


**MUNICIPAL SALES TAX**

Presented by:  
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May 1, 2015



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**A WORD OF CAUTION**

These materials are presented with the understanding that the information provided is not legal advice. Due to the rapidly changing nature of the law, information contained in this presentation may become outdated. Anyone using information contained in this presentation should always research original sources of authority and update this information to ensure accuracy when dealing with a specific matter. No person should act or rely upon the information contained in this presentation without seeking the advice of an attorney.



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**MUNICIPAL TAXES**



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**OTHER MUNICIPAL TAXES**

- *Hotel Occupancy Tax*
- *Property Taxes*
- *Municipal License Tax*
- *Public Utilities Tax*
- *Amusement Tax*



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**OTHER MUNICIPAL TAXES**

- *Tax on purchases of intoxicating liquors*
- *User fees*
- *Business and Occupation Tax*



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**HISTORY**



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**HISTORY**

The Consumers Sales and Service Tax was adopted in 1933, on the heels of West Virginia’s major tax revolt capped by the “Tax Limitation Amendment of 1932” found in Article X, section 1 of the West Virginia Constitution.



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**ENACTMENT OF USE TAX**

- In 1951, the Use Tax was enacted as a “complimentary” tax to the Sales Tax, even though the tax was imposed only on the use of tangible personal property (and not upon services).



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**SALES OF TANGIBLE PERSONAL PROPERTY & SERVICES**

- Subject to many exemptions and exceptions, the West Virginia Consumers Sales and Service Tax is generally imposed on the sale of tangible personal property or the dispensing of certain services in West Virginia.
- The most important feature distinguishing West Virginia from the mainstream of states is the taxability of services in West Virginia. In West Virginia, services are generally taxable unless explicitly exempt, whereas most other states tax only "listed" services.



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**MUNICIPAL SALES AND USE TAX  
(AS OF JULY 1, 2015)**

\* HOME RULE CITY

- Bolivar
- Charleston \*
- Charles Town \*
- Harrisville
- Huntington \*
- Martinsburg \*
- Milton \*
- Nitro \*



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**MUNICIPAL SALES AND USE TAX  
(AS OF JULY 1, 2015)**

\* HOME RULE CITY

- Parkersburg \*
- Quinwood
- Ranson \*
- Rupert
- Thomas
- Vienna \*
- Wheeling \*
- Williamstown



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## WHO IS REQUIRED TO COLLECT

- All retailers:
  - Have an office, distribution, sales, sample or warehouse location or other place of business in the local area either directly or by a subsidiary;



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## WHO IS REQUIRED TO COLLECT

- Have a representative, agent, salesperson, canvasser or solicitor in the local area – on either a permanent or temporary basis;
- Who operates under the authority of the retailer or its subsidiary for any purpose, such as repairing, selling or installing orders for the retailer's goods or services or leasing tangible personal property in the local area;



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## WHO IS REQUIRED TO COLLECT

- Ship or deliver tangible personal property to the local area; or
- Perform taxable services in the local area.



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## WHO IS REQUIRED TO COLLECT

- Local tax applies to sales made or services performed within city limits only.
- Zip codes help to determine the taxing area but don't always correspond exactly with city or county limits, so part of a zip code may be outside the city.



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## MUNICIPAL USE TAX

- Local use tax applies when you buy items or services for use, storage, distribution or consumption in the local area without paying local sales tax to the seller.



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## MUNICIPAL USE TAX

- You buy items outside the local area, the seller doesn't charge local sales tax and you use or store the item in the local area.
- You buy a taxable item from an out-of-state seller who does not charge local sales tax.



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## **PRESUMPTION OF TAXABILITY**

(EXEMPTIONS STRICTLY CONSTRUED AGAINST TAXPAYERS)

- “To prevent evasion, it [is] presumed that all sales and services are subject to the [West Virginia Sales Tax] until the contrary is clearly established.”  
*W. Va. Code § 11-15-6.*



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## **VENDORS, RETAILERS, PURCHASERS & USERS: PERSPECTIVES**

- In general, a purchaser or user of tangible personal property or services is liable for Sales and Use Tax.
- A vendor or retailer engaging in business in West Virginia is liable for failure to collect tax unless such vendor or retailer adequately protects itself by properly documenting the transaction as being exempt from tax.



