

Streamlined Sales and Use Tax Agreement

Taxability Matrix Library of Definitions

State: WEST VIRGINIA (Amended October 2005)
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Each of the items listed in the chart are defined in the Library of Definitions in the Streamlined Sales Tax Agreement adopted November 12, 2002, or adopted by the Implementing States subsequent to November 12, 2002. Refer to Appendix C of the Streamlined Sales Tax Agreement for each definition.

Place an “X” in the appropriate column under the heading “Treatment of definition” to indicate the treatment of each definition in your state. If a definition does not apply to your state, enter “NA” in the first column under the heading “Treatment of definition.” In accordance with the agreement, your state must adopt the definitions in the Library of Definitions that apply to your state without qualifications except for those allowed by the agreement. For this reason, do not enter any comments or qualifications in the two columns under the heading “Treatment of definition”. If your state has adopted a definition in the Library of Definitions with a qualification, do not place an “X” in either column under the heading “Treatment of definition” but include a comment in the “Reference” column explaining the qualification. Enter the applicable statute/rule cite in the “Reference” column.

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 and use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state relative to treatment of the terms defined in the Library of Definitions.

Administrative definitions	Treatment of definition		Reference
	Included in sales price	Excluded from sales price	Statute/Rule Cite
Sales price Identify how the options listed below are treated in your state. The following options may be excluded from the definition of sales price only if they are separately stated on the bill to the purchaser.			
<ul style="list-style-type: none"> • Charges by the seller for any services necessary to complete the sale other than delivery and installation 	x		
<ul style="list-style-type: none"> • Delivery charges including direct mail 	x		
<ul style="list-style-type: none"> • Delivery charges excluding direct mail 			
<ul style="list-style-type: none"> • Installation charges 	x		
<ul style="list-style-type: none"> • Exempt personal property bundled with taxable personal property 	x		
<ul style="list-style-type: none"> • Credit for trade-in 		x	

Product Definitions			
Clothing and related products	Taxable	Exempt	Statute/Rule Cite
Clothing	X		
Clothing accessories or equipment	X		
Protective equipment	X		
Sport or recreational equipment	X		
Computer related products	Taxable	Exempt	Statute/Rule Cite
Computer software (not prewritten)	x		
Computer software (not prewritten) delivered electronically	x		
Computer software (not prewritten) delivered via load and leave	x		
Prewritten computer software	x		
Prewritten computer software delivered electronically	x		
Prewritten computer software delivered via load and leave	x		
Food and food products	Taxable	Exempt	Statute/Rule Cite
Candy	5%*		W. Va. Code § 11-15-3a
Dietary supplements	5%*		W. Va. Code § 11-15-3a
Food and food ingredients	5%*		W. Va. Code § 11-15-3a
Food sold through vending machines	5%*		W. Va. Code § 11-15-3a
Soft drinks	5%*		W. Va. Code § 11-15-3a
Prepared food	6%		W. Va. Code § 11-15-3a
Prepared food options – indicate whether the following options are included or excluded from the definition of prepared food.	Included in the definition	Excluded from the definition	Statute/Rule Cite
<ul style="list-style-type: none"> Food sold without eating utensils provided by the seller whose primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries) 	5%*		W. Va. Code § 11-15-3a & § 11-15B-2(b)(29)
<ul style="list-style-type: none"> Food sold without eating utensils provided by the seller in an unheated state by weight or volume as a single item 	5%*		W. Va. Code § 11-15-3a & § 11-15B-2(b)(29)
<ul style="list-style-type: none"> Bakery items sold without eating utensils provided by the seller, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas 	5%*		W. Va. Code § 11-15-3a & § 11-15B-2(b)(29)
Health-care products	x		
Drugs (indicate how the options are treated in your state)	Taxable	Exempt	Statute/Rule Cite
<ul style="list-style-type: none"> Drugs for human use without a prescription 	x		

* Beginning January 1, 2006

• Drugs for human use with a prescription		X	
• Drugs for animal use without a prescription	X		
• Drugs for animal use with a prescription		X	
• Insulin for human use without a prescription		X	
• Insulin for human use with a prescription		X	
• Insulin for animal use without a prescription		X	
• Insulin for animal use with a prescription		X	
• Medical oxygen for human use without a prescription	X		
• Medical oxygen for human use with a prescription		X	
• Medical oxygen for animal use without a prescription	X		
• Medical oxygen for animal use with a prescription		X	
• Over-the-counter drugs for human use without a prescription	X		
• Over-the-counter drugs for human use with a prescription		X	
• Over-the-counter drugs for animal use without a prescription	X		
• Over-the-counter drugs for animal use with a prescription		X	
• Grooming and hygiene products for human use	X		
• Grooming and hygiene products for animal use	X		
• Drugs for human use to hospitals and other medical facilities	X		
• Prescription drugs for human use to hospitals and other medical facilities	X		
• Drugs for animal use to veterinary hospitals and other animal medical facilities	X		
• Prescription drugs for animal use to hospitals and other animal medical facilities	X		
• Taxable and nontaxable drugs bundled together	X		
• Free samples of drugs for human use	X		
• Free samples of prescription drugs for human use	X		
• Free samples of drugs for animal use	X		
• Free samples of prescription drugs for animal use	X		
Durable medical equipment (indicate how the options are treated in your state)	Taxable	Exempt	Statute/Rule Cite
• Durable medical equipment without a prescription	X		
• Durable medical equipment with a prescription		X	
• Durable medical equipment paid for by Medicare	X		
• Durable medical equipment reimbursed by Medicare	X		
• Durable medical equipment paid for by Medicaid	X		
• Durable medical equipment reimbursed by Medicaid	X		

