 4A of these rules), and the vendor shall make no profit therefrom. The vendor is not required unlawfully to pay the tax in this case, but the consumer (customer of X) was; therefore, the individual customers of X may petition for refund.

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

SECTIONS 20 THROUGH 22 RESERVED FOR FUTURE USE.

Section 23. Record Retention and Examination

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

23.02. Purchasers who are subject only to the use tax (see section 4C(c) of these rules) are required to maintain complete and accurate records of all purchases from out-of-state vendors. The records shall include the purchaser's copy of sales slips, invoices, bills of lading, or similar type documents, in addition to an original record of such purchases. These records shall also reflect the payment of West Virginia use tax and shall have appearing upon the face of the record the amount of use tax paid.

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

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

Section 24. Assessments, Petitions for Reassessment, Hearings and Appeals.

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

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

24.03. Petition for Reassessment.

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

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

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

(d) The petition for reassessment shall contain (a) a statement of the amount of the deficiency or liability, as the case may be, determined by the Tax Department, the nature of the tax, the period for which determined; (b) clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Tax Department in the determination of the deficiency. Each assignment of error shall be numbered; (c) clear and concise statements of facts upon which the petitioner relies as sustaining the assignments of error; (d) a prayer, setting forth the relief sought; (e) the signature of the petitioner; (f) a verification by the petitioner; (g) a copy of the assessment shall be appended to the original of the petition.

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

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

24.04. Hearings and Appeals

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

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

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

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

(e) Petitioner will be given an opportunity for argument within time limits fixed by the Tax Department following submission of evidence. The Tax Department will accept briefs in lieu of argument. Briefs must be filed timely within the period prescribed by the hearing examiner.

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

SECTIONS 25 THROUGH 29 RESERVED FOR FUTURE USE.

PART III

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

Section 30. Sales to and Purchases by Nonresident Individuals.

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

30.02. Sale of an article within this State to a nonresident and delivery by the vendor to such purchaser outside this State shall not relieve the vendor from the responsibility for collection of the consumers tax unless his books, records and other evidence show that such delivery was indispensable to the sale and that the sale was consummated outside this State. The fact that a purchaser has an out-of-state address and the property was mailed or delivered to such address is not sufficient to relieve imposition of consumers tax; nor does such fact establish consummation of sale outside this State.

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

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

> Example 1: X, a resident of Ohio, vists a West Virginia furniture store and purchases furniture for $500. X makes payment, and the vendor delivers the goods to the purchaser in Ohio. Said sale is taxable for consumers tax and the vendor must collect consumers tax in the amount of $15.00, unless the vendor can show (via a written sales contract, etc.) that the delivery was not incidental to the sale and was, in fact, indispensable and that the sale was consummated in Ohio.

> Example 2: A resident of Virginia takes a toaster into West Virginia and has the same repaired by a serviceman. The person performing the service must collect the cosumers tax. However, if the person performing the services goes to the purchaser's home in Virginia

to repair the appliance, no consumers tax is applicable.

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

Section 31. Banking Business.

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

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

(a) Charges made for data processing services rendered for others,

(b) Charges made for real estate management,

(c) Fees received for rental of safety deposit boxes,

(d) Fees received for collecting notes and accounts of others,

(e) Sales to consumers of promotional items, such as, glassware, silverware, appliances, etc., and

(f) Sales to consumers of checkbooks.

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

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

Section 32. Bottle Deposits.

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

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

Section 33. Persons Rendering Services.

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

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

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

Section 34. Sales by the State, Counties and Municipalities.

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

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

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

Section 35. Personal Services and Sales to Persons Rendering Such Services.

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

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

Section 36. Hospitals.

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

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

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

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

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

Section 37. Nursing and Convalescent Homes

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

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

Section 38. Hotels, Motels, Tourist Homes and Rooming Houses.

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

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

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

Section 39. Dormitory Charges, Fraternity and Sorority Houses.

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

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

Section 40. Summer Camps, Camping and Trailer Parks.

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

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

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

Section 41. Schools.

