

June 25, 1969

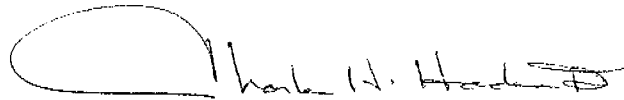
Mr. John D. Rockefeller IV
Secretary of State
State of West Virginia
Capitol Building
Charleston, West Virginia

Dear Sir:

Enclosed is the original and one (1) copy of amended regulations issued by this Commission regarding the Consumers Sales and Service Tax and Use Tax. These regulations are designated Series III-IV of Chapter 11-15 and 15A of the West Virginia Administrative Regulations.

I hereby certify that the attached regulations are true and accurate copies of official regulations adopted by this Commission on June 25, 1969.

Very truly yours,



Charles H. Haden II
State Tax Commissioner

CHH/gvd

Enclosures (2)

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 6/25/69

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX COMMISSIONER

CONSUMERS SALES AND USE TAXES

(Chapter 11, Article 15 and 15A of the Code)

RULES AND REGULATIONS

Charles H. Haden II
State Tax Commissioner

Effective
August 1, 1964

Amended
April 1, 1969

FILED IN THE OFFICE OF
JOHN D. ROCKEFELLER
SECRETARY OF STATE
THIS DATE 6/25/69

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX COMMISSIONER

Chapter 11-15 and 15A
(1964)

AMENDED APRIL 1, 1969

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WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX COMMISSIONER

Chapter 11-15 and 15A

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

Section 1. General

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

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

CUT § 1.03. Effective Date. --These regulations are promulgated on June 25, 1969 and become effective thirty (30) days thereafter.

CUT § 1.04. Filing Date of Regulations -- These Regulations were filed in the office of the Secretary of State on June 25, 1969.

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

CUT § 1.06. Definitions.--When used in these regulations;

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

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

(c) "Sale", "sales" or "selling" shall include any transfer of the possession or ownership of tangible personal property for a consideration when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose. The term embraces renting or leasing, conditional sales contracts, leases with options to purchase, contracts

under which possession of property is given to purchaser but title is retained by vendor as security for payment of purchase price. The term does not include isolated transactions in which tangible personal property is sold, transferred, offered for sale, or delivered by the owner thereof or by his representative for the owner's account, such sale, transfer, offer for sale or delivery not being made in the ordinary course of the owner's business activities. Repeated sales of tangible personal property will not be deemed an isolated sale.

(d) "Vendors" shall include any person engaged in this State in making sales of tangible personal property, furnishing or rendering services, the sale or use of which is taxable by the Consumers Tax Statute.

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

(f) "Purchaser" shall mean any person who purchases tangible property which is taxable under the Use Tax or who purchases tangible property or a service taxable under the Consumers Tax.

(g) "Retailer" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of the Use Tax Law: Provided, however, that when in the opinion of the Tax Commissioner it is necessary for the efficient administration of this law to regard any salesmen,

representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employees or persons under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the Tax Commissioner may so regard them and may regard the dealers, distributors, supervisors, employers, or persons as retailers for purposes of this law.

(h) "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property 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.

CUT § 1.07. Record Retention and Examination.--Persons engaged in selling tangible personal property and rendering services subject to the Consumers Tax are required to retain complete and accurate records of their purchases, sales and services, and of the Consumers and Use Tax collected thereon. With respect to purchases, these records shall include purchase invoices, sales slips, bills of lading, statements or other type of memoranda relating to such purchases, in addition to

his own original entry record of such purchases. With respect to sales and services, these records shall include sales slips, invoices, cash register tabs or tapes, cash receipts, cash receipts records, or other documents of original entry from which the vendor's journals or ledgers are constructed, in addition to journals, ledgers, and other books of accounts, all the exemption certificates, and an original record of total tax collections. (This may be a daily, weekly or monthly record.)

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

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

All persons subject to the Use Tax shall make such records available for inspection by the Commissioner or his representa-

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

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

in writing, of such assessment.

CUT § 1.08. Penalties for Nonpayment and Noncompliance.---

Any taxpayer who fails to file a return, sign the return and pay the Consumers Tax imposed by law within the time provided shall be considered delinquent and shall be required to pay a penalty of Six per cent of the tax for the first month, or fraction thereof, during which he is delinquent, and one per cent of the tax for each succeeding month, or fraction thereof, during which he is delinquent. For purposes of the imposition of this penalty, a payment postmarked after the fifteenth day of the month shall be considered delinquent.

The penalties so added shall be collected at the same time and in the same manner and as a part of the tax. For example, the regular penalty due on tax for the period ending June thirtieth, \$10.00, and paid on August Second is seven per cent or seventy (70) cents.

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

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

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

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

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

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

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

CUT § 1.09. Vendors Must Collect and Pay Consumers Tax.--

The vendor is personally liable for payment of Consumers Tax. He is required by law to add the tax to the sale price and to collect it from the purchaser. He shall account to the State for all tax paid by the purchaser, and he shall keep the amount of tax paid separate from the proceeds of sale, unless authorized, in writing, by the Tax Commissioner, to keep such amount of tax in a different manner.

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

CUT § 1.10. Retailers Who Are Required to Collect Use Tax.

Every retailer, as defined in Regulation CUT 1.06 - Definitions, having or maintaining within this state, directly or by a subsidiary, an office, distribution house, warehouse, or other place of business, or any agent of general or restricted authority, irrespective of whether the place of business or agent is located

here permanently or temporarily or whether the person or subsidiary maintaining such place of business or agent is authorized to do business within this state; or

The engaging in any activity as a business within this State by any person directly or by a subsidiary in connection with the lease, sale, or delivery of tangible personal property for use, storage, or consumption including but not limited to having, maintaining, or using any office, distribution house, sales house, warehouse, or other place of business of any stock of goods or any solicitor, salesman, agent or representative under its authority, at its direction, or with its permission, regardless of whether the person or subsidiary is authorized to do business in this State shall at the time of making such sale or delivery of tangible personal property, whether within or without the State, collect the tax imposed by the Use Tax Law.

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

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

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

CUT § 1.12. Liability of Successor in Interest.---When any person liable for Consumers Tax shall sell his business or stock of goods or quit his business, he shall make a final return and pay any tax or penalty due within fifteen days after the date of sale or quitting business. It is recommended that the successor of the business or stock of goods obtain from the Tax Commissioner a written statement of the amount of any unpaid tax or penalty as at the date of sale of the business. The successor shall withhold a sufficient portion of the purchase money to cover the amount of such unpaid taxes or penalties until

the seller shall produce a receipt from the Tax Commissioner showing that they have been paid or a certificate from the Tax Commissioner stating that no taxes or penalties are due.

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

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

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

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

CUT § 1.15. Bracket System or Rate - Computation of Consumers Sales and Use Taxes. On each sale from six cents to thirty-five cents, both inclusive, one cent; on each sale from thirty-six cents to seventy cents, both inclusive, two cents; on each sale from seventy-one cents to one dollar, both inclusive, three cents. When the sale price is in excess of one dollar the tax is three cents on each whole dollar and

upon any fractional part of a dollar in excess of whole dollars, as follows: One cent on the fractional part of the dollar if less than thirty-six cents; two cents on the fractional part of the dollar if in excess of thirty-five cents but less than seventy-one cents; and three cents on the fractional part of a dollar if in excess of seventy cents. For example, the tax on sales from one dollar and one cent to one dollar and thirty-five cents, both inclusive, four cents; on sales from one dollar and thirty-six cents to one dollar and seventy cents, both inclusive, five cents; and on sales from one dollar and seventy-one cents to two dollars, both inclusive, six cents.

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

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

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
.06 thru .35	.01	1.36 thru 1.70	.05
.36 - .70	.02	1.71 - 2.00	.06
.71 - 1.00	.03	2.01 - 2.35	.07
1.01 - 1.35	.04	2.36 - 2.70	.08

<u>Amt. of Sales</u>			<u>Tax</u>	<u>Amt. of Sales</u>			<u>Tax</u>
2.71 thru	3.00		.09	10.01 - 10.35			.31
3.01 -	3.35		.10	10.36 - 10.70			.32
3.36 -	3.70		.11	10.71 - 11.00			.33
3.71 -	4.00		.12	11.01 - 11.35			.34
4.01 -	4.35		.13	11.36 - 11.70			.35
4.36 -	4.70		.14	11.71 - 12.00			.36
4.71 -	5.00		.15	12.01 - 12.35			.37
5.01 -	5.35		.16	12.36 - 12.70			.38
5.36 -	5.70		.17	12.71 - 13.00			.39
5.71 -	6.00		.18	13.01 - 13.35			.40
6.01 -	6.35		.19	13.36 - 13.70			.41
6.36 -	6.70		.20	13.71 - 14.00			.42
6.71 -	7.00		.21	14.01 - 14.35			.43
7.01 -	7.35		.22	14.36 - 14.70			.44
7.36 -	7.70		.23	14.71 - 15.00			.45
7.71 -	8.00		.24	15.01 - 15.35			.46
8.01 -	8.35		.25	15.36 - 15.70			.47
8.36 -	8.70		.26	15.71 - 16.00			.48
8.71 -	9.00		.27	16.01 - 16.35			.49
9.01 -	9.35		.28	16.36 - 16.70			.50
9.36 -	9.70		.29	16.71 - 17.00			.51
9.71 -	10.00		.30	17.01 - 17.35			.52

Adm. Reg. 11-15
Series III-IV

Sec. 1.15

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
17.36 - 17.70	.53	25.01 - 25.35	.76
17.71 - 18.00	.54	25.36 - 25.70	.77
18.01 - 18.35	.55	25.71 - 26.00	.78
18.36 - 18.70	.56	26.01 - 26.35	.79
18.71 - 19.00	.57	26.36 - 26.70	.80
19.01 - 19.35	.58	26.71 - 27.00	.81
19.36 - 19.70	.59	27.01 - 27.35	.82
19.71 - 20.00	.60	27.36 - 27.70	.83
20.01 - 20.35	.61	27.71 - 28.00	.84
20.36 - 20.70	.62	28.01 - 28.35	.85
20.71 - 21.00	.63	28.36 - 28.70	.86
21.01 - 21.35	.64	28.71 - 29.00	.87
21.36 - 27.70	.65	29.01 - 29.35	.88
21.71 - 22.00	.66	29.36 - 29.70	.89
22.01 - 22.35	.67	29.71 - 30.00	.90
22.36 - 22.70	.68	30.01 - 30.35	.91
22.71 - 23.00	.69	30.36 - 30.70	.92
23.01 - 23.35	.70	30.71 - 31.00	.93
23.36 - 23.70	.71	31.01 - 31.35	.94
23.71 - 24.00	.72	31.36 - 31.70	.95
24.01 - 24.35	.73	31.71 - 32.00	.96
24.36 - 24.70	.74	32.01 - 32.35	.97
24.71 - 25.00	.75	32.36 - 32.70	.98

Adm. Reg. 11-15
Series III-IV

Sec. 1.15

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
32.71 - 33.00	.99	40.01 - 40.35	1.21
33.01 - 33.35	1.00	40.36 - 40.70	1.22
33.36 - 33.70	1.01	40.71 - 41.00	1.23
33.71 - 34.00	1.02	41.01 - 41.35	1.24
34.01 - 34.35	1.03	41.36 - 41.70	1.25
34.36 - 34.70	1.04	41.71 - 42.00	1.26
34.71 - 35.00	1.05	42.01 - 42.35	1.27
35.01 - 35.35	1.06	42.36 - 42.70	1.28
35.36 - 35.70	1.07	42.71 - 43.00	1.29
35.71 - 36.00	1.08	43.01 - 43.35	1.30
36.01 - 36.35	1.09	43.36 - 43.70	1.31
36.36 - 36.70	1.10	43.71 - 44.00	1.32
36.71 - 37.00	1.11	44.01 - 44.35	1.33
37.01 - 37.35	1.12	44.36 - 44.70	1.34
37.36 - 37.70	1.13	44.71 - 45.00	1.35
37.71 - 38.00	1.14	45.01 - 45.35	1.36
38.01 - 38.35	1.15	45.36 - 45.70	1.37
38.36 - 38.70	1.16	45.71 - 46.00	1.38
38.71 - 39.00	1.17	46.01 - 46.35	1.39
39.01 - 39.35	1.18	46.36 - 46.70	1.40
39.36 - 39.70	1.19	46.71 - 47.00	1.41
39.71 - 40.00	1.20	47.01 - 47.35	1.42

<u>Amt. of Sales</u>	<u>Tax</u>	<u>Amt. of Sales</u>	<u>Tax</u>
47.36 - 47.70	1.43	49.71 - 50.00	1.50
47.71 - 48.00	1.44	50.01 - 50.35	1.51
48.01 - 48.35	1.45	50.36 - 50.70	1.52
48.36 - 48.70	1.46	50.71 - 51.00	1.53
48.71 - 49.00	1.47	51.01 - 51.35	1.54
49.01 - 49.35	1.48	51.36 - 51.70	1.55
49.36 - 49.70	1.49	51.71 - 52.00	1.56

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

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

CUT § 1.16. Cash Sales and Credit Sales.--Those sales transactions in which the purchase price is paid upon delivery of the merchandise to the purchaser, or prior thereto, and those rental transactions in which the rental is paid either upon delivery of the rented property to the lessee or the

return of such property, or in advance of either of these events, are cash sales. All other sales and rental transactions are credit sales.

