



DIRECT USE CONCEPT

Beginning July 1, 1987, the exemption of certain industries from consumers sales and service tax on purchases became subject to the direct use concept. Under this concept, the applicability of the sales and use tax depends on the use of the property or service rather than the type of property or service purchased. The purchase of the same item may be taxable in one instance and exempt in another, depending totally on its usage. The basic concept is that purchases directly used in activities or operations which are an integral and essential part of the activity are exempt from sales and use tax, while purchases which are instead used in activities or operations which are incidental, convenient, or remote to such activities are taxable for sales and use tax purposes.

Industries Subject To The Direct Use Concept And Effective Dates

The activities of manufacturing, transportation, transmission, communication, and the production of natural resources are subject to the direct use concept on and after July 1, 1987. The activity of contracting is subject to the direct use concept only for the period from July 1, 1987 to February 28, 1989. On or after March 1, 1989, purchases for use in contracting are subject to the rules outlined in Section 107 of the approved West Virginia Legislative Regulations. On and after June 7, 2008, purchases by a health care provider of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment, or prevention or injury or disease in humans.

Uses Of Property Or Services Constituting Direct Use

Uses of property or services which will constitute direct use, thereby making its purchase exempt from sales and use tax shall include only the following:

- (1) Tangible personal property physically incorporated into a finished product resulting from manufacturing production, production of natural resources or from contracting activity during the period July 1, 1987 to February 28, 1989. For example, raw materials used by a manufacturer in making the finished product would be directly used in manufacturing;
- (2) Tangible personal property or services causing a direct physical, chemical or other change upon property undergoing manufacturing production, production of natural resources or contracting activity during the period July 1, 1987 to February 28, 1989. For example, equipment used to assemble parts during the manufacturing process would be directly used in manufacturing;
- (3) Tangible personal property or services used in transporting or storing property undergoing transportation, communication, transmission, manufacturing production, production of natural resources or contracting activity during the period July 1, 1987 to February 28, 1989. For example, fork lifts used to move partially manufactured goods from one area to another would be directly used in manufacturing, while fork lifts used to move completed goods on the loading dock would not be directly used in manufacturing;
- (4) Tangible personal property or services used in measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production, production of natural resources, or in contracting activity during the period July 1, 1987 to February 28, 1989. For example, testing equipment used in quality control to determine whether goods being manufactured meet contract specifications would be directly used in manufacturing;
- (5) Tangible personal property or services used to physically control or direct the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production, production of natural resources or in contracting activity during the period July 1, 1987 to February 28, 1989. For example conveyor belts used in moving manufactured goods on an assembly line would be directly used in manufacturing;
- (6) Tangible personal property or services used to direct or record the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources or in contracting activity during the period July 1, 1987 to February 28, 1989. For example, meters used to record the amount of natural gas traveling through a pipeline would be directly used in transmission;
- (7) Tangible personal property or services used to produce energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources, or in contracting activity during the period July 1, 1987 to February 28, 1989. For example, an electrical generator or boiler used to produce energy for use in operating equipment directly used in manufacturing is considered to be directly used in manufacturing;