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

(a) Exempt sales by schools:

(1) Food sales to students within the schools as a part of the hot lunch program on a nonprofit basis for the health and welfare of the students.

(2) School textbooks, workbooks, instructional aids, standardized examination material required to be used in any schools of this State.

(3) School papers and yearbooks, compiled and edited by students of the school and sold only to students.

(4) Admission tickets to students only for events produced solely by talent of the school involved.

(5) Rental of locks, lockers, storage space, clothing, other materials and equipment owned by schools and furnished solely to students.

(6) Class dues and library fines.

(7) Tuition payments.

(b) Taxable sales and services by schools:

(1) Sales at concession stands and snack bars.

(2) Sales of school supplies at bookstores except as exempted under Item (a)(2) above.

(3) Sales through the use of vending machines; the tax must be computed on each sale.

(4) Sales of class jewelry, pictures, banners, etc.

(5) Sale of food not exempt under Item (a) A, above, for consumption in the school or in the home.

(6) Sales of admission tickets to nonstudents for all school events.

(7) Sales of tickets to students and nonstudents for all interscholastic events.

(8) Sales by and activities of the P.T.A., booster groups, etc.

(9) School papers, yearbooks, etc., sold to nonstudents.

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

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

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

Section 42. Churches.

42.01. Sales to Churches and Religious Groups.

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

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

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

Section 43. Nonprofit Organizations.

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

Section 44. Out-of-State Purchases.

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

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

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

Section 45. Leased Departments.

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

Section 46. Rentals.

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

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

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

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

Section 47. Coin-Operated Machines and Devices.

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

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

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

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

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

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

Section 48. Repairs to Tangible Personal Property.

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

Section 49. Advertising Agencies, Radio and Television Broadcasting Stations.

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

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

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

Section 50. Printers, Lithographers, Mimeographers, Multigraphers.

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

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

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

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

Section 51. Newspapers and Magazines.

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

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

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

Section 52. Florists.

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

Section 53. Places of Amusement.

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

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

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

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

Section 54. Employees' Meals.

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

Section 55. Building Materials.

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

Section 56. Speculative Builders.

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

Section 57. Trading Stamps, Coupons and Meal Tickets.

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

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

Section 58. Public Assistance.

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

Section 59. Collection Agencies.

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

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

Appendix 1. <u>List of Condiments</u>

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. <u>Essential oils, oleoresins (solvent-free) and natural extractives</u>.

Alfalfa
Allspice
Almond, bitter (free from prussic acid)
Ambrette (seed)
Angelica root
Angelica seed
Angelica steam
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 Engligh
Cananga
Capsicum
Caraway
Cardamom seed
Carbo bean
Carrot
Cascarilla bark
Cassis 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

Appendix 1

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, ammoninated
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

Appendix 1

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, biller, 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

Appendix 1

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

Bays
Borage
Bunnet
Camomile
Capers
Caraway
Celenes
Chervil
Chives
Coriander
Dill
Fennels
Fenugreek
Geranum
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.

Appendix 1

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

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. <u>Pepper</u>.

Black pepper
Cayenne pepper
Red pepper
White pepper

12. <u>Salt and salt substitutes</u>.

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. <u>Sauces</u>.

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

14. <u>Spices and other natural seasonings and flavorings</u>.

Alfalfa herb and seep
Allspice
Ambrette seed
Angelica
Angelica root
Angelica seed

Appendix 1

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)
Cardamon
Bassia, Chinese
Cassia, Padang or Batavia
Cassia, Saigon
Cayene 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
Bay 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

Appendix 2

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
Desenix
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

Appendix 2

Liquid stockings
Listerine
Manicure preparations
Mascara
Massage creams
Mercurochrome
Merthiolate
Milk or Magnesia
Milk or 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
Rolaids
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
Automative 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 dishwater 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 repellant
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