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

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

CUT § 1.17. Aggregating Purchases.--Delivery of the merchandise marks the occurrence of a sale. When several items are delivered simultaneously, the tax may be computed on the total sale price of the items so delivered. This is the only situation in which purchases may be aggregated in the computation of the tax. Separate sales transactions may not be aggregated.

For example, if merchandise is purchased at the cosmetic counter, delivered to the purchaser and a purchase price of sixty cents paid, this is a complete sale and two cents tax must be collected. If the same purchaser goes to the candy counter and makes a ten cent purchase, there is a new sale and one cent tax must be collected thereon. The cosmetic sale

and the candy sale may not be aggregated so as to permit the payment of two cents tax instead of three cents.

CUT § 1.18. Conditional Sales.---For the purpose of obtaining uniformity and consistency among all vendors in the administration of the Consumers Tax Law with respect to conditional sales, a conditional sale is hereby defined to mean an agreement for the sale of tangible personal property pursuant to which possession is delivered to the buyer, but title is retained by the seller until the performance of some condition, usually the payment of the purchase price. A conditional sale shall be considered to be a sale made at the time of, and at the place of acceptance of the purchase offer by the seller. The tax applies to conditional sales as of the time the sale is made and must be collected in the same manner as for charge sales, i.e., within thirty days from the time the sale is consummated.

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

So-called "leases" of tangible personal property wherein title is passed to the "lessee" upon completion of purchase price payments are sales, and the full tax must be collected

and paid at or prior to the passage of title of the tangible personal property to the purchaser or within thirty days thereafter.

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

CUT § 1.19. Finance, Interest and Carrying Charges.--
The sale price upon which the Consumers Tax or Use Tax is to be computed shall not include carrying charges, interest, finance charges or similar items. For example, a sewing machine priced at \$80.00 is sold under a conditional sales contract which provides for deferred monthly payments. A carrying charge of \$5.00 is added to the sale price to cover the cost of recording the contract and billing the purchaser, thus making the total cost to the purchaser \$85.00. The tax is to be computed on \$80.00.

CUT § 1.20. Discounts. Any discount allowed at the time of sale which establishes the final selling price for the article at time of sale may be deducted in arriving at the base price subject to the tax. Discounts which are allowed after the sale is made or upon conditions or events happening at some future time, such as a certain percentage discount being allowed if paid within a specified period, are not deductible in determining the tax base for the Consumers or Use Tax liability.

CUT § 1.21. Rentals.--The statutory definition of "sale" in the Consumers Tax Law includes the transfer of possession. Thus renting or leasing tangible personal property is an activity subject to the tax. The tax is to be computed on the total charge made for the rental.

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

Rental of a motor vehicle is subject to Consumers Sales and Use Tax in addition to other applicable taxes.

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

CUT § 1.22. Exchanged Merchandise.--When merchandise, the sale of which has been taxed under the Consumers Tax or Use Tax, is exchanged, the value of the merchandise exchanged may be deducted from the sale price of the article purchased and tax collected upon the balance.

CUT § 1.23. Merchandise Held or Laid Away.--When merchandise is held or laid away by the vendor pending a payment of all or part of the purchase price, the sale for Consumers Tax purposes occurs when the merchandise is delivered to the purchaser. If an unpaid balance remains at the time the merchandise is delivered, the sale is to be treated as a charge sale.

CUT § 1.24. Barter.--When the consideration for a sale is goods, which have not previously been the subject of a taxable sale or use, instead of money, the tax is to be computed upon the sales value of the article or articles sold.

CUT § 1.25. Sales Which are Rescinded - Returned or Damaged Merchandise.--When a sale upon which tax was collected is rescinded, the tax shall be refunded to the purchaser unless it has previously been remitted to the Commissioner. Returns

shall be filed and tax remitted on or before the fifteenth day of the month next succeeding the month in which the tax accrued.

CUT § 1.26. Bottle Deposits.--The Consumers Tax does not apply to a bottle deposit, provided that the amount of the deposit is separately stated on the invoice or sales slip.

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

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

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

granted to a national bank.

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

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

CUT § 1.29. Persons Rendering Services.--Persons engaged in any of the activities set out below or any similar or analogous activities are rendering a service subject to the Consumers Tax:

Agency	Electrical Repair, Installation
Automobile Repair	Engraving
Airplane Pleasure Trips	Excavating
Alterations	Foundries
Battery Stations	Furniture Repair
Billiards, Pool	Grading
Bowling and Ten Pin Alleys	Hauling
Carpentry	Hotels, Motels, Tourist Courts
Cleaning, Pressing, Dyeing	House Moving
Creosoting	Jewelry Repair
Delivering	Labor

Laundries	Sewing
Machine Operators	Storage Warehouses and Storage Lockers
Meat Cutting	Termite and Pest Control
Motor Repair	Tin and Sheet Metal Repair Shops
Motorcycle Repair	Vulcanizing
Oilers	Warehouses
Office and Business Machine Repairs	Washing Cars
Photography	Watch Repair
Painting	Weighing
Planing Mills	Welding
Printing	Well Drillers
Pipe Fitting	Winding
Recapping, Roofing	Wrapping Merchandise
Shoe Repair	

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

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

See Regulation CUT § 1.36. - "Hospitals".

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

CUT § 1.31. Sales to and Services by Professional Persons.---

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

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

CUT § 1.32. Personal Services and Sales to Persons Rendering Such Services.---The Consumers Tax does not apply to the charge for personal services rendered by barbers,

beauticians, manicurists, etc. Personal services include those rendered to the person of an individual. If apart from their personal services, they are engaged in selling to the public such articles as hair tonic, soap, hair nets, and the like, they are vendors and must collect the Consumers Tax on all such sales.

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

CUT § 1.33. Druggists and Pharmacists.--Sales by druggists and pharmacists of drugs when sold upon prescription of a physician, dentist, or other professional person licensed to prescribe, are exempt from Consumers Sales or Use Tax. The prescription must be legibly written and executed by the proper person with the prescription number shown upon the face of the sales invoice.

CUT § 1.34. Opticians and Orthopedic Suppliers.--The sale of eye glasses or orthopedic appliances upon prescription of a physician or other professional person licensed to prescribe are exempt from Consumers Sales and Use Tax.

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

CUT § 1.36. Hospitals.--The serving of meals, rental of rooms, sale of drugs, blood, oxygen, dressing, appliances and other tangible personal property to patients as a part of the services rendered by hospitals are so commingled with professional and personal services, which are not subject to the tax, that a ruling was issued by the Commissioner November 15, 1953, authorizing hospitals to make a lump sum report of all items, reporting fifty per cent of the hospital sale as exempt, and the other fifty per cent, as taxable, at three per cent tax computed thereon. Charges to out-patients are not subject to the tax unless items of tangible personal property, other than drugs or orthopedic appliances, are delivered to the patient.

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

Tax and they are not subject to a proration.

Since hospitals are engaged in the business of selling tangible personal property and services subject to tax, they are exempt from payment of the Consumers and Use Taxes on purchases of property and services for resale.

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

Embalmers and funeral directors are exempt from payment of Consumers and Use Taxes on their purchases of property or services for resale.

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

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

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

In filing a return under this regulation, a person has the option to select one of the following methods for reporting his sales subject to Consumers Tax: (1) If the charges for selling tangible personal property and services and the charges for rendering personal services are itemized, those charges itemized as personal services, subject to the review and approval of the State Tax Commissioner, may be deducted from the total charges and the Consumers Tax computed on the balance. (2) If the charges for selling tangible property and services

and the charges for rendering personal services are not itemized, said person shall be entitled to an exemption of thirty-three and one-third (33-1/3) per cent of the total charges and the Consumers Tax must be computed on the balance.

CUT § 1.40. Rooming House.--The term "rooming house", as used in this rule, means any establishment furnishing rooms to three or more individuals by the week or month at a specified rate. Persons who operate rooming houses are required to collect and remit Consumers Tax. The tax may be computed on the total amount of the weekly or monthly charge. Rooming houses entertaining transient guests are subject to the rule applicable to hotels, motels, and tourist homes contained in Regulation CUT § 1.41. - "Hotels, Motels and Tourist Homes or Courts".

CUT § 1.41. Hotels, Motels, and Tourist Homes or Courts.--Persons engaged in renting rooms in hotels, motels, and tourist homes or courts on a daily charge rate shall compute the Consumers Tax upon the daily charge in the same manner as any other charge sale. If meals are served, and separate charges are made for each meal, the tax must be computed upon each sale. If persons contract with the owner or management for the use of a room as a permanent residence, the tax may be computed upon the total charge of each billing.

Persons primarily engaged in the business of renting rooms

or serving meals are exempt from the payment of Consumers and Use Taxes on their purchases of tangible personal property for resale.

CUT § 1.42. Dormitory Charges.--If colleges, including state, church and private schools, are engaged in the business of renting rooms and selling meals to students, they incur a Consumers Tax liability on their receipts from such sales. When a lump sum charge is made for monthly, semester, semi-annual or annual periods, the tax may be computed on the total charge. When meals are served in cafeterias operated by the school, the Consumers Tax must be computed on each individual sale.

CUT § 1.43. Fraternity and Sorority Houses.--All persons who are engaged in the operation of a fraternity or sorority house selling meals or renting rooms are engaged in business and incur a Consumers Tax liability on their receipts from such sales.

CUT § 1.44. Summer Camps.--The amounts derived as compensation for the services rendered and tangible personal property sold to campers in the operation of a summer camp are subject to Consumers Tax.

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

CUT § 1.45. Trailer Parks.--The mere leasing of space upon which to park a trailer is an activity which is not subject to the Consumers Tax. However, if the lessor renders services for the lessee or lessees of such space, the tax applies to such services. If a total charge is made which includes the charge for services, the Consumers Tax must be computed on such total charge.

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

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

CUT § 1.47. Schools.--(Educational School Activities within the School Being Exempt; Activities of the School Which Are of a Business Nature Not Being Exempt)--All schools should file Consumers Tax returns in accordance with this regulation.

Exempt Sales by Schools:

- A. Food sales to students within the schools as a part of the hot lunch program on a nonprofit basis for the health and welfare of the student. (This includes the Federal Special Milk Program.)
- B. School textbooks, workbooks, instructional aids, standardized examination material required to be used in any of the schools of the State.

- C. School papers and yearbooks, compiled and edited by students of the school and sold only to students.
- D. Admission tickets to students only for events produced solely by talent of the school involved.
- E. Rental of locks, lockers, storage space, clothing, other materials and equipment owned by schools and furnished solely to students.
- F. Class dues and library fines.

Taxable Sales and Services by Schools:

1. Sales at concession stands and snack bars.
2. Sales of school supplies at bookstores except as exempted under Item B, above.
3. Sales through the use of vending machines; the tax must be computed on each sale.
4. Sales of class jewelry, pictures, banners, etc.
5. Sale of food not exempt under Item A, above, for consumption in the school or in the home.
6. Sales of admission tickets to nonstudents for all school events.
7. Sales of tickets to students and nonstudents for all interscholastic events.
8. Sales by and activities of the P.T.A., Booster Groups, etc.
9. School papers, yearbooks, etc., sold to nonstudents.

Taxable and Tax-Exempt Purchases; Exemption Certificates:

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

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

Schools are classified as vendors of tangible property and services and may furnish Exemption Certificate No. 3 to suppliers subject to the limitations outlined in the two preceding paragraphs. For example, purchases of soft drinks, food for snack bars, jewelry, pictures, clothing and candy are exempt transactions; but the purchase of materials for use in yearbooks and class plays are not exempt transactions.

CUT § 1.48. Churches.--

A. Sales to Churches and Religious Groups. Sales to and services for churches are exempt when the purchase price is paid from the church treasury. Each church may obtain an

exemption certificate by writing to the Consumers Sales and Use Tax Division, State Capitol, Charleston, West Virginia.