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## **WHEN TO CHARGE A LOCAL TAX**

- As a general rule TPP,
  - Destination-based sourcing rules are used to determine the applicable local sales or use tax on a given sales transaction, subject to certain exceptions. These sourcing rules apply, regardless of whether the taxable item sold is characterized as tangible personal property or a service.



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## SOURCING RULES TPP

- Destination-based sourcing rules:
  - 1) The sale is sourced to the retailer's business location if the buyer receives the merchandise there.
  - 2) If the retailer delivers or ships the merchandise to the buyer the sale is sourced to location where the buyer (or donee) receives the merchandise



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## SOURCING RULES TPP

- 3) If neither (1) nor (2) apply, then the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller maintained in the ordinary course of the seller's business.



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## SOURCING RULES TPP

- 4) If neither (1), (2) nor (3) apply, then the sale is sourced to the address of the buyer obtained during consummation of the sale, and can include the address of the buyer's payment instrument (check, credit card or money order)



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## SOURCING RULES TPP

- 5) If (1), (2), (3) or (4) do not apply, or the retailer has insufficient information to determine whether (1), (2), (3) or (4) should apply, then by default, the origin-based sourcing rule applies. The sale is sourced to the address from which the merchandise (tangible personal property) was shipped.



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## SOURCING RULES SERVICE

- The destination-based sourcing rules will apply to all retail sales of taxable services, as well as sales of tangible personal property. This means the sale of a taxable service is sourced to the location where the purchaser of the services makes first use of those services. In many situations, this is the location where the taxable services are performed.



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## PER SE EXEMPTIONS



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## PER SE EXEMPTIONS

- Sales of public services which are regulated by the West Virginia Public Service Commission.  
See *W. Va. Code* § 11-15-8;  
*CSR* 110-15-9.2.3.



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## PER SE EXEMPTIONS

- An isolated transaction  
See *W. Va. Code* § 11-15-9(a)(7);  
*CSR* § 110-15-9.2.5



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## PER SE EXEMPTIONS

- Sales of drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes.  
See *W. Va. Code* § 11-15-9 (a)(11);  
*CSR* § 110-15-9.2.7.



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### PER SE EXEMPTIONS

- Leases of motor vehicles titled pursuant to the provisions of *W. Va. Code §17A-3-1, et seq.*, to lessees for a period of thirty (30) or more consecutive days.  
See *W. Va. Code § 11-15-9 (a) (17)*;  
*CSR § 110-15-9.2.10*.



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### PER SE EXEMPTIONS

- Sales of radio or television broadcasting time, sales of advertisements of goods and services in preprinted advertising circulars, and magazines, newspapers and outdoor advertising space.  
See *W. Va. Code § 11-15-9(a) (12)*;  
*CSR § 110-15-9.2.14*.



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### PER SE EXEMPTIONS

- Personal services  
See *W. Va. Code § 11-15-8*;  
*CSR § 110-15-9.2.15*.



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## PER SE EXEMPTIONS

- Professional services  
See *W. Va. Code* § 11-15-8;  
*CSR* § 110-15-9.2.16.



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## PER SE EXEMPTIONS

- Contracting services  
See *W. Va. Code* § 11-15-8a;  
*CSR* § 110-15-9.2.17.



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## PER SE EXEMPTIONS

- Services rendered by an employee  
to his or her employer.  
See *W. Va. Code* § 11-15-2(b)(17);  
*CSR* § 110-15-9.2.18.



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## PER SE EXEMPTIONS

- Sales of tangible personal property or taxable services in this State, or the use in this State of tangible personal property or services, which this State is prohibited from taxing under its consumers sales and service tax and use tax laws by the United States Constitution, controlling federal law, the Constitution of this State or some controlling provision of West Virginia Law. See *W. Va. Code* §§ 11-15-9 (a) (28) and (29); *CSR* § 110-15-9.2.19.



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## PER SE EXEMPTIONS

- Sales of or charges for the transportation of passengers in interstate commerce. See *W. Va. Code* § 11-15-9(a)(27); *CSR* § 110-15-9.2.21.



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## PER SE EXEMPTIONS

- Casual and occasional sales by certain non-profit organizations. See *W. Va. Code* § 11-15-9(a)(14); *CSR* § 110-15-9.2.22.



