

West Virginia's response to the recertification review

Report issue 1:Taxability Matrix

"All taxable tangible personal property and services (e.g., clothing, health care items, etc.) - add 11-15B-3(a) and delete "N/A" where it appears."

After a conversation with Pam Cook on 10/9/12 we were directed to add the cite 11-15-3 and 11-15-6 (per email on 10-10-12) to the noted lines. We are to leave N/A where we did not adopt the definition per the instructions on the matrix. We have no definitions in our code for "Essential clothing priced below a state specific threshold," "Prewritten computer software delivered electronically," nor for any of the other numerous "product definitions" where the designation "N/A" was inserted.

These requested changes were made.

"Grooming and hygiene products - add comment that grooming and hygiene products that are over-the-counter drugs are exempt if sold with a prescription."

This has been done but once again WV would request that this line on the matrix be broken into two lines as is the other items in this section, with and without a prescription. I believe that CRIC agreed last recertification process that this item can be confusing as is currently stated.

Ancillary services and telecommunications services - need statute cite for exemption for regulated services.

The requested changes have been made. Per a phone conversation with Pam Cook 10-9-12 we were to note the exempt telecommunication lines with 11-15-8.

Report Issue 2- Certificate of Compliance

Section 302, last question - change the "Yes" to "No" and delete the citation

The question listed on the matrix was as follows:

"Does the tax base differ for state and local jurisdictions for electricity, piped natural or artificial gas or other fuels delivered by the seller?"

The response given by the WV Tax Department as stated is consistent with W.Va. Code § 11-15B-34. State and local sales and use tax bases. W.Va. Code § 11-15B-34(a) requires state and local sales and use tax bases to be identical, unless prohibited by federal law, or as provided in subsection (b) of this section, which relates to sales or use taxes levied on, among other things, electricity, piped

natural or artificial gas or other fuels delivered by the seller, which local jurisdictions are prohibited from taxing.

Section 318, paragraph D - change the "Yes" to "No" and move the comment down from paragraph C.3.c.

The question listed on the matrix was as follows:

“D. Does the state not require the filing of a return from a seller who registers under the Agreement, and indicates that it anticipates making no sales that would be sourced to that state?”

The question as worded is confusing. We maintain that our response to the question, “Yes” is correct. The question is stated in the negative; therefore, an affirmative answer affirms the negative, “Yes, the Tax Commissioner does not require a seller which has indicated at the time of registration that it anticipates making no sales which would be sourced to this state to file a return, except that the seller shall lose the exemption upon making any taxable sales into this state and shall file a return in the month following any sale.” W.Va. Code § 11-15B-25. In other words, “Yes” is the correct answer.

The comment to Section 318, paragraph C.3.c has been moved to the “Comment” section of Section 318, paragraph D.

Section 322 - add "N/A" to all paragraphs after paragraph A

This request has been completed.

Tangible personal property - change 11-15B-2(b) (57) to 11-15B-2(b) (60)

This request has been completed.

BAC Issue 3: Central administration and Uniform Returns and Remittances

The state was declared out of compliance because West Virginia requires motor vehicle lease payments to be made to the West Virginia Division of Motor Vehicles. See W.V.C. § 11-15-3c(f)(10). This requirement does not conform to the single entity requirement in § 301 of the SSUTA and it does not comply with the uniform return and remittance provisions in §§ 318 and 319 of the SSUTA.

WV has worked with BAC (Fred Nicely) regarding this issue and on July 26, 2012 sent Mr. Nicely the attached letter. WV was under the impression the issues and concerns had been addressed. The same argument is made by WV as was made last certification process on the issue of single entity requirement and the uniform return and remittance provisions. (See attachments)