



## SALES AND USE TAX EXEMPTIONS

*The West Virginia sales and use tax laws contain many exemptions from the tax. The same exemptions apply to municipal sales and use taxes. This publication provides general information. It is not a substitute for tax laws and legislative regulations. It does not discuss special rules regarding sales of gasoline and special fuels.*

### GENERAL PRINCIPLES

- When discussing sales/use tax exemptions, it is important to consider the following general principles:
  - All sales of tangible personal property or taxable services are presumed to be subject to tax.
  - Tax *must* be collected unless a specific exemption applies to the transaction and proper documentation of the exempt status of the transaction is established by the purchaser and retained by the seller.
  - Most individuals, businesses and organizations must pay tax on their purchases.
  - The burden of proving that a transaction is exempt is on the person claiming the exemption and the vendor making the sale.
  - Vendors who fail to collect and remit sales tax on taxable transactions or who fail to maintain proper records and documents with respect to taxable transactions are personally liable for payment of the amount of tax.
  - Intentional disregard of the sales/use tax law or regulations is a serious matter and will result in monetary fines or criminal penalties.
- For a more complete discussion regarding West Virginia sales tax responsibilities, see Publication [TSD-407](#).
- There are several distinct types of exemptions and prescribed methods by which exemptions must be claimed. Failure to follow the proper method in claiming an exemption may result in a transaction being taxable.

### “PER SE” EXEMPTIONS

- The term “per se” means by, of, or in itself. When used in the context of sales tax exemptions, it refers to exemptions that **do not require a separate exemption document as proof of the exempt status**. Generally, the normal documentation of the transaction is sufficient proof of the “per se” exemption. Vendors who make sales that are “per se” exempt must maintain adequate records to substantiate the exemption.
- The following sales and services are exempt “per se” from sales/use tax in West Virginia:
  - **Advertising** - Sales of radio or television broadcasting time, preprinted advertising circulars and outdoor advertising space, newspaper and magazine advertising space for the advertisement of goods or services.
  - **College Board** - Sales of board or meal plans by public or private colleges or universities when the sale is for more than 30 consecutive days and is on a “contract basis” to students enrolled at the school.
  - **Contracting** - The construction, alteration, repair, improvement or decoration of real property, but only when the work performed results in a “capital improvement” to the real property. All other construction trade activities are subject to the sales tax unless otherwise exempt. Purchases made by contractors are generally taxable. For more information on capital improvements, see Publication [TSD-310](#).
  - **Day Care Centers** - Sales of day care center services. A day care center’s own purchases of property or services are generally taxable.
  - **Drugs, durable medical goods, mobility enhancing equipment and prosthetic devices dispensed upon prescription** - Through June 30, 2016, the exemption for durable medical equipment set forth by W. Va. Code § 11-15-9i (2011) can be asserted by health care providers and individuals who purchase durable medical equipment to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease when the durable medical equipment is used. Between July 1, 2016 and June 30, 2018, this exemption is only available to individuals. After July 1, 2018, this exemption will be available

to both home users and health care providers. For more information on this exemption, see Publication [TSD-425](#).

- **Prescriptions** - Sales and purchases of drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon prescriptions issued by persons licensed to prescribe and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease. Sales of insulin to consumers for medical purposes are also exempt from sales tax. Sales of nonprescription medications are subject to the tax. For a more complete discussion of the application of sales and use tax to drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon prescription, and insulin, see Publication [TSD-377](#), Publication [TSD-383](#) and Publication [TSD-425](#).
- **Educational Summer Camp Tuition** - Tuition charges made for attending educational summer camps. This exemption does not apply to sales of tangible personal property or food by the camps. For more information on educational camps, see Publication [TSD-375](#).
- **Employee Services** - Services provided by an employee to the employer that are within the scope of the employment contract. Services provided by an employee to the employer that are outside of the employment contract and services provided by an “independent contractor” are taxable. A discussion of the employee/employer relationship can be found in Section 60 of the West Virginia State Tax Department’s Sales Tax Regulations, W. Va. C.S.R. § 110-15.
- **Certain Exempt Organizations** - Federal and State Law exempt certain organizations or activities from sales taxes. These provisions are not found in our sales tax law or legislative rule, but are in the particular provisions of the law that deal with the specific organization or activity.

