

West Virginia's Response

Under Section 302, the questions about different tax bases for state and local taxes with respect to fuels and motor vehicles, aircraft, etc. are marked no. The statutes at 11-15B-34(b) indicate that the base is the same except in these two areas.

This was an interpretive error on our part. We have corrected this to answer "yes" to each of the 4 questions in Section 302.

The following citations on the Certificate of Compliance need to be corrected: Section 313, last question should be 11-15B-17(b); Section 318, paragraph D should be 11-15B-25(d); Section 403, paragraph A should be 11-15B-2(b)(31), paragraph B should be 11-15B-2(b)(32) and paragraph C should be 11-15B-2(b)(33); Section 404, first question should be 11-15B-11(d); prewritten computer software should be 11-15B-2(b)(39); tobacco should be 11-15B-2(b)(62); prescription should be 11-15B-2(b)(38); ancillary services should be 11-15B-20(2).

We have made all these changes.

Under Section 324, the rounding rule does not contain the provision allowing the aggregation of state and local taxes (no local taxes are currently imposed, but will be effective 10/1/11).

As instructed, we completed the certificate of compliance based on the tax situation in West Virginia at the time of completion. At that time, no localities imposed a sales tax in West Virginia. As you mention in the above note, this will change on October 1, 2011, when a single municipality in the state will begin imposing a local sales tax. Our next certificate will address the aggregation issue in regards to the rounding rule.

Section 330 indicates that the bundling rule for transactions that include telecommunications services, ancillary service, internet access or audio or video programming service is being followed. The only citation is for an administrative notice that contains the bundling definition but not this rule.

The Administrative Notice clearly states our policy regarding bundling of the aforementioned services (see the last paragraph in the Notice). We are unclear as to why this Administrative Notice is insufficient.

The following citations need to be added or corrected on the taxability matrix: non-prewritten computer software (plus delivered electronically and by load and leave), add 11-15-3(a); prepared food, add 11-15-3B; over-the-counter drugs for animal use with a prescription should be 11-15B-2(b)(34) instead of 11-15B-2(b)(15); and prepaid wireless calling service (international, interstate and intrastate) add 11-15-2(b)(13) and 11-15-3(a).

These have been added/corrected.

The taxability matrix indicates that over-the-counter drugs for human use with a prescription are exempt and that grooming and hygiene products for human use are taxable. The definition of over-the-counter drugs does not exclude grooming hygiene products.

Over the counter drugs for human use with a prescription are exempt. Over the counter drugs for human use without a prescription are taxable. Grooming and hygiene products for human use on the matrix do not indicate whether a prescription is involved or not. Therefore we would consider it taxable as no evidence of exemption is stated. As WV does not exclude grooming and hygiene products in the definition of over the counter drugs, it would stand to reason we would tax them (or not) based on whether or not a prescription was issued.