Appendix 3

Picture frames
Plant supplies (pots, food)
Plastic products (trash bags, waste cans, storage containers)
Potted plants
Raxor 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
$ .01 TO $ .05	NONE
.06 TO .35	$ .01
.36 TO .70	.02
.71 TO 1.00	.03
1.01 TO 1.35	.04
1.36 TO 1.70	.05
1.71 TO 2.00	.06
2.01 TO 2.35	.07
2.36 TO 2.70	.08
2.71 TO 3.00	.09
3.01 TO 3.35	.10
3.36 TO 3.70	.11
3.71 TO 4.00	.12
4.01 TO 4.35	.13
4.36 TO 4.70	.14
4.71 TO 5.00	.15
5.01 TO 5.35	.16
5.36 TO 5.70	.17
5.71 TO 6.00	.18
6.01 TO 6.35	.19
6.36 TO 6.70	.20
6.71 TO 7.00	.21

AMOUNT OF SALE	TAX
$ 7.01 TO $ 7.35	$ .22
7.36 TO 7.70	.23
7.71 TO 8.00	.24
8.01 TO 8.35	.25
8.36 TO 8.70	.26
8.71 TO 9.00	.27
9.01 TO 9.35	.28
9.36 TO 9.70	.29
9.71 TO 10.00	.30
10.01 TO 10.35	.31
10.36 TO 10.70	.32
10.71 TO 11.00	.33
11.01 TO 11.35	.34
11.36 TO 11.70	.35
11.71 TO 12.00	.36
12.01 TO 12.35	.37
12.36 TO 12.70	.38
12.71 TO 13.00	.39
13.01 TO 13.35	.40
13.36 TO 13.70	.41
13.71 TO 14.00	.42
14.01 TO 14.35	.43

AMOUNT OF SALE	TAX
$14.36 TO $14.70	$ .44
14.71 TO 15.00	.45
15.01 TO 15.35	.46
15.36 TO 15.70	.47
15.71 TO 16.00	.48
16.01 TO 16.35	.49
16.36 TO 16.70	.50
16.71 TO 17.00	.51
17.01 TO 17.35	.52
17.36 TO 17.70	.53
17.71 TO 18.00	.54
18.01 TO 18.35	.55
18.36 TO 18.70	.56
18.71 TO 19.00	.57
19.01 TO 19.35	.58
19.36 TO 19.70	.59
19.71 TO 20.00	.60
20.01 TO 20.35	.61
20.36 TO 20.70	.62
20.71 TO 21.00	.63
21.01 TO 21.35	.64
21.36 TO 21.70	.65

AMOUNT OF SALE	TAX
$21.71 TO $22.00	$ .66
22.01 TO 22.35	.67
22.36 TO 22.70	.68
22.71 TO 23.00	.69
23.01 TO 23.35	.70
23.36 TO 23.70	.71
23.71 TO 24.00	.72
24.01 TO 24.35	.73
24.36 TO 24.70	.74
24.71 TO 25.00	.75
25.01 TO 25.35	.76
25.36 TO 25.70	.77
25.71 TO 26.00	.78
26.01 TO 26.35	.79
26.36 TO 26.70	.80
26.71 TO 27.00	.81
27.01 TO 27.35	.82
27.36 TO 27.70	.83
27.71 TO 28.00	.84
28.01 TO 28.35	.85
28.36 TO 28.70	.86
28.71 TO 29.00	.87
29.01 TO 29.35	.88

AMOUNT OF SALE	TAX
$29.36 TO $29.70	$ .89
29.71 TO 30.00	.90
30.01 TO 30.35	.91
30.36 TO 30.70	.92
30.71 TO 31.00	.93
31.01 TO 31.35	.94
31.36 TO 31.70	.95
31.71 TO 32.00	.96
32.01 TO 32.35	.97
32.36 TO 32.70	.98
32.71 TO 33.00	.99
33.01 TO 33.35	1.00
33.36 TO 33.70	1.01
33.71 TO 34.00	1.02
34.01 TO 34.35	1.03
34.36 TO 34.70	1.04
34.71 TO 35.00	1.05
35.01 TO 35.35	1.06
35.36 TO 35.70	1.07
35.71 TO 36.00	1.08
36.01 TO 36.35	1.09
36.36 TO 36.70	1.10
36.71 TO 37.00	1.11

