

**WEST VIRGINIA
SECRETARY OF STATE**

JOE MANCHIN, III

ADMINISTRATIVE LAW DIVISION

Form #5

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2004 JUN 30 A 9:59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OF INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code § 11-10-5

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE (s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

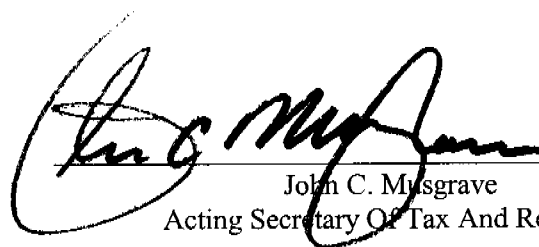
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 15F

TITLE OF RULE BEING ADOPTED: Sales Tax Holiday

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS August 2, 2004



John C. Musgrave
Acting Secretary Of Tax And Revenue

**AGENCY APPROVED
TITLE 110
INTERPRETIVE RULE
STATE TAX DEPARTMENT
SERIES 15F
SALES TAX HOLIDAY**

FILED

2004 JUN 30 A 9:59

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 110-15F-1. General.

1.1. Scope. This rule clarifies, explains and implements the Sales Tax Holiday for purchases of certain clothing, computers, computer accessories, footwear and other school supplies as authorized by West Virginia Code § 11-15-9g.

1.2. Authority. West Virginia Code § 11-10-5.

1.3. Effective Date.

1.4. Filing Date.

§110-15F-2. Interpretive Note.

This interpretive rule shall be read *in pari materia* with the legislative rule for the consumers sales and service tax and use tax codified in 110 C.S.R 15. The definitions, policies and procedures provided in 110 C.S.R. 15 are equally applicable to this rule. All sales and services are presumed to be taxable unless there is an applicable exemption. Should there be any inconsistency between this rule and 110 C.S.R 15, the language of 110 C.S.R. 15 shall control, except to the extent it does not reflect the amendment to the consumers sales and use tax laws that is addressed in this rule.

§ 110-15F-3. Definitions.

3.1. Unless a specific definition is provided in section 3.2 of this rule, terms used in this rule are defined as provided in legislative rule 110 C.S.R. 15, § 1 *et seq.*, unless the context in which the term is used in this rule clearly requires a different meaning.

3.2. When used in this rule, the following terms have the meaning ascribed in this subsection, and shall apply in the singular as well as in the plural.

3.2.1. "Accessories" means any item, other than clothing or footwear, that is carried on or about the human body, without regard to whether the item is worn on the body in a manner that is characteristic of clothing or footwear. "Accessories" includes, but is not limited to, barrettes, brief cases, cuff links, hair bows, hair clips, jewelry, handbags, luggage, nonprescription eyewear, purses, umbrellas, wallets, watches and wigs, to name just a few examples.

3.2.2. "Clothing" means any article of wearing apparel designed to be worn on or about the human body. "Tax exempt clothing" does not include "accessories," wearing apparel designed to be used primarily for the athletic activity or the protective use for which it is designed, or wearing apparel that has a sales price of \$100 or more.

3.2.3. "Computer" means and is limited to a single personal computer base unit, and includes those computer accessories sold with a single personal computer base unit, that are sold in the same single sales transaction with the single personal computer base unit, and for direct use with the single personal computer base unit.

3.2.3.a. *Example 1.* A hard disk drive installed into a single personal computer base unit at the time that base unit was sold would be physically incorporated into and part of a single personal computer base unit, and would be part of a "computer" for purposes of this definition.

3.2.3.b. *Example 2.* Those items sold in a "package deal" that includes a personal computer base unit, monitor, keyboard, preloaded software package, printer and all necessary cables would constitute a "computer" for purposes of this definition. Note that software primarily designed for recreation or entertainment will in no case qualify as part of a computer or as a computer accessory for purposes of the exemption.

3.2.3.c. Computer accessories that are purchased in a transaction separate from the transaction in which a single personal computer base unit is purchased will be treated as separate or stand alone computer accessories for purposes of the exemption, and not as accessories sold as part of the computer, and will be subject to the \$100.00 statutory exemption limitation rather than the \$750.00 statutory exemption limitation for "computers."

3.2.3.d. "Personal computer" means a small general-purpose programmable electronic machine that performs high-speed mathematical or logical operations or that assembles, stores, correlates, or otherwise processes information, designed for use typically by a single person at a time, and commonly known as a personal computer or microcomputer. "Personal computer" includes computers commonly known as laptop computers, desktop computers and personal computers configured as tower type personal computers.

3.2.3.e. "Base unit" means the main central processing unit for a personal computer system as contained in a single case, box or housing, which housing may also contain sub-processors, or auxiliary or ancillary processing units, data memory devices and information storage devices, including disk drives and necessary circuitry.

3.2.3.f. "Central processing unit" means that component of a computer that interprets and executes programming instructions, and which may typically contain

control units that direct data or program flow, execution units which perform mathematical or logical operations on data and one or more caches or registers which store data, intermediate results or operands.