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

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

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

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

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

CUT § 1.50. Nonprofit Organizations.--Nonprofit organizations and institutions are not, by reason of their nonprofit status alone, exempt from the Consumers or Use Tax unless otherwise exempt. They are required to comply with the provisions of the laws pertaining to the filing of returns and making payments of the taxes due on sales or on purchases direct to the Tax Commissioner.

CUT § 1.51. Out-of-State Purchases.--In the computation of the Use Tax, credit may not be taken for sales or use taxes paid in another state. The Use Tax is due even though sales or use tax has been paid on the purchase or use of the same property in another state.

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

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

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

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

CUT § 1.53. Leased Departments.--Persons who operate leased departments in which merchandise is sold or services rendered are required to collect and remit Consumers Tax. Such persons are required to file returns and remit tax separately from their lessors unless the lessor executes and forwards Form CST 200=1 to the Commissioner. When a lessor elects to report the sales and tax collections for the leased department, this information must be shown on schedule Form 2.17J and shall accompany the tax return. Execution of this form does not in any manner relieve the operator of the leased department from liability under the Consumers Law.

CUT § 1.54. Exemption Certificates.--It will be presumed for the administration of the Consumers and Use Tax that all gross receipts are subject to tax, unless it is established to the contrary. The burden of proving that a

sale of tangible personal property is to an exempt purchaser is upon the seller or vendor, unless he requires the purchaser to sign a certificate at the time of sale to the effect that the tangible personal property is purchased by an exempt organization or for an exempt purpose.

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

Any person who gives an exemption certificate to the seller for tangible personal property which he knows, at the time of purchase, will be used in a manner other than expressed in the exemption certificate is guilty of a misdemeanor and shall, upon conviction, be fined no more than \$500.00 for each offense.

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

- (1) Unit Exemption Certificates are of two types.
 - (a) Unit certificate designed for use with individual purchases by all resident business organizations exempt from Consumers and Use Tax. It must show the article purchased and the basis for claiming exemption. The form for this unit exemption certificate should be as follows:

WEST VIRGINIA

CONSUMERS SALES AND USE TAX EXEMPTION CERTIFICATE

UNIT CERTIFICATE

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

(State the proposed use of the merchandise or service)

(Merchandise or Service purchased)

(Name of purchaser's business or organization)

(Business or organization address)

(Purchaser's Signature)

Date _____

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

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

(Purchaser's Signature)

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

For those applying and qualifying there is available an Application for Direct Payment Certificate form which is as follows:

WEST VIRGINIA

CONSUMERS SALES AND USE TAX

APPLICATION FOR DIRECT PAYMENT CERTIFICATE

BY

(Account Identification Number)

The undersigned hereby requests permission from the Tax Commissioner of the State of West Virginia to claim exemption on all purchases of tangible personal property and/or services obtained from in-state or out-of-state suppliers.

The applicant is cognizant that a part of the purchases made in its business are subject to sales or use tax and hereby agrees to remit directly to the State Tax Department any and all consumers or use tax which is not exempt under the Law of the State of West Virginia.

It is understood that the applicant shall render a monthly report on a purchasers use tax reporting form supplied by the State Tax Department and remit the tax due on all taxable purchases obtained from in-state or out-of-state suppliers.

It is further understood that the applicant will notify its suppliers of authority to claim exemption and will stamp each purchase order or certificate of exemption in the following manner: "Do not add West Virginia Sales or Use Tax.

WEST VIRGINIA

CONSUMERS SALES AND USE TAX

BLANKET EXEMPTION CERTIFICATE--NO. 1

FOR

WHOLESALEERS, JOBBERS, AND DISTRIBUTORS

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

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

(Name of Wholesaler, Jobber or Distributor)

By _____

Address _____

West Virginia Account Identification Number

WEST VIRGINIA

CONSUMERS SALES AND USE TAX

BLANKET EXEMPTION CERTIFICATE -- No. 2

FOR

CONTRACTORS, MANUFACTURERS, ETC.

The undersigned hereby certifies that he is engaged in this State in the business of () Contracting, () Manufacturing, () Transportation, () Transmission, () Communication, () Production of Natural Resources (check appropriate business), and that the purchases of "raw material" as defined in the Law (which may include certain prescribed services) under this certificate are exempt from Consumers Sales and Use Taxes. The undersigned is informed that falsification or unlawful use of this certificate or use of the goods or services purchased in such a way they will be subject to tax will subject him to the tax, a fine and penalties.

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

(Name of Contractor, Manufacturer, etc.)

By _____

Address _____

(Account Identification Number)

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

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

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

(Name of Retailer)

By _____

Address _____

(Account Identification Number)

WEST VIRGINIA

CONSUMERS SALES AND USE TAX

BLANKET EXEMPTION CERTIFICATE NO. -- 4

FOR

FEDERAL, STATE, COUNTY OR MUNICIPAL GOVERNMENTS

AND VOLUNTEER FIRE DEPARTMENTS

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

(Insert name of governmental unit or agency)

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

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

(Signature of Person making purchase)

(Address of person making purchase)

WEST VIRGINIA

CONSUMERS SALES AND USE TAX

BLANKET EXEMPTION CERTIFICATE -- No. 5

FOR

BONA FIDE CHARITABLE ORGANIZATIONS

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

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

(Signature of Person making purchase)

(Address of person making purchase)

WEST VIRGINIA

CONSUMERS SALES AND USE TAX

BLANKET EXEMPTION CERTIFICATE -- No. 6

FOR

CHURCHES

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

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

(Signature of person making purchase)

(Address of person making purchase)

WEST VIRGINIA

CONSUMERS SALES AND USE TAX

BLANKET EXEMPTION CERTIFICATE --NO. 7

FOR

NATIONALLY CHARTERED FRATERNAL AND SOCIAL ORGANIZATIONS

The undersigned hereby certifies that all purchases made under this exemption certificate for _____ are made for free distribution in public welfare and relief work. The undersigned is informed that falsification or unlawful use of this certificate or use of the goods purchased in another manner than that indicated on the certificate will subject him to a fine and penalties.

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

(Signature of person making purchase)

(Address of person making purchase)

WEST VIRGINIA

CONSUMERS SALES AND USE TAX

BLANKET EXEMPTION CERTIFICATE -- NO. 8

FOR

COMMERCIAL PRODUCERS OF AGRICULTURAL PRODUCTS

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

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

(Signature of person making purchase)

(Address of person making purchase)

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

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

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

where it is not deemed necessary.

An exemption is provided for certain services and items of tangible personal property which are specifically named in Section 2, Sub-section 11, Section 8, and certain sub-sections of Section 9 of the Consumers Tax Law.

The following are exempt and the vendor is not required to obtain exemption certificates thereon:

- (1) Sales of gasoline;
- (2) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;
- (3) Sales of text books required to be used in any of the schools of this State;
- (4) Sales of motor vehicles which are titled by the Department of Motor Vehicles;
- (5) Sales of services by an employee for an employer;
- (6) The sale of personal services (services done to, or on the person of an individual);
- (7) Professional services;
- (8) Services furnished by corporations subject to the control of the Public Service Commission;
- (9) Sales of school lunches to school children by school officials;
- (10) Sales of newspapers delivered by route carriers;

- (11) Isolated transactions;
- (12) Drugs and related appliances upon prescription;
- (13) Transportation charges separately stated.

CUT § 1.56. Sales and Services Rendered for Use or Consumption in the Commercial Production of an Agricultural Product.--Sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product, the ultimate sale of which will be subject to the tax imposed by the Consumers Tax Law, are exempt from the Consumers Tax. Sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property are not included within this exemption and are subject to the tax.

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

The exemption was intended as an advantage to persons engaged in the production of agricultural products as a business activity and not as an advantage to persons who produce such products for their own consumption. A satisfactory method of determining whether the purchaser is engaged

commercially is to determine whether the gross receipts from his activities indicate that such activities exceed to a substantial extent those which would be necessary in order to sustain the consumption requirements of the average family.

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

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

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

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

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

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

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

(e) Sales of raw materials (See CUT § 2.14) to persons engaged in this State in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources.

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

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

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

This does not apply to Manufacturer's Federal Excise Taxes paid by the vendor to the manufacturer or any other form of "hidden taxes", even though this hidden tax is shown on the vendor's invoice to the individual purchaser. For example, tire or office machine sales to the consumer where purchase price is \$18.60, with Manufacturer's Federal Excise Tax separately noted as \$2.30, the total sales price being \$20.90, the Consumers or Use Tax shall be computed on the total sales price of \$20.90.

CUT § 1.59. Interstate and Foreign Commerce.---

A. Consumers Tax

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

(a) shipped from a point outside this state

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

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

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

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

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

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

(d) sold to a common carrier and shipped by the vendor via the purchasing carrier under a bill of lading, whether the freight is paid in advance or the shipment is made freight

charges collect, to a point outside this State and actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier;

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

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

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

CERTIFICATE OF OUT-OF-STATE DELIVERY

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

on _____.

(Driver's signature)

(Driver's employer)

(I. C. C. Permit No.)

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

(Signature of person taking delivery)

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

delivery of the property to a carrier for shipment outside the State, or to a foreign purchaser for shipment abroad.

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

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

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

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

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

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

B. Use Tax

Use Tax applies with respect to any tangible personal

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

CUT § 1.60. Coin-Operated Machines and Devices.---Sales of tangible personal property or service through the use of coin-operated machines and devices are subject to the Consumers Tax. Machines and devices included in this rule are vending machines, storage lockers, toilet lockers, telescopes, radios, television sets, automatic washers, photographic machines, music machines, amusement machines, and any other coin-operated machines or devices. Machines used in the conduct of a public utility business are not included.

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

The person who has control of the machine, i.e., the one who has the key, fills the machine, robs it, etc., is responsible for returning and remitting the Consumers Tax.

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

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

CUT § 1.61. Sales and Services by or to Persons Subject to control by the Public Service Commission.--Sales of services by persons subject to control by the Public Service Commission are not taxable under the Consumers Tax Law. Sales to such persons of raw materials as limited in the Act are not subject to the tax.

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

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

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

CUT § 1.63. Artificial Limbs and Orthopedic Appliances.---Sales of artificial limbs, orthopedic appliances and the like are not subject to the Consumers or Use Tax.

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

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

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

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

CUT § 1.67. Hawkers, Peddlers, Street Vendors, etc.---Hawkers, peddlers, street vendors, and the like, who sell and deliver merchandise or render services are required to collect and remit Consumers Tax on all such sales and services.

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

of repeated sales is deemed to be regularly engaged in business and his sales are not considered isolated, even though they may be few or infrequent.

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

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

CUT § 1.69. Installation Incidental to Selling.--

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

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

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

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

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

CUT § 1.72. Repairs to Tangible Personal Property.---Persons engaged in the business of repairing property for others are engaged in a service business, the gross receipts from

which are subject to the Consumers Tax. Those persons engaged in a repair service who are required to furnish tangible personal property which will be transferred to the purchaser shall include in their total charge, separately stated, the sale price of tangible personal property as subject to the tax. Those repairmen who are qualified vendors, when purchasing tangible personal property which they will sell to their customers, will be permitted to purchase all such property tax free.

CUT § 1.73. Awnings, Storm Doors and Storm Windows.--

Awnings, storm doors and windows are classified as tangible personal property, the sale of which is subject to the Consumers Tax. Where a service charge is made for the delivery, erection or attachment of these items to homes or other real property the tax shall be collected upon the total charge.

A separate accounting must be kept of service charges, wholesale and retail sales for the convenience of filing Business and Occupation Tax returns under the proper classification.

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

If an antenna, along with parts and attachments therefor, is sold for a lump sum amount which includes both the

antenna and the cost of erection or installation, such lump sum amount shall be used as the measure of the tax.

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

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

CUT § 1.75. Delivery Charges.--Delivery charges which are separately stated are not subject to the Consumers Tax. Therefore, when sales are made and delivery charges added, which are not separately stated, the Consumers Tax must be computed on the total.

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

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

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

CUT § 1.78. Top Soil, Fill Dirt, Sand, Gravel and Sod.--

Sales of top soil, fill dirt, sand, gravel and sod are subject to Consumers and Use Taxes. The Consumers Tax is to be measured by the amounts received from such sales including charges made for transportation unless separately stated. These materials are sold in every instance where they are supplied to tenants, landowners, and speculative builders for a consideration. Suppliers may not for tax purposes claim to furnish these materials free when charges are made for services such as "loading" and "handling". The measure of the tax is the amount received by the supplier without any deduction for labor or services which go into producing and delivering the materials, regardless of the fact that such labor or services may be billed as separate items. The Use Tax is measured by the sale price of the top soil, etc.