AMOUNT OF SALE	TAX
$37.01 TO $37.35	$1.12
37.36 TO 37.70	1.13
37.71 TO 38.00	1.14
38.01 TO 38.35	1.15
38.36 TO 38.70	1.16
38.71 TO 39.00	1.17
39.01 TO 39.35	1.18
39.36 TO 39.70	1.19
39.71 TO 40.00	1.20
40.01 TO 40.35	1.21
40.36 TO 40.70	1.22
40.71 TO 41.00	1.23
41.01 TO 41.35	1.24
41.36 TO 41.70	1.25
41.71 TO 42.00	1.26
42.01 TO 42.35	1.27
42.36 TO 42.70	1.28
42.71 TO 43.00	1.29
43.01 TO 43.35	1.30
43.36 TO 43.70	1.31
43.71 TO 44.00	1.32
44.01 TO 44.35	1.33
44.36 TO 44.70	1.34

AMOUNT OF SALE	TAX
$44.71 TO $45.00	$1.35
45.01 TO 45.35	1.36
45.36 TO 45.70	1.37
45.71 TO 46.00	1.38
46.01 TO 46.35	1.39
46.36 TO 46.70	1.40
46.71 TO 47.00	1.41
47.01 TO 47.35	1.42
47.36 TO 47.70	1.43
47.71 TO 48.00	1.44
48.01 TO 48.35	1.45
48.36 TO 48.70	1.46
48.71 TO 49.00	1.47
49.01 TO 49.35	1.48
49.36 TO 49.70	1.49
49.71 TO 50.00	1.50

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
$ .01	TO	$ .25	NONE
.26	TO	.50	$ .01
.51	TO	1.00	.02
1.01	TO	1.50	.03
1.51	TO	2.00	.04
2.01	TO	2.50	.05
2.51	TO	3.00	.06
3.01	TO	3.50	.07
3.51	TO	4.00	.08
4.01	TO	4.50	.09
4.51	TO	5.00	.10
5.01	TO	5.50	.11
5.51	TO	6.00	.12
6.01	TO	6.50	.13
6.51	TO	7.00	.14
7.01	TO	7.50	.15
7.51	TO	8.00	.16
8.01	TO	8.50	.17
8.51	TO	9.00	.18
9.01	TO	9.50	.19
9.51	TO	10.00	.20
10.01	TO	10.50	.21

AMOUNT OF SALE			TAX
$10.51	TO	$11.00	$ .22
11.01	TO	11.50	.23
11.51	TO	12.00	.24
12.01	TO	12.50	.25
12.51	TO	13.00	.26
13.01	TO	13.50	.27
13.51	TO	14.00	.28
14.01	TO	14.50	.29
14.51	TO	15.00	.30
15.01	TO	15.50	.31
15.51	TO	16.00	.32
16.01	TO	16.50	.33
16.51	TO	17.00	.34
17.01	TO	17.50	.35
17.51	TO	18.00	.36
18.01	TO	18.50	.37
18.51	TO	19.00	.38
19.01	TO	19.50	.39
19.51	TO	20.00	.40
20.01	TO	20.50	.41
20.51	TO	21.00	.42
21.01	TO	21.50	.43

AMOUNT OF SALE			TAX
$21.51	TO	$22.00	$ .44
22.01	TO	22.50	.45
22.51	TO	23.00	.46
23.01	TO	23.50	.47
23.51	TO	24.00	.48
24.01	TO	24.50	.49
24.51	TO	25.00	.50
25.01	TO	25.50	.51
25.51	TO	26.00	.52
26.01	TO	26.50	.53
26.51	TO	27.00	.54
27.01	TO	27.50	.55
27.51	TO	28.00	.56
28.01	TO	28.50	.57
28.51	TO	29.00	.58
29.01	TO	29.50	.59
29.51	TO	30.00	.60
30.01	TO	30.50	.61
30.51	TO	31.00	.62
31.01	TO	31.50	.63
31.51	TO	32.00	.64
32.01	TO	32.50	.65