A nonexclusive list of organizations that are exempt from sales tax by other sections of federal or state law includes: federal or state chartered credit unions, regional transit authorities, county ambulance authorities, and non-profit public health care corporations. These provisions of federal and state law may exempt the organization or activity from sales tax on the sale of goods and services, or on purchases of goods and services, or both. However, this exemption applies only to the activities or transactions specifically excluded from taxation by the applicable statute.

For example, state law imposes a pari-mutuel wagering tax on racing tracks in lieu of other taxes on its operations; nevertheless, sales of food, beverages, programs, souvenirs and other items by racing tracks are subject to the sales tax.

- **Food Stamp Purchases** - Sales of food lawfully purchased with federal food stamps or with drafts issued by the West Virginia special supplemental food program for Women, Infants, and Children (WIC).
- **Fraternities and Sororities** - Charges made by fraternities and sororities to their student members for board or meal plans.
- **Fund Raising Sales by Churches and Certain Non-Profit Organizations** - This exemption applies only to organizations that meet special requirements. For a more complete discussion of this exemption, see Publication [TSD-320](#).
- **Intangible Property** - Sales of intangibles (copyrights, royalties, notes, bonds, etc.).
- **Isolated Transactions** - Sales of tangible personal property or taxable services by persons who are not in the business of making such sales, such as an individual selling his personal belongings or a law office selling its used furniture.

Sales of tangible personal property may be made at yard sales without collecting sales tax provided such sales are held no more than four times per year and last no longer than 48 hours each. Persons who regularly and routinely sell goods at yard sales, flea markets or along the roadside are engaged in the business of selling. They must register with the State Tax Department and collect sales tax on such sales.

Persons who are not engaged in the business of providing taxable services may also qualify for this exemption. For example, teenagers who occasionally mow lawns, babysit or do odd jobs for their neighbors may be able to claim this exemption.

- **Lottery Tickets** - Sales of West Virginia lottery tickets and materials related directly to the lottery by authorized lottery retailers.
- **Newspapers** - Sales of newspapers delivered by route carriers are exempt from sales tax. Over-the-counter and vending machine sales are taxable.
- **Personal Services** - Sales of services **to the “person” of an individual**, such as barbering, hairstyling, manicuring and massaging. Generally, this exemption does not apply to weight loss

or physical fitness programs. Purchases of tangible personal property or taxable services made by personal service providers are generally taxable.

- **Professional Services and Certified Public Accountants** - Sales of services recognized as “professional” under West Virginia law, such as those provided by doctors, lawyers, engineers, architects and CPA’s. Purchases by professionals for use in providing professional services are taxable.
- **Public Services** - Sales of services **subject to the control of the West Virginia Public Service Commission**, including sales of gas, steam and water delivered through pipes and mains and sales of electricity, most telephone services and services of regulated public or common carriers, bus and taxi services. Mobile telephone and paging services that may not be regulated are subject to the tax. Sales of goods by regulated companies are generally not exempt.
- **Real Property** - The sale, lease or rental of real estate (land, houses, buildings and other structures attached to the land) to the same person or occupant for thirty or more consecutive days. Rentals of real property for less than thirty days, such as daily parking rental, are subject to the sales tax.
- **School Activities** - Sales of tickets for activities **sponsored by elementary and secondary schools** located within this State. This exemption does not include activities sponsored by other organizations which merely occur on school property and are not sponsored by the school. For more information on exempt school activities, see Publication [TSD-312](#) and Publication [TSD-312A](#).
- **Textbooks** - Sales of textbooks **required to be used** in any of the schools of the State, whether the books are sold directly to schools or students. This exemption includes written course materials as well as audio and video materials so long as they are a required text of the school. This exemption does not apply to books or materials that are not textbooks, pens, pencils, paper or other school supplies. For more information, see Publication [TSD-312](#) and Publication [TSD-312A](#).
- **Transportation** - Charges for transporting passengers in interstate commerce, such as airplane tickets or bus tickets, when the trip begins or ends outside the State.