3.2.3.g. The term "computer" does not include:

3.2.3.g.1 personal data assistants;

3.2.3.g.2. programmable calculators or other calculators;

3.2.3.g.3. video game systems (including handheld units);

3.2.3.g.4. dedicated internet receivers which connect to telephone lines or television cables, or other lines or to satellite connections, and provide an interface for display of, or access to, the internet through a television set;

3.2.3.g.5. cellular, wireless, mobile or digital telephones;

3.2.3.g.6. digital cameras;

3.2.3.g.7. electronic or digital watches;

3.2.3.g.8. mainframe computers;

3.2.3.g.9. video cassette recorders;

3.2.3.g.10. compact disk players other than those physically incorporated into and part of a single personal computer base unit as a disk drive, and sold in the single sales transaction with a single personal computer base unit for direct use with the single personal computer base unit;

3.2.3.g.11. digital video disk players other than those physically incorporated into and part of a single personal computer base unit as a disk drive, and sold in the single sales transaction with a single personal computer base unit for direct use with the single personal computer base unit;

3.2.3.g.12. devices designed primarily for playing games, communications, photography, entertainment or recreation;

3.2.3.g.13. disk drives other than those physically incorporated into and part of a single personal computer base unit, and sold in the single sales transaction with a single personal computer base unit for direct use with the single personal computer base unit;

3.2.3.g.14. modems other than those physically incorporated

into and part of a single personal computer base unit, and sold in the single sales transaction with a single personal computer base unit for direct use with the single personal computer base unit;

3.2.3.g.15. printers other than those sold in a single sales transaction with a single personal computer base unit for direct use with the single personal computer base unit,

3.2.3.g.16. scanners, other than those sold in a single sales transaction with a single personal computer base unit for direct use with the single personal computer base unit;

3.2.3.g.17. photocopiers;

3.2.3.g.18. fax machines;

3.2.3.g.19. monitors other than those sold in a single sales transaction with a single personal computer base unit for direct use with the single personal computer base unit;

3.2.3.g.20. video cameras;

3.2.3.g.21. web cameras or other cameras; and

3.2.3.g.22 automotive, household, industrial, or other electronic devices, which may contain electronic circuitry or computer-like circuitry, or microcontrollers as part of a larger system, such as a sewing machine, clock, clock radio, microwave oven, telephone, radio, television or entertainment center.

3.2.3.h. "Tax-exempt computer" means any personal computer that, after application of allowed manufacturer's coupons and manufacturer's rebates, has a sales price of less than \$750, except as otherwise provided in this rule.

3.2.4. "Computer accessories" means the individual components of a personal computer system other than the base unit, typically used with or in conjunction with the base unit. "Computer accessories" includes, but is not limited to: printers, stand alone modems, modems purchased separately from the base unit, but designed to be installed within the base unit, computer fax cards purchased separately from the base unit, but designed to be installed within the base unit (but not fax machines), keyboards, monitors, pass through or flat bed scanners, stand alone memory units, memory chips or boards purchased separately from the base unit, but designed to be installed within the base unit, computer cables, stand alone disk drives (including floppy disk drives, hard disk drives, compact disk (CD) drives, digital video disk (DVD) drives, and zip disk drives), disk drives purchased separately from the base unit, but designed to be installed within the base unit, computer hubs, computer routers, software designed primarily for purposes

other than entertainment or recreation and purchased separately from the base unit, but designed to be installed within the base unit and used as programming for the base unit.

3.2.4.a. "Computer accessories" does not include:

3.2.4.a.1. personal digital assistants (PDAs) and similar units such as schedulers and organizers;

3.2.4.a.2. programmable calculators;

3.2.4.a.3. video game systems (including handheld units);

3.2.4.a.4. internet receivers which connect to telephone lines or television cables, or other lines or to satellite connections, and provide an interface for display of, or access to, the internet through a television set;

3.2.4.a.5. cellular, wireless, mobile or digital telephones;

3.2.4.a.6. digital cameras;

3.2.4.a.7. electronic or digital watches;

3.2.4.a.8. mainframe computers;

3.2.4.a.9. video cassette recorders;

3.2.4.a.10. compact disk players designed primarily for entertainment or recreation;

3.2.4.a.11. digital video disk players designed primarily for entertainment or recreation;

3.2.4.a.12. any device designed primarily for playing games, communications, photography, entertainment or recreation;

3.2.4.a.13. video cameras;

3.2.4.a.14. web cameras or other cameras;

3.2.4.a.15. furniture;

3.2.4.a.16. photocopiers;

3.2.4.a.17. fax machines;

3.2.4.a.18. pagers;

3.2.4.a.19. software designed primarily for entertainment or recreation; and

3.2.4.a.20. automotive, household, industrial, or other electronic devices, which may contain electronic circuitry or computer-like circuitry, or microcontrollers as part of a larger system, such as a sewing machine, clock, clock radio, microwave oven, telephone, radio, television or entertainment center.

3.2.4.b. "Tax exempt computer accessory" means any computer accessory that, after application of allowed manufacturer's coupons and manufacturer's rebates, has a sales price of less than \$100, except as otherwise provided in this rule.

3.2.5. "Eligible item" means tangible personal property that is exempt from tax under West Virginia Code §11-15-9c and this rule that is purchased during the sales tax holiday period. "Eligible item" includes certain clothing and footwear and certain school supplies, computers and computer accessories, when they have a sales price of less than \$100.00 per article of clothing, pair of footwear, computer, computer accessory, or other school supply item.

3.2.6. "Eyewear" means any nonprescription eyeglasses. Eyewear includes, but is not limited to, sunglasses, reading glasses and other similar accessories that may be sold without a prescription.

