

## Sales and Use Tax – Sales Tax Holiday Questions and Answers

### 1. When is the Sales Tax Holiday?

The West Virginia State Sales Tax Holiday will begin this year at **12:01 a.m.** on **Friday August 5<sup>th</sup>, 2022** and will end at **11:59 p.m.** on **Monday August 8, 2022.**

The West Virginia State Sales Tax Holiday begins each year on the Friday before the first Sunday in August and ends the following Monday.

### 2. What items qualify for the sales tax holiday?

During the holiday, the following items are exempt from Sales and Use tax:

- Certain clothing with a purchase price of \$125 or less
- Certain school supplies with a purchase price of \$50 or less
- Certain school instruction material with a purchase price of \$20 or less
- Certain laptop and tablet computers with a purchase price of \$500 or less; and
- Certain sports equipment with a purchase price of \$150 or less.

Items purchased for use in a trade or business are **not exempt** under the sales tax holiday.

### 3. Can multiple qualifying items be purchased in a single tax-exempt transaction?

There is no limit on the amount of the total purchase. The qualification is determined by each individual item.

### 4. What item of clothing qualify?

“Clothing” includes, but is not limited to, shirts; blouses; sweaters; pants; shorts; skirts; dresses; uniforms (athletic and nonathletic); shoes and shoe laces; insoles for shoes; sneakers; sandals; boots; overshoes; slippers; steel-toed shoes; underwear; socks and stockings; hosiery; pantyhose; footlets; coats and jackets; rainwear; gloves and mittens for general use; hats and caps; ear muffs; belts and suspenders; neckties; scarves; aprons (household and shop); lab coats; athletic supporters; bathing suits and caps; beach capes and coats; costumes; baby receiving blankets; diapers, children and adult, including disposable diapers; rubber pants; garters and garter belts; girdles; formal wear; and wedding apparel.

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### 5. What is not included in the definition of clothing?

While clothing is eligible for the holiday, the following items are ***not eligible*** for the holiday and are subject to tax during the holiday period:

- Items purchased for use in a trade or business.
- Clothing accessories or equipment. Clothing accessories or equipment include briefcases; cosmetics; hair notions, including, but not limited to, barrettes, hair bows, and hair nets; handbags; handkerchiefs; jewelry; sunglasses (non-prescription); umbrellas; wallets; watches; and wigs and hair pieces.
- Protective equipment. Protective equipment includes breathing masks; clean room apparel and equipment; ear and hearing protectors; face shields; hard hats; helmets; paint or dust respirators; protective gloves; safety glasses and goggles; safety belts; tool belts; and welder's gloves and masks.
- Sewing equipment and supplies including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; and sewing materials that become part of "clothing" including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers.
- Sports or recreational equipment. Sport or recreational equipment includes ballet and tap shoes; cleated or spiked athletic shoes; gloves, including, but not limited to, baseball, bowling, boxing, hockey, and golf; goggles; hand and elbow guards; life preservers and vests; mouth guards; roller and ice skates; shin guards; shoulder pads; ski boots; waders; and wetsuits and fins.
- Belt buckles sold separately.
- Costume masks sold separately.
- Patches and emblems sold separately.

### 6. Does the \$125 exemption apply to the first \$125 of an item of clothing?

No. The exemption applies to items selling for \$125 or less. If an item of clothing sells for more than \$125, tax is due on the entire selling price.

### 7. Can a retailer split items that are normally sold together for the item to fall below the threshold?

No. For example, the retailer may not sell a pair of \$150 shoes as two individual \$75 items for the purchase to qualify for the exemption.

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### 8. What types of items qualify as school supplies?

School supplies include only the following items: binders; book bags; calculators; cellophane tape; blackboard chalk; compasses; composition books; crayons; erasers; folders (expandable, pocket, plastic, and manila); glue, paste, and paste sticks; highlighters; index cards; index card boxes; legal pads; lunch boxes; markers; notebooks; paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper; pencil boxes and other school supply boxes; pencil sharpeners; pencils; pens; protractors; rulers; scissors; and writing tablets.

Items not included in this list are taxable.

“School supplies” does not include any item purchased for use in a trade or business.

### 9. What types of items qualify as school instructional material?

School instructional material includes only the following items: reference books, reference maps and globes, textbooks, and workbooks.

Items not included in this list are taxable. “School instructional material” does not include any material purchased for use in a trade or business.

### 10. Will items purchased for my business be eligible for the tax exemption during the sales tax holiday?

No. The exemption does not apply to items used in a trade or business. If a consumer purchases an item that is to be used in a trade or business and the retailer does not collect sales tax, the consumer is obligated to report the purchase and pay consumer’s use tax on the item. The consumer may report and pay the tax on the regularly filed return, or if the consumer does not have a use tax account, may report, and pay the tax on his or her personal income tax return.

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### **11. What about buy one, get one free or for a reduced price?**

The total price of items advertised as “buy one, get one free” or “buy one for a reduced price” cannot be averaged to qualify both items for the exemption. For example: a retailer advertises pants as “buy one, get one free.” The first pair of pants is priced at \$150.00; the second pair of pants is free. Tax is due on \$150.00. The store cannot sell each pair at \$75.00 in order for the items to qualify for the exemption. However, the retailer may advertise and sell the items for 50 percent off, selling each pair of \$150.00 pants for \$75.00, making each pair eligible for the exemption.