- (8) Tangible personal property or services used to facilitate the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production, production of natural resources, or in contracting activity during the period July 1, 1987 to February 28, 1989. For example, pipes used to carry water to equipment directly used in manufacturing would be directly used in manufacturing.
- (9) Tangible personal property or services used to control or otherwise regulate atmospheric conditions required for transportation, communication, transmission, manufacturing production, production of natural resources or in contracting activity during the period July 1, 1987 to February 28, 1989. For example, air conditioning necessary to control temperatures during a manufacturing process would be directly used while air conditioning for the personal comfort of employees would not be directly used in manufacturing;
- (10) Tangible personal property or services which serve as an operating supply for property undergoing transmission, manufacturing production, production of natural resources or in contracting activity during the period July 1, 1987 to February 28, 1989, or for property directly used in transportation, communication, transmission, manufacturing production, production of natural resources or in contracting activity during the period July 1, 1987 to February 28, 1989. For example, warehouses used to store property directly used in the manufacturing process are directly used in manufacturing;
- (11) Tangible personal property or services used in the maintenance or repair of property directly used in transportation, communication, transmission, manufacturing production, production of natural resources or in contracting activity during the period July 1, 1987 to February 28, 1989. For example, repair services performed on equipment used directly in the manufacturing process are directly used in manufacturing;
- (12) Tangible personal property or services used in the storage, removal or transportation of economic waste directly resulting from the activities of transportation, communication, transmission, manufacturing production, production of natural resources, or in contracting activity during the period July 1, 1987 to February 28, 1989. For example, trash bins used to store waste directly resulting from manufacturing are directly used in manufacturing;
- (13) Tangible personal property or services used in pollution control or environmental quality or protection activity directly relating to the activities of transportation, communication, transmission, manufacturing production, production of natural resources, or in contracting activity during the period July 1, 1987 to February 28, 1989. For example, a scrubber used to clean air emissions from a manufacturing facility would be directly used in manufacturing or a slurry pond used to collect runoff from a mine would be directly used in the production of natural resources;
- (14) Tangible personal property or services used in personnel, plant, product, or community safety or security activity directly relating to the activities of transportation, communication, transmission, manufacturing production, production of natural resources, or in contracting activity during the period July 1, 1987 to February 28, 1989. For example, safety shoes used by personnel for protection in a hazardous manufacturing facility are directly used in manufacturing; and
- (15) Tangible personal property or services used as an integral and essential part of transportation, communication, transmission, manufacturing production, production of natural resources, or in contracting activity during the period July 1, 1987 to February 28, 1989.

Uses Of Property Or Services Not Constituting Direct Use

Uses of property or services which will not constitute direct use, thereby making the purchase subject to the sales and use tax shall include, but not be limited to the following:

- (1) Tangible personal property or services used in the heating or illumination of office buildings. For example, the purchase of lighting fixtures for an office building would not be directly used;
- (2) Tangible personal property or services used in janitorial or general cleaning activities. For example, cleaning supplies or janitorial services purchased for general maintenance of a facility would not be directly used;
- (3) Tangible personal property or services used for the personal comfort of employees. For example, couches purchased for the employee lounge would not be directly used;
- (4) Tangible personal property or services used in production planning, scheduling of work or inventory control. For example, a computer purchased for use in maintaining records on inventory levels would not be directly used;
- (5) Tangible personal property or services used in marketing, general management, supervision, finance, training, accounting and administration. For example, property purchased for use in research for a new or improved product would not be directly used; and

- (6) Tangible personal property or services used in an activity or function incidental or convenient to transportation, communication, transmission, manufacturing production, production of natural resources, or in contracting for the period July 1, 1987 to February 28, 1989, rather than in an integral or essential part of such activity.

DIRECT USE GUIDELINES FOR TRANSPORTATION INDUSTRIES

Transportation means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location. The transportation activity must be conducted for others as a commercial enterprise and does not include the transportation of goods by the owner of the goods, such as the transportation of goods to a customer by the manufacturer. Transportation also does not include storage of tangible personal property unless it is only temporarily stored while in transit. Purchases of tangible personal property or services not directly used in transportation are subject to the sales and use tax. This regulation also applies to taxpayers engaged in transportation activities subject to the control of the Public Service Commission.

Taxable Items

The following items are indirectly used in transportation activity and subject to sales and use tax. This list gives only examples of taxable items and is not intended to be all inclusive.

- a. Office supplies;
- b. Office equipment;
- c. Billing supplies;
- d. Tariff rate schedules;
- e. Motor freight guides or other trade publications;
- f. Uniforms;
- g. Paper towels, cloth towels;
- h. Hand cleaner;
- i. Toilet supplies;
- j. Space heaters, except when used to preserve property being transported;
- k. Linens;
- l. Beds;
- m. Dishwasher, stove, other kitchen items;
- n. Time records - log books;
- o. Machinery and tools used to repair vehicles other than transportation vehicles, i.e., supervisor's car;
- p. Repair parts for vehicles other than transportation vehicles, i.e., supervisor's car; and
- q. Equipment such as fork lifts or hand trucks used to move goods in storage rather than goods in transit.