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## EXEMPTIONS REQUIRING CERTIFICATE

- Some tax exemptions may be claimed by presenting a properly executed Certificate of Exemption (**Form F0003**) to the vendor of the tangible personal property or taxable services. If a vendor fails to obtain a properly completed exemption certificate from the purchaser or if the purchaser refuses to provide a vendor a properly executed exemption certificate, the vendor must collect the tax from the purchaser. The following is a list of tax exemptions that may be claimed through the use of a Certificate of Exemption [[SSTGB Form F0003](#)] :
  - **Purchase for Resale** - Purchases of tangible personal property or taxable services intended for resale, or for use in performing taxable services when such property becomes a component part of the property upon which the services are performed and will be actually transferred to the purchaser.
  - **Purchase By An Exempt Commercial Agricultural Producer** - Purchases of tangible personal property or taxable services for use or consumption in the commercial production of an agricultural product and purchases of propane for use in heating poultry houses, but not purchases for construction of or permanent improvement of real property. For more information, see Publication [TSD-371](#).

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## TAX EXEMPT ORGANIZATIONS

- Purchases by certain specified entities are exempt from sales and use taxes, as follows:
  - **Government** - Purchases by the United States government or the State of West Virginia, including their institutions or subdivisions and county and municipal governments of West Virginia. Purchases by employees of such government agencies while on government business are not exempt from sales tax unless such purchases are directly billed to and paid for by the government agency. Purchases by another state, or by an out-of-state county or municipal government are not exempt unless the other state or government organization provides the same exemption to the State of West Virginia and its institutions and subdivisions. Private persons doing business with the government may not claim this exemption.
  - **Certain Nonprofit Organizations** - Purchases by a corporation or organization that has a current registration certificate and that is exempt from federal income taxes under section § 501(c)(3) or (c)(4) of the Internal Revenue Code, if the organization meets all of the requirements

set forth in W. Va. Code § 11-15-9(f). For information concerning these requirements, see Publication [TSD-320](#).

- **Schools** - Purchases by a school that has its principal campus in this State, is approved by the State of West Virginia to award degrees, and is exempt from federal and state income taxes under section § 501(c)(3) of the Internal Revenue Code. For more information, see Publication [TSD-320](#).
  - **Churches** - Purchases of services, equipment, supplies, food for meals and materials directly used or consumed by churches that make no charge whatsoever for the services they provide. These purchases must be paid for directly out of the church treasury. For more information, see Publication [TSD-320](#).
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#### **CERTAIN SPECIFIC SERVICES**

- The purchase of certain specified services is exempt from sales and use taxes, as follows.
    - **Data Processing** - Purchases of electronic data processing services and software related to such purchases, but not purchases of data processing equipment, materials and supplies.
    - **Purchases from Affiliated Entities** - Purchases of services by one corporation, partnership or limited liability company from a related corporation, partnership or limited liability company are exempt from sales tax when both corporations are members of the same controlled group.
    - **Films and Arcade Games** - Purchases of motion picture films, coin-operated video arcade machines and other video arcade games are exempt from sales tax if underlying admissions or playing charges subject to sales tax exist. For more information, see Publication [TSD-356](#).
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#### **REFUNDABLE EXEMPTIONS/DIRECT PAY PERMIT EXEMPTIONS**

- Some exemptions may not be claimed by use of the tax exemption certificate. They **must** be claimed through one of the following ways:
  - **Pay/Refund** - Business entities that qualify for certain exemptions but have not been issued direct pay permits must pay the sales tax to the vendor at the time of purchase and then apply to the Tax Department for a refund or credit of the tax paid on their exempt purchases.
  - **Direct Pay Permit** - Issuance of a direct pay permit is a method of claiming certain exemptions that absolves the vendor or retailer from responsibility to collect and remit consumers sales and service tax and use tax. The holder of the direct pay permit must report the taxes to the Tax Department.