CUT § 1.79. Advertising Agencies.--Advertising agencies furnish services subject to the Consumers Sales Tax. Where the agency does not purchase the advertising for resale, it shall collect and pay Consumers Sales Tax on fees, retainers and commissions charged, unless exempt under provisions of the Consumers Sales Tax Law. Where the agency purchases the advertising in any form for resale, it shall omit the Consumers Sales Tax on such resale unless these sales are commingled with the service charge.

CUT § 1.80. Printers, Lithographers, Mimeographers, Multigraphers.--Persons engaged in the business of printing, lithographing, mimeographing, multigraphing, and the like, are engaged in selling tangible personal property and rendering a service subject to the Consumers Tax.

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

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

Persons engaged in the business of printing are exempt from the tax on their purchases of raw materials for use in manufacturing the marketable product.

CUT § 1.81. Newspaper and Magazine Sales.--Sales of newspapers, magazines and periodicals by persons operating newsstands, book stores, cigar stores, drug stores, depot newsstands, and the like, are subject to Consumers Tax if the individual sale transaction is in excess of five cents.

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

CUT § 1.82. Florists.--Florists are required to collect and remit Consumers Tax upon their gross receipts from sales of flowers, wreaths, soil, etc., and services. Those florists who participate in Florists Telegraph Delivery Association or a similar arrangement shall be governed by the following rules: (a) The West Virginia florist who takes orders for flowers, etc., shall collect Consumers Tax irrespective of the fact that the flowers may be delivered in another State; (b) a West Virginia florist who receives an order transmitted from another florist has no Consumers Tax liability on such sale irrespective of the fact that the order may be transmitted from a florist in another state.

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

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

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

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

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

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

CUT § 1.86. Plane and Boat Rides, etc.---The transportation of individuals by persons who are not subject to the control of the Public Service Commission or the Interstate Commerce Commission are sales taxable under the Consumers Tax. Persons engaged in such activities are required to collect the tax upon each fare.

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

CUT § 1.87. Places of Amusement.---All sales and services rendered in the operation of a place of amusement or entertainment are subject to the Consumers Tax, including receipts from hat-check services, toilet services, sales of popcorn, candies, cold drinks, programs, souvenirs, and novelties, as well as receipts from admissions, except that the Federal Amusement Tax collected as a separate item should not be used as a part of the measure of the Consumers Tax.

Places of amusement or entertainment include, but are not limited to, theatres, motion picture shows, auditoriums where lectures and concerts are given, amusement parks, fair grounds, race tracks, baseball parks, football stadiums, athletic events, swimming pools, street fairs, carnivals, dance halls, cabarets, night clubs, golf courses, skating rinks, art exhibits, gymnasiums, riding courses, and the like. Places of amusement

or entertainment also include all places where the public is charged a fee for admission to see any kind of a display or hear any kind of a program or to participate in sports, such as golf, tennis, badminton, and games of skill, such as billiards.

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

CUT § 1.88. Admissions.--The Consumers Tax applies to the receipts from the sale of admissions, by tickets or fixed-fee donations whether by a season subscription or by single ticket purchases, to places at which amusements, entertainment, sports events, seasonal and exhibition games or recreation is provided. The term admission does not include regular dues or membership fees which entitle members to usual club or similar organization privileges. However, it does include that portion of such dues or fees which are utilized in admissions to events open to the public. Entertainment purchased by clubs or other fraternal and social organizations for which an admission fee is not charged where the cost of the entertainment is paid from the membership dues, the tax shall be charged to the club. If theatres or other places of public amusement operate concessions selling tangible personal property,

they are taxable on such sales. If leased concessions are operated, see CUT § 1.53 - Leased Departments.

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

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

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

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

CUT § 1.93. Painters and Paper Hangers.--Persons engaged in the business of paper hanging, house painting on an hourly

basis, refinishing, floor waxing, wallpaper cleaning, and the like, are rendering services and are liable for the Consumers Tax on their gross receipts from such services which may also include charges for material transferred to the customer in the performance of such services.

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

Persons engaged in repairing or replacing real property damaged by insects, rodents, etc., are required to collect sales tax on such service and material invoiced to the customer.

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

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

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

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

CUT § 1.97. Employees' Meals.--Meals served by employers as part of the employees' wages are taxable sales.

CUT § 1.98. Building Materials.--Sales of building materials, including such items as heating plants, electrical equipment or supplies, plumbing fixtures or supplies, lumber, miscellaneous hardware, prefabricated houses, roofing, cinder or concrete blocks, cement, pipes, tile and other materials used in building, construction, or repair trades are subject to the Consumers and Use Tax unless exemption certificates are furnished.

CUT § 1.99. Speculative Builders.--Speculative or operative builders are engaged primarily in the construction or repair of real property for sale or rent and are deemed to

be the ultimate consumers of all supplies, materials, or equipment used in the conduct of their business. Therefore Consumers Tax is applicable to sales to such operative builders and services rendered for them, and Use Tax is applicable to their purchases from outside the State.

Section 2. General (Continued)

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

CUT § 2.02. Trading Stamps, Coupons, Scrip, Meal Tickets, Complimentary Passes, etc.--The exchange of merchandise or prizes for trading stamps, scrip, etc., shall be considered a sale of those goods. The vendor shall collect the Consumers Tax upon the value of the merchandise or prize.

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

CUT § 2.03. Public Assistance.--Persons who are the recipients of funds distributed by federal, state or local governments in public welfare or relief work are not exempt from Consumers Tax. However, where the purchases are made by the federal, state and local government agencies for a person or persons in need of public assistance, the sales are exempt.

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

CUT § 2.05. Revision or Abatement of Consumers Tax Assessment.--If a taxpayer against whom an assessment has been made desires abatement or revision of the assessment, he has thirty (30) days after service of the assessment to file with

the commissioner, either personally or by certified mail, a petition for reassessment. A petition filed by certified mail will be deemed to have complied with the foregoing requirements, if the postmark date thereon is clearly within said thirty (30) days, or is received within such period. If the thirtieth day falls on Sunday, or a day which is a legal holiday in the State of West Virginia, filing will be considered timely if it is done on the next succeeding secular day which is not a legal holiday. See CUT § 2.06 - Petition for Reassessment Requirements. In the case of a "Jeopardy Assessment" such petition must be filed within twenty (20) days.

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

CUT § 2.06. Petition for Reassessment Requirements.--
The petition for reassessment shall be in writing with an original and one copy. It shall be complete in itself so as to fully state the issues. No telegraph, telephone call or similar communication will be recognized as a petition.

The petition shall contain the following:

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

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

The form of the petition should be as follows:

Petition for Reassessment

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

In the Matter of:

Petitioner's Business Name.....

Petitioner's Real Name(s).....

Address.....

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

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

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

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

State of West Virginia)	Business Name _____
) SS	Signature of _____
)	Affiant _____
County of _____)	Title _____
)	

_____, being duly sworn

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

By _____

Sworn to and subscribed
before me on this _____ day
of _____ 19__
at _____
My Commission expires _____, 19__.

Notary Public

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

CUT § 2.08. Continuances.--Hearings will not be delayed by a motion for continuance, unless it is timely made and sets forth good and sufficient cause. Conflicting engagements of counsel or the employment of new counsel will never be regarded as good ground for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown which the Commissioner deems adequate.

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

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

The petitioner may appear individually, or by legal

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

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

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

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

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

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

CUT § 2.14. Raw Materials.--Effective April 1, 1969 through March 31, 1970, the Consumers Sales and Use Tax has been modified by the deletion of an exemption on purchases for use in business, and by the addition of exemptions of raw materials as hereinafter defined:

When considering the manufacturing, retailing and wholesaling businesses, raw materials shall mean materials which are partially or wholly consumed or become a component part of the whole of a marketable product. Persons engaged in the business of selling personal tangible property are exempt on purchases of packaging materials which become a part of the delivered product or property sold for resale or to the consumer.

As to other business classifications set forth in the Act, raw materials shall also include property and/or services

as limited to specified businesses hereinafter listed.

(a) Coal--Coal used in generating electricity is exempt.

(b) Electric--Persons engaged in the business of distributing or transmitting electrical energy are exempt on purchases of poles, wires, and cables.

(c) Telephone, Telegraph, Radio and Television--Persons engaged in the business of communication are exempt on the purchase of central office communications equipment, station connections and equipment, together with services connected with installation of this equipment. Poles, wires, and cables, used in this capacity are exempt but not the installation thereof.

(d) Water Companies--Water companies owned and operated by a governmental body, including public service districts, are exempt on all purchases. Water companies not so owned and operated are exempt only on the purchase of meters, pipes, pumps, and chemicals.

(e) Municipally Owned Electric Power Companies--Municipally owned electric power plants are exempt on all purchases for use in generating and distributing electrical energy. Exemption Certificate Number 4 may be utilized for suppliers.

(f) Gas and Oil--Persons engaged in the business of selling oil, liquified or natural gas are exempt from the sales and use tax on the purchase of meters, pipes and compressors used in said business; it being the intent of this subsection not to exempt any accessory attachment or other equipment not strictly construed to be a "pipe, "meter" or "compressor"; it being the further intent of this subsection that a compressor is equipment used only in pumping oil, liquified or natural gas.

(g) Contracting--Persons engaged in the business of contracting are exempt from Consumers Sales and Use Tax on purchases of materials and services when such materials and services are incorporated into and become a component part of an existing building or structure or in the development of real property. This exemption does not include such items as scaffolding, forms, explosives, coffer dams or temporary structures used to facilitate the completed job. The sale and installing of machinery, equipment, furniture and appliances by a contractor shall be construed as taxable sales under the Consumers Sales Tax Act.

(h) Natural Resources--Persons engaged in the production of coal and other natural resources such as sand, limestone, salt, oil and gravel are exempt on the purchase of materials

and services purchased and wholly consumed and/or rendered wholly nonusable and nonrecoverable. This exemption shall not include machinery and equipment, tires, cable, machinery parts, or the services of repairing said machinery. Such items as roof bolts and lagging, roof support timber, bits, lubricants, rock dust, ties and track ballast, drilling cement, gel or mud, plugging material and related nonrecoverable "down-hole" supplies are examples of exempt materials. It being the intent that raw materials under this subsection shall be either partially or wholly consumed to the extent that said material or materials are not reusable, resalable or recoverable. Further, any material not so changed physically, chemically, analytically or biologically so that it may be used again in a process is not exempt.

As an example of exempt "services" under subsection "h" of the Consumers Sales Tax Act, contract drilling and mining shall be exempt. Producers of natural resources and persons in privy thereto shall be entitled to the same exemptions as a producer.

It is the intent of this subsection not to exempt producers of natural gas in the purchasing of meters, pipes and compressors.

(i) Manufacturing--Persons engaged in the process of manufacturing are exempt from payment of Consumers Sales and

Use Tax on materials and/or services which are partially or wholly consumed or become a component part of a manufactured product. This exemption shall include containers in which the product is wrapped, caps used to contain said product and labels directly applied to identify the product. This exemption does not include repair services on machinery and equipment.

(j) Transportation--Persons engaged in transporting passengers and tangible personal property who are subject to the control of the Public Service Commission or the Interstate Commerce Commission are exempt from Consumers Sales and Use Tax on rolling stock and the personal property used in or in the repair of rolling stock. The "service", however, involved in repairing rolling stock is not exempt.

Water and Air Pollution Control Facilities--Purchase of property and/or services for the construction, development and maintenance of water and air pollution control facilities are exempt.

STATE TAX COMMISSIONER

Chapter 11-15 and 15A
(1964)

AMENDED April 1, 1969

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West Virginia
CONSUMERS SALES TAX
AND USE TAX

G. THOMAS BATTLE
State Tax Commissioner

Reprinted from
Michie's West Virginia
Code of 1961
and
1963 Cumulative Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VA.
1963

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THE MICHIE COMPANY

Consumers Sales Tax and Use Tax

CHAPTER 11. TAXATION.

Article 15. Consumers Sales Tax.

- § 999(1). [1] General consumers sales and service tax imposed.
- 999(2). [2] Definitions.
- 999(3). [3] Amount of tax.
- 999(3a). [3a] Additional consumers sales tax.
- 999(4). [4] Purchaser to pay; vendor not to represent he will absorb tax; accounting by vendor; penalty.
- 999(4a). [4a] Failure to collect tax; liability of vendor.
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- 999(6). [6] Vendor must show sale or service exempt; presumption.
- 999(7). [7] Tax on gross proceeds of sales of manufactured, etc., product.
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- 999(10). [10] Tax paid by a consumer.
- 999(11). [11] Repealed.
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- 999(13). [13] Collection of tax when sale on credit.
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- 999(18). [18] Enforcement of lien.
- 999(18a). [18a] Receivership; bankruptcy; priority of tax.
- 999(18b). [18b] Persons selling or quitting business; successor to withhold purchase money.
- 999(19). [19] Other times of filing returns.
- 999(20). [20] Quarterly return.
- 999(21). [21] Annual return.
- 999(22). [22] Consolidated returns.
- 999(23). [23] Keeping and preservation of records; inspection thereof.
- 999(24). [24] Assessment and collection of the tax when insufficiently returned.
- 999(24a). [24a] Jeopardy assessments.
- 999(24b). [24b] Notice of assessment; petition for reassessment; hearing.