Exempt Items

The following items are directly used in transportation activity and exempt from sales and use tax. The list only gives examples and is not intended to be all inclusive.

- a. Repair parts for transportation vehicles;
- b. Machinery and tools used to repair transportation vehicles;
- c. Tires, tubes, batteries, motor oil, grease lubricants, and brake and transmission fluids used on or in transportation vehicles;
- d. Repair manuals for transportation vehicles;
- e. Cleaning supplies used to clean transportation vehicles;
- f. Equipment such as fork lifts, hand trucks, conveyor systems and dollies, used to load, unload or move goods in transit rather than goods in storage;
- g. Heating or cooling equipment used to maintain temperatures necessary to maintain goods in transit;
- h. Truck scales;
- i. Two-way radios used in transportation vehicles;
- j. Reflectors and fire extinguishers used on transportation vehicles; and
- k. Crates and packing materials used to pack goods in transit.

Items Used In Both Taxable And Exempt Manner

It is possible for an item to be used in both a taxable or exempt manner. In such instances, apportionment of the tax may be necessary. The apportionment must be performed using a reasonable method acceptable to the Tax Commissioner. Additional information on apportionment is provided in Section 9d of the approved West Virginia Legislative Regulations.

DIRECT USE GUIDELINES FOR MANUFACTURING INDUSTRIES

Manufacturing means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed. Purchases of tangible personal property and services which are directly used in manufacturing activity are exempt from sales and use tax. Purchases of tangible personal property or services not directly used in manufacturing are subject to sales and use tax.

Taxable Items

The systematic operation or integrated series of systematic operations which constitutes manufacturing begins with the storage and handling of raw materials and continues through the last step of processing. Storage of completed products and transportation of completed products to the customer or to another site is not included in manufacturing. Also, items relating to the administration of the plant or manufacturing facility are not considered to be directly used and are taxable. The list provides only some examples of taxable items and is not intended to be all inclusive.

- a. Office furniture;
- b. Office supplies and equipment;
- c. Recordkeeping materials;
- d. Research and development equipment used in developing new products or improving present products;
- e. Computer and computer software, unless used to control the flow of goods in production;
- f. Manuals and trade publications;
- g. Uniforms;
- h. Toilet supplies, paper and cloth towels;
- i. Heating and air conditioning equipment, except if specifically designed to maintain atmospheric conditions essential to the manufacturing process or to the maintenance of the manufactured goods;
- j. Machinery, tools, parts, and materials used to repair equipment other than equipment directly used in the manufacturing process;
- k. Machinery, tools, parts and materials used to maintain site facilities other than facilities directly used in manufacturing, such as materials used to maintain office facilities;
- l. Materials used to construct, pave or maintain parking lots;
- m. Tangible personal property and services used to convey, handle, transport market or display finished products;
- n. Tangible personal property and services used to convey finished goods to storage or to store, or to remove or load finished goods from storage at the plant site;
- o. Tangible personal property or services used in advertising or marketing manufactured goods, including withdrawal of salesman's samples from inventory; and
- p. Purchases of repairs to fulfill manufacturer's warranty.

Exempt Items

The following items are directly used in manufacturing and are exempt from sales and use tax. The list provides only some examples and is not intended to be all inclusive.

