

**STATE NAME: WEST VIRGINIA**

**Section 328 Best Practices Matrix**

**Effective Date:** 7/1/14

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The “best practices” have been approved by the Streamlined Sales Tax Governing Board (SSTGB) for each of the products, procedures, services, or transactions identified in the chart below pursuant to Section 335 of the Streamlined Sales and Use Tax Agreement (SSUTA), as amended through May 15, 2014.

Use of the term “State” in each practice refers to the state completing the Matrix.

Place an “X” in the appropriate column to indicate whether the practice does or does not apply in your state.

For each practice identified in this matrix and further described in Appendix E of the SSUTA which your state follows, place an “X” in the “Yes” column and enter the statute or rule that applies to your state’s treatment of this “best practice” in the References column.

For each practice identified in this matrix and further described in Appendix E of the SSUTA that your state does not follow, place an “X” in the “No” column and, if necessary, describe in the Comments column your state’s practice in this area.

Sellers and certified service providers are relieved from tax liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the best practices matrix.

Conformance to a “best practice” by a state is voluntary and no state shall be found not in compliance with the Agreement if it does not follow a best practice adopted by the Governing Board.

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Best Practice from Appendix E	Brief Description of Best Practice	For each section, place an "X" in the YES column for the Practice your State follows. Place an "X" in the NO column if the practice does not apply in your State.		For sections with only NO responses, describe your State's tax treatment. Additional comments may be added for any response.	
		Yes	No	References: Statute, Rule, Cite	Comments
<b>Best Practice 2 – Credits</b>					
<b>Definition</b>	<p><b>“Tax Paid”</b> means the tax that was (1) paid and (2) previously due from either the seller or the purchaser when the sale of that product is taxable in that state and it was properly sourced based on that state’s sourcing rules. “Tax paid” includes tax that was (1) paid and (2) previously due from the purchaser (or seller, if applicable) because the purchaser moved the product to a different jurisdiction. “Tax paid” does not include the portion of tax paid that is currently eligible for a credit or refund or tax paid that is eligible for refund under a tax-incentive program or agreement.</p>				

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Credits 2.1	<p><b>2.1 Credit Against Use Tax</b></p> <p>The State imposing tax on the purchaser provides credit for “sales or use taxes paid” on a product against the State’s use tax.</p>	X		W.Va. Code §11-15A-10a; W.Va. Legislative Rules 110-15-43.	<p><b>W.Va. Code §11-15A-10a.</b>            (a) A person is entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of sales tax lawfully paid to another state for the acquisition of that property or service: . . . .</p> <p><b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, credit may be taken for sales or use taxes paid in another state up to the amount of tax due this State. . . .</p>
Credits 2.2	<p><b>2.2 Credit Against Sales Tax</b></p> <p>The State imposing tax provides credit for the “sales or use taxes paid” on a product against the State’s sales tax.</p>	X		W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.	<p><b>W.Va. Code §11-15A-10a.</b>            (a) A person is entitled to a credit against the tax imposed by this article on the use of a particular item of tangible</p>

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					<p>personal property, custom software or service equal to the amount, if any, of <b>sales tax lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p> <p><b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state</b> up to the amount of tax due this State. . . .</p>
Credits 2.3.a.	<p><b>2.3 Reciprocity</b></p> <p>2.3.a. The credit the State provides in 2.1 and 2.2 applies regardless of whether another state provides a reciprocal credit.</p>	X		W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.	<p><b>W.Va. Code §11-15A-10a.</b></p> <p>(a) <b>A person is entitled to a credit against the tax</b> imposed by this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of <b>sales tax lawfully paid to another state</b> for the acquisition of that</p>

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					<p>property or service: . . . .</p> <p>· <b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state</b> up to the amount of tax due this State. . . .</p>
Credits 2.3.b.	2.3.b. The credit the State provides in 2.1 and 2.2 only applies when the other state where the tax was paid provides a reciprocal credit.		X	W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.	<p><b>W.Va. Code §11-15A-10a.</b>            (a) <b>A person is entitled to a credit against the tax</b> imposed by this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of <b>sales tax lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p> <p>· <b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible</p>

