



## **Collection Of West Virginia Consumer Sales And Service Tax For All State Correctional Centers And Regional Jail Facilities**

The purpose of this publication is to provide information to all State Correctional Centers, Regional Jail Facilities, Juvenile Detention Centers and County Jails (Correctional Facilities) of their responsibility regarding the proper collection of West Virginia Consumer Sales and Service Tax (Sales Tax), and the remittance of such tax to the State Tax Department. In addition, this publication announces the intent of the State Tax Department to prospectively hold Correctional Facilities accountable for any future action of noncompliance with regard to proper collection and payment of the sales tax on or after November 1, 2004.

The Sales Tax is imposed on sales of tangible personal property and selected services in this State. See W. Va. Code § 11-15-3. "Sale" includes "any transfer of the possession or ownership of tangible personal property for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor's business and is made to the transferee or his agent for consumption or use or any other purpose." See, W. Va. Code § 11-15-2(r). "Services" or "selected services" includes "all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but shall not include contracting, personal services or the services rendered by an employee to his employer or any service rendered for resale." See W. Va. Code § 11-15-2(s) and 110 C.S.R. 15, § 2.74.

The purchaser is required to pay the Sales Tax which is to be added to and constitute a part of the sales price, and is to be collected by the vendor who is to remit the tax to the State. See, W. Va. Code § 11-15-4. All sales and services are subject to the Sales Tax unless specifically excepted or exempted. See W. Va. Code § 11-15-6. The services that are excepted from taxation are sales of professional services, personal services and services provided by corporations subject to the control of the West Virginia Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission. See W. Va. Code § 11-15-8. The sales that are exempted from taxation are numerous and are listed in West Virginia Code § 11-15-9.

West Virginia also imposes a Use Tax that is complementary to the Sales Tax. See W. Va. Code § 11-15A-1a. The Use Tax is imposed at the same rate as the Sales Tax, and is imposed upon the use in this State of tangible personal property and selected services purchased outside of this State or sold across state lines into this State. See W. Va. Code § 11-15A-2.

No current sales tax exemption applies for purchases of goods and services by inmates. Inmates are treated in the same manner as the general population with regard to the imposition of the sales tax. It is the responsibility of the vendor (i.e., the Correctional Facility) to collect and remit sales tax on all purchases by inmates.

Some Correctional Facilities may contract with a commissary to manage inmate accounts and purchases by inmates of items authorized by the correctional facility. There is nothing to differentiate inmate purchases from the commissary from purchases of similar items at a retail outlet elsewhere. In both situations, the purchaser, whether inmates or otherwise, are consumers and as such are required to pay Sales Tax on the amount of the purchase. In those transactions, it is the inmate, not the Correctional Facility or commissary that is the consumer. The Correctional Facility is merely the custodian of the inmate accounts and, as such, is required to pay the inmate's bill.

As the purchases by inmates are subject to Sales Tax, there must be a determination as to the most appropriate method for its collection. If the cost of the inmate's order is to be deducted from the inmate's fund balance, the Sales Tax is to also be deducted from the account at that time. This treatment would be similar to that occurring at the time a non-inmate customer purchases goods from a retailer. At that time, the vendor takes control of the Sales Tax so collected and remits it to the State Tax Department in a timely manner.

The vendor is not permitted to assume the amount of the Sales Tax. Under Section 11-15-4, "the purchaser shall pay to the vendor the amount of tax levied...." The respective inmate is the purchaser and the Correctional Facility/commissary is the vendor; as a result, State law requires the collection of the tax.

If you have questions concerning West Virginia State taxes, please contact the:  
West Virginia State Tax Department  
Taxpayer Services Division  
P.O. Box 3784  
Charleston, WV 25337-3784  
Telephone: (304) 558-3333  
1-800-WVA-TAXS (1-800-982-8297) our toll free number  
TDD Service for the hearing impaired: 1-800-2TAXTDD (1-800-282-9833)  
To order forms or publications call: (304) 344-2068 or Toll free: 1-800-422-2075  
To order by mail please use the above address.  
Internet Address: <http://www.state.wv.us/taxdiv>