3.2.7. "Footwear" means any shoe, boot or other similar article that is designed to be worn on a foot. "Tax-exempt footwear" shall not include footwear that is designed primarily for wear in athletic activities or protective use, which is not generally worn except when used for athletic or sporting activity, such as golf shoes, football cleats, track spikes, or for protective use, such as special hazard footwear such as shoes with a metatarsal guard and cold storage boots, or footwear that has a sales price in excess of \$99.99.

3.2.8. "Holiday" or "exemption period" means the sales tax holiday exemption period authorized by West Virginia Code § 11-15-9g, which begins at 12:01 a.m. eastern daylight time on the first Friday in August, 2004, and ends at midnight eastern daylight time the following Sunday evening.

3.2.9. "Manufacturer's rebate," in the case of a computer or computer accessory purchased during the Holiday, means any offer or promise that a manufacturer or distributor will (1) refund to a consumer all or a portion of the price paid by the consumer for the purchase of consumer goods, or (2) pay to the retailer a portion of the sales price for the purchase of consumer goods that otherwise would be paid by the consumer. The manufacturer's rebate may be evidenced by a manufacturer's rebate certificate or a manufacturer's coupon.

3.2.10. "Prescription eyewear" means eyeglasses and contact lenses for which a prescription written by an ophthalmologist, doctor of optometry or other person licensed in this State to prescribe eyeglasses is required to purchase the item .

3.2.11. "Nonrecreational software" means a computer program that is not designed primarily for recreational use. "Nonrecreational software" includes, but is not limited to, operating software, educational software, word processing software, financial software and any other similar software. "Nonrecreational software" shall not include a computer program that is designed primarily for recreational use such as software purchased for use with a gaming device, game console or other similar recreational device or any computer program designed primarily for recreational use with a personal computer.

3.2.12. "Personal computer base unit" means any laptop, desktop, or tower computer system, which consists of a central processing unit, random access memory, and a storage drive. Such term shall not include personal data assistant devices or any device not primarily designed to process data.

3.2.13. "Sales price" or "selling price" means the total amount for which tangible personal property is sold by a retailer, whether paid in money or otherwise. Sales price is determined after allowance of any cash discount, whether advertised as a "percent off the retail price" or allowed upon presentation of the retailer's coupon. Sales price includes the amount of a manufacturer's coupons and manufacturer's rebates allowed when determining the amount the consumer pays to the retailer whether in cash, by credit, debit or other purchase card, or in exchange for other goods or services provided by the consumer. Exception: A manufacturer's coupon or manufacturer's rebate for the purchase of a computer or computer accessory during the Holiday that reduces the amount paid by the consumer to the retailer for the computer below \$750 or for the computer accessory below \$100 per item is not taxable monetary consideration. However, this exception shall not apply when, after application of the manufacturer's coupon or rebate, the net sales price to the consumer is \$750 or more for the computer or \$100 or more for the computer accessory.

3.2.14. "School supplies" includes, but is not limited to, pens, pencils, binders, notebooks, reference books, book bags, lunch boxes, calculators, computers, computer accessories and other supplies used in school.

3.2.15. "Special clothing or footwear that is primarily designed for protective use and that is not normally worn except when used for the protective use for which it is designed" means items for human wear designed for protection of the wearer against injury or disease, or as protection against damage or injury of another person, that is not suitable for general use. This type of clothing and footwear includes, but is not limited to, breathing masks, cleaning room apparel, ear and hearing protectors, face shields, hard hats, helmets, paint or dust respirators, protective gloves, safety belts, safety glasses and

goggles, tool belts, and welders gloves and masks, to name just a few examples.

3.2.16. "Special clothing or footwear that is primarily designed for athletic activity and that is not normally worn except when used for the athletic activity for which it is designed" means items for human wear designed to be used in connection with an athletic recreational activity that are not suitable for general use. This type of clothing and footwear includes, but is not limited to, ballet and tap shoes, cleated or spiked athletic shoes, gloves for athletic or recreational activity such as baseball, bowling, boxing, football, hockey and other sports gloves, goggles, elbow, hand, knee and shin guards or pads; life preservers and vests; mouth guards; shoulder pads; fishing and ski boots; and wet suits and fins, to name just a few examples.

3.2.17. "Trade or business" means any activity engaged in by any person or caused to be engaged in by any person with the object of direct or indirect gain, benefit or advantage.

§110-15F-4. Exemption for certain clothing and footwear.

4.1. Beginning at 12:01 a.m. eastern daylight time on the first Friday in August, 2004, and ending at 12 midnight eastern daylight time on the following Sunday evening, sales of certain clothing and footwear designed to be worn on or about the human body are per se exempt from consumers sales and use taxes if the sales price for the article is less than \$100.00, unless otherwise provided in this rule.

4.2. Exceptions. – This exemption shall not apply to:

4.2.1. The sale of any accessories;

4.2.2. The sale of special clothing or footwear that is designed primarily for wear in athletic activity and that is not generally worn except when used for the athletic activity for which it is designed;

4.2.3. The sale of special clothing or footwear that is designed primarily for protective use and that is not generally worn except when worn for the protective use for which it is designed, or

4.2.4. The rental of any clothing or footwear.

4.3. Application of this exemption to sale of clothing or footwear during the exemption period is illustrated by the following examples:

4.3.1. *Example 1.* A customer purchases three shirts for \$45.00 per shirt. All three items qualify for the exemption, even though the customer's total purchase price (\$135.00) exceeds \$100.00.