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					personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state</b> up to the amount of tax due this State. . . .
Credits 2.4.a.	<p><b>2.4 State and Local Sales Use “Tax Paid”</b></p> <p>2.4.a. The credit provided for in 2.1 and 2.2 is for the combined amount of state and local “tax paid” to another state or local jurisdiction against both the state and local taxes due to the State.</p>		X		<b>See 2.4.b</b>
Credits 2.4.b.	<p>2.4.b. The credit provided for in 2.1 and 2.2 is for only the state “tax paid” to another state against the taxes due to the State (<i>i.e.</i>, no credit for local tax against state tax). If the State has local sales or use taxes, it only provides credit for state tax against state tax and local tax against local tax.</p>	X		W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.	<p><b>W.Va. Code §11-15A-10a.</b>                      (a) <b>A person is entitled to a credit against the tax</b> imposed by this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of <b>sales tax lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p> <p><b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible</p>

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					personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state</b> up to the amount of tax due this State. . . .
Credits 2.5	<p><b>2.5 Credit for “Similar Tax” Paid to Another Jurisdiction</b></p> <p>The credit provided for in 2.1 and 2.2 includes “similar taxes” that were (1) paid and (2) previously due to another state or local jurisdiction against the sales or use taxes due.</p> <p>List all known similar or like taxes the state provides credit for even if such tax does not meet the definition of a “similar tax.”</p> <p>a. b. c.</p>		X		At this time West Virginia has no “similar taxes.”

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Credits 2.6	<p><b>2.6. Credit Against “Similar Tax” Imposed by the State</b></p> <p>The credit provided for in 2.1 and 2.2 includes “sales or use taxes paid” to another state or local jurisdiction against “similar taxes” due.</p> <p>List “similar taxes” imposed that the state provides credits against.</p> <ul style="list-style-type: none"><li>a.</li><li>b.</li><li>c.</li></ul>		X		At this time, West Virginia has no “similar taxes.”
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Credits 2.7	<p><b>2.7 Sourcing when Receipt Location is Known</b></p> <p>The credit provided for in 2.1 and 2.2 applies when the other state's "sales or use taxes" were (1) paid and (2) previously due based on: i) that other state's sourcing rules, or ii) the purchaser's location of use of a product subsequent to the initial sale.</p>	X		W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.	<p><b>W.Va. Code §11-15A-10a.</b>            (a) <b>A person is entitled to a credit against the tax</b> imposed by this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of <b>sales tax lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p> <p><b>' 110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state</b> up to the amount of tax due this State. . . .</p>
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Credits 2.8	<p><b>2.8 Sourcing when Receipt Location is Unknown</b></p> <p>Except as provided in Best Practice 2.13, the credit provided for in 2.1 and 2.2 applies when the seller sources the initial sale pursuant to the SSUTA Sections 310.A.3, 310.A.4, or 310.A.5, because the location where the product was received by the purchaser was unknown to the seller.</p>	X		W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.	<p><b>W.Va. Code §11-15A-10a.</b>                  (a) A person is entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of sales tax lawfully paid to another state for the acquisition of that property or service: . . . .</p> <p><b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, credit may be taken for sales or use taxes paid in another state up to the amount of tax due this State. . . .</p>
Credits 2.9	<p><b>2.9 Characterization of Sale</b></p> <p>The credit provided for in 2.1 and 2.2 applies regardless of the other state's characterization of the product as tangible personal property, a service, digital good, or product delivered electronically.</p>	X		W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.	Regardless of how another state characterizes the product purchased in another state, W.Va. Code §11-15A-10a entitles the purchaser to a credit against sales tax lawfully paid to

