



STATE OF WEST VIRGINIA
Department of Revenue
State Tax Department

Joe Manchin III
Governor

2009 MAY 17 PM 3:49
Christopher G. Morris
State Tax Commissioner

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA STATE TAX DEPARTMENT
Administrative Notice 09-20

SUBJECT: Consumer Sales and Service Tax and Use Tax - State Tax Commissioner's Policy Statement that vendors providing delivery services to customers must charge consumer sales and service tax or use tax on the total cost of the delivery service, which includes the postage and handling fee.

BACKGROUND: The consumer sales and service and use tax regulations provide that separately stated delivery charges are subject to the consumer sales and service tax, unless the delivery service is provided by a common carrier subject to regulation by the Public Service Commission and the customer pays the delivery charge directly to the common carrier. However, where the vendor purchases delivery or shipping service from the common carrier and the customer pays to the vendor the cost for shipping and handling, the total amount of all such shipping and handling charges is taxable to the customer because the customer is purchasing such services from the vendor. See Consumer Sales and Service and Use Tax Regulations §110-15-89.

PRIOR POLICY: In decisions issued prior to 2003, the State Tax Department, through the Office of Hearing and Appeals, has held that the actual reimbursement for freight charges paid on behalf of customers to common carriers are not subject to the consumer sales and service tax or use tax. Based on these decisions, the State Tax Department has not required that vendors providing delivery service collect consumer sales and service tax and use tax on charges that are directly attributable to a charge made by a common carrier and passed on by the vendor.

NEW POLICY: West Virginia became a member of the Streamlined Sales and Use Tax Program in 2003 by the passage of the Streamlined Sales and Use Tax Administration Act ("Streamlined Act"). The definitions and exemptions applicable to the Streamlined Act are equally applicable to the administration of the sales and use tax in West Virginia and must be enforced accordingly. The Streamlined Act defines "delivery charges" as charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. See West Virginia Code §11-15B-2(b)(13). The Streamlined Act further defines "sales price" to include the total amount of consideration, including cash, credit, property and service, for which personal property or services are sold, leased or rented, valued in money, whether

received in money or otherwise, without any deduction for "delivery charges." See West Virginia Code §11-15B-2(b)(48)(A).

Pursuant to these definitions, beginning October 1, 2009, the Tax Department will require that vendors providing delivery services to customers charge consumer sales and service tax or use tax on the total cost of the delivery service, which includes the postage and handling fee. If a vendor fails to collect consumer sales and service tax or use tax on the total cost of the delivery service, the vendor will be subject to an assessment for tax, interest and penalty.

Issued:

May 11, 2009



Christopher G. Morris
State Tax Commissioner
West Virginia State Tax Department

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