4.3.2. *Example 2.* A customer purchases a pair of shoes for \$100.00. The purchase does not qualify for the exemption because the customer's purchase price is not less than \$100.00.

4.3.3. *Example 3.* A customer purchases a tie for \$50.00, a shirt for \$55.00 and a suit for \$300.00. The purchase of the tie and shirt qualify for the exemption, but the suit does not qualify.

4.3.4. *Example 4.* A customer purchases a college or professional sports team's jersey for \$35.00. The purchase qualifies for the exemption.

4.3.5. *Example 5.* A customer purchases a football uniform for \$75.00 and football cleats for \$50.00. The purchase does not qualify for the exemption because these items are designed primarily for use in athletic activity.

4.3.6. *Example 6.* A customer purchases a gold pin for \$99.00 to wear on her dress. The purchase does not qualify for the exemption because the item is an accessory.

§110-15F-5. Exemption for certain school supplies other than computers and computer accessories.

5.1. Beginning at 12:01 a.m. eastern daylight time on the first Friday in August, 2004, and ending at 12 midnight eastern daylight time on the following Sunday evening, the following sales of school supplies, except computers and computer accessories, are per se exempt from consumers sales and use taxes if the sales price for the item is less than \$100.00, except as otherwise provided in this rule.

5.2. The sale of school supplies that may be utilized in the classroom or for classroom related activities, such as pens, pencils, binders, notebooks, dictionaries, book bags, backpacks and lunch boxes are exempt if the sales price for the item or supply is less than \$100.00.

5.3. Sales of school supplies during the Holiday shall be presumed to be for classroom or classroom related activities, unless the vendor's records indicate otherwise, if the sales price for each item or supply is less than \$100.00.

5.4. The application of this exemption to the sale of school supplies during the exemption period is illustrated by the following examples:

5.4.1. *Example 1.* A customer purchases a box of pencils for \$5.00. The purchase qualifies for the exemption.

5.4.2. *Example 2.* A customer purchases a calculator for \$30.00. The purchase qualifies for the exemption.

5.4.3. *Example 3.* A customer purchases ten composition books sell for \$2.50 each. The total purchase of \$25.00 qualifies for the exemption.

5.4.4. *Example 4.* A customer purchases a pen for \$35.00, a package of ink cartridges for \$15.00 and a ream of inkjet paper for \$10.00. All three items qualify for the exemption.

5.4.5. *Example 5.* A customer purchases a box of pens for \$10.00, six wire bound notebooks for \$15.00 (at \$2.50 each) and chalk for \$3.00. The customer pays with a business credit card or business check. Because a business credit card or business check is used, the purchases are presumed to be for use in a trade or business and do not qualify for the Holiday exemption.

§110-15F-6. Exemption for certain computers and computer accessories.

6.1. Beginning at 12:01 a.m. eastern daylight time on the first Friday in August, 2004, and ending at 12 midnight eastern daylight time on the following Sunday evening, the following sales of computers and computer accessories are per se exempt from consumers sales and use taxes if the sales price, after subtraction of any manufacturer's coupon or manufacturer's rebate, for the computer is less than \$750 or for the computer accessory is less than \$100.00, except as otherwise provided in this rule.

6.2. Exceptions. "Computer" and "computer accessories" do not include furniture or any systems, devices, software or peripherals designed for, or intended primarily for, recreational use, such a personal game system or related software.

6.3. Application of the Holiday exemption to the sale of personal computers and personal computer related accessories during the exemption period is illustrated by the following examples:

6.3.1. *Example 1.* A customer purchases a personal computer for \$1,500.00. The purchase will not qualify for the exemption because the sales price is in excess of \$749.99.

6.3.2. *Example 2.* During the Holiday, a customer purchases a computer printer for \$190.00. The retailer must charge \$11.40 tax on the purchase price. After the sale, the purchaser applies to the manufacturer for a rebate of \$100.00, resulting in the actual cost of the printer to the purchaser being \$90.00. The customer may apply to the State Tax Department for refund of the sales tax paid to the retailer on the purchase price of the printer.

6.3.3. *Example 3.* A customer purchases a package of ink cartridges for an inkjet computer printer for \$75.00. The inkjet cartridges are printer supplies eligible for the Holiday exemption as a school supply.

6.3.4. *Example 4.* A customer purchases a \$120 computer printer that, after the manufacturer's rebate is applied by the retailer, costs the customer \$90. The customer pays for the printer with a business credit card or a business check. The purchase is not exempt from tax and the retailer must collect tax on \$120.00.

§110-15F-7. Articles normally sold as a unit.

7.1. Articles that are normally sold as a unit must continue to be sold as a unit. The retailer may not separate items normally sold as a unit and sell them separately in order to obtain the exemption. A retailer may not separately state the price of each item normally sold as a unit in order to obtain the exemption. The following examples illustrate application of this rule:

7.2. *Example 1:* A pair of dress shoes normally sells for \$120.00. The pair cannot be split in order to sell each shoe for \$60.00 to qualify for the exemption.