The exemption depends on the actual price paid for each item. For example: A retailer advertises shoes as “buy one pair at the regular price, get a second pair for half price.” The first pair of shoes is sold for \$140.00; the second pair is sold for \$70.00 (half price). Tax is due on the \$140.00 shoes, but not on the \$70.00 shoes. The store cannot sell each pair of shoes for \$105.00 in order for the items to qualify for the exemption. However, a retailer may advertise each pair for 25 percent off, thereby selling each pair of \$140.00 shoes for \$105.00, making each pair eligible for the exemption.

### **12. How should a retailer handle items normally sold as a unit?**

Articles normally sold as a unit must be sold that way during the sales tax holiday. They cannot be priced separately and sold as individual items to qualify for the exemption. However, components normally priced as “separates” may still be sold as separate articles.

### **13. How do retailers handle sales of sets containing both exempt and taxable items?**

When exempt clothing, accessories, or footwear are sold together with taxable merchandise as a set or single unit, the full price is subject to sales tax unless the price is separately stated.

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### **14. How are coupons and discounts handled?**

If a retailer offers a discount or store coupon to reduce the price of an item to less than then the threshold amount for the exemption, then the item will qualify for the exemption. This applies to all retailer discounts even if a retailer's coupon or loyalty card is required to secure the discount.

If a retailer accepts a coupon that entitles the retailer to third-party reimbursement, such as a manufacturer's coupon, the discount provided by the coupon does **not** reduce the item's sales price for purposes of determining whether the item is eligible for the exemption.

### **15. Does the exemption apply to rain checks?**

Eligible items that customers purchase during the Holiday using a rain check qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the Holiday will qualify an eligible item for the exemption only if the purchase price is paid in full at the time the rain check was issued. If the item is sold after the Holiday, the Holiday exemption does not apply, and it is taxable.

### **16. Does the exemption apply to rebates?**

Rebates occur after the sale and do not reduce the sales price of an item for purposes of the sales tax holiday threshold. If the price of the item before rebate exceeds the threshold, it is taxable.

### **17. Does the exemption apply to repairs, alterations, or items for rent?**

The exemption does not apply to taxable services, such as alterations performed on clothing, accessories, or footwear, or to any rental costs.

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### **18. Does the exemption apply to layaway sales?**

Qualifying items placed on or picked up from layaway during the sales tax holiday are exempt from sales tax.

However, in order to be considered a layaway sale, the retailer and customer must have entered into a layaway sales agreement, the customer made a deposit in accordance with the retailer's layaway policy, and the merchandise was segregated from the retailers' inventory.

### **19. Does the exemption apply to mail, telephone, E-mail, and internet orders?**

Qualified items sold to consumers in West Virginia by mail, telephone, e-mail, or Internet shall qualify for the sales tax exemption if the consumer orders and pays for the item and the retailer accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. However, if the order and payment were made before the sales tax holiday, even if the item is delivered during the sales tax holiday, it would not qualify for the exemption. Additionally, if a customer requests delayed shipping or the payment does not occur until after the holiday period, the item would not qualify for the exemption.

Out-of-state consumer's ordering from retailers in West Virginia via mail, telephone, e-mail or internet are not eligible for the sales tax holiday, because sales tax is determined based upon the destination of the sale, and not where the sale originated.

### **20. Does the exemption apply to shipping and handling charges?**

Shipping and handling charges that are separately stated are taxable.

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### **21. How should retailers handle exchanges and returns?**

- If a consumer buys an eligible item during the sales tax holiday and later exchanges it for the same item in a different size or color, the retailer should not charge sales tax even if the exchange is made after the end of the sales tax holiday.
- If a consumer buys an eligible item during the sales tax holiday and returns the item after the tax holiday period for credit on the purchase of a different item, the retailer must charge sales tax on the sale of the newly purchased item, even if it would have been eligible for the exemption during the sales tax holiday.
- If a consumer buys an eligible item before the holiday period but returns the item during the sales tax holiday period and receives credit on the purchase of a different item of eligible property, no sales tax is due on the sale of the new item. The retailer must provide the consumer credit for both the purchase price and sales tax paid on the item being returned.

### **22. How should retailers handle refunds?**

Retailers are encouraged to refund the tax to any customer who was charged sales or use tax on an exempt purchase. Customers who were charged tax by a vendor for an exempt purchase should take their tax paid receipt to the retailer to facilitate obtaining the refund.

If the retailer has not already remitted the tax to the State Tax Department, the retailer should simply refund the tax to the customer. If the retailer has remitted the tax to the State Tax Department, the retailer should refund the tax to the customer and then take a credit for the tax refunded on the retailer's next sales or use tax return.

### **23. How do retailers report exempt sales?**

Exempt sales are reported on the CST-200CU Return that you file monthly, quarterly, etc with the WV State Tax Department.

### **24. Can a vendor choose not to participate in the sales tax holiday?**

No. The sales tax holiday is set by law and vendors must comply.

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**25. Does the sales tax holiday apply to the county local sale and use tax rates?**

Yes.

**26. Can a retailer advertise for the sales tax holiday?**

The Department will not endorse or approve any advertisement. However, there is no restriction on advertising for the sales tax holiday.

**27. If I purchase from a seller online at 1:00 a.m. on the designated Friday but the seller is located on the west coast in the pacific time zone, should I be charged sales tax for those items eligible for the sales tax holiday?**

Yes. The time zone of the seller's location determines the authorized time period for the sales tax holiday when the purchaser is located in one time zone and the seller is located in another. In this instance, it is only 10:00 p.m. on Thursday in the Pacific Time Zone. The sales tax holiday does not start until 12:00 a.m. on the designated Friday.