MAIN STREET FAIRNESS ACT OF 2003
(H.B. 3014)
Executive Summary

The Main Street Fairness Act of 2003 (H.B. 3014) passed the West Virginia Legislature March 5, 2003. It is based on a national effort by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The purpose of this bill is to level the playing field between sellers with retail stores in West Virginia who collect sales tax and out-of-state sellers who sell to West Virginia consumers over the Internet, by telephone, or by mail-order, but do not collect West Virginia's use tax, which was enacted in 1951.

Electronic commerce continues to grow. The U.S. Commerce Department recently reported that online e-commerce sales rose over 28 percent (to over $14 billion) in the 4th quarter of 2002 compared to 2001. The Commerce Department does not include travel and certain other online sales. Online sales amounted to 1.6 percent of all retail sales; for all of 2002, online sales were about 25 percent greater than 2001. Overall retail sales increased only about 1.4 percent.

Sales tax modernization will be achieved nationally by states using common definitions and other tax law simplifications, more efficient administrative procedures and technology. Participation in this streamlined system of sales and use tax administration is voluntary for both states and sellers of goods and services to consumers.

The Legislature has taken an important step by being one of the first states to authorize its Tax Commissioner to sign the Streamlined Sales and Use Tax Agreement, which is the work product of this national effort. The Agreement does not take effect until at least ten states with an aggregate population of 54,887,181 or more enact similar legislation. Similar legislation has been introduced in a number of other states and will be introduced in more states as legislatures come into session.

Substantive changes in West Virginia's sales and use tax laws made by H.B. 3014 will take effect January 1, 2004. Almost all of the changes will be transparent to consumers. One change that consumers will see is that the tax on a fifty-five cent purchase will be three cents under the new rounding rule rather than four cents under the present bracket method of collecting the tax. The Agreement requires that when purchase prices include fractional parts of a dollar, e.g., $1.55, tax must be collected using an arithmetic algorithm rather than the bracket system. West Virginia has used a bracket system since at least 1937. Under the algorithm, purchase price is multiplied by 6 percent and the calculation is carried to the third decimal place. If the third decimal place is 5 or greater, the tax is rounded up to the next whole cent. The following chart illustrates how these two tax collection methods work.

BRACKET SYSTEM			ROUNDING RULE		
PRICE		**TAX**	**PRICE**		**TAX**
5¢	or less	0	8¢	or less	0
6¢	to 16¢	1¢	9¢	to 24¢	1¢
17¢	to 33¢	2¢	25¢	to 41¢	2¢
34¢	to 50¢	3¢	42¢	to& 58¢	3¢
51¢	to 67¢	4¢	59¢	to 74¢	4¢
68¢	to 84¢	5¢	75¢	to 91¢	5¢
85¢	to $1.00	6¢	92¢	to $1.00	6¢
$1.01	to $1.16	7¢	$1.01	to $1.08	6¢
$1.17	to $1.33	8¢	$1.09	to $1.24	7¢
$1.34	to $1.50	9¢	$1.25	to $1.41	8¢

$1.51 to $1.67	10¢
$1.68 to $1.84	11¢
$1.85 to $2.00	12¢

$1.42 to $1.58	9¢
$1.59 to $1.74	10¢
$1.75 to $1.91	11¢
$1.92 to $2.00	12¢

Because the current bracket system is more aggressive than the arithmetic algorithm, 42 percent of the time tax paid by consumers on a transaction will be one penny less. The benefit to retailers is that the rounding rule is easier to program in their computers than the existing sales tax brackets, and it makes determining, collecting and remitting sales tax easier for sellers. Additionally, the rounding rule will be uniform among all states that sign the Streamlined Sales and Use Tax Agreement.

A second change affecting retailers, beginning in January, 2004, is that sales and use tax returns and remittances of tax will be due on the 20th day of the month following the close of the reporting period rather than on the 15th day of the month.

Different groups have expressed support for this Agreement, including the National Governors Association, the National Conference of State Legislatures, the Federation of Tax Administrators, the Multistate Tax Commission and the National Retail Federation. The West Virginia Retailers' Association supports the Streamlined Sales and Use Tax Agreement because it promotes fair competition, protects consumers, addresses simplification, and sustains government services and programs that are funded from general revenue. Annually, approximately one third of West Virginia's general revenue fund comes from sales and use tax collections. Enactment of the Main Street Fairness Act will help maintain and facilitate growth in this important source of revenue.

Some Facts and Myths

Under established decisions of the United States Supreme Court, West Virginia may not require an out-of-state seller to collect the State's use tax unless the out-of-state seller has physical presence in this State. H. B. 3014 does not change this.

Under the Internet Tax Freedom Act, West Virginia may not collect sales or use taxes on Internet access charges. H. B. 3014 does not change this.

The Internet Tax Freedom Act does not prohibit a state from collecting sales and use taxes on purchases of goods and services made over the Internet. The problem states have is the practical difficulty of collecting use taxes from individual consumers when the seller does not collect the tax. The objective of H. B. 3014 and the Streamlined Sales and Use Tax Agreement is to have more out-of-state sellers collect West Virginia's use taxes.

Even if Congress subsequently changes federal law to require out-of-state sellers to collect use tax on sales to West Virginia consumers, all such bills previously introduced in Congress include generous annual sales threshold amounts before tax collection could be required. The purpose of the threshold is to protect small sellers, so that a seller with gross annual sales below the specified dollar threshold would not be required to collect use taxes for any state in which the seller does not have physical presence.

H. B. 3014 does not require any West Virginia retailer making sales to out-of-state customers to begin collecting use taxes for the state to which the product is shipped.

Sellers will decide for themselves whether or not they want to register under the Streamlined Sales and Use Tax Agreement to collect sales and use taxes for states that sign the Agreement. There are a number of reasons why a seller may want to register under the Agreement.

If a seller does register under the Agreement, the seller must collect tax for all signatory states. Sellers may not cherry pick the states for which they will collect tax. This feature is important to West Virginia because it will result in increased use tax collections once the Agreement takes effect and is implemented.

The vast majority of sellers who register under the Agreement will elect to use a certified service provider to fulfill the seller's tax collecting, remitting and reporting requirements with signatory states. All of this will be done electronically. The burden of knowing the various tax laws and rates of tax falls on the certified service providers. By using uniform definitions, permitting only a single rate of tax per state and a single rate of tax per local taxing jurisdiction, using uniform sourcing rules, using uniform exemption certificates and tax returns and technology, the states believe they can achieve a streamlined sales and use tax administration system that will benefit all states that sign the agreement.

When a seller uses a certified service provider, signatory states may not audit the seller for compliance with the state's sales and use tax law except in two instances: (1) a state may audit the seller's payment of tax on its taxable purchases for use in business, and (2) when the state believes that a seller has committed fraud.

Additionally, the states will compensate certified service providers for collecting and remitting tax and filing tax returns. This compensation will be paid from taxes collected for each state and will be based upon new dollars collected for that state. Because the details of this have yet to be determined, and because the cost is not known at this time, H. B. 3014 prohibits the Tax Commissioner from signing any agreement to pay compensation to certified services providers until after the method by which these payments will be determined and made are approved by the Legislature, presumably in 2004.

Finally, West Virginia's participation in the Agreement is purely voluntary. The Legislature may elect to withdraw from this program at any time.