7.3. *Example 2:* A suit is normally priced at \$125.00 on a single price tag. The suit may not be split into separate articles so that each or any of the items may be sold for under \$100.00 in order to qualify for the exemption. However, when components of a suit are normally sold and priced as separate articles, they may continue to be sold as separate articles and qualify for the exemption, if the price for each article is less than \$100.

7.4. *Example 3.* A personal computer base unit has a sales price of \$800. The components of the base unit may not be itemized so that those that have a sales price of less than \$100 may qualify for the Holiday exemption. The \$800 is taxable.

§110-15F-8. Sets containing both exempt and taxable items.

8.1. When items that would be exempt during the Holiday, if sold separately, are normally sold together with taxable merchandise as a set or single unit, the entire sales price is subject to tax. The following examples illustrate application of this rule.

8.2. A dress shirt, tie and cufflinks are packaged by the manufacturer for retail sale as a set for a suggested retail price of \$95.00. The entire retail price is subject sales tax. The retailer may not place a sales tag on the set that itemizes the price. Nor may the retailer advertise the set as buy a shirt and tie and get a free set of cufflinks.

8.3. A dress shirt and cufflinks are packaged as a set by the manufacturer and have a suggested retail sales price of \$75.00. The label on the package or a store display sign states that the cufflinks are free. On the retailer's shelf is the very same shirt packaged without cufflinks that has a sale price of \$75.00. In this circumstance the dress shirt and cufflinks packaged as a unit selling for \$75.00 qualifies for the Holiday exemption.

8.4. During the Holiday, the sale of shoelaces, as a separate item, continue to be subject to sales tax. Despite this treatment of laces sold separately, sales of tie shoes with

laces during the Holiday will qualify for the exemption if the sales price is less than \$100.00.

§110-15F-9. Buy one, get one free or for a reduced price.

9.1. The total price of items advertised as "buy one, get one free" or "buy one, get one for a reduced price" may not be averaged in order for both items to qualify for the exemption. The following examples illustrates application of this rule:

9.2. *Example 1:* A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at \$110.00; the second pair of pants is free. Tax is due on \$110.00. The store cannot sell each pair at \$55.00 in order for the items to qualify for the exemption. However, the retailer may advertise and sell the items for 50% off, selling each pair of \$110.00 pants for \$55.00, making each pair eligible for the exemption.

9.3. *Example 2:* A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for \$120.00; the second pair is sold for \$60.00 (half price). Tax is due on the \$120.00 shoes, but not on the \$60.00 shoes. The store cannot sell each pair of shoes for \$90.00 in order for the items to qualify for the exemption. However, a retailer may advertise each pair for 25% off, thereby selling each pair of \$120.00 shoes for \$90.00, making each pair eligible for the exemption.

§110-15F-10. Exchanging a tax-exempt purchase after the Holiday ends.

10.1. When a customer purchases an eligible item during the Holiday and later exchanges the item for the same item (different size, different color, etc.), no tax will be due even if the exchange is made after the Holiday ends, unless the sales price of the second item is greater than the sales price of the exchanged item. In this situation, the retailer must collect tax on the entire sales price of the exchanged item unless the exchange occurs during the Holiday and the sales price of the second item is less than \$100.00.

10.2. When a customer purchases an eligible item during the Holiday and later returns the item and receives credit on the purchase of a different item, the appropriate tax must be collected measured by the full sales price of the newly-purchased item, unless the new purchase occurs during the Holiday and the sales price is less than \$100.00.

10.2.1. *Example 1:* During the Holiday, a customer purchases an \$85.00 dress that qualifies for the exemption. Later, during the Holiday, the customer exchanges the \$85.00 dress for a \$125.00 dress. Tax is due on the \$125.00 dress. The \$85.00 credit from the returned item cannot be used to reduce the sales price of the \$125.00 item to \$40.00 for exemption purposes.

10.2.2. *Example 2:* A customer purchases a \$35.00 shirt during the Holiday. After the Holiday ends, the customer exchanges the shirt for a \$35.00 jacket. Since the

jacket was not purchased during the Holiday, tax is due on the \$35.00 price of the jacket.

§110-15F-11. Returning an eligible item.

When a customer returns an eligible item purchased during the Holiday, the retailer may refund tax only if the customer produces a receipt or invoice showing tax was paid on the item, or if the retailer has sufficient documentation to show that tax was paid on the specific item.

§110-15F-12. Coupons and discounts.

12.1. Manufacturer's coupons do not reduce the sales price of an item. Therefore, a manufacturer's coupon cannot be used to reduce the selling price of an item to less than \$100.00 in order to qualify for the exemption, unless the item is a personal computer or computer accessory. See subsection 17.2 of this rule for a special rule for computers and computer accessories.

12.1.1. *Example:* A jacket sells for \$105.00. The customer has a \$10.00 manufacturer's coupon good for the purchase of the jacket. The manufacturer's coupon does not reduce the sales price of the jacket. Tax is due on the \$105.00 even though the customer only pays the retailer \$95.00 for the jacket.

12.2. Store coupons and discounts do reduce the sales price of an item. Therefore, a store coupon or discount can be used to reduce the sales price of an item to less than \$100.00 in order to qualify for the exemption.

12.2.a. *Example:* A customer buys a \$400.00 suit and a \$110.00 shirt. The retailer is offering a 10 percent discount. After applying the 10 percent discount, the final sales price of the suit is \$360.00, and the sales price of the shirt is \$99.00. The suit is taxable (it is over \$100.00) and the shirt is exempt (it is less than \$100.00).

