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July 23, 2001

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: STATE TAX DEPARTMENT

RULE: NEW RULE, 110CSR15E, CONSUMER SALES & SERVICE TAX & USE TAX
-- MOBILE HOMES & SIMILAR UNITS & BUILDING MATERIALS USED &
CONSUMED IN REPAIR OR REPLACEMENT OF FLOOD DAMAGED
RESIDENCES & BUSINESSES

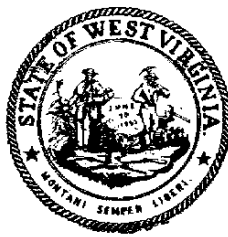
DATE FILED AS AN EMERGENCY RULE: JULY 20, 2001

DECISION NO. 7-01

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

FILED
2001 JUL 24 A 11
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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EMERGENCY RULE DECISION
(ERD 7-01)

AGENCY: State Tax Department
RULE: New Rule, 110CSR15E, Consumer Sales & Service Tax & Use Tax -- Mobile homes & Similar Units & Building Materials Used & Consumed in Repair or Replacement of Flood Damaged Residences & Businesses

FILED AS AN EMERGENCY RULE: July 20, 2001

- par. 1 The State Tax Department (Department) has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State July 20, 2001 and with the LRMRC July 20, 2001.

par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §11-10-5 reads:

§§11-10-5. General power; regulations and forms.

The tax commissioner shall administer and enforce each tax to which this article applies and, in connection therewith, shall prescribe all necessary forms. The tax commissioner may make all needful rules and regulations for the taxes to which this article applies as provided in the State Administrative Procedures Act in chapter twenty-nine-a of this code: Provided, That all rules and regulations of the tax commissioner presently in effect on the effective date of this article shall remain in full force and effect until amended or repealed by the tax commissioner in the manner prescribed by law.

par. 9 Executive Order 14-01 states in part:

(3) That the West Virginia consumers sales and service tax set forth in Article 15, Chapter 11 of the West Virginia Code and the West Virginia use tax set forth in Article 15A, Chapter 11 of the West Virginia Code shall be suspended, nullified and deemed not applicable to purchases or uses of specified building construction materials and supplies designated by the West Virginia Tax Department in emergency rules promulgated for the purpose of implementing this order as necessary for the reconstruction and restoration of flood damaged property by or for persons rendered homeless by flooding, or persons who have suffered damage to their property as a result of flooding in the aforementioned counties. All such purchases and uses shall be subject to the restrictions and requirements prescribed in such emergency rule.

par. 10 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 11 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The facts and circumstances as presented by the Department are as follows:

During the time period of May through July 2001, many counties in West Virginia were ravaged sustained rains, flash-flooding & strong winds. The flooding severely damaged or destroyed a significant number of residential and business structures.


These results of forces of nature now pose a significant threat to the public health, safety and welfare.

The Governor of the State of West Virginia on July 17, 2001 signed Executive Order 14-01 to provide means to assist in alleviating the threats. Executive Order 14-01 suspended, nullified and deemed not applicable the application of the Consumers Sales and Service Tax and the Use Tax on the purchases of mobile homes, house trailers, modular homes and similar units and the service of installing them, and exempts building construction materials and supplies used or consumed in the repair, restoration, reconstruction or replacement of structures damaged by flooding that occurred in certain counties during May through June 2001.

In accordance with Executive Order 14-01, Emergency Legislative Rule 110CSR15E is hereby filed to provide to the public necessary guidance and clarification so as to facilitate satisfying the intent and requirements of Executive Order 14-01.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare" and "to prevent substantial harm to the public interest"

par. 15 This decision shall be cited as Emergency Rule Decision 7-01 or ERD 7-01 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Tax Department, the Attorney General and the Legislative Rule Making Review Committee.