AMOUNT OF SALE			TAX
$33.01	TO	$33.50	$ .67
33.51	TO	34.00	.68
34.01	TO	34.50	.69
34.51	TO	35.00	.70
35.01	TO	35.50	.71
35.51	TO	36.00	.72
36.01	TO	36.50	.73
36.51	TO	37.00	.74
37.01	TO	37.50	.75
37.51	TO	38.00	.76
38.01	TO	38.50	.77
38.51	TO	39.00	.78
39.01	TO	39.50	.79
39.51	TO	40.00	.80
40.01	TO	40.50	.81
40.51	TO	41.00	.82
41.01	TO	41.50	.83
41.51	TO	42.00	.84
42.01	TO	42.50	.85
42.51	TO	43.00	.86
43.01	TO	43.50	.87
43.51	TO	44.00	.88

AMOUNT OF SALE			TAX
$44.01	TO	$44.50	$ .89
44.51	TO	45.00	.90
45.01	TO	45.50	.91
45.51	TO	46.00	.92
46.01	TO	46.50	.93
46.51	TO	47.00	.94
47.01	TO	47.50	.95
47.51	TO	48.00	.96
48.01	TO	48.50	.97
48.51	TO	49.00	.98
49.01	TO	49.50	.99
49.51	TO	50.00	1.00
50.01	TO	50.50	1.01
50.51	TO	51.00	1.02
51.01	TO	51.50	1.03
51.51	TO	52.00	1.04
52.01	TO	52.50	1.05
52.51	TO	53.00	1.06
53.01	TO	53.50	1.07
53.51	TO	54.00	1.08
54.01	TO	54.50	1.09
54.51	TO	55.00	1.10
55.01	TO	55.50	1.11

AMOUNT OF SALE			TAX
$55.51	TO	$56.00	$ 1.12
56.01	TO	56.50	1.13
56.51	TO	57.00	1.14
57.01	TO	57.50	1.15
57.51	TO	58.00	1.16
58.01	TO	58.50	1.17
58.51	TO	59.00	1.18
59.01	TO	59.50	1.19
59.51	TO	60.00	1.20
60.01	TO	60.50	1.21
60.51	TO	61.00	1.22
61.01	TO	61.50	1.23
61.51	TO	62.00	1.24
62.01	TO	62.50	1.25
62.50	TO	63.00	1.26
63.01	TO	63.50	1.27
63.51	TO	64.00	1.28
64.01	TO	64.50	1.29
64.51	TO	65.00	1.30
65.01	TO	65.50	1.31
65.51	TO	66.00	1.32
66.01	TO	66.50	1.33
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
$ .01	TO	$ .05	NONE
.06	TO	1.00	$ .01
1.01	TO	2.00	.02
2.01	TO	3.00	.03
3.01	TO	4.00	.04
4.01	TO	5.00	.05
5.01	TO	6.00	.06
6.01	TO	7.00	.07
7.01	TO	8.00	.08
8.01	TO	9.00	.09
9.01	TO	10.00	.10
10.01	TO	11.00	.11
11.01	TO	12.00	.12
12.01	TO	13.00	.13
13.01	TO	14.00	.14
14.01	TO	15.00	.15
15.01	TO	16.00	.16
16.01	TO	17.00	.17
17.01	TO	18.00	.18
18.01	TO	19.00	.19
19.01	TO	20.00	.20
20.01	TO	21.00	.21

AMOUNT OF SALE			TAX
$21.01	TO	$ 22.00	.22
22.01	TO	23.00	.23
23.01	TO	24.00	.24
24.01	TO	25.00	.25
25.01	TO	26.00	.26
26.01	TO	27.00	.27
27.01	TO	28.00	.28
28.01	TO	29.00	.29
29.01	TO	30.00	.30
30.01	TO	31.00	.31
31.01	TO	32.00	.32
32.01	TO	33.00	.33
33.01	TO	34.00	.34
34.01	TO	35.00	.35
35.01	TO	36.00	.36
36.01	TO	37.01	.37
37.01	TO	38.00	.38
38.01	TO	39.00	.39
39.01	TO	40.00	.40
40.01	TO	41.00	.41
41.01	TO	42.00	.42
42.01	TO	43.00	.43