§110-15F-13. Gift certificates.

The sale of a gift certificate is not taxable. Eligible items sold and delivered during the Holiday using a gift certificate will qualify for the exemption regardless of when the gift certificate was purchased. Eligible items sold and delivered after the Holiday using a gift certificate are taxable even if the gift certificate was purchased during the Holiday. A gift certificate cannot be used to reduce the selling price of an item to under \$100.00 in order for the item to qualify for the exemption.

§110-15F-14. Layaway sales.

14.1. A layaway sale is a sales transaction in which merchandise selected by the customer is set aside for future delivery to the customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment

period, receives the merchandise

14.2. Eligible items will qualify for the exemption if during the Holiday (1) a retailer and a customer enter into an layaway sale agreement, (2) the customer makes the usual deposit in accordance with the retailer's layaway policy, and (3) the merchandise is segregated from the retailer's inventory.

14.3. Eligible items will also qualify for exemption if prior to the Holiday (1) a retailer and a customer entered into a layaway sale agreement, (2) the customer made the usual deposit in accordance with the retailer's layaway policy, (3) the merchandise was segregated from the retailer's inventory and (4) the customer makes the final payment and takes delivery of the merchandise during the Holiday.

§110-15F-15. Mail, telephone, e-mail, and Internet orders and custom orders.

15.1. Under West Virginia sales tax law, a sale of tangible personal property occurs when a purchaser receives title to or possession of the property for consideration. Accordingly, an eligible item qualifies for the sales tax holiday exemption if:

15.1.1. The item is both delivered to and paid for by the customer during the exemption period; or

15.1.2. The customer orders and pays for the item and the retailer accepts the order during the exemption period for immediate shipment, even if physical delivery is made after the exemption period.

15.2. A retailer accepts an order when the retailer has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order, or assignment of an "order number" to a telephone, e-mail or Internet order.

15.3. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders, or because stock is currently unavailable to the retailer, or because the item needs to be custom made.

§110-15F-16. Rain checks.

Eligible items that customers purchase during the Holiday using a rain check qualify for the exemption regardless of when the rain check was issued. However, issuance of a rain check during the Holiday will qualify an eligible item for the exemption only if the purchased price is paid in full at the time the rain check is issued. If the item is actually sold after the Holiday, the Holiday exemption does not apply.

§110-15F-17. Rebates.

17.1. Rebates generally occur after the sale and do not affect the sales price of an item for sales tax purposes. Even when the manufacturer's rebate is applied by the retailer at the time of sale, the rebate amount does not reduce the sales price of the item for sales tax purposes. See subsection 17.2 of this rule for a special rule for computers and computer accessories.

17.1.1. *Example 1.* A jacket sells for \$105.00. The customer receives a \$10.00 mail-in rebate from the manufacturer. The rebate occurs after the sale and does not reduce the sales price of the jacket. Tax is due on \$105.00.

17.1.2. *Example 2.* A dress sells for \$125.00. As a promotion for its new line of dresses, the manufacturer is offering an in-store instant rebate of \$30.00, which the retailer allows at the cash register. Even though the net sales price to the customer is \$95, the purchase is taxable and sales tax must be collected on \$125.00. The money the retailer received for the sale was \$95 from the customer plus \$30.00 from the manufacturer.

17.2. Special rule for manufacturer's rebates on purchase of computer when application of rebate reduces the sales price below \$750, or computer accessories when application of rebate reduces the sales price below \$100.

17.2.1. When during the Holiday a customer purchases a personal computer and a manufacturer's rebate or manufacturer's coupon is applied by the retailer to reduce the price of the item below \$750, the item is exempt from tax. Similarly, when during the Holiday a customer purchases a computer accessory and a manufacturer's rebate or manufacturer's coupon is applied by the retailer to reduce the price of the item below \$100, the item is exempt from tax.

17.2.2. Subdivision 17.2.1 does not apply when the sales price of the personal computer or computer accessory after application of the manufacturer's rebate or manufacturer's coupon is equal to or greater than the amount stated in subdivision 17.2.1. In this situation, tax must be collected on the selling price of the computer or computer accessory before the vendor subtracts the amount of the manufacturer's rebate or manufacturer's coupon to determine the net selling price of the item.

17.2.3. During the Holiday a customer purchases a computer printer for \$120 and then applies to the manufacturer for a rebate of \$30. Because the net cost of the printer, after subtraction of the \$30 rebate amount, is less than \$100, the customer may apply to the State Tax Department for refund of the sales or use tax paid to the retailer. Attached is a form that may be used by the customer to obtain the refund. The original receipt must show the price paid for the computer or computer accessory and that tax was paid on the purchase price. The original receipt and a true copy of the manufacturer's rebate application form, as completed by the customer, must be attached to the claim for refund when it is filed with the State Tax Department.

17.2.4. During the Holiday a customer purchases a personal computer for \$1,000 plus sales tax. The customer receives a rebate of \$100 directly from the manufacturer. The customer may not apply to the State Tax Department for refund of sales tax paid to the retailer.