999(24c). [24c] Appeal.

999(24d). [24d] Collection by action or suit; injunction.

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999(25). [25] Records of nonresidents doing business in State.

999(26). [26] Records of tax commissioner; preservation of returns.

999(27). [27] When information obtained is confidential.

999(27a). [27a] Transferred.

999(28). [28] Rules and regulations of tax commissioner.

999(29). [29] Penalties; jurisdiction.

999(30). [30] Proceeds of tax for free schools.

§ 999(1). [1] **General Consumers Sales and Service Tax Imposed.**—The purpose of this article is to impose a general consumers sales and service tax. (1937, c. 108; 1939, c. 121.)

Effect of Amendment of 1939.—The amendment inserted the words "and service."

Editor's Note.—Acts 1933, 2nd Ex. Sess., c. 66, codified as former §§ 999(1)-999(36), was superseded by Acts 1935, c. 84, formerly codified as §§ 999(37)-999(72). The latter act was in turn superseded by Acts 1937, c. 108, codified herein as §§ 999(1)-999(30).

The general consumers' sales tax is not a license. *Kresge Co. v. Bluefield*, 117 W. Va. 17, 183 S. E. 601.

Construing Contract as a Taxable Sale or Service Not Controlled by General Rule of Construction of Tax Statutes.

—The rule of construction that an ambiguity in a statute imposing a tax is to be resolved in favor of the one upon whom the tax is sought to be imposed, does not apply to the construction of a written contract for the purpose of determining whether the transaction represented by the contract constitutes a sale or a service taxable under this act. *Charleston Transit Co. v. James*, 121 W. Va. 412, 4 S. E. (2d) 297.

Cited in *Hamill v. Koontz*, 134 W. Va. 439, 59 S. E. (2d) 879; *Douglass v. Koontz*, 137 W. Va. 345, 71 S. E. (2d) 319.

§ 999(2). [2] **Definitions.**—For the purpose of this article:

(1) "Persons" shall mean any individual, partnership, association, corporation, municipal corporation, guardian, trustee, committee, executor or administrator;

(2) "Tax commissioner" shall mean the state tax commissioner;

(3) "Gross proceeds" shall mean the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses shall not be deducted, but any credit or refund made for goods returned may be deducted;

(4) "Sale", "sales" or "selling" shall include any transfer of the possession or ownership of tangible personal property for a consideration when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose;

(5) "Vendor" shall mean any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property;

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

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

(8) "Tax" shall include all taxes, interest and penalties levied hereunder;

(9) "Service" or "selected service" shall include all non-professional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include personal services or the services rendered by an employee to his employer or any service rendered for resale;

(10) "Purchaser" shall mean a person who purchases tangible personal property or a service taxed by this article;

(11) "Personal service" shall include those:

(a) Compensated by the payment of wages in the ordinary course of employment;

(b) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services;

(12) "Taxpayer" shall mean any person liable for the tax imposed by this article. (1937, c. 108; 1939, c. 121; 1943, c. 87; 1951, c. 181; 1955, c. 169.)

Effect of Amendment of 1939.—The amendment so changed this section that a comparison here is not practical.

Effect of Amendment of 1943.—The amendment inserted the definition of "ultimate consumer" and renumbered the remaining subdivisions.

Effect of Amendment of 1951.—The amendment made a change in the definition of "wholesale dealer" which formerly appeared in this section.

Effect of Amendment of 1955.—The amendment rewrote this section.

Validity of tax for the use of tangible personal property sustained. *Charleston Transit Co. v. James*, 121 W. Va. 412, 4 S. E. (2d) 297.

§ 999(3). [3] **Amount of Tax.**—For the privilege of selling certain selected services defined in dispensing certain selected services defined in section eight [§ 999(8)] of this article, the vendor shall collect from the purchaser the tax as provided under this article, and shall pay the amount of tax to the tax commissioner in accordance with the provisions of this article.

There shall be no tax on sales where the monetary consideration is five cents or less. The

amount of the tax shall be computed as follows:

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

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

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

Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though such sales are aggregated in the billing or payment therefor. (1937, c. 108; 1955, c. 169; 1957, c. 163.)

Effect of Amendment of 1955.—The amendment substituted "eight" for "seven" in the section reference in the first paragraph and made other changes of a minor nature.

Effect of Amendment of 1957.—The amendment, effective July 1, 1957, added the last paragraph of this section.

Vehicle Purchased in Another State.—For case decided under former provisions of the statute, see Vaught v. Bailey, 115 W. Va. 317, 175 S. E. 783.

Additional Consumers Sales Tax.—See § 999(3a).

§ 999(3a). [3a] Additional Consumers Sales Tax.

—For the purpose of providing additional revenue for the state general revenue fund and for the privilege of selling tangible personal property and dispensing certain selected services defined in section eight [§ 999(8)] of this article, the vendor, in addition to the tax imposed by section three [§ 999(3)] of this article, shall collect from the purchaser the tax provided by this section, and shall pay the amount of such tax to the tax commissioner in accordance with the provisions of this article.

The amount of the tax shall be computed as follows:

On each sale, the additional sum of one cent (\$.01) on each one dollar (\$1.00) of monetary consideration, or fraction thereof, in excess of one dollar (\$1.00).

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, payment, collection, remission and assessment of the consumers sales tax imposed by section three [§ 999(3)] of said article shall be applicable to the levy, imposition, payment, collection, remission and assessment of such additional tax.

Notwithstanding the provisions of section thirty [§ 999(30)] of this article, all moneys received by the tax commissioner from the additional tax imposed by this section shall be paid by him into the state fund, general revenue, to be expended in whatever manner provided by law.

It is the intent of the legislature in imposing this additional tax to provide funds to the governor, the state road commissioner and the state department of natural resources for the emergency relief of unemployment throughout the state of West Virginia.

The provisions of this section shall expire June thirtieth, one thousand nine hundred sixty-four. (1961, cc. 9, 152; 1961, 1st Ex. Sess., c. 12; 1962, c. 31; 1963, c. 185.)

Editor's Note. — This section was inserted by c. 9, Acts 1961, passed Jan. 13, 1961, and made effective Jan. 15, 1961, and was subject to expiration on June 30, 1961. Chapter 152, Acts 1961, effective July 1, 1961, however, extended the operation of this section until Aug. 31, 1961. Acts 1961, 1st Ex. Sess., c. 12, passed June 16, 1961, and made effective July 1, 1961, was passed so as to take effect upon the expiration of c. 152, Acts 1961 and extended the additional consumers sales tax until June 30, 1962.

Effect of Amendment of 1962.—The amendment, effective July 1, 1962, rewrote the former sixth paragraph to appear as the present sixth and seventh paragraphs. Prior to the amendment the section was due to expire on June 30, 1962.

Effect of Amendment of 1963.—The amendment, effective July 1, 1963, extended the expiration date of this section from June 30, 1963 to June 30, 1964.

§ 999(4). [4] Purchaser to Pay; Vendor Not to Represent He Will Absorb Tax; Accounting by Vendor; Penalty.—The purchaser shall pay to the vendor the amount of tax levied by this article which shall be added to and constitute a part of the sales price, and shall be collectable as such by the vendor who shall account to the state for all tax paid by the purchaser. The vendor shall keep the amount of tax paid separate from the proceeds of sale exclusive of the tax unless authorized in writing by the tax commissioner to keep such amount of tax in a different manner. Where such authorization is given, the state's claim shall be enforceable against and shall take precedence over, all other claims against the moneys commingled.

A vendor shall not represent to the public, in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that the tax is not to be considered an element in the price to the purchaser. Any person who violates the provisions of this paragraph shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than fifty nor more than one thousand dollars, or imprisonment in the county jail for not exceeding one year, or both, in the discretion of the court. (1937, c. 108; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment rewrote the first paragraph and added the second paragraph.

§ 999(4a). [4a] Failure to Collect Tax; Liability of Vendor.—If any vendor fails to collect the tax imposed by section three [§ 999(3)] of this article, he shall be personally liable for such amount as he failed to collect. (1955, c. 169.)

§ 999(4b). [4b] Liability of Purchaser; Assessment and Collection.—If any purchaser refuses to pay to the vendor the tax imposed by section three [§ 999(3)] of this article, or in the case of a sale exempt from the application of the tax, a purchaser refuses to sign and present to the vendor a proper certificate indicating the sale is not

subject to this tax, or signs or presents to the vendor a false certificate, or after signing and presenting a proper certificate uses the items purchased in such manner that the sale would be subject to the tax, he shall be personally liable for the amount of tax applicable to the transaction or transactions.

In such cases the tax commissioner shall have authority to make an assessment against such purchaser, based upon any information within his possession or that may come into his possession. This assessment, the notice, hearing and appeal shall be made and conducted in accordance with sections twenty-four, twenty-four-b and twenty-four-c [§§ 999(24), 999(24b), 999(24c)] of this article.

This section shall not be construed as relieving the vendor from liability for the tax. (1955, c. 169.)

§ 999(5). [5] **Total Amount Collected to Be Remitted.**—No profit shall accrue to any person as a result of the collection of the tax levied by this article notwithstanding the total amount of such taxes collected may be in excess of the amount for which such person would be liable by the application of the levy of two per cent to the gross proceeds of his sales and the total of all taxes collected by any such person shall be returned and remitted to the tax commissioner as hereinafter provided. (1937, c. 108.)

§ 999(6). [6] **Vendor Must Show Sale or Service Exempt; Presumption.**—The burden of proving that a sale or service was exempt from the tax shall be upon the vendor, unless he takes from the purchaser an exemption certificate signed by and bearing the address of the purchaser and setting forth the reason for the exemption. To prevent evasion, it shall be presumed that all sales and services are subject to the tax until the contrary is clearly established. (1937, c. 108; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment rewrote this section.

§ 999(7). [7] **Tax on Gross Proceeds of Sales of Manufactured, etc., Product.**—A person exercising the privilege of producing for sale, profit or commercial use, any natural resources, product or manufactured product, and engaged in the business of selling such product not otherwise exempted herein shall make returns of the gross proceeds of such sales and pay the tax imposed by this article. (1937, c. 108; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment deleted the words "at retail any," which formerly followed the word "selling," deleted the word "retail," which formerly preceded the word "sales," and substituted the word "engaged" for the word "engaging."

§ 999(8). [8] **Furnishing of Services Included; Exceptions.**—The provisions of this article shall

apply not only to selling tangible personal property, but also to the furnishing of all services, except professional and personal services, and except those services furnished by corporations subject to the control of the public service commission. (1937, c. 103; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment deleted the words "and the state road commission" formerly appearing at the end of the section.

A contract between a transit company and a tire company to furnish tires, the use and consumption of which is to be paid for by the transit company entirely upon a mileage basis, while under a separate paragraph of the contract, provision is made for the tire company continually to perform the duty of keeping the tires in good repair, the transit company being a utility operating in West Virginia exclusively, represents a transaction which, during the life of the contract, is a taxable service under this section. Charleston Transit Co. v. James, 121 W. Va. 412, 4 S. E. (2d) 297.

§ 999(9). [9] Exemptions.—The following sales and services shall be exempt:

(1) Sales of gasoline, taxable under article fourteen (§ 976 et seq.), chapter eleven of the Code, one thousand nine hundred thirty-one;

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

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

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

(5) Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four [§ 1721(122)], article three, chapter seventeen-a of the Code;

(6) Sales of property or services to churches and bona fide charitable organizations who make no charge whatever for the services they render or to persons engaged in this state in the business of contracting, manufacturing, transportation, transmission, communication, or in the production of natural resources: Provided, however, that the exemption herein granted shall apply only to services, machinery, supplies and materials directly used or consumed in the businesses or organizations named above;

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

(8) Sales of tangible personal property and services rendered for use or consumption in con-

nection with the conduct of the business of selling tangible personal property to consumers or dispensing a service subject to tax under this article and sales of tangible personal property and services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which will be subject to the tax imposed by this article: Provided, however, that sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement of real property shall not be exempt;

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

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

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

(12) Sales of newspapers when delivered to consumers by route carriers. (1937, c. 108; 1941, c. 119; 1943, c. 90; 1951, c. 182; 1955, c. 169; 1957, c. 164; 1963, c. 186.)