AMOUNT OF SALE			TAX
$43.01	TO	44.00	$ .44
44.00	TO	45.00	.45
45.01	TO	46.00	.46
46.01	TO	47.00	.47
47.01	TO	48.00	.48
48.01	TO	49.00	.49
49.01	TO	50.00	.50
50.01	TO	51.00	.51
51.01	TO	52.00	.52
52.01	TO	53.00	.53
53.01	TO	54.00	.54
54.01	TO	55.00	.55
55.01	TO	56.00	.56
56.01	TO	57.00	.57
57.01	TO	58.00	.58
58.01	TO	59.00	.59
59.01	TO	60.00	.60
60.01	TO	61.00	.61
61.01	TO	62.00	.62
62.01	TO	63.00	.63
63.01	TO	64.00	.64
64.01	TO	65.00	.65

AMOUNT OF SALE			TAX
$65.01	TO	$66.00	$ .66
66.01	TO	67.00	.67
67.01	TO	68.00	.68
68.01	TO	69.00	.69
69.01	TO	70.00	.70
70.01	TO	71.00	.71
71.01	TO	72.00	.72
72.01	TO	73.00	.73
73.01	TO	74.00	.74
74.01	TO	75.00	.75
75.01	TO	76.00	.76
76.01	TO	77.00	.77
77.01	TO	78.00	.78
78.01	TO	79.00	.79
79.01	TO	80.00	.80
80.01	TO	81.00	.81
81.01	TO	82.00	.82
82.01	TO	83.00	.83
83.01	TO	84.00	.84
84.01	TO	85.00	.85
85.01	TO	86.00	.86
86.01	TO	87.00	.87

AMOUNT OF SALE			TAX
$ 87.01	TO	$ 88.00	$ .88
88.01	TO	89.00	.89
89.01	TO	90.00	.90
90.01	TO	91.00	.91
91.01	TO	92.00	.92
92.01	TO	93.00	.93
93.01	TO	94.00	.94
94.01	TO	95.00	.95
95.01	TO	96.00	.96
96.01	TO	97.00	.97
97.01	TO	98.00	.98
98.01	TO	99.00	.99
99.01	TO	100.00	1.00
100.01	TO	101.00	1.01
101.01	TO	102.00	1.02
102.01	TO	103.00	1.03
103.01	TO	104.00	1.04
104.01	TO	105.00	1.05
105.01	TO	106.00	1.06
106.01	TO	107.00	1.07
107.01	TO	108.00	1.08
108.01	TO	109.00	1.09

AMOUNT OF SALE			TAX
$109.01	TO	$110.00	$1.10
110.01	TO	111.00	1.11
111.01	TO	112.00	1.12
112.01	TO	113.00	1.13
113.01	TO	114.00	1.14
114.01	TO	115.00	1.15
115.01	TO	116.00	1.16
116.01	TO	117.00	1.17
117.01	TO	118.00	1.18
118.01	TO	119.00	1.19
119.01	TO	120.00	1.20
120.01	TO	121.00	1.21
121.01	TO	122.00	1.22
122.01	TO	123.00	1.23
123.01	TO	124.00	1.24
124.01	TO	125.00	1.25
125.01	TO	126.00	1.26
126.01	TO	127.00	1.27
127.01	TO	128.00	1.28
128.01	TO	129.00	1.29
129.01	TO	130.00	1.30
130.01	TO	131.00	1.31

AMOUNT OF SALE			TAX
$131.01	TO	$132.00	$1.32
132.01	TO	133.00	1.33
133.01	TO	134.00	1.34

STATE TAX COMMISSIONER
CHARLESTON, WEST VIRGINIA

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XV and XV-A
(1973, amended 1979)

Subject: Consumers Sales and Service Tax and Use Tax

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