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## PER SE EXEMPTIONS

- Sales of vehicles which are titled with the West Virginia Department of Motor vehicles and which are subject to the vehicle title privilege tax imposed by W. Va. Code § 17A-3-4 or a similar tax imposed by another state.  
See *W. Va. Code § 11-15-9(a) (4)*;  
*CSR § 110-15-9.2.24*.



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## EXEMPTIONS FOR WHICH AN EXEMPTION CERTIFICATE IS REQUIRED



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## REQUIRED EXEMPTION CERTIFICATE

- Sales of certain tangible personal property or taxable service to the State, its institutions or subdivisions.  
See *W. Va. Code § 11-15-9 (a) (3)*;  
*CSR § 110-15-9.3.1*.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Sales of tangible personal property (and services) for the purpose of resale. See *W. Va. Code* §§ 5 11-15-9(a)(9) and 11-15-2(b)(17); *CSR* §110-15-9.3.4.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Sales of tangible personal property or taxable services to certain entities exempt under Section 501(c) (3) or (c) (4) of the Internal Revenue Code. *W. Va. Code* § 11-15-9(a) (6); *CSR* § 110-15-9.3.10.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Sales of electronic data processing services and related software. See *W. Va. Code* § 11-15-9(a)(21); *CSR* § 110-15-9.3.11.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when both organizations are members of the same controlled group or are related taxpayers under I.R.C. § 267.  
See *W. Va. Code* § 11-15-9(a)(23);  
*CSR* § 110-15-9.3.12.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Sales of certain aircraft repair, remodeling and maintenance services.  
See *W. Va. Code* § 11-15-9(a)(33);  
*CSR* § 110-15-9.47.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Commissions received by manufacturer's representatives.  
See *W. Va. Code* § 11-15-9(a)(37).



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Sales of primary opinion research services, when research results are transmitted to out-of-state clients by interstate commerce means as an indispensable part of the service. See *W. Va. Code § 11-15-9(a)(38)*.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Charges made by an I.R.C. § 501(c) (3) or (c) (6) income tax-exempt organization to its members for dues, newsletters, seminars, meetings, hand-out materials and for meals, lodging, entertainment and transportation services included in these charges and for which the organization has already paid the applicable sales tax. See *W. Va. Code § 11-15-9(a) (41)*.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Sales of soap to be used at a car wash. See *W. Va. Code § 11-15-9(a)(44)*.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Commissions received by a travel agency from an out-of-state vendor.  
See *W. Va. Code § 11-15-9(a)(45)*.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Service of providing technical evaluations by certified environmental and industrial consultants from compliance with environmental standards.  
See *W. Va. Code §§ 11-15-9(a)(46) and 11-15-9c*.



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**REQUIRED EXEMPTION  
CERTIFICATE**

- Payments made to lodging franchisers under franchise agreements.  
*W. Va. Code § 11-15-9(a)(48)*.



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**REFUNDABLE  
EXEMPTIONS**

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**REFUNDABLE EXEMPTIONS**

- Sales of property or services to persons engaged in this State in the business of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or sale of electric power, or providing public utility service, which are directly used in those activities.  
See *W. Va. Code* § 11-15-9(b) (2);  
*CSR* § 110-15-9.4.1.

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**REFUNDABLE EXEMPTIONS**

- Sales of tangible personal property or services to nationally chartered fraternal or social organizations when such property or services are purchased for the sole purpose of free distribution in public welfare or relief work.  
See *W. Va. Code* § 11-15-9(b)(3);  
*CSR* § 110-15-9.4.2.

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## REFUNDABLE EXEMPTIONS

- Sales and services of fire fighting or station house equipment.  
See *W. Va. Code* § 11-15-9(b)(4);  
*CSR* § 110-15-9.4.3.



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## REFUNDABLE EXEMPTIONS

- Certain sales of building materials or building supplies or other property to an organization qualified under Section 501(c) (3) or (c) (4) of the Internal Code.  
See *W. Va. Code* § 11-15-9(b)(5);  
*CSR* § 110-15-9.4.5.



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## REFUNDABLE EXEMPTIONS

- Sales of property or services to bona fide charitable organizations which make no charge whatsoever for the services they render.  
See *W. Va. Code* § 11-15-9(b)(1);  
*CSR* § 110-15-9.4.6.



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## THANK YOU!

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