

**WHAT TO DO WHEN YOUR ADVERTISER
WANTS TO RUN AN AD WHICH STATES THAT THEY WILL
ASSUME, ABSORB OR REBATE THE STATE SALES TAX**

West Virginia Code § 11-9-7 makes it a crime to represent, advertise or state to the public or to any purchaser that a merchant will absorb or assume payment of any part of the sales tax or that the sales tax is not to be considered as part of or added to the sales price of a good or service. This statute makes it a misdemeanor which upon conviction can result in a fine of not less than \$100 or more than \$1,000 or subjects an individual to imprisonment for not more than six months or potentially for both fine and imprisonment.

The statute is clear, unambiguous and the State Tax Department has shown a will to enforce this particular provision. In the past the West Virginia State Tax Department has sent letters to merchants who have undertaken advertising of this type. The letters warn that upon

a second run of advertisements of this type, that the Tax Department will treat this as a criminal act.

We strongly urge stations to discourage this type of advertising and to avoid the temptation to skate on the thin ice of trying to wordsmith the advertisement around this particular criminal provision. To the extent you don't desire to be the bearer of bad news, we will be happy to provide you with a copy of the statute and our opinion that a particular advertisement violates W. Va. Code § 11-9-7. If you have questions, feel free to contact WVBA or its General Counsel, David Allen Barnette, at 340-1327.