- a. Raw materials used in manufacturing which are incorporated into and become part of the completed product;
- b. Tangible personal property or services used in conveying or unloading raw materials into storage or from storage to the production line;
- c. Tangible personal property or services used in storage of raw materials or partially finished manufactured goods;
- d. Machinery or equipment used directly in manufacturing;
- e. Machinery, tools, repair parts, and materials used to repair and maintain equipment directly used in the manufacturing process;
- f. Tangible personal property or services used to convey partially finished manufactured goods from storage to the production line or from one part of the production line to another;
- g. Machinery, tools, repair parts, and materials used to maintain plant site facilities directly used in the manufacturing process;
- h. Heating and air conditioning equipment, but only if specifically designed to maintain atmospheric conditions essential to the manufacturing process or to the maintenance of the manufactured goods;
- i. Tangible personal property and services used in testing and inspecting products on the production line for quality control purposes;
- j. Computer hardware and software but only if used to direct production line operations or control the flow of goods in production or in quality control. If used for administrative purposes, computer hardware and software are taxable;

- k. Safety equipment or clothing such as safety shoes, safety goggles, safety gloves, fire extinguishers, or first aid kits, but only if used in connection with or if necessary to the manufacturing process;
- l. Tangible personal property or services used in plant security, such as plant security guard services or alarm systems;
- m. Pollution control equipment used to eliminate, prevent, or reduce air, water or noise pollution resulting directly from manufacturing activity; and
- n. Boxes, cartons, containers, and wrapping and packaging materials and supplies used in packaging or packing manufactured products for sale, but only if the packaging material is actually transferred to the purchaser as part of the product. For example, cartons transferred to the purchaser as part of the sale are exempt, but racks used to facilitate delivery which must be returned by the purchaser are taxable.

Items Used In Both Taxable And Exempt Manner

It is possible for an item to be used in both a taxable or exempt manner. In such instances, apportionment of the tax may be necessary. The apportionment must be performed using a reasonable method acceptable to the Tax Commissioner. Additional information on apportionment is provided in Section 9d of the Regulations.

DIRECT USE CONCEPT FOR PERSONS ENGAGED IN ACTIVITIES SUBJECT TO THE BUSINESS AND OCCUPATION TAX

Persons subject to the state business and occupation tax are exempt on all purchases made by them for direct use in business and occupation tax activities. This exemption includes purchases used directly in the public service or utility business or in the business of generating or producing electric power, but only in activities for which the gross receipts are subject to business and occupation tax. It should be noted that some entities may be engaged in many businesses, some of which are subject to business and occupation tax and some of which are not subject to the business and occupation tax. Purchases for use in the other activities would be taxable unless they qualify for another exemption. If a person will be using the item both in an exempt manner and a taxable manner, it is possible that he may have to apportion the tax on purchases used in more than one activity. The apportionment must be performed using a reasonable method acceptable to the Tax Commissioner. Additional information on apportionment is provided in Section 9d of the Regulations.

DIRECT USE GUIDELINES FOR PRODUCTION OF NATURAL RESOURCES INDUSTRIES

The production of natural resources means the performance by the owner of the natural resources, or another of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment for sale, profit, or commercial use of any natural resource products, and any reclamation, waste disposal or environmental activities associated with these activities. Persons engaged in the production of natural resources are subject to the direct use concept. Persons engaged in the production of natural resources must pay tax on purchases of tangible personal property and services, which are indirectly used in the production of natural resources. Purchases of tangible personal property and services which are directly used in the production of natural resources are exempt from sales and use tax.

Natural Resource

The term natural resource means all forms of mineral including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil, and natural gas liquids which are contained in or on the soils or waters of this State, including standing timber.

Severing Or Severed

Severing or severed means the physical removal of the natural resources from the earth or waters of this State by any means or from the waste or residue of prior mining.

Activities Not Included In The Production Of Natural Resources

The production of natural resources shall not include the following:

- a. In the case of limestone quarried or mined, any activity after the stone is severed and reduced to possession on the surface. Processing of limestone is considered to be manufacturing;
- b. In the case of natural gas, any conversion or refining process. Conversion or refining of natural gas is considered to be manufacturing;
- c. In the case of oil, any conversion or refining process. Refining of oil is considered to be manufacturing; (d) In the case of timber, any cuts after the tree is severed, topped and delimbed. See *Burruss v. Hardesty*, 297 S.E.2d 836 (W. Va. 1982). The cutting of timber at a sawmill is considered to be manufacturing.