• Durable medical equipment for home use without a prescription	x		
• Durable medical equipment for home use with a prescription		x	
• Durable medical equipment for home use paid for by Medicare	X		
• Durable medical equipment for home use reimbursed by Medicare	X		
• Durable medical equipment for home use paid for by Medicaid	X		
• Durable medical equipment for home use reimbursed by Medicaid	X		
Mobility enhancing equipment (indicate how the options are treated in your state)	Taxable	Exempt	Statute/Rule Cite
• Mobility enhancing equipment without a prescription	x		
• Mobility enhancing equipment with a prescription		x	
• Mobility enhancing equipment paid for by Medicare	X		
• Mobility enhancing equipment reimbursed by Medicare	X		
• Mobility enhancing equipment paid for by Medicaid	X		
• Mobility enhancing equipment reimbursed by Medicaid	X		
Prosthetic devices (indicate how the options are treated in your state)	Taxable	Exempt	Statute/Rule Cite
• Prosthetic devices without a prescription	x		
• Prosthetic devices with a prescription		x	
• Prosthetic devices paid for by Medicare	X		
• Prosthetic devices reimbursed by Medicare	X		
• Prosthetic devices paid for by Medicaid	X		
• Prosthetic devices reimbursed by Medicaid	X		
• Corrective eyeglasses without a prescription	x		
• Corrective eyeglasses with a prescription		x	
• Corrective eyeglasses paid for by Medicare	X		
• Corrective eyeglasses reimbursed by Medicare	X		
• Corrective eyeglasses paid for by Medicaid	X		
• Corrective eyeglasses reimbursed by Medicaid	X		
• Contact lenses without a prescription	x		
• Contact lenses with a prescription		x	
• Contact lenses paid for by Medicare	X		
• Contact lenses reimbursed by Medicare	X		
• Contact lenses paid for by Medicaid	X		
• Contact lenses reimbursed by Medicaid	X		
• Hearing aids without a prescription	x		
• Hearing aids with a prescription		x	

• Hearing aids paid for by Medicare	X		
• Hearing aids reimbursed by Medicare	X		
• Hearing aids paid for by Medicaid	X		
• Hearing aids reimbursed by Medicaid	X		
• Dental prosthesis without a prescription	x		
• Dental prosthesis with a prescription		x	
• Dental prosthesis paid for by Medicare	X		
• Dental prosthesis reimbursed by Medicare	X		
• Dental prosthesis paid for by Medicaid	X		
• Dental prosthesis reimbursed by Medicaid	X		

Notes to taxability matrix:

In West Virginia:

On September 13, 2005, the West Virginia Legislature passed H. B. 401, which added a new section 11-15-3a to the West Virginia Code and amended W. Va. Code §§11-15B-2 and 11-15B-2a, all relating generally to consumers sales and use taxes on food and food ingredients intended for human consumption; reducing rate of tax on sales, purchases and uses of food and food ingredients to five percent **beginning January 1, 2006**; defining “food and food ingredients,” “candy,” “food sold through vending machines,” “prepared food,” “soft drinks,” and “Streamlined Sales and Use Tax Agreement,” and providing that six percent (6%) rate of tax continues to apply to sales, purchases and uses of “prepared food,” as defined in W. Va. Code §11-15B-2(b)(29).

All sales of “tangible personal property,” as defined in W. Va. Code §11-15B-2(b)(40) and in the Agreement, are taxable unless an “entity-based exemption,” as defined in W. Va. Code § 11-15B-2(b)(15), applies to the transaction, a “product-based exemption,” as defined in W. Va. Code § 11-15B-2(b)(28), applies to the transaction, or a “use-based exemption,” as defined in W. Va. Code §11-15B-2(b)(46), applies to the transaction, see W. Va. Code § 11-15-3(a). For example, sales of clothing and related products and sales of food and food products are taxable unless an entity-based or use-based exemption applies.

Tax is expressly imposed on sales of custom software. All sales of custom software are taxable unless an “entity-based exemption,” as defined in W. Va. Code § 11-15B-2(b)(15), applies to the transaction, a “product-based exemption,” as defined in W. Va. Code § 11-15B-2(b)(28), applies to the transaction, or a “use-based exemption,” as defined in W. Va. Code §11-15B-2(b)(46), applies to the transaction, see W. Va. Code § 11-15-3(a).

The furnishing of all “select services” are taxable, W. Va. Code § 11-15-3(a), unless an entity-based exemption, a product-based exemption or use-based exemption applies to the transaction.

“Select service” is defined in W. Va. Code §11-15-2(b)(17), §11-15B-2(b)(38) and §11-15-8. Excepted from the definition are “personal services,” as defined in W. Va. Code § 11-15-2(b)(12), professional services, services the furnishing of which is subject to control of the West Virginia

Public Service Commission, W. Va. Code §11-15-8m other than cable television service which is taxable, “contracting services” as defined in W. Va. Code § 11-15-2(b)(3), employee services, and ancillary activities associated with sales of tangible personal property under programs or agreements providing incentives to vendors to sell a greater volume of tangible personal property under a manufacturer’s, distributor’s or other third-party’s marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement. All other services are taxable unless an exemption applies. The term “personal services,” as defined in W. Va. Code §11-15B-2(b)(25), is limited to services rendered to the person of an individual without at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services, and employee services for his or her employer compensated by the payment of wages in the ordinary course of employment.