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					<p>that state, as long as the product would have been subjected to WV's sales tax.</p> <p><b>W.Va. Code §11-15A-10a.</b> (a) <b>A person is entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of sales tax lawfully paid to another state for the acquisition of that property or service: . . . .</b></p> <p><b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state</b> up to the amount of tax due this State. . . .</p>
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Credits 2.10.a.	<p><b>2.10 Sales Price Components</b></p> <p>2.10.a. Full Credit Allowed.</p> <p>The credit provided for in 2.1 and 2.2 applies to all components of the SSUTA “sales price” definition, whether taxable or nontaxable in the State.</p>		X	<p>W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.</p>	<p>The credit provided for in W.Va.Code §11-15A-10 applies only to those products purchased in another state and for which sales tax has been paid if the product would have been subjected the sales tax or use tax in West Virginia.</p> <p><b>W.Va. Code §11-15A-10a.</b>          (a) A person is <b>entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service</b> equal to the amount, if any, of sales tax <b>lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p> <p><b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another</b></p>
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					state up to the amount of tax due this State. . . .
Credits 2.10.b.	<p>2.10.b. Partial Credit Allowed</p> <p>When taxable and non-taxable charges are itemized on the invoice, the credit provided for in 2.1 and 2.2 is only for the "tax paid" on the taxable components of the sales price in the State.</p>	X		<p>W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.</p>	<p>The credit would only be applied to sales tax actually paid to another state for a product which would have been subjected to sales tax or use tax in West Virginia.</p> <p><b>W.Va. Code §11-15A-10a.</b>                      (a) A person is <b>entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service</b> equal to the amount, if any, of sales tax lawfully paid to another state for the acquisition of that property or service: . . . .</p> <p><b>§ 110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this</p>

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Credits 2.11.a.	<p><b>2.11 Transactions with Taxable and Exempt Products</b></p> <p>2.11.a. Full Credit Allowed</p> <p>The credit provided for in 2.1 and 2.2 applies to the full amount of “tax paid” on a transaction consisting of taxable and exempt products.</p>		X	W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.	<p>If sales or use tax had been paid to another state on a product or service which would have been exempt from imposition of West Virginia’s sales tax or use tax if purchased in this State, the credit provided for in W.Va. Code §11-15A-10 would not apply.</p> <p><b>W.Va. Code §11-15A-10a.</b>            (a) A person is <b>entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service</b> equal to the amount, if any, of sales tax <b>lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p> <p><b>110-15-43. Out-Of-State</b></p>

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					<p><b>Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state</b> up to the amount of tax due this State. . . .</p>
Credits 2.11.b.	<p>2.11.b. Partial Credit Allowed.</p> <p>When taxable and non-taxable products are itemized on the invoice the credit provided for in 2.1 and 2.2 is only for the "tax paid" on the taxable products of a transaction in the State.</p>	X		<p>W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43.</p>	<p>The credit would only be applied to sales tax actually paid to another state for a product which would have been subjected to sales tax or use tax in West Virginia.</p> <p><b>W.Va. Code §11-15A-10a.</b>                  (a) A person is <b>entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service</b> equal to the amount, if any, of <b>sales tax lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p>

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					<p><b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state up to the amount of tax due this State. . . .</b></p>
Credits 2.12	<p><b>2.12 Audit Sampling</b></p> <p>The credit provided for in 2.1 and 2.2 applies when the sale or purchase of the product was part of the population sampled pursuant to an audit sampling method.</p>	X		<p>W.Va. Code §11-15A-10a; W.Va. Legislative Rule §110-15-43</p>	<p>Whether or not the product purchased was part of the population sampled pursuant to an audit sampling method is irrelevant. The credit would apply as long as sales tax or use tax was paid for a product in another state which would have been subjected to the sales tax or use tax in WV.</p> <p><b>W.Va. Code §11-15A-10a.</b>          (a) A person is <b>entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service</b> equal to</p>