Treatment of Contract Miners Or Contract Cutters Engaged In Production Of Natural Resources

A contract miner or cutter is a person engaged as an independent contractor in producing natural resources which are owned by others. Contract miners or cutters are considered to be engaged in the production of natural resources and their purchases are subject to the direct use concept when engaged in the activities. Purchases made by a contract miner or cutter for direct use in the production of natural resources are exempt, while purchases made for indirect use are taxable. Contract miners or cutters are not subject to the severance tax because they do not have an economic interest in the natural resource product being produced.

Taxable Items

Purchases of tangible personal property or services indirectly used in the production of natural resources are taxable. The following items are not directly used in production of natural resources and may be subject to the sales and use tax. The list provides only some examples of taxable items and is not intended to be all inclusive.

a. All Natural Resources.

- (1) Blueprints or blueprinting equipment;
- (2) Engineering equipment and surveying equipment, maps, and other property used in exploration;
- (3) Office and clerical supplies and equipment;
- (4) Janitorial supplies;
- (5) Light bulbs and fixtures used in offices, repair shops, bath-houses, or similar facilities;
- (6) Supplies used in bath-house;
- (7) Textbooks, manuals, and reference material;
- (8) Research and development equipment used in developing new products or improving present products;
- (9) Personnel records, time logs;
- (10) Machinery, tools, parts, and materials used to repair equipment other than equipment directly used in the production of natural resources, and
- (11) Machinery, tools, parts and materials used to maintain office facilities, repair shops, bath-houses, or eating facilities.

b. Coal Mining and Processing. - (Special rules exist for severance taxpayers).

- (1) Tangible personal property or services used in the transportation of coal from the mine to the customer or from the processing plant to the customer.

c. Limestone Quarrying. - (Special rules exist for severance taxpayers).

- (1) Tangible personal property or services used in the transportation of limestone from the quarry floor to a customer; and
- (2) Tangible personal property or services used indirectly in the processing of limestone. Limestone processing is considered to be manufacturing rather than the production of natural resources, therefore purchases for indirect use in processing are taxable.

d. Natural Gas and Oil Production. - (Special rules exist for severance taxpayers).

- (1) Tangible personal property or services used indirectly in the refining or processing of natural gas or oil. The refining or processing of natural gas or oil is considered to be manufacturing. Therefore, purchases for indirect use in refining or processing are taxable.

e. Timbering. - (Special rules exist for severance taxpayers).

- (1) Cables used to secure logs to a truck for transportation to a customer;
- (2) Machinery, tools, parts and materials used to maintain equipment used to transport logs to a customer; and
- (3) Tangible personal property or services used indirectly in activities occurring after the delimiting of the tree. Activities such as cutting timber at the sawmill are considered to be manufacturing. Purchases for indirect use in manufacturing are taxable.

Exempt Items

Purchases of tangible personal property or services directly used in the production of natural resources are exempt from sales and use tax. The following items are directly used in the production of natural resources and are exempt from sales and use tax. The list provides only some examples of exempt items and is not intended to be all inclusive.

a. All Natural Resources.

- (1) Pollution control equipment used to eliminate, prevent, or reduce air, water, or noise pollution resulting directly from production activity;
- (2) Tangible personal property or services used for production site security, such as security guard services or alarm systems;
- (3) Safety equipment or clothing such as safety shoes, safety goggles, safety gloves, fire extinguishers, or first aid kits, but only if used directly in the production process;
- (4) Machinery, tools, repair parts, and materials used to repair and maintain equipment directly used in production; and
- (5) Machinery, tools, repair parts, and materials used in reclamation activities associated with the production of natural resources.

b. Coal Mining and Processing.

