

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #6

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE
AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: State Tax Department TITLE NUMBER: 110

AMENDMENT TO AN EXISTING RULE: YES _____ NO X _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 15C

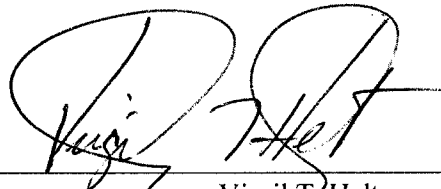
TITLE OF RULE BEING PROPOSED: Consumers Sales and Service Tax and Use Tax - Drugs, Durable Medical Goods, Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; and Motor Vehicles Per Se Exemption

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 407

SECTION 64-7-1(b), PASSED ON March 13, 2010

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: May 11, 2010



Virgil T. Helton
Secretary of the Department of Revenue

**TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT**

FILED
2010 MAY -6 PM 3:14
OFFICE OF THE CLERK
SECRETARY OF STATE

**SERIES 15C
CONSUMERS SALES AND SERVICE TAX AND USE TAX -
DRUGS, DURABLE MEDICAL GOODS, MOBILITY ENHANCING EQUIPMENT AND
PROSTHETIC DEVICES PER SE EXEMPTION; MOTOR VEHICLES PER SE
EXEMPTION**

§110-15C-1. General.

1.1. Scope. -- This legislative rule explains and clarifies the exemption from consumers sales tax provided in W. Va. Code §11-15-9i as added by Com. Sub. for House Bill No. 2380 (2007), exempting the purchase by a health provider of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices from the consumers sales and service tax. In addition, this legislative rule supercedes the rules for per se exemption from consumer sales tax for the lease or sale of motor vehicles.

1.2. Authority. -- W. Va. Code §§11-10-5 and 11-15-9i.

1.3. Filing Date. --

1.4. Effective Date. May 11, 2010.

§110-15C-2. Interpretive Note.

2.1. This legislative rule incorporates by reference the Department's rule, Consumers Sales and Service Tax and Use Tax, 110CSR15, and shall be read in pari materia with that rule. The definitions, policies, and procedures provided in 110CSR15 are equally applicable to purchases made under this legislative rule. To the extent that this legislative rule differs from 110CSR15, then for the purpose of purchases by a health provider of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices, and for the purpose of leasing or selling motor vehicles this legislative rule governs. However, for all other purposes, 110CSR15 governs the application of the Consumers Sales and Service Tax and Use Tax.

§110-15C-3. Definitions.

Unless a specific definition is provided in this section, terms used in this rule are defined as provided in legislative rule 110CSR15, §1, *et seq.*, unless the context in which the term is used clearly requires a different meaning. The following terms shall have the meaning ascribed in this rule.

3.1. "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

3.1.1. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, and supplements to any of them;

3.1.2. Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease; or

3.1.3. Intended to affect the structure or any function of the body.

3.2. "Durable medical equipment" means equipment including repair and replacement parts for the equipment, but does not include "mobility enhancing equipment", which:

3.2.1. Can withstand repeated use;

3.2.2. Is primarily and customarily used to serve a medical purpose;

3.2.3. Generally is not useful to a person in the absence of illness or injury;
and

3.2.4. Is not worn in or on the body.

3.2.5. Includes the following examples: Home or portable oxygen equipment, home air fluidized beds, blood glucose monitors, commode chairs, nebulizers and infusion pumps.

3.3. "Health care provider" means any person licensed to prescribe drugs, durable medical goods, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease. For purposes of this rule, the term "health care provider" includes any hospital, medical clinic, nursing home or provider of inpatient hospital services and any provider of outpatient hospital services, physician services, nursing services, ambulance services, surgical services or veterinary services.

3.4. "Mobility-enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include "durable medical equipment", which:

3.4.1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

3.4.2. Is not generally used by persons with normal mobility; and

3.4.3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

3.4.4. Includes the following examples: Walkers, wheelchairs, crutches, canes, and orthodic shoes.

§110-15C-4. Applicability of Consumers Sales Tax.

4.1. General Rule. – The consumers sales and service tax is imposed upon the sale of tangible personal property or selected services. All sales are presumed to be taxable unless the sale is either excepted or exempt from the tax.

4.2. Health Care Provider Exemption. – The purchase by a health provider of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease is exempt from the consumers sales and service tax.

4.2.1. Per Se Exemption. – A health care provider is not required to obtain an exemption certificate, material purchase certificate or direct pay permit to claim the health care provider exemption.

4.3. Exclusions From Per Se Exemption. – On and after July 1, 2008, sales of motor vehicles are subject to the consumers sales and service tax and use tax in accordance with West Virginia Code § 11-15-3c. Therefore the per se exemptions regarding leases, sales and purchases of motor vehicles set forth in the Department's rule, Consumers Sales and Service Tax and Use Tax, 110CSR15, subsections 9.2.10 and 9.2.24 and subdivisions of section 9.2.24 of the Code of State Rules are superceded by statute and are of no further force or effect. The tax imposed pursuant to the provisions of West Virginia Code §11-15-3c on motor vehicle purchases and uses is subject to the regulatory and administrative jurisdiction of the Commissioner of Motor Vehicles.