17.2.5. When a retailer allows a cash discount or the customer presents to the retailer the retailer's discount coupon and a manufacturer's rebate or manufacturer's coupon also applies, the amount of retailer's discount or retailer's coupon is subtracted. The amount of the manufacturer's coupon or manufacturer's rebate is then subtracted to determine whether the purchase price paid by the customer for the computer is less than \$750.00 or, if the purchase is that of a computer accessory, the amount paid is less than \$100.00. (In this example the manufacturer's rebate or coupon is applied at the register.)

§110-15F-18. Repairs and alterations.

18.1. Repairs to eligible items do not qualify for the Holiday exemption. Alterations to eligible items do not qualify for the exemption even though alterations may be sold, invoiced, and paid for at the same time as the item to be altered.

18.2. *Example:* A customer purchases a pair of pants for \$99.00, and pays \$5.00 to the retailer to have the pants cuffed. The \$99.00 charge for the pants is exempt; however, tax is due on the \$5.00 alteration charge.

§110-15F-19. Refunds.

19.1. A customer who pays West Virginia sales or use tax to a vendor when no tax is due may either seek a refund of the tax paid from that vendor or apply to the State Tax Department for a refund.

19.1.1. Retailers are encouraged to refund the tax to any customer who was charged sales or use tax on an exempt purchase. Customers who were charged tax by a vendor for an exempt purchase should take their tax paid receipt to the retailer to facilitate obtaining the refund.

19.1.2. If the retailer has not already remitted the tax to the State Tax Department, the retailer should simply refund the tax to the customer. If the retailer has remitted the tax to the State Tax Department, the retailer should refund the tax to the customer and then take a credit for the tax refunded on the retailer's next sales or use tax return.

19.2. If the retailer refuses to refund the tax, the customer may file a claim for refund with the State Tax Department. The original sales receipt showing (1) the date of the purchase, (2) a description of the item purchased, (3) the name of the retailer, (4) the place or store number where the sale was made, and (5) the amount of tax paid shall be attached to the claim for refund.

19.3. The State Tax Department may not refund sales or use tax paid to another state.

§110-15F-20. Shipping and handling charges.

20.1. Shipping and handling charges that are separately stated are taxable.

20.2. *Example.* The sales price of an eligible item purchased during the Holiday is \$85 and the shipping and handling charges are \$15.00 for a total of \$100. Tax must be collected on the \$15, resulting in a total purchase price of \$100.90.

§110-5F-21. Records and reporting.

No special record keeping or reporting is necessary. Records should be maintained as currently required by law or rules of the Tax Commissioner.

§110-5F-22. Exceptions.

22.1. This Holiday exemption does not apply to:

22.1.1. The rental of clothing, footwear, school supplies, computers or computer accessories;

22.1.2. The sale of clothing, footwear, school supplies, other than a computer or computer accessories, when the sales price is greater than \$99.99;

22.1.3. The sale of a computer when the sales price is greater than \$749.99, unless, after application of a manufacturer's rebate or manufacturer's coupon by the retailer, the net sales price to the consumer is less than \$750.00.

22.1.4. The sale of a computer accessory when the sales price is greater than \$99.99, unless, after application of a manufacturer's rebate or manufacturer's coupon by the retailer, the net sales price to the consumer is less than \$100.00.

22.1.5. The sale or rental of furniture;

22.1.6. The sale or rental of tangible personal property for use in a trade or business.

22.2. For purposes of this rule, purchase payments made through the use of a business check or business credit card are presumed to be for use in a trade or business and are not exempt from tax under the Holiday exemption.

§ 110-15F-23. Listing of taxable and exempt items.

The following lists are examples of exempt and taxable items by type. These lists assume that the sales price of each item is less than \$100. The lists are not all inclusive of all the articles and items that may be purchased exempt from tax during the tax Holiday.

**Alphabetical list of representative items
Clothing and Footwear**

A

Exempt

Adult diapers
Aerobic clothing
Antique clothing
Aprons, household

Taxable

Accessories (generally)
Barrettes and bobby pins
Belt buckles
Hair bows, clips, and bands
Handbags, purses
Handkerchiefs
Jewelry
Key cases
Ponytail holders
Wallets
Watch bands
Watches
Alterations of clothing
Athletic gloves, pads, supporters

B

Exempt

Baby bibs, clothes, diapers
Bandanas
Bathing suits, caps, cover-ups
Belts
Bibs
Blouses
Boots, general purpose (except ski and fishing)
Bow ties
Bras

Bridal apparel, sold not rented

Taxable

Barrettes
Ballet shoes
Baseball cleats and gloves
Belt Buckles (when sold separately)
Bicycle shoes with cleats
Billfolds, wallets
Bobby pins

Bowling shoes, rented and sold
Braces and supports worn to correct or alleviate a
physical incapacity or injury, except prescription

Buttons

C

Exempt

Caps and hats, except athletic uniforms
Choir and altar clothing

Clerical vestments
Coats and wraps

Costumes
Coveralls
Cowboy boots

Taxable

Cleated and spiked shoes
Cloth and lace, knitting yarns, and other fabrics
Clothing repair
Clothing repair items, such as thread, buttons, tapes,
 iron-on patches, zippers
Coin purses
Corsages and boutonnieres
Cosmetics
Cosmetic bags
Crib blankets

D - E

Exempt

Diapers, diaper inserts
 (adult and baby, cloth or disposable)
Dresses
Dress gloves, shoes
Ear muffs
Employee uniforms, but not athletic or protective

Taxable

Diaper bags
Eyewear, except prescription

F

Exempt

Formal clothing, sold not rented
Fur coats and stoles

Taxable

Fabric
Fanny packs
Fishing boots, waders, vests
Football pads, pants, shoes, gloves

G

Exempt

Taxable

Garters and garter belts
Girdles, bras, and corsets

Gloves (generally), such as dress, leather
and winter

Graduation caps and gowns, sold not
rented

Gym suits and uniforms

Gloves, sports

Gloves (protective), such as rubber, surgical,
welding,
work and garden

Goggles, except prescription

H

Exempt

Hats

Hosiery, including support hosiery

Taxable

Hair nets, bows, clips, and bands

Handbags and purses

Handkerchiefs

Hard hats

Helmets (bike, baseball, football, hockey,
motorcycle, etc.)