- (1) Machinery and equipment used to sever or extract the coal including continuous miners, augurs, picks, and other cutting machines and tools for underground mining and dozers, end loaders, cranes, backhoes, and power shovels for surface mining;
- (2) Mine support and roof materials such as timbers, roof bolts, and glue;
- (3) Drainage pipes, pumps and valves located at or in the mine;
- (4) Blasting equipment and explosives;
- (5) Mine ventilation equipment;
- (6) Rock dust and other dust alloying materials;
- (7) Mine and supply cars;
- (8) Equipment used to generate energy to operate machinery and equipment directly used in production such as generators, battery chargers, compressors, and transformers;
- (9) Tangible personal property or services used in transportation of coal from the mine face to a stockpile located at the mouth of the mine, such as mine and shuttle cars, trolley and battery locomotives, conveyor belts, or railroad tracks located inside the mine;
- (10) Tangible personal property or services used in the transportation of coal from the site of a surface mine to a stockpile where coal is stored for further shipment;
- (11) Communication equipment used within the mine;
- (12) Processing equipment, such as washers, centrifuges; and
- (13) Tangible personal property or services used to transport coal from the mine to the processing plant, but only if both activities are conducted by the same person.

c. Limestone Quarrying.

- (1) Machinery and equipment used to sever or extract the limestone from the face of the quarry;
- (2) Blasting equipment and explosives;
- (3) Rock dust and other dust alloying materials; and
- (4) Tangible personal property or services used to transport limestone from the quarry to the processing plant but only if both activities are conducted by the same person.

d. Natural Gas and Oil Production.

- (1) Gas and oil drilling rigs and equipment; and
- (2) Chemicals used in gas and oil well completion.

e. Timbering.

- (1) Axe;
- (2) Chain saw;
- (3) Cables and chains, if used to move trees to permit delimiting;
- (4) Hydraulic slasher;
- (5) Oil if used in severing equipment;
- (6) Sawblades;
- (7) Saws;
- (8) Shearers; and
- (9) Wedges.

Items Used In Both Taxable And Exempt Manner

It is possible for an item to be used in both a taxable or exempt manner. In such instances, apportionment of the tax may be necessary. The apportionment must be performed using a reasonable method acceptable to the Tax Commissioner. Additional information on apportionment is provided in Section 9d of the Regulations.

DIRECT USE GUIDELINES FOR TRANSMISSION INDUSTRIES

The activity of transmission means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location through a pipeline or other medium for commercial purposes. The word medium refers to the stationary mode by which liquid, natural gas, or electricity moves from one location to another, including pipelines or wires, but excluding tank trucks and barges. Purchases of tangible personal property or services which are directly used in transmission are exempt from sales and use tax. Purchases of tangible personal property or services which are not directly used in transmission are subject to the sales and use tax.

Taxable Items

Purchases of tangible personal property or services relating to the administration or management of a transmission facility are not considered to be directly used and are taxable. The list provides only some examples of taxable items and is not intended to be all inclusive.

- a. Office furniture;
- b. Office supplies and equipment;
- c. Recordkeeping materials;
- d. Research and development equipment;
- e. Computers and computer software, unless used to trace or control the flow of goods in transmission;
- f. Uniforms;
- g. Toilet supplies, paper and cloth towels;
- h. Light bulbs and lighting fixtures;
- i. Heating or air-conditioning equipment, except if specifically designed to maintain atmospheric conditions essential to the transmission process or to maintain products in transmission;
- j. Machinery, tools, parts, and materials used to repair equipment other than equipment directly used in the transmission process;
- k. Machinery, tools, parts, and materials, used to maintain facilities other than those directly used in transmission, such as materials used to maintain office facilities; and
- l. Storage tanks used to store products before or after transmission.

Exempt Items

The activity of transmission begins with the receipt or intake of the liquid, natural gas, or electricity into the transmission system and ends with the delivery of the product to the customer. Purchases of tangible personal property or services directly used in transmission activities are exempt from sales and use tax. The list provides only some examples and is not intended to be all inclusive.

- a. Machinery and equipment used directly in the transmission process, such as pipes, poles, and wires; and
- b. Machinery, tools, repair parts and materials used to repair and maintain equipment directly used in the transmission process.

