



WEST VIRGINIA STATE TAX DEPARTMENT

Office of School Finance Summer Workshop

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WEST VIRGINIA STATE TAX DEPARTMENT

Matthew Irby, Director, Tax Account Administration

Before we get started

This presentation is meant to be a source of general information and not as a substitute for tax laws, rules, or regulations and may not be relied upon as legal or tax advice or to support specific instances not addressed.

The material presented may contain simplified explanations of potentially complex legal and tax concepts so as to apply generally across broad areas of tax practice, both legal and accounting, and is intended for general overview and application.

Individual comments by presenters are meant to be illustrative in nature and are not intended as official Tax Department policy.

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Sales and Use Tax for Public Schools

It is important to note at the outset that the issue of sales and use tax is two-fold:

- 1) Taxability as a consumer
- 2) Responsibility as a vendor

Schools as a consumer

- 1) Absolute exemption when purchasing (See W.Va. Code sec. 11-15-9(a)(3)). Entity based exemption vs. Use based exemption.
- 2) No special contractors exemption:
 - a) This exemption allows a contractor to assert the exemption of their vendor (see W.Va. Code sec. 11-15-8d.
 - b) Workaround: Purchase materials on behalf of the contractor.

Must Use an Exemption Certificate





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PTA/PTO as a consumer

Essentially the same for organizations such as the PTA/PTO, except they must be an exempt entity:

- 1) Are they an exempt organization under IRC sec. 501(c)(3) or (4).
- 2) Does it either:
 - a) receive over ½ of its support from gifts; or
 - b) have no paid employees and donates its net income from fundraisers to a 501(c)(3) or (4).
- 3) Is the item being used or consumed in the activity that makes the organization exempt

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Exceptions to the exemption

- 1) Does not exempt gasoline and special fuel. A motor fuel exemption must exist.
- 2) Cannot be used to purchase items used in the generation of unrelated business income.
- 3) Must have a business registration certificate to assert exemption.
- 4) No Tax Commissioner qualification of organizations. Certify to your vendor yourself.

Schools as a vendor

When selling items, it is important to note the differences in the types of exemptions:

- 1) Per Se – By determination of the State Tax Commissioner, these exemptions are determined to be exempt without the need of an exemption certificate.
- 2) Certificate – Sale is only exempt upon the receipt of a properly executed exemption certificate.
- 3) Refundable – Tax must be paid and the consumer can then file with the State Tax Department a claim for refund.
- 4) Direct Pay – Certain claimants of refundable exemptions may be eligible for a direct pay permit. Provision to a vendor of a permit allows the vendor to not collect tax (similar to exemption certificate).

Per Se Exemptions applicable to Schools - Textbooks

Sales of Textbooks to be used in the school:

- Includes – Textbooks, workbooks, instructional aids, examination materials that are **required**.
- Excludes – Materials, notebooks, school supplies and books that are **not required**.
- Not contemplated – other sales of tangible personal property (clothing, posters, magazines, etc.)

Per Se Exemptions applicable to Schools – Items other than food

- 1) School newspapers and yearbooks sold to students or employees (but not to others.)
- 2) Locks, lockers, storage space, clothing and equipment owned by public schools and furnished **solely to students**.
- 3) Class dues and library fines.

Per Se Exemptions applicable to Schools – Tickets to events

Tickets for school sponsored events are per se exempt:

- Events sponsored by other organizations are not necessarily exempt.
- Does not apply to merchandise.

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Per Se Exemptions applicable to Schools – Food

- Food sold by public 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.

- Vending machines are always taxable
- Food sold to public is subject to tax unless:
 - Made by a school sponsored organization (PTA/PTO, boosters, etc.) at athletic, cultural, social or fundraising event when proceeds are donated to the school.

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Per Se Exemptions applicable to Schools – Casual and Occasional

Fundraising:

- Must have a business registration certificate
- Must have a ruling from IRS for 501(c)(3) or (4)
- No paid employees and proceeds donated to the school
- Can be no longer than 84 consecutive hours
- No more than six in a twelve month period (this is a rolling 12 months).

Statute of Limitations – Fuel Tax

§11-14C-31

SB 461

Changing the due date for refunds of fuel taxes

Extends the due date for claims of refunds by county school boards for fuel taxes from August 31 following the end of the fiscal year to December 31. FY 18 still due August 31, FY19 due December 31.

Fuel Tax Refund Filing Requirements

MFR-14G for government, must include:

- Form completed
- Fuel Tax summary detailing:
 - Fuel Type
 - Purchase date
 - Company purchased from
 - Invoice #
 - Invoiced gallons

Significant delay related to failure to file all information.

Failure to file timely will result in a complete denial.

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Questions?

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Taxpayer Assistance Line: (304)558-3333

Taxpayer Assistance email: TaxHelp@wv.gov

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