JOE MANCHIN, III
Secretary of State

Entered _____

FILED
2001 JUL 24 A 9:14
OFFICE WEST VIRGINIA
SECRETARY OF STATE

STATE OF WEST VIRGINIA
EXECUTIVE DEPARTMENT
CHARLESTON
EXECUTIVE ORDER NO. 14-01

By the Governor

WHEREAS, By the powers vested in the Governor, I have declared a State Of Emergency to exist as of July 8, 2001 in eight counties and certain parts of other surrounding West Virginia counties that have been ravaged by heavy sustained rains, flash-flooding, and strong winds; and

WHEREAS, No proclamation terminating such State Of Emergency has been issued by the Governor or by concurrent resolution of the Legislature; and

WHEREAS, The flooding in such counties severely damaged or destroyed a significant number of residential and business properties as well as the property of certain political subdivisions of this State; and

WHEREAS, The public safety, health and welfare interests of those persons rendered homeless or suffering property damage by flooding present an immediate need for temporary and permanent housing and housing repair and restoration; and

WHEREAS, Emergency powers vested in the Office of Governor during the existence of a state of emergency, under § 15-5-6(j) of the West Virginia Code, authorize the Governor "[t]o make provisions for the availability and use of temporary emergency housing;" and

WHEREAS, West Virginia Code § 15-5-6(b) authorizes the Governor "[t]o sell, lend, lease, give, transfer or deliver materials or perform functions relating to emergency services on such terms and conditions as he shall prescribe and without regard to the limitations of any existing law and to account to the State Treasurer for any funds received for such property;" and

WHEREAS, West Virginia Code § 15-5-6(g) authorizes the Governor "(t)o suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules or regulations of any state agency, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency;" and

WHEREAS, West Virginia Code § 15-5-6(k) authorizes the Governor "(t)o perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population."

NOW, THEREFORE, I, Bob Wise, Governor of the State of West Virginia, pursuant to the constitutional and statutory authority of this Office do hereby **ORDER** and **DIRECT**:

(1) That, in accordance with and pursuant to the provisions of West Virginia Code § 15-5-6, a program be implemented and directed by the West Virginia Office of Emergency Services whereby the State of West Virginia shall oversee and regulate:

(a) Purchases of mobile homes, house trailers, modular homes, or similar such units designed primarily for habitation and occupancy by or for persons certified by the said Office of Emergency Services as having been rendered homeless by the flooding or its consequences;

(b) Purchases of the service of installing such units; and

(c) Purchases of contracts for installation of such units;

(2) That, as a term and condition of the performance of the aforesaid oversight and regulatory function, and by exercise of powers and duties necessary to promote and secure the safety and protection of the civilian population in accordance with West Virginia Code § 15-5-6(k), the West Virginia consumers sales and service tax set forth in Article 15, Chapter 11 of the West Virginia Code and the West Virginia use tax set forth in Article 15A, Chapter 11 of the West Virginia Code shall be suspended, nullified and deemed not applicable to purchases and uses of such mobile homes,

house trailers, modular homes or similar such units by or for those persons rendered homeless by flooding and its consequences in the aforementioned counties; and further,

(3) That the West Virginia consumers sales and service tax set forth in Article 15, Chapter 11 of the West Virginia Code and the West Virginia use tax set forth in Article 15A, Chapter 11 of the West Virginia Code shall be suspended, nullified and deemed not applicable to purchases or uses of specified building construction materials and supplies designated by the West Virginia Tax Department in emergency rules promulgated for the purpose of implementing this Order as necessary for the reconstruction and restoration of flood damaged property by or for persons rendered homeless by flooding, or persons who have suffered damage to their property as a result of flooding in the aforementioned counties. All such purchases and uses shall be subject to the restrictions and requirements prescribed in such emergency rule.

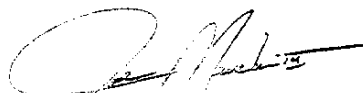
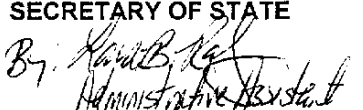
IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



By the _____

DONE at the Capitol, in the City of Charleston, State of West Virginia, this Seventeenth day of July, in the year of our Lord, Two Thousand One, and in the One Hundred Thirty-ninth year of the State.


GOVERNOR


SECRETARY OF STATE
By: 
Administrative Assistant