



# STATE OF WEST VIRGINIA

Department of Revenue  
State Tax Department

Joe Manchin III  
Governor

Craig A. Griffith  
State Tax Commissioner

## ADMINISTRATIVE NOTICE 10-24

**SUBJECT:** Consumers Sales and Service Tax – Purchases by a health care provider of prescription and over-the-counter drugs to be dispensed upon prescription are per se exempt from Consumers Sales and Service Tax.

### FACTS

This Administrative Notice is a declaration of the policy to be followed by the West Virginia State Tax Department regarding the imposition of Consumer Sales and Service Tax on the sales to health care providers of prescription and over-the-counter drugs to be dispensed upon prescription.

### DISCUSSION

West Virginia imposes a Consumers Sales and Service Tax on sales of tangible personal property, custom software and selected services in this state. See, W. Va. Code § 11-15-3. "Services" or "selected services" includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as opposed to the selling of tangible personal property. However, "selected services" does not include contracting, personal services, or services rendered by an employee to his or her employer, or any service rendered for resale. See, W. Va. Code § 11-15-2(b)(17) and the corresponding State Legislative Rule 110 C.S.R. 15, § 2.83.

All such sales are subject to the sales tax unless they are specifically excepted or exempted. See W. Va. Code § 11-15-6. The sales which are excepted from taxation are the sales of professional services, personal services and services provided by businesses subject to the control of the public service commission when the service or the manner in which it is delivered is subject to regulation by the public service commission. See W. Va. Code § 11-15-8. The sales that are exempted from taxation are numerous and are listed generally in West Virginia Code § 11-15-9.

It is presumed that all sales and services are subject to the tax until the opposite is clearly established. See W. Va. Code § 11-15-6. A tax law under which a person claims an exemption is to be strictly construed against the person claiming the exemption. See Woodell v. Dailey, 160 W.Va. 65, 230 S.E.2d 466 (1976).

West Virginia also imposes a Use Tax that is complementary to the Sales Tax. See, W. Va. Code § 11-15A-1a. The Use Tax is imposed at the same rate as the Sales Tax, and is imposed upon the use in this State of tangible personal property and selected services purchased outside of this State or sold across state lines into this State. See W. Va. Code § 11-15A-2. The sales that are exempted are numerous and are listed generally in West Virginia Code § 11-15A-3.

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West Virginia is a member of the Streamlined Sales and Use Tax Program (SST). See, W. Va. Code § 11-15B-1 et seq. The definitions and exemptions applicable to the Sales Tax and the Use Tax are equally applicable to the SST.

There continue to be questions relating to the exemption of drugs purchased by a health care provider from Consumers Sales and Service Tax.

West Virginia Code § 11-15B-2 provides the following definition of "drug."

(16) "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease; or

(C) Intended to affect the structure or any function of the body.

West Virginia Code § 11-15-9i provides the following exemption:

§11-15-9i. Exempt drugs, durable medical goods, mobility enhancing equipment and prosthetic devices.

(a) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this chapter, the purchase by a health care provider of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices, all as defined in section two, article fifteen-b of this chapter, to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease are exempt from the tax imposed by this article.

(b) For purposes of this exemption, "health care provider" means any person licensed to prescribe drugs, durable medical goods, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease. For purposes of this section, the term "health care provider" includes any hospital, medical clinic, nursing home or provider of inpatient hospital services and any provider of outpatient hospital services, physician services, nursing services, ambulance services, surgical services or veterinary services: Provided, That the amendment to this subsection enacted during the 2009 regular legislative session shall be effective on or after July 1, 2009.

(c) This section shall be effective July 1, 2007.

The foregoing exempts from Consumers Sales and Service Tax and Use Tax the purchase of drugs, as defined above, when purchased by a health care provider to be dispensed upon prescription. Included in the definition is the requirement that the drug will be dispensed upon prescription.

West Virginia Code § 11-15B-2 provides the following definition.

(38) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue prescriptions.

If a substance satisfies the definition of "drug," its purchase by a health care provider will be exempt from Consumers Sales and Service Tax if that which is purchased is intended to be dispensed upon prescription.

West Virginia Code § 11-15-9j establishes the method by which a health care provider may claim the foregoing exemption.

§11-15-9j. Direct pay permits for health care providers.

Any person having a right or claim to any exemption set forth in section nine-i [§11-15-9i] of this article shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit or, as provided in section nine-d [11-15-9d] of this article and section three-d [11-15A-3d] , article fifteen-a of this chapter, give to the vendor his or her West Virginia direct pay permit number.


West Virginia legislative rule 110 C.S.R. 15C, which authorizes the purchase of drugs to be per se exempt from the Consumers Sales and Service Tax and Use Tax, is consistent with and promulgated pursuant to West Virginia Code §§ 11-15-9i and 11-15-9j. This Administrative Notice, which provides additional clarification relative to the purchase of drugs to be per se exempt from the Consumers Sales and Service Tax and Use Tax, is consistent with the foregoing legislative rule and is issued pursuant to West Virginia Code §§ 11-15-9i and 11-15-9j.

Based upon the foregoing authority, it is the policy of the West Virginia State Tax Department that when a health care provider purchases drugs in a transaction that satisfies the exemption provided in West Virginia Code § 11-15-9i, the transaction shall be per se exempt from the Consumers Sales and Service Tax and Use Tax, and the vendor of the drugs sold to the healthcare provider is relieved of the requirement to collect either the tax or the direct pay permit number from the healthcare provider.

This Administrative Notice does not apply to the purchase of durable medical goods, mobility enhancing equipment, prosthetic devices or durable medical equipment.

Notice of this determination will be filed in the State Register.

Issued: 9/2/10

  
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State Tax Commissioner

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