Business entities that qualify for these exemptions may apply to the Tax Department for a direct pay permit. Only those organizations that qualify for one or more of these exemptions will be issued a direct pay permit. Also, business entities that are delinquent in paying taxes to the Tax Department will not be issued direct pay permits. Direct pay permits may only be used to purchase exempt items and may not be used to purchase gasoline and special fuel.

- The following sales of tangible personal property and taxable services are exempt from tax, but only if the purchaser presents to, and the vendor accepts, in good faith, a properly executed exemption certificate or material purchase certificate, or the purchaser presents the direct pay permit number issued by the Tax Commissioner:
    - **Manufacturing Exemptions** - Purchases of equipment, supplies, materials and services intended for direct use or consumption in the activity of manufacturing. Purchases that are not intended for direct use or consumption but whose use or consumption is only incidental or convenient to the manufacturing activity are not exempt.

For example, the purchase of an oven to process coal into coke and the purchase of coal to be processed into coke are exempt, whereas a furnace purchased to heat the office building of a coke manufacturer and the coal used to fire that furnace are subject to sales tax. For a more complete discussion of the definition of "direct use", see Publication [TSD-358](#).
    - **Natural Resource Production** - Purchases for direct use or consumption in the activity of producing natural resources. Purchases that are not for direct use or consumption or whose use or consumption will only be incidental or convenient to the natural resource production activity are taxable.
    - **Transportation and Transmission Businesses** - Purchases made for direct use or consumption in the activity of transportation. Transportation and transmission businesses engage in the activity of hauling or delivering goods for others. Persons who haul or deliver their own goods may not claim this exemption. Purchases that are not for direct use or consumption
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or whose use or consumption will only be incidental or convenient or such transportation or transmission activity are taxable.

- **Communication Businesses** - Purchases made for direct use or consumption in the activity of communication (telephone, telegraph, commercial broadcast radio and television, cable television, etc.). Purchases that are not for direct use or consumption or whose use or consumption will only be incidental or convenient to the communications activity are taxable.
- **Businesses Subject to the Business and Occupation Tax, Severance Tax or Telecommunications Tax** - All equipment, supplies and materials that will be used in the business activities subject to the business and occupation tax, severance tax and telecommunication tax are exempt from the sales tax. Purchases made for use in activities not subject to those taxes do not qualify for this exemption.
- **Aircraft** - Purchases by a licensed carrier of persons or property, or by a government entity, or aircraft repair, remodeling and maintenance services for an aircraft, engine or other component part of an aircraft, or purchases of tangible personal property that is permanently affixed as a component part of an aircraft as part of the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts, and purchases by a licensed carrier of persons or property, or by a government entity, of machinery, tools or equipment, directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts.
- **Other Organizations** - Charitable organizations, volunteer fire departments and nationally chartered fraternal or social organizations may qualify for a refundable/direct pay permit exemption. If these organizations do not qualify for the specific exemption for non-profit (IRC §501(c)(3) or § 501(c)(4)) organizations, they may claim a limited refundable exemption. However, if these organizations qualify for the non-profit exemption, they must claim their exemption by use of the tax exemption certificate and are not eligible to receive a direct pay permit.

Purchases by **bona fide charitable organizations** that make no charge whatsoever for the services they render.

Purchases by **volunteer fire departments** of station house equipment, construction and automotive equipment.

Purchases by nationally chartered **fraternal or social organizations** for the sole purpose of free distribution in public welfare or relief work.

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**ASSISTANCE AND  
ADDITIONAL  
INFORMATION**

- For assistance or additional information, you may call a Taxpayer Service Representative at:

**1-800-WVA-TAXS  
(1-800-982-8297)**

Or visit our website at:

[www.tax.wv.gov](http://www.tax.wv.gov)

File and pay taxes online at:

<https://mytaxes.wvtax.gov>

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