



STATE OF WEST VIRGINIA
Department of Revenue
State Tax Department

COPY

Joe Manchin III
Governor

Christopher G. Morris
State Tax Commissioner

WEST VIRGINIA STATE TAX DEPARTMENT
Administrative Notice 2008-29

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FILED
OFFICE WEST VIRGINIA
SECRETARY OF STATE

SUBJECT: Relief from certain liability for state and local taxes. State Tax
Commissioner's policy statement concerning relief from tax liability, pursuant to West Virginia
Code Section 11-15b-36, for state and local taxes for sellers and certified service providers
collecting sales and use tax imposed by this state or a political subdivision of this state.

This Administrative Notice advises the public of the policy the Tax Department will follow relative to the relief from liability resulting from the seller or the certified service provider relying on erroneous data provided by this state on tax rates, boundaries or taxing jurisdiction assignments.

LAW

Section 11-15B-36 of the West Virginia Code reads as follows:

§ 11-15B-36. Relief from certain liability for state and local taxes.

(a) General.

Sellers and certified service providers registered under the Streamlined Sales and Use Tax Agreement to collect sales and use taxes imposed by this state or a political subdivision of this state who charged and collected the incorrect amount of sales or use taxes resulting from the seller or the certified service provider relying on erroneous data provided by this state on tax rates, boundaries or taxing jurisdiction assignments shall be held harmless by the Tax Commissioner and the local taxing jurisdiction.

(b) Exception.

After providing adequate notice as determined by the governing board, if the state provides an address-based database for assigning taxing jurisdictions pursuant to subdivision (4) or (5), subsection (d), section thirty-five of this article, the state may cease providing liability relief for errors resulting from reliance on the database provided by the Tax Commissioner under subdivision (3) of said subsection. If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, the Tax Commissioner and the governing board may extend the relief from liability to that seller for a designated period of time.

Emphasis added.

ISSUE

With reference to the emphasized language of the above quoted statutory provision, the question presented is whether this language is to be interpreted to apply to sellers registered under the Streamlined Sales and Use Tax Agreement or to all sellers.

DISCUSSION

The West Virginia Tax Department finds the literal interpretation of the phrase "***Sellers and certified service providers registered under the Streamlined Sales and Use Tax Agreement***" to be the better interpretation.

The phrase "***registered under the Streamlined Sales and Use Tax Agreement***" follows and modifies only the words "***certified service providers.***" The literal interpretation does not require sellers to be registered under the Streamlined Sales and Use Tax Agreement.

The Tax Commissioner will not interpret the requirement for Streamlined Sales and Use Tax Agreement registration to be imposed, by implication upon sellers, in circumstances where the literal language of the statute applies the Streamlined Sales and Use Tax Agreement registration requirement only to certified service providers

The Tax Commissioner interprets the term "seller" as used in West Virginia Code §11-15B-36(a) to mean any seller, regardless of whether the seller is registered under the Streamlined Sales and Use Tax Agreement.

DETERMINATION

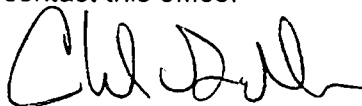
It is the determination of the Tax Commissioner that all sellers, regardless of whether a seller is registered under the Streamlined Sales and Use Tax Agreement, shall be held harmless by the Tax Commissioner and the local taxing jurisdiction for charging and collecting the incorrect amount of sales or use tax resulting from the seller relying on erroneous data provided by this state on tax rates, boundaries or taxing jurisdiction assignments.

APPLICATION OF THIS ADMINISTRATIVE NOTICE

The provisions of this Administrative Notice shall apply to any applicable matter or assessment of tax pending before the Tax Department and governed under West Virginia Code §11-15B-36.

If you have any question about this advisory, please contact this office.

Issued: December 4, 2008



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State Tax Commissioner
West Virginia State Tax Department

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