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					<p>the amount, if any, of <b>sales tax lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p> <p>· <b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state</b> up to the amount of tax due this State. . . .</p>
Credits 2.13	<p><b>2.13 Direct Mail</b></p> <p>The credit provided for in 2.1 and 2.2 applies when the seller sources the sale of Advertising and Promotional Direct Mail pursuant to Section 313.A.4.</p>		X		
Credits 2,14	<p><b>2.14 Accelerated Payments on Lease/Rentals</b></p> <p>The credit provided for in 2.1 and 2.2 includes the “tax paid” to another state or local jurisdiction on a lease/rental transaction based on the sum of the lease payments (“accelerated basis”), against the</p>		X	<p>W.Va. Code §11-15A-10a; W.Va. Legislative Rules §110-15-43; §110-15-129.1; and §110-15-129.7.3.</p>	<p><b>W.Va. Code §11-15A-10a.</b></p> <p>(a) A person is <b>entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom</b></p>

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	<p>“sales or use taxes” due on the balance of the lease/rental payments.</p>				<p><b>software or service</b> equal to the amount, if any, of <b>sales tax lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p> <p>· <b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state</b> up to the amount of tax due this State. . . .</p> <p>129.1. A lessee of tangible personal property used in this State is allowed credit against his West Virginia use tax liability for payment of consumers sales and service taxes lawfully imposed by another state on lease payments attributable to the period of time the lessee uses the leased property in this State. The</p>
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					<p>measure of tax is the amount of the periodic lease payments.</p> <p>129.7.3. . . . Credit will be allowed against any sales or use tax legally imposed and paid to another state. See Section 10 of these regulations.</p>
Credits 2.15	<p><b>2.15 Inception-Deferred Collection on Lease/Rentals</b></p> <p>The credit provided for in 2.1 and 2.2 includes the “tax paid” to another state or local jurisdiction on a lease/rental transaction based on a deferred collection/remittance method against the “sales or use taxes” due on the balance of the lease/rental payments.</p>	X		<p>W.Va. Code §11-15A-10a; W.Va. Legislative Rules §110-15-43; §110-15-129.1; and §110-15-129.7.3.</p>	<p><b>W.Va. Code §11-15A-10a.</b>          (a) A person is <b>entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service</b> equal to the amount, if any, of <b>sales tax lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p> <p><b>110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax,</p>

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<p>Credits 2.16</p>	<p><b>2.16 Lessor Acquisition.</b></p> <p>The credit provided for in 2.1 and 2.2 includes the “tax paid” by the lessor to another state or local jurisdiction on the acquisition of the product against the “sales or use taxes” due on the balance of the lease/rental payments provided the tax reimbursement is documented and disclosed to the lessee.</p>		<p>X</p>	<p>W.Va. Code §11-15A-10a; W.Va. Legislative Rules §110-15-43; §110-15-129.1; and §110-15-129.7.3.</p>	<p><b>W.Va. Code §11-15A-10a.</b>            (a) A person is <b>entitled to a credit against the tax imposed by this article on the use of a particular item of tangible personal property, custom software or service</b> equal to the amount, if any, of <b>sales tax lawfully paid to another state</b> for the acquisition of that property or service: . . . .</p> <p><b>§ 110-15-43. Out-Of-State Purchases.</b></p> <p>43.1. Purchases of tangible personal property and services out of this State for use in this State are subject to the West Virginia use tax. In the computation of the use tax, <b>credit may be taken for sales or use taxes paid in another state</b> up to the amount of tax due this State. . . .</p> <p>129.1. A lessee of tangible personal property used in this State is allowed credit against his West Virginia use tax liability for payment of</p>
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					<p>consumers sales and service taxes lawfully imposed by another state on lease payments attributable to the period of time the lessee uses the leased property in this State. The measure of tax is the amount of the periodic lease payments.</p> <p>129.7.3. . . . Credit will be allowed against any sales or use tax legally imposed and paid to another state. See Section 10 of these regulations.</p>
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