Effect of Amendments.—The 1951 amendment deleted provisions added by the 1941 and 1943 amendments relating to retail sales of food for human consumption.

The 1955 amendment rewrote the introductory paragraph and subsections (3), (4) and (5), and added subsections (6) through (10).

The 1957 amendment added subsection (11).

The 1963 amendment, effective March 4, 1963, rewrote subdivision (5) and added subdivision (12).

§ 999(10). [10] **Tax Paid by a Consumer.**—It is the intent of this article that the tax levied hereunder shall be passed on to and be paid by the ultimate consumer. The amount of the tax shall be added to the sales price, and shall constitute a part of that price and be collectible as such. (1937, c. 108; 1943, c. 87.)

The 1943 amendment inserted the word "ultimate" in line four.

§ 999(11). [11]: Repealed by Acts 1955, c. 169.

§ 999(12). [12] **Agreements by Competing Taxpayers.**—To provide uniform methods of adding the average equivalent of the tax to the selling price in each sale or transaction subject to the tax, appropriate rules and regulations, except as otherwise herein provided, may be agreed upon or adopted by competing taxpayers or associations of taxpayers, except that all collections shall be made on the basis of the total transaction at the time of sale, without regard to the value of the separate items making up the total amount of the sale. Such rules and regulations, if they do not involve price fixing, shall not be deemed

illegal as in restraint of trade or commerce. The tax commissioner shall cooperate in formulating such rules and regulations, and, in the event appropriate rules and regulations are not submitted to him within thirty days after this article takes effect, or within a reasonable extended period fixed by the tax commissioner, he shall himself formulate and promulgate appropriate rules and regulations to effectuate the purpose of this section. (1937, c. 108.)

§ 999(13). [13] Collection of Tax When Sale on Credit.—A vendor doing business wholly or partially on a credit basis shall require the purchaser to pay the full amount of tax due upon a credit sale at the time such sale is made or within thirty days thereafter. (1937, c. 108; 1955, c. 169.)

The 1955 amendment substituted "vendor" for "taxpayer" and "partially" for "partly."

§ 999(14). [14] When Separate Records of Sales Required.—Any vendor engaged in a business subject to this tax, who is at the same time engaged in some other kind of business, occupation or profession, not taxable under this article, shall keep records to show separately the transactions used in determining the tax base herein taxed. In the event such person fails to keep such separate records there shall be levied upon him a tax based upon the entire gross proceeds of both or all of his businesses. (1937, c. 108; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment rewrote this section.

§ 999(15). [15] Sales to Affiliated Companies or Persons.—In determining gross proceeds of sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from a sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the amount upon which the tax shall be levied, corresponding as nearly as possible to gross proceeds from the sale of similar products of like quality or character, where no common interest exists between the parties. (1937, c. 108.)

§ 999(16). [16] Tax Return and Payment; Penalty for Nonpayment.—The taxes levied by this article shall be due and payable in monthly installments, on or before the fifteenth day of the month next succeeding the month in which the tax accrued. The taxpayer shall, on or before the fifteenth day of each month, make out and mail to the tax commissioner a return for the preceding month, in the form prescribed by the tax commissioner, showing: (a) the total gross proceeds of his business for that month;

(b) the gross proceeds of his business upon which the tax is based; (c) the amount of the tax for which he is liable; and (d) any further information necessary in the computation and collection of the tax which the tax commissioner may require. A remittance for the amount of the tax shall accompany the return. A monthly return shall be signed by the taxpayer or his duly authorized agent.

Any taxpayer who fails to pay the tax imposed by this article within the time provided by law shall be considered delinquent and shall be required to pay a penalty of six per cent of the tax for the first month, or fraction thereof, during which he is delinquent and one per cent of the tax for each succeeding month, or fraction thereof, during which he is delinquent: Provided, however, that if the failure to pay is due to reasonable cause, the tax commissioner may waive or remit this penalty in whole or in part. For purposes of the imposition of this penalty, a payment postmarked after the fifteenth day of the month shall be considered delinquent.

If the failure is due to fraud or intent to evade this article or the rules and regulations promulgated thereunder, there shall be added an additional penalty of twenty-five per cent of the amount of the tax, exclusive of penalties.

The penalties so added shall be collected at the same time and in the same manner and as a part of the tax. (1937, c. 108; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment substituted "based" for "computed" at the end of subdivision (b) in the first paragraph and added the second, third and fourth paragraphs.

§ 999(17). [17] Tax a Debt; Lien of Unpaid Tax; Recordation of Lien. — A tax due and unpaid under this article shall be a debt due the state. It shall be a personal obligation of the taxpayer and shall be a lien upon all the property of the taxpayer: Provided, that such lien shall be subject to the restrictions and conditions embodied in article ten-c [§§ 3916(16), 3916(17)], chapter thirty-eight of the Code, one thousand nine hundred thirty-one, and any amendment made or which may hereafter be made thereto.

If the taxpayer is an association or corporation, the officers thereof shall be personally liable, jointly and severally, for any default on the part of the association or corporation, and payment of the tax may be enforced against them as against the association or corporation which they represent. (1937, c. 108; 1943, c. 87; 1955, c. 169.)

The 1943 amendment added the proviso to the first paragraph, and omitted a provision relating to priority. The 1955 amendment rewrote the section.

§ 999(18). [18] Enforcement of Lien.—A lien for taxes under this article shall attach when the obligation to pay the tax to the tax commissioner

accrues. The lien shall be enforceable by the tax commissioner by suit in equity. (1937, c. 103; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment substituted the words "by suit in equity" for the words "as any other lien against the property of a debtor" at the end of the section.

§ 999(18a). [18a] Receivership; Bankruptcy; Priority of Tax.—In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all taxes due and unpaid under this article shall be paid from the first money available for distribution in priority to all claims and liens except taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid under this article which are chargeable against the person whose property or estate is in administration or distribution. (1939, c. 121; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment added the words "which under federal law are given priority over the debts and liens created by this article" at the end of the first sentence.

Effect of Rules of Civil Procedure on Section.—See Rule 66, appearing in Appendix, and discussion thereof in LUGAR & SILVERSTEIN, WEST VIRGINIA RULES.

§ 999(18b). [18b] Persons Selling or Quitting Business; Successor to Withhold Purchase Money.— If any person liable for the tax imposed by this article shall sell his business or stock of merchandise or quit his business, the taxes and penalties imposed by this article shall become due and payable immediately and such persons shall make a final return within fifteen days after the date of selling or quitting business. The taxes and penalties shall be a lien upon the property of such person. His successor, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes and penalties due and unpaid until such time as the former owner shall produce a receipt from the tax commissioner showing that the taxes and penalties have been paid or a certificate indicating no taxes are due. If the purchaser of the business or stock of goods fails to withhold purchase money, as above provided, he shall be personally liable for the payment of the taxes and penalties accrued and unpaid on account of the operation of the business by the former owner. (1955, c. 169.)

§ 999(19). [19] Other Times of Filing Returns.—The tax commissioner may, upon written request, authorize a taxpayer whose books and records are not kept on a monthly basis to file returns at times other than those specified in section sixteen [§ 999(16)], but in no event shall a

taxpayer make less than one return a calendar month, except as provided by section twenty [§ 999(20)] or as may be authorized in writing by the tax commissioner. (1937, c. 108; 1955, c. 169.)

Effect of Amendment of 1955.—Prior to the amendment the first section reference was to "the preceding section" and the second section reference was to "section sixteen."

§ 999(20). [20] **Quarterly Return.**—When the total tax for which a person is liable does not exceed ten dollars for any month, he may make quarterly return on or before the fifteenth day of the first month in the next succeeding quarter in lieu of monthly returns. (1937, c. 108.)

§ 999(21). [21] **Annual Return.**—On or before thirty days after the end of the tax year, each person liable for the payment of a tax hereunder shall make an annual return in such form as may be required by the tax commissioner, showing total gross proceeds of his business for the preceding tax year, gross proceeds upon which the tax for that year was computed, and any other information necessary in the computation or collection of the tax that the tax commissioner may require. After deducting the amount of prior payments during the tax year, the taxpayer shall transmit the return with a remittance for any remaining tax, payable by him during the preceding tax year, to the tax commissioner. The taxpayer or his duly authorized agent, shall verify the return under oath. The tax commissioner for good cause shown, may, on written application of a taxpayer, extend the time for making any return required by the provisions of this article. (1937, c. 108.)

§ 999(22). [22] **Consolidated Returns.**—A person operating two or more places of business of like character from which are made or dispensed sales or services which are taxable hereunder shall file consolidated returns covering all such sales or services to which a schedule must be attached showing total sales and charges made for rendering such services and total tax collections for each place of business. (1937, c. 108; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment rewrote this section.

§ 999(23). [23] **Keeping and Preservation of Records; Inspection Thereof.** — Each taxpayer shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices, bills of lading and such other pertinent documents in such form as the tax commissioner may by regulation require. Such records and other documents shall be open at any time, during business hours, to the inspection of the tax commissioner and his agents and shall be preserved for a period of five years, unless the

tax commissioner shall consent in writing to their destruction within that period or by order require that they be kept longer. (1937, c. 108; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment rewrote this section.

§ 999(24). [24] Assessment and Collection of the Tax When Insufficiently Returned.—If the tax commissioner believes that the tax imposed by this article 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, he may proceed to investigate and determine or estimate the tax liability of the taxpayer and make an assessment thereon.

Provided, however, that if the tax commissioner believes that the tax yield as compared to the taxpayer's gross proceeds is deficient, he shall make test checks of the tax yield as compared to gross proceeds. Such test checks shall be conducted in the following manner: The tax commissioner shall notify the taxpayer by mail that he intends to make test checks upon not less than five business days over a period of at least one month. The taxpayer may designate in writing two of the days to be checked or two-fifths of the days to be checked and the tax commissioner shall designate the remainder. During the days designated for test checks the taxpayer shall keep a record of individual sales and the amount of tax collected on such sales. The totals of the sales and the tax for each day checked shall, at the close of the business day, be certified by representatives of the taxpayer and the tax commissioner. When the checks are completed, the sales for all days checked shall be totaled and the tax collected thereon shall be totaled and from such totals the percentage of tax yield determined. If the percentage of tax previously returned by the taxpayer for any taxable period is in excess of one-tenth of one per cent less than the percentage resulting from the checks, the tax imposed by this article shall be deemed to have been insufficiently returned for said period and the tax commissioner shall make an assessment based upon the percentage resulting from the checks and applied to taxpayer's gross proceeds for each period thus shown to be deficient, with credit for the tax previously paid. (1937, c. 108; 1955, c. 169.)

Effect of Amendment of 1955.—The amendment rewrote this section.

§ 999(24a). [24a] Jeopardy Assessments. — If the tax commissioner believes that the collection of the tax imposed by this article will be jeopardized by delay, he shall thereupon make an assessment of the tax, noting that fact upon the assessment. The amount assessed shall be

immediately due and payable. Unless the taxpayer against whom a jeopardy assessment is made petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such an assessment becomes final.

A petition for reassessment by a person against whom a jeopardy assessment has been made must be accompanied by such security as the tax commissioner may deem necessary to insure compliance with this article. (1955, c. 169.)

§ 999(24b). [24b] Notice of Assessment; Petition for Reassessment; Hearing.—The tax commissioner shall give to the taxpayer written notice of any assessment made pursuant to this article. Unless the taxpayer to whom a notice of assessment is directed shall, within thirty days after service thereof (except in the case of jeopardy assessments), either personally or by certified mail, file with the tax commissioner a petition in writing, verified under oath by said taxpayer or his duly authorized agent, having knowledge of the facts, setting forth with definiteness and particularity the items of the assessment objected to, together with the reason for such objections, said assessments shall become and be deemed conclusive and the amount thereof shall be payable at the end of the thirty-day period. In every case where a petition for reassessment as above described is filed, the tax commissioner shall assign a time and place for the hearing of same and shall notify the petitioner of such hearing by written notice at least twenty days in advance thereof and such hearing shall be held within sixty days from the filing of the petition for reassessment unless continued by agreement or by the tax commissioner for good cause. The hearing shall be informal and may be conducted by an examiner designated by the tax commissioner. At such hearing evidence may be offered to support the assessment or to prove that it is incorrect. After such hearing the tax commissioner shall, within a reasonable time, give notice in writing of the decision. Unless an appeal is taken within thirty days from service of this notice, the tax commissioner's decision shall be final. (1955, c. 169; 1962, c. 28.)