Hunting vests

I - J

Exempt

Jackets

Jeans

Jerseys for other than athletic wear

Jogging apparel

Taxable

Ice skates

In-line skates

Insoles

Jewelry

K - L

Exempt

Lab coats

Leg warmers

Leotards and tights

Lingerie

Taxable

Key chains and cases

Life jackets and vests

M - N

Exempt

Mittens

Taxable

Makeup bags

Neckwear, including ties and scarves
Nightgowns and night shirts

Martial arts attire
Masks (when sold separately)
Monogramming services

O – P

Exempt

Overshoes and rubber shoes

Pajamas
Pants
Panty hose

Taxable

Pads (football, hockey, soccer, elbow, knee, shoulder)
Paint or dust masks
Patterns
Ponytail holders
Purses

R

Exempt

Raincoats, rain hats, and ponchos
Robes

Rubber thongs, flip-flops
Running shoes without cleats

Taxable

Receiving blankets
Rented clothing, including uniforms, formal wear,
and costumes
Rented shoes or skates
Repair of clothing
Riding pants
Roller blades and skates

S

Exempt

Sandals
Scarves
Scout uniforms
Shawls and wraps
Shirts
Shoes without cleats
Shorts
Skirts
Slacks
Sleepwear, nightgowns, pajamas
Slippers
Slips
Sneakers

Taxable

Safety clothing
Safety glasses, except prescription
Safety shoes not adaptable for street wear
Scuba gear
Shin guards and padding
Shoe inserts
Shoe laces (when sold separately)
Shoes with cleats, spikes
Shoulder pads for dresses, jackets, etc.
Shower caps
Skates: ice, roller
Ski boots, vests, suits
Skin diving suits

Socks

Stockings

Suits, slacks, jackets, and sports coats

Support hose

Suspenders

Sweatshirts

Sweaters

Swim suits, trunks

Special protective clothing or footwear not adaptable for street wear

Sports helmets

Sports uniforms, pads, helmets

Sunglasses, except prescription

Sweatbands: arm, wrist, head

Swim masks, fins, goggles

T - U

Exempt

Tennis skirts, dresses, shoes

Ties

Tights

Trousers

Tuxedos, but not cufflinks and rentals

T-shirts

Undergarments

Uniforms, general for work and school

Taxable

Tap dance shoes

Thread

Umbrellas

Uniforms for athletic activity

Uniforms designed to protect the body

V - W -Y -Z

Exempt

Veils

Vests, except hunting and water

Walking shoes

Windbreakers

Work clothes and uniforms

Taxable

Wallets, billfolds

Watch bands

Watches

Water ski vests

Weight lifting belts

Wet and dry diving suits

Wigs, toupees, and chignons

Yard goods

Yarn

Zipppers

(Including Computers & Computer Accessories)

A - B

Exempt

Antivirus software
Assignment books
Backpacks
Binders
Binder clips
Blue books
Book bags
Book covers
Book markers

Taxable

Action games
Adventure games
Appointment books
Backpacks (for hiking and similar activities)
Batteries for multipurpose use
Books, except dictionaries, thesauruses
and textbooks
Briefcases

C - D - E - F**Exempt**

Cables (computer)
Calculators
Canvas for oil painting
CD (blank)
Central processing unit
Chalk
Chalk boards
Chalkboard erasers
Clipboards
Colored pencils
Compact disk drives
Compass
Composition books
Computer paper

Construction paper
Crayons
Crayon box
Daily planners
Database software
Dictionaries
Dividers
Dry boards for writing
Educational software
Erasers
File Jackets
Finance software
Folders

Taxable

CD (pre-recorded music, voice or otherwise)
Cellular telephones

Computers for recreation (games and toys)
Computer games
Digital cameras

Digital video cameras
Duffel Bags
Flash Cards

G - H - I - J - K - L

Exempt

Glue (stick and liquid)
Glue refills
Graph paper
Gym bags
Hard drive (computer)
Headsets, for use with a computer
Highlighters
Index cards
Ink
Ink cartridges
Internet software
Keyboards
Labels
Lead refills
Loose-leaf binders
Lunch boxes

Taxable

Games
Game controllers
Gaming software
Greeting card software
Joy sticks

M - N - O - P - R

Exempt

Markers
Memo pads
Memory
Microphone, for use with a computer
Modeling clay
Modems
Monitor
Motherboard
Mouse
Musical instruments, and related items
Notebooks
Oil paints
Operational software
Organizers
Paper (notebook or printer)
Paste
Pencil box
Pencil erasers
Pencil sharpener

Taxable

MP3 players
Music download software