Items Used In Both Taxable And Exempt Manner

It is possible for an item to be used in both a taxable or exempt manner. In such instances, apportionment of the tax may be necessary. The apportionment must be performed using a reasonable method acceptable to the Tax Commissioner. Additional information on apportionment is provided in Section 9d of the Regulations.

DIRECT USE GUIDELINES FOR COMMUNICATION INDUSTRIES

The activity of communication includes all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission, or other encoded symbolic information transfers. Communication activity also includes commercial broadcast radio, commercial broadcast television and cable television. Persons engaged in the activity of communications are subject to the direct use concept on their purchases of tangible personal property or services for use in

communication activity, unless they fall within the exemption for telecommunication taxpayers. If a person does not fall within this exemption, their purchases of tangible personal property and services for use indirectly in the activity of communications are subject to sales and use tax. Purchases of tangible personal property or services for use directly in the activity of communication are exempt from sales and use tax.

DIRECT USE CONCEPT FOR PERSONS ENGAGED IN ACTIVITIES SUBJECT TO TELECOMMUNICATIONS TAX

Persons subject to the telecommunications tax are exempt on all purchases for direct use in telecommunications activities. This exemption includes purchases of tangible personal property or services in activities for which the gross receipts are subject to the telecommunications tax. The Public Service Commission provides annually to the Tax Commissioner a list of activities deemed to be competitive, which are not subject to the telecommunications tax. Purchases of tangible personal property or services for use in these competitive activities may be taxable, since the gross receipts from them are not subject to the telecommunications tax. It should be noted that some entities may be engaged in many activities, some of which are subject to the telecommunications tax and some of which are not subject to the telecommunications tax. If a person will be using the item both in an exempt manner and a taxable manner, it is possible that they may have to apportion the tax on purchases used in more than one activity. The apportionment must be performed using a reasonable method acceptable to the Tax Commissioner. Additional information on apportionment is provided in Section 9d of the Regulations.

DIRECT USE CONCEPT FOR HEALTH CARE PROVIDERS

The purchase by a health care provider of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment, or prevention or injury or disease in humans are exempt from sales tax. Purchases of non-prescription drugs and other over-the-counter healthcare items remain subject to sales tax just as such items are taxable when purchased by a consumer from a retailer. See Publication TSD-425 for additional information.

Definitions for exempt items are:

“Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

- (A) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplement to any of them;
- (B) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans; or
- (C) Intended to affect the structure or any function of the human body.

“Durable medical equipment” means equipment, including repair and replacement parts for the equipment, but not including “mobility-enhancing equipment”, which is primarily taken into the possession of the patient for use by the patient and:

- (A) Can withstand repeated use;
- (B) Is primarily and customarily used to serve a medical purpose;
- (C) Generally is not useful to a person in the absence of illness or injury; and
- (D) Is not worn in or on the body.

Examples: Home or portable oxygen equipment, home air fluidized beds, blood glucose monitors, commode chairs, nebulizers, infusion pumps.

“Mobility-enhancing equipment” means equipment, including repair and replacement parts to the equipment, but does not include “durable medical equipment”, which:

- (A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;
- (B) Is not generally used by persons with normal mobility; and
- (C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

Examples: Walkers, wheelchairs, crutches, canes, orthodic shoes.

“Prosthetic device” means a replacement, corrective or supportive device, including repair and replacement parts for the device, worn on or in the body, to:

- (A) Artificially replace a missing portion of the body;
- (B) Prevent or correct physical deformity or malfunction of the body; or
- (C) Support a weak or deformed portion of the body.

Examples: Artificial limbs, prosthetic intraocular lenses, cardiac pacemakers, artificial eyes, dental fillings and crowns, enteral nutrition pumps, ostomy supplies.

Assistance may be obtained by calling

Taxpayer Services Division

(304) 558-3333 or 1-800-WVA-TAXS (1-800-982-8297)

A TDD Service is available for the hearing impaired by calling
1-800-2TAXTDD (1-800-282-9833)

To order forms or publications call the automated information system at:
(304) 344-2068 or 1-800-422-2075

Or visit our website: <http://www.state.wv.us/taxdiv>