Effect of Amendment of 1962.—The amendment, effective Feb. 3, 1962, inserted "certified mail" in lieu of "registered mail" in the second sentence.

§ 999(24c). [24c] Appeal.—An appeal may be taken by the taxpayer to the circuit court of the county in which the activity taxed was engaged in, 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 commissioner of his determination as provided in section twenty-four-b [§ 999(24b)].

The appeal shall be taken by written notice to the tax commissioner and served as an original notice. When said notice is so served it shall,

with the return thereon, be filed in the office of the clerk of the circuit court and docketed as other cases with the taxpayer as plaintiff and the tax commissioner as defendant. The plaintiff shall file with such clerk a bond for the use of the defendant, with sureties approved by such clerk, in penalty double the amount of tax appealed from, and in no case shall the bond be less than fifty dollars, conditioned that the plaintiff shall perform the orders of the court.

The court shall hear the appeal in equity and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. In such appeal a certified copy of the tax commissioner's assessment shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of this article. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of said court with the tax commissioner who shall then correct the assessment in accordance with said decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of the state in the same manner that appeals are taken in equity. (1955, c. 169.)

Effect of Rules of Civil Procedure on Section.—See Rules 1, 2, 81(a)(1), appearing in Appendix, and discussion thereof in LUGAR & SILVERSTEIN, WEST VIRGINIA RULES.

§ 999(24d). [24d] Collection by Action or Suit; Injunction.—The tax commissioner may collect any tax, interest and penalty due and unpaid under the provisions of this article by action in debt, assumpsit, motion for judgment or other appropriate proceeding in the county in which (a) the activity taxed was engaged in or (b) the taxpayer resides; or by a suit to enforce the lien therefor in any county in which property of the taxpayer may be found; or, if the tax due and unpaid under this article is three hundred dollars or less, by suit in the court of any justice having jurisdiction of the taxpayer or of his property. If the failure of any taxpayer to comply with the provisions of this article shall have continued sixty days, the tax commissioner may proceed to obtain an injunction restraining the taxpayer from doing business in this state until he fully complies with the provisions of this article. In any proceeding under this section upon judgment or decree for the plaintiff he shall be awarded his costs. (1955, c. 169.)

Effect of Rules of Civil Procedure on Section.—See Rules 1, 2, 3, appearing in Appendix, and discussion thereof in LUGAR & SILVERSTEIN, WEST VIRGINIA RULES.

§ 999(24e). [24e] Collection by Distraint.—The tax commissioner may distraint upon any goods, chattels or intangibles represented by negotiable evidence of indebtedness of any taxpayer delinquent under this article for the tax, interest and penalty accrued and unpaid hereunder. The tax

commissioner may require the assistance of the sheriff of any county of the state in levying such distress in the county of which such sheriff is an officer. A sheriff so collecting taxes due hereunder shall be entitled to compensation in the amount of all penalties collected over and above the principal amount of the tax due, but in no case shall such compensation exceed twenty-five dollars. All moneys so collected shall be returned to the tax commissioner within ten days after collections. (1955, c. 169.)

§ 999(24f). [24f] **Service of Notice.** — Any written notice required by this article shall, unless otherwise specifically provided, be served upon the taxpayer personally or by certified mail. (1955, c. 169; 1962, c. 28.)

Effect of Amendment of 1962.—The amendment, effective Feb. 3, 1962, inserted "certified mail" in lieu of "registered mail" at the end of the section.

§ 999(25). [25] **Records of Nonresidents Doing Business in State.**—A nonresident person or foreign corporation engaged in a business within this State in the conduct of which the tax levied by this article becomes due, shall keep within this State adequate records concerning the operation of the business, and all taxes collected in the course of the business. The amount of the tax collected shall not be transmitted outside of this State without the written consent of, and in accordance with the conditions prescribed by the tax commissioner. (1937, c. 108.)

§ 999(26). [26] **Records of Tax Commissioner; Preservation of Returns.**—The tax commissioner shall keep full and accurate records of all moneys received by him. He shall preserve all returns filed with him hereunder for five years. (1937, c. 108.)

§ 999(27). [27] **When Information Obtained is Confidential.** — Unless, in compliance with the judicial order, or as may be required by the proper administration hereof, the tax commissioner, his agents and employees and former tax commissioners, agents and employees shall not divulge facts or information obtained in the administration hereof. (1937, c. 108.)

§ 999(27a). [27a]: Transferred to § 975(5b).

§ 999(28). [28] **Rules and Regulations of Tax Commissioner.**—The tax commissioner shall have the authority to promulgate and enforce reasonable rules and regulations necessary to the administration and enforcement of this article. (1937, c. 108.)

§ 999(29). [29] **Penalties; Jurisdiction.** — Except as herein otherwise provided, a person who wilfully violates any of the provisions of this article, or any lawful rule or regulation promulgated under it, shall be guilty of a misdemeanor,

and, upon conviction, shall be fined not less than fifty dollars, nor more than three hundred dollars for the first offense; and for any second or subsequent offense, shall be guilty of a felony, and, upon conviction, shall be fined not less than five hundred dollars, nor more than five thousand dollars, and confined in the penitentiary not to exceed two years, either such fine or imprisonment, or both, in the discretion of the court. Justices of the peace shall have concurrent jurisdiction with the circuit court, and any other courts having criminal jurisdiction in their county, for the trial of all misdemeanors arising under this article. (1937, c. 108; 1939, c. 121.)

Effect of Amendment of 1939.—The seventh line formerly read in part "nor more than five thousand dollars." The amendment changed it to its present reading and added the remainder of the section.

§ 999(30). [30] **Proceeds of Tax for Free Schools.** — The proceeds of the tax imposed by this article shall be devoted to the support of the free schools, and be expended in such manner as may be provided by law. (1937, c. 108.)

Provisions Directory.—The provisions of this section are a mere legislative direction concerning the use to be made of the proceeds of the tax and do not restrict or impair the power of any subsequent legislature to repeal or modify such provisions. Board of Education of Wyoming County v. Board of Public Works (W. Va.), 109 S. E. (2d) 552.

Revenue Part of the General Revenue Fund.—The revenue derived from the consumers sales tax and the use tax, § 999(30z), is not a part of the general school fund but is a part of the general revenue fund and as such is subject to the provisions of § 265(191) authorizing the board of public works to limit expenditures from appropriations to the revenues available for the particular purposes. The provisions of this section and § 999(30z) do not require that such proceeds be paid into the general school fund. Board of Education of Wyoming County v. Board of Public Works (W. Va.), 109 S. E. (2d) 552.

Article 15A. Use Tax.

- § 999(30a). [1] Definitions.
- § 999(30b). [2] Imposition of tax.
- § 999(30b1). [2a] Additional use tax.
- § 999(30c). [3] Exemptions.
- § 999(30d). [4] Evidence of use.
- § 999(30e). [5] How collected.
- § 999(30f). [6] Collection by retailer.
- § 999(30g). [7] Foreign retailers.
- § 999(30h). [8] Absorbing tax.
- § 999(30i). [9] Tax as debt.
- § 999(30j). [10] Payment to tax commissioner.
- § 999(30k). [11] Liability of user.
- § 999(30l). [12] Bond to secure payment.
- § 999(30m). [13] Determination by tax commissioner.
- § 999(30n). [14] Appeal.
- § 999(30o). [15] Service of notice.
- § 999(30p). [16] Failure to pay; penalties.
- § 999(30q). [17] Assessment; levy to collect tax.
- § 999(30r). [18] Seller must show sale not at retail; presumption.
- § 999(30s). [19] Fraud.

999(30t). [20] Criminal penalty.

999(30u). [21] Books; examination.

999(30v). [22] Revoking permits.

999(30w). [23] Tax imposed is in addition to all other taxes and charges.

999(30x). [24] Refund.

999(30y). [25] Administration of article.

999(30z). [26] Proceeds of tax for free schools.

999(30aa). [27] Partial unconstitutionality.

§ 999(30a). [1] Definitions.—The following words, terms, and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Person" includes any individual, firm, co-partnership, joint adventure, association, corporation, estate, trust, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.

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

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

4. "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.

5. "Tangible personal property" means tangible goods, wares, and merchandise when furnished or delivered within this state to consumers or users within this state.

6. "Retailer" means and includes every person engaged in the business of selling tangible personal property for use within the meaning of this article: Provided, however, that when in the opinion of the tax commissioner it is necessary for the efficient administration of this arti-

cle to regard any salesmen, representatives, truckers, peddlers or canvassers as the agents of the dealers, distributors, supervisors, employers 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 article.

7. "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 (§ 3091) of the Code of West Virginia, one thousand nine hundred thirty-one.

8. The word "commissioner" means the state tax commissioner.

9. The word "taxpayer" includes any person within the meaning of subsection one hereof, who is subject to a tax imposed by this article, whether acting for himself or as a fiduciary. (1951, c. 183.)

§ 999(30b). [2] Imposition of Tax.—An excise tax is hereby imposed on the use in this state of tangible personal property furnished or delivered within this state to consumers or users within this state on or after the effective date of this article, at the rate of two per cent of the purchase price of such property. Said tax is hereby imposed upon every person using such property within this state until such tax has been paid directly to a retailer, or to the state tax commissioner as hereinafter provided.

Purchases of tangible personal property made from the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the state of West Virginia of a character not ordinarily readily obtainable within the state, shall not be subject to use tax when sold, if such industrial materials and equipment would not be subject to use tax if such were sold outside of the state for use in West Virginia.

This article shall not apply to purchases made by counties or municipal corporations. (1951, c. 183.)

§ 992(30b1). [2a] **Additional use tax.**—For the purpose of providing additional revenue for the state fund, general revenue, there is hereby imposed, other than in this section two-a to the contrary, an additional excise (use) tax in the same form, manner and extent as in section two [§ 999(30b)] of this article provided; said additional excise (use) tax is imposed at the rate of one per cent of the purchase price of such property, with the first one dollar of such purchase price being exempt for the purpose of computing the additional excise tax imposed by this section two-a.

Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, exemptions, payment, collection, remission and assessment of the excise tax imposed by section two [§ 999(30b)] of this article shall be applicable to the levy, imposition, exemptions, payment, collection, remission and assessment of such additional tax as imposed by this section two-a.

Notwithstanding the provisions of section twenty-six [§ 999(30z)] of this article, all moneys received from the additional tax imposed by this section shall be paid into the state fund, general revenue, to be expended in whatever manner provided by law.

The provisions of this section shall expire June thirtieth, one thousand nine hundred sixty-four. (1961, c. 153; 1961, 1st Ex. Sess., c. 13; 1962, c. 32; 1963, c. 187.)

Editor's Note. — This section was originally inserted by c. 153, Acts 1961, passed March 10, 1961, and made effective from passage, but was subject to expiration on Aug. 31, 1961. Chapter 13, Acts 1st Ex. Sess. 1961, passed June 16, 1961, and made effective July 1, 1961, was, however, passed to take effect upon the expiration of c. 153, Acts 1961, and extended the provisions of this section until June 30, 1962.

Effect of Amendment of 1962.—The amendment, effective July 1, 1962, extended the provisions of this section from June 30, 1962 to June 30, 1963.

Effect of Amendment of 1963.—The amendment, effective July 1, 1963, rewrote the last paragraph, extending the provisions of this section from June 30, 1963 to June 30, 1964.

§ 992(30c). [3] **Exemptions.**—The use in this state of the following tangible personal property is hereby specifically exempted from the tax imposed by this article:

1. All articles of tangible personal property brought into the state of West Virginia by a non-resident individual thereof for his or her use or enjoyment while within the state.

2. Tangible personal property, the gross receipts from the sale of which are exempted from the retail sales tax by the terms of section nine, article fifteen, chapter eleven [§ 999(9)] of the Code of West Virginia, one thousand nine hundred thirty-one.

3. Tangible personal property, the gross receipts from the sale of which are derived from

the sale of machinery, supplies and materials to contractors, or to persons engaged in the business of manufacturing, transportation, transmission, communication or in the production of natural resources in this state.

4. Tangible personal property, the gross receipts or the gross proceeds from the sale of which are required to be included in the measure of the tax imposed by article fifteen [§ 999(1) et seq.], chapter eleven of the Code of West Virginia, one thousand nine hundred thirty-one, and any amendment made or which may hereafter be made thereto.

5. Tangible personal property the sale of which in this state is not subject to the West Virginia consumers' sales tax. (1951, c. 183.)

§ 999(30d). [4] Evidence of Use.—For the purpose of the proper administration of this article to prevent evasion of the tax, evidence that tangible personal property was sold by any person for delivery in this state shall be prima facie evidence that such tangible personal property was sold for use in this state. (1951, c. 183.)

