



## ABC's Of Sales And Use Tax For Private Elementary And Secondary Schools

In light of major changes to the West Virginia sales and use tax laws that affect elementary and secondary schools, each private elementary and secondary school must review its tax practices to assure proper compliance. Each individual school must register with the Department of Tax and Revenue to establish a sales tax account for remittance of taxes collected upon taxable sales. Schools that directly purchase also must register to claim exemption from tax upon their purchases. Registration forms and information may be obtained by contacting the Taxpayer Services Division as indicated at the end of this publication. This publication provides general information regarding typical transactions of private schools, and is not a substitute for sales and use tax laws or regulations. Publication TSD-312 discusses public elementary and secondary schools.

### **PURCHASES AND SALES, GENERALLY**

Unless there is a specific exemption in the sales tax law, all sales, leases and services in West Virginia are taxable, even sales by or through private schools. The burden of proving that a sale was exempt from tax is upon the seller. School officials should ensure that sales tax is imposed on all sales of items that are not specifically exempt.

Sales tax applies not only to sales by schools themselves, but to sales by school employees, school related organizations like the PTA, and businesses when the sales are made at or through the schools or school children. As a result of recent changes in the laws, retail sales by many out-of-state businesses (including mail order sales) in this state are now subject to use tax when the out-of-state retail business has agents or other physical presence in the State.

Private schools which are recognized by the State of West Virginia as institutions of elementary or secondary education and which substitute for the requirement of compulsory public school attendance are, to the extent of the instruction provided, rendering a professional education service. Those providing State-approved kindergarten programs are likewise rendering professional education services. Private schools which provide professional education services are not required to collect sales tax on the tuition they charge for those services. However, unless a private school also satisfies the requirements of the following section or some other specific exemption, it must pay the sales tax or use tax on all purchases of tangible personal property or taxable services which are used or consumed in rendering these professional education services.

The following discussion outlines some of the major sales tax exemptions applying to typical school-related transactions.

### **PURCHASES OF ITEMS OTHER THAN FOOD**

In order for a private school's purchases to be exempt from the sales tax and the use tax, the school must meet all of the following conditions:

- (1) a corporation or organization which has a current Business Registration Certificate; and,
- (2) exempt from federal income taxes under Internal Revenue Code § 501(c)(3) or § 501(c)(4); and also,
- (3) an elementary or secondary school which has a regular faculty and curriculum and a regularly enrolled body of students in attendance at the place in this State where its professional education service activities are regularly carried on.

If all three conditions are satisfied, the private school qualifies for an exemption which applies only to services, equipment, supplies and materials used or consumed in the activities that qualify the school for exemption from federal income taxes. This exemption does not apply to purchases of gasoline or special fuel or to purchases of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Internal Revenue Code § 513. The following purchases are exempt from tax under this and other exemptions:

- (1) Purchases of textbooks, workbooks, instructional aids and standardized examination materials required to be used in any school of this State are exempt per se.
- (2) Purchases of library books, newspapers and magazines are exempt.
- (3) Tangible personal property and taxable services which are purchased for resale by the school are exempt.

(4) Long-term leases of motor vehicles are exempt. A long term lease is a lease for a period of 30 or more consecutive days.

(5) Purchases of office or administrative materials, supplies, equipment or services used or consumed in the activities which qualify the school as exempt under Internal Revenue Code § 501(c)(3) or § 501(c)(4) are exempt.

(6) Purchases of educational supplies and equipment are exempt.

(7) Purchases of building materials, supplies or equipment, including janitorial materials, supplies, equipment and services are exempt if they are to be installed in, affixed to or incorporated into the real property used by the school for its educational activities.

(8) Purchases of repair parts or repair services are exempt if the property being repaired is used or consumed in the activities which qualify the private school as exempt under Internal Revenue Code § 501(c)(3) or § 501(c)(4).

(9) Purchases of athletic equipment and supplies are exempt.

In order to claim these exemptions on their purchases, private schools must issue a current, properly completed certificate of exemption (Form F0003) to their vendors, except that no certificate is required for the purchase of required textbooks and other required materials listed in item (1) above.

## **SALES OF ITEMS OTHER THAN FOOD**

Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a private school that is exempt on its purchases to the extent provided in the foregoing section, are exempt. To qualify as a casual and occasional sale, a fund raising event may last no longer than 84 consecutive hours, and no more than six such events may be held in any consecutive 12-month period.

### **ILLUSTRATION**

If a school purchases books (other than required textbooks) to sell at a "book fair" in order to raise funds, its purchases of the books are exempt under the resale exemption, and thus the sale of the books would also be exempt if the book fair lasts 84 hours or less, e.g., Monday morning through Thursday afternoon. But if the book fair lasts from Monday morning through Friday afternoon, the sale of the books would be taxable even though the purchase of the books is exempt, because the book fair lasts more than 84 hours. If the school does not purchase the books for the book fair but merely solicits orders from a book company's catalog, then the sale of such books is taxable because the school has not purchased the books and is simply acting as the agent for the book company which is the actual seller, not the school.

Other exemptions may also be applicable to sales by private schools. The following sales by private schools are exempt:

(1) Sales of textbooks, workbooks, instructional aids, and standardized examination materials required in any private elementary or secondary school in this State are exempt per se, so no sales tax or use tax is collected upon such sales. However, sales of other school materials, school supplies, and books which are not required textbooks are taxable, as are sales of jewelry, candy, clothing items, posters, magazines, greeting cards, and all other items not specifically exempt.

