



CONSUMERS SALES AND SERVICE TAX ON THE SERVICES OF LOBBYISTS

The purpose of this publication is to provide general information regarding consumers sales and service tax on the services of lobbyists. This publication is meant to be a source of general information and not a substitute for tax laws or regulations.

It appears that there may be some confusion on the part of some lobbyists regarding taxability of lobbying services under the West Virginia consumers sales and service tax. This publication addresses the consumers sales and service taxation of lobbying services.

“Lobbyist” means a person who, through communication with a government officer or employee, promotes, advocates, or opposes or otherwise attempts to influence:

- (1) The passage or defeat or the executive approval or veto of any legislation which may be considered by the West Virginia Legislature, or
- (2) The adoption or rejection of any rule, regulation, legislative rule, standard, rate, fee or other delegated legislative or quasi-legislative action to be taken or withheld by any Executive Department.

With two possible exceptions, the compensation paid to a lobbyist for this service is subject to consumers sales and service tax in West Virginia. If the compensation associated with lobbying is in the form of wages paid by an employer to an employee for services rendered on direct behalf of the employer, then the activity is exempt from tax. In addition, if a licensed attorney provides legal services to a specific client, including legislative drafting, or written analysis of legislation, rules or regulations for consideration, then the service may be designated as a professional activity.

Absent a statutory exemption or exception, services are subject to the West Virginia consumers sales and service tax. See W. Va. Code § 11-15-6. Article 15, Chapter 11 of the West Virginia Code imposes the consumers sales and service tax on sales of tangible personal property and services. Taxable “services” include “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 or her employer or any service rendered for resale.” See W. Va. Code § 11-15-2(s) and 110 C.S.R. 15, § 2.83.

Sales of professional services, personal services and services provided by corporations subject to regulation by the Public Service Commission are excepted from the tax. See W. Va. Code § 11-15-8. The sales that are exempt from taxation are listed mainly in W. Va. Code § 11-15-9, through 9g and in the corresponding regulations, mainly 110 C.S.R. 15, § 9.

It is presumed that all sales and services are subject to tax until the contrary is clearly established. See W. Va. Code § 11-15-6. A tax law under which a person claims an exemption is to be strictly construed against the person claiming the exemption.

Lobbying services are subject to the consumers sales and service tax. Lobbyists must collect and remit the West Virginia consumers sales and service tax on their gross compensation for lobbying services.

Lobbying is not a professional service and is not exempt or excepted from the tax. West Virginia Legislative Rule, 110 C.S.R. 15, Consumers Sales and Service Tax and Use Tax, at Section 8.1, provides pertinent information regarding professional services.

When making a determination as to whether other activities fall within the “professional” classification, the Tax Department will consider such things as the level of education required for the activity, the nature and

extent of nationally recognized standards for performance, licensing requirements on the State and national level, and the extent of continuing education requirements.

Absent a statutory designation as a professional service, a service activity must meet all of the following criteria in order to qualify as professional service for purposes of the West Virginia consumers sales and service tax exception.

1. A license is required at either the State or national level in order to provide the service, and the license must be issued by a recognized and duly established licensing authority or body.
2. A significant minimum level of education, and specialized testing are required in order for a license to be issued. Typically, not less than a baccalaureate, post graduate or professional degree, as applicable, in a relevant specific area of study would be expected.
3. Nationally recognized performance standards are in effect and applicable to the licensed activity, as set by a recognized and duly established licensing authority or body.
4. Continuing education is required to maintain the professional license.

All of these criteria must be satisfied with relation to a service activity in order for the service to be recognized as a professional service.

None of these criteria is a mandated prerequisite in order for an individual to become a lobbyist. Therefore, the Tax Department cannot make the determination that lobbyists qualify as professional service providers.

Persons who receive compensation for lobbying the West Virginia Legislature or West Virginia State regulatory agencies must collect the West Virginia consumers sales and service tax from their clients on the gross proceeds paid to the lobbyist for the lobbying service. Gross receipts means and includes the amount received in money, credits, property or other consideration, without any deduction for expenses, cost of property sold or distributed, or any other expenses whatsoever. Gross receipts include reimbursements paid to the lobbyist by the lobbyist's clients for expenses without regard to whether such expenses or reimbursements are separately billed.

Employees engaged in lobbying for an employer in exchange for wage and salary compensation are not required to collect the consumers sales and service tax, but the employer may be required to collect the tax from the employer's client.

Persons engaged in providing lobbyist services are required to register with the Tax Department to collect the consumers sales and service tax and use tax, and must collect and remit the tax on gross receipts from lobbying activity.

To contact the West Virginia State Tax Department regarding a particular question or access information by alternative means, the following information is provided:

West Virginia State Tax Department
Taxpayer Services Division
P.O. Box 3784
Charleston, WV 25337-3784
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 within West Virginia: 1-800-422-2075
Internet Address: <http://www.state.wv.us/taxdiv>