§ 999(30e). [5] How Collected.—The tax herein imposed shall be collected in the following manner:

1. The tax upon the use of all tangible personal property, which is sold by a retailer maintaining a place of business in this state, or by such other retailer as the tax commissioner shall authorize pursuant to section seven [§ 999(30g)] of this article shall be collected by such retailer and remitted to the state tax commissioner, pursuant to the provisions of sections six to ten [§§ 999(30f)-999(30j)], inclusive, of this article.

2. The tax upon the use of all tangible personal property not paid pursuant to subsection one of this section shall be paid to the tax commissioner directly by any person using such property within this state, pursuant to the provisions of section eleven [§ 999(30k)] of this article. (1951, c. 183.)

§ 999(30f). [6] Collection by Retailer.—Every retailer maintaining a place of business in this state and making sales of tangible personal property for use in this state, not exempted under the provisions of section three [§ 999(30c)] of this article, shall at the time of making such sales, whether within or without the state, collect the tax imposed by this article from the purchaser, and give to the purchaser a receipt therefor in the manner and form prescribed by the tax commissioner, if the tax commissioner shall, by regulation, require such receipt. Each such retailer shall list with the tax commissioner the name and address of all his agents operating in this state, and the location of any and all his distribution or sales houses or offices or other places of business in this state. (1951, c. 183.)

§ 999(30g). [7] Foreign Retailers.—The tax commissioner may, in his discretion, upon application authorize the collection of the tax herein imposed by any retailer not maintaining a place of business within this state, who, to the satisfaction of the tax commissioner furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax in such manner, and subject to such regulations and agreements as the tax commissioner shall prescribe. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property sold to his knowledge for use within this state, in the same manner and subject to the same requirements as a retailer maintaining a place of business within this state. Such authority and permit may be cancelled when, at any time, the tax commissioner considers the security inadequate, or that such tax can more effectively be collected from the person using such property in this state. (1951, c. 183.)

§ 999(30h). [8] Absorbing Tax.—It shall be unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this article will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. The tax commissioner shall have the power to adopt and promulgate rules and regulations for adding such tax, or the equivalent thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling such retailers to add and collect, as far as practicable, the amount of such tax. Any person violating any of the provisions of this section within this state shall be guilty of a misdemeanor and subject to the penalties provided in section twenty [§ 999(30t)] of this article. (1951, c. 183.)

§ 999(30i). [9] Tax as Debt.—The tax herein required to be collected by any retailer pursuant to sections six or seven [§§ 999(30f) or 999(30g)], and any tax collected by any retailer pursuant to said sections, shall constitute a debt owed by the retailer to this state. (1951, c. 183.)

§ 999(30j). [10] Payment to Tax Commissioner.—Each retailer required or authorized, pursuant to sections six or seven [§§ 999(30f) or 999(30g)], to collect the tax herein imposed, shall be required to pay to the tax commissioner the amount of such tax on or before the fifteenth day of the month next succeeding each quarterly period, the first such quarterly period being the period commencing on the first day of July, one thousand nine hundred fifty-one, and ending

on the thirtieth day of September, one thousand nine hundred fifty-one. At such time, each retailer shall file with the tax commissioner a return for the preceding quarterly period in such form as may be prescribed by the tax commissioner showing the sales price of any or all tangible personal property sold by the retailer during such preceding quarterly period, the use of which is subject to the tax imposed by this article, and such other information as the tax commissioner may deem necessary for the proper administration of this article. The return shall be accompanied by a remittance of the amount of such tax, for the period covered by the return, provided that where such tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part thereof, is extended over a period longer than sixty days from the date of the sale thereof, the retailer may collect and remit each quarterly period that portion of the tax—equal to two per cent of that portion of the purchase price actually received during such quarterly period. The tax commissioner, if he deems it necessary in order to insure payment to the state of the amount of such tax, may in any or all cases require returns and payments of such amount to be made for other than quarterly periods. The tax commissioner may, upon request and a proper showing of the necessity therefor, grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed by the retailer or his duly authorized agent, and must be certified by him to be correct. (1951, c. 183.)

§ 999(30k). [11] **Liability of User.**—Any person who uses any tangible personal property upon which the tax herein imposed has not been paid either to a retailer or direct to the tax commissioner as herein provided, shall be liable therefor, and shall on or before the fifteenth day of the month next succeeding each quarterly period pay the tax herein imposed upon all such property used by him during the preceding quarterly period in such manner and accompanied by such returns as the tax commissioner shall prescribe. All of the provisions of section ten [§ 999(30j)] with reference to such returns and payments shall be applicable to the returns and payments herein required. (1951, c. 183.)

§ 999(30I). [12] **Bond to Secure Payment.**—The tax commissioner may, when in his judgment it is necessary and advisable to do so in order to secure the collection of the tax levied under this article, authorize any person subject to such tax, and any retailer required or authorized to collect such tax pursuant to the provisions of sections six and seven [§§ 999(30f) and

not been supplied pursuant to the provisions of this article, shall be prima facie evidence thereof. (1951, c. 183.)

§ 999(30q). [17] **Assessment; Levy to Collect Tax.**—The tax commissioner shall have power to make an assessment against any person subject to the tax imposed by this article which is due and unpaid. Such assessment may include penalties. The tax commissioner may collect such assessment by levy, action at law, distraint or any other method of enforcing or collecting taxes which may be provided by law and shall have the right to file liens therefor in any county. (1951, c. 183.)

Effect of Rules of Civil Procedure on Section.—See Rules 1, 2, appearing in Appendix, and discussion thereof in LUGAR & SILVERSTEIN, WEST VIRGINIA RULES.

§ 999(30r). [18] **Seller Must Show Sale Not at Retail; Presumption.**—The burden of proving that a sale was not at retail shall be upon the seller, unless he takes from the purchaser a certificate signed by and bearing the address of the purchaser to the effect that the property was purchased for resale. To prevent evasion it shall be presumed that all proceeds are subject to the tax until the contrary is clearly established. (1951, c. 183.)

§ 999(30s). [19] **Fraud.**—Any person required to make, render, sign, or certify any return or supplementary return, who makes any false or fraudulent return with intent to defeat or evade the tax, and/or amount required to be paid by this article, shall be guilty of a misdemeanor and shall, for each such offense, be fined not less than fifty dollars and not more than five hundred dollars, or be confined in jail not more than sixty days, or be subject to both such fine and confinement in the discretion of the court. (1951, c. 183.)

§ 999(30t). [20] **Criminal Penalty.**—Any retailer or other person failing or refusing within a reasonable time to furnish any return herein required to be made, or failing or refusing within a reasonable time to furnish a supplemental return or other data required by the tax commissioner, shall be guilty of a misdemeanor and subject to a fine of 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. (1951, c. 183.)

§ 999(30u). [21] **Books; Examination.**—Every retailer required or authorized to collect taxes imposed by this article and every person using in this state tangible personal property purchased on or after the effective date of this article, shall keep such records, receipts, invoices,

and other pertinent papers as the tax commissioner shall require, in such form as the tax commissioner shall require. The tax commissioner or any of his duly authorized agents is hereby authorized to examine the books, papers, records, and equipment of any person either selling tangible personal property or liable for the tax imposed by this article, and to investigate the character of the business of any such person in order to verify the accuracy of any return made, or if no return was made by such person, to ascertain and determine the amount due under the provisions of this article. Any such books, papers, and records shall be made available within this state for such examination upon reasonable notice when the tax commissioner shall deem it advisable and shall so order. However, where the taxpayer's records must be kept out of state, the taxpayer may upon being notified by the tax commissioner that an examination is to be made, elect to do one of the following: (1) Forthwith transport the required records to a convenient point in West Virginia and notify the tax commissioner that they are available; or (2) pay the reasonable traveling expenses of the tax commissioner's representatives from Charleston, West Virginia, to the out of state place where the records are kept, and return, and reasonable living expenses of such representatives while engaged in their examination. (1951, c. 183.)

§ 999(30v). [22] **Revoking Permits.**--Whenever any retailer maintaining a place of business in this state, or authorized to collect the tax herein imposed pursuant to section seven [§ 999(30g)] of this article fails to comply with any of the provisions of this article or any orders, rules or regulations of the tax commissioner prescribed and adopted under this article, the tax commissioner may, upon notice and hearing hereinafter provided, by order revoke the store license, if any, issued to such retailer under article thirteen-a [§§ 975(6) et seq.], chapter eleven of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, or if such retailer is a corporation authorized to do business in this state under section seventy-nine, article one, chapter thirty-one (§ 3091) of said Code, may certify to the secretary of state a copy of an order finding that such retailer has failed to comply with certain specified provisions, orders, rules or regulations. The secretary of state shall, upon receipt of such certified copy, revoke the permit authorizing said corporation to do business in this state, and shall issue a new permit only when such corporation shall have obtained from the tax commissioner an order finding that such corporation has complied with its obligations under this article. No order author-

ized in this section shall be made until the retailer is given an opportunity to be heard and to show cause why such order should not be made, and he shall be given twenty days' notice of the time, place, and purpose of such hearing. The tax commissioner shall have the power in his discretion to issue a new store permit after such revocation. (1951, c. 183.)

§ 999(30w). [23] **Tax Imposed Is in Addition to All Other Taxes and Charges.**—The tax imposed under this article shall be in addition to all other taxes, licenses or charges to which the persons taxed herein are subject under the law of this state. It is the purpose of this article to rest a fair share of the tax burden, commensurate with the benefits received, upon those exercising the privilege taxed hereby within this state. (1951, c. 183.)

§ 999(30x). [24] **Refund.**—All claims for the refund of overpayments of the tax imposed by this article must be accompanied by amended returns showing the amount of taxes due, the amount paid in error and the amount overpaid. Where such error is not apparent from an examination of the return, the taxpayer must furnish a full and complete statement of the reasons for the differences between the original and amended returns. Before finally passing upon a claim the tax commissioner may require the production of any further evidence considered necessary in order to arrive at a correct finding. The tax commissioner can issue refunds of the tax imposed by this article only where application for such refund is made within two years from the date of payment of such tax as provided for in section two-a, article one, chapter eleven [§ 655(1)] of the Code of West Virginia, one thousand nine hundred thirty-one, as amended. (1951, c. 183.)

§ 999(30y). [25] **Administration of Article.**—The administration of this article is vested in and shall be exercised by the tax commissioner who shall prescribe forms and reasonable rules and regulations in conformity with this article for the making of returns and for the ascertainment, assessment and collection of the taxes imposed hereunder; and the enforcement of any provisions of this article in any of the courts of the state shall be under the exclusive jurisdiction of the tax commissioner. (1951, c. 183.)

§ 999(30z). [26] **Proceeds of Tax for Free Schools.**—The proceeds of the tax imposed by this article shall be devoted to the support of the free schools, and be expended in such manner as may be provided by law. (1951, c. 183.)

Provisions Directory.—The provisions of this section are a mere legislative direction concerning the use to be made of the proceeds of the tax and do not restrict or impair

the power of any subsequent legislature to repeal or modify such provisions. Board of Education of Wyoming County v. Board of Public Works (W. Va.), 109 S. E. (2d) 552.

Revenue Part of the General Revenue Fund.—The revenue derived from the consumers sales tax, § 999(30) and the use tax is not a part of the general school fund but is a part of the general revenue fund and as such is subject to the provisions of § 265(191) authorizing the board of public works to limit expenditures from appropriations to the revenues available for the particular purposes. The provisions of this section and § 999(30) do not require that such proceeds be paid into the general school fund. Board of Education of Wyoming County v. Board of Public Works (W. Va.), 109 S. E. (2d) 552.

§ 999(30aa). [27] Partial Unconstitutionality.—The provisions of this article shall be deemed to be severable and if for any reason any provision shall be determined to be unconstitutional or invalid, such determination shall not be held to affect any other provision hereof. (1951, c. 183.)

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 - Defined, § 999(30a).
- Tax commissioner.
 - Determination, § 999(30m).

June 30, 1964

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

Dear Mr. Burdett:

Enclosed are two (2) copies of regulations issued by the State Tax Department regarding the Business and Occupation Tax. These regulations are designated Series I of Chapter 11-13 of the West Virginia Administrative Regulations.

I hereby certify that the attached regulations are true and accurate copies of official regulations adopted by this Department on June 30, 1964.

Very truly yours,



G. Thomas Battle
State Tax Commissioner

GTB/LRT/jb

Enclosures (2)

cc: Mr. Louis R. Tabit, Director
Business and Occupation Tax Division

Filed in Office of the Secretary of State
of West Virginia *June 30, 1964*
JOE F. BURDETT
SECRETARY OF STATE