(2) School newspapers and yearbooks compiled and edited by students of the school are exempt when sold to students or school employees. However, such sales are taxable when sold to others. Sales of advertisements in newspapers and yearbooks are exempt from sales tax.

(3) Rentals of locks, lockers, storage space, clothing and other materials and equipment owned by private schools and furnished solely to students of the school are exempt from sales tax.

(4) Class dues and library fines are exempt from sales tax.

(5) Sales of tickets for activities sponsored by elementary and secondary private schools located in this State are exempt. This exemption applies only to sales of tickets to such activities; it does not apply to sales of anything else, such as sales of merchandise. Sales of tickets to athletic, cultural and social events, as well as fund raising events, would be exempt as long as they are sponsored by the school. But, sales to such events would not be exempt if they are not sponsored by the school, even if the event occurs on school property. For an activity to be sponsored by a school, it should be an activity which is organized solely to benefit the school's students, and which would not otherwise occur. For example, sales of tickets for admission to a school carnival held by parents to raise money for such things as art supplies and air conditioners for classrooms would be exempt as fund raising events if the carnival was held on

the school grounds and the carnival was promoted as an activity to raise money for the school or for some school related purpose, such as a school sponsored class trip. On the other hand, sales of tickets to carnivals, concerts, circuses, ball games and other such events would be subject to tax when conducted by businesses for profit, even if the school receives a share of the proceeds from the event.

(6) Casual and occasional sales by a parent-teacher association (PTA) or similar organization are exempt if the organization (1) has a current business registration certificate; (2) is exempt from federal income taxes under Internal Revenue Code § 501(c)(3) or § 501(c)(4); and (3) is an organization with no paid employees and whose gross income from fund raisers, less reasonable and necessary expenses to raise such gross income (or the tangible personal property or services purchased with such net income) is donated to the private school. If any of the foregoing conditions are not met, casual and occasional sales are taxable. For example, sales of such items as class photographs, class rings and school jackets are taxable when sold by for-profit organizations and individuals, because for-profit organizations and individuals are not exempt from federal income taxes under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code. To qualify as a casual and occasional sale, a fund raiser may last no longer than 84 consecutive hours (i.e., three and one half days) and no more than six such fundraisers may occur in any consecutive twelve months period. For more information, see Publication TSD-320, "Sales and Use Tax Considerations for Nonprofit Organizations."

#### **ILLUSTRATION**

Moe Doe, a professional photographer, takes class photographs for various schools as part of his photography business, which is subject to sales tax. Moe has a current business registration certificate and employs a secretary/receptionist. Sales tax must be charged on the sales price of the class photographs for each of the following reasons. First, since Moe is in the business of photography, his services are not casual and occasional sales. Second, Moe is not a PTA or similar organization. Third, because he is a professional photographer, Moe is not a qualified Section 501(c)(3) or Section 501(c)(4) organization. And fourth, because taking class photographs is part of his business, Moe does not donate all of his earnings from such activities to the schools. The fact that Moe's services are provided to public school students does not make his services exempt from sales tax. The school should either be sure that Moe is collecting sales tax, or the school itself should collect and remit the tax.

#### **PURCHASES AND SALES OF FOOD**

There are special exemption provisions for sales and purchases of food by private schools.

**Purchases.** - Only purchases of food to be sold during normal school hours are exempt from the sales and use taxes. All other purchases are taxable unless a specific exemption (other than the purchase for resale exemption) is available. An exemption may be claimed by issuing a properly completed certificate of exemption to the vendor.

**Sales.** - Food sold by private schools, school sponsored parent-teacher associations or school sponsored student organizations, to students enrolled in the school or to employees of the school during normal school hours is exempt per se from sales tax.

Two types of private organizations may make such exempt sales:

(1) Any private, parochial or denominational school which is subject to regulation by the West Virginia State Board of Education;  
or

(2) Any parent-teacher association or student organization which is sponsored by a private, parochial or denominational school which is subject to regulation by the West Virginia State Board of Education.

The following sales of food during other than normal school hours are also exempt:

Sales of food by a school sponsored student or parent-teacher association or similar organization at athletic, cultural, social or fund raising events when the proceeds of such sales, after payment of reasonable expenses, are donated to the school or used to purchase tangible personal property or services for the school. Examples of such exempt sales are bake sales held by the school's band boosters to raise money for new uniforms, and concession sales of hot dogs, popcorn and soft drinks by parents at athletic events to raise money for athletic equipment.

The following sales of food are always subject to sales tax:

Sales of food by vending machines, regardless of where the machine is located, who owns the machine, or when the sale occurs;  
and

Sales of food to the general public during normal school hours, unless such sales meet all of the conditions listed in Item (6) in the previous section on "Sales of Items Other Than Food."

## WHEN SALES ARE TAXABLE

One other aspect of taxable sales should be kept in mind. When a taxable sale occurs, the sales tax generally must be stated separately from the sales price. In some situations, however, such as nonexempt ticket sales, admission fees and food sold at school related events such as ball games, the sale price may include the sales tax. In the case of tickets, either the sales price and sales tax must be separately stated on the ticket, or the ticket or a sign posted in plain view must state that sales tax is included in the ticket price. With respect to admission charges where tickets are not used and sales of food at school related events, a sign may also be posted in plain view stating that sales tax is included in the sales price. Whenever the sign method is used, the sign must be legible and visible to a person with normal vision from a distance of 20 feet. When the sales price includes the sales tax, the amount of sales tax which must be imposed on each sale is as follows:

Divide the total amount received by 1.06 and multiply that amount by .06, then round the resulting amount up to the next highest cent. This last figure is the amount owed to the State on the sale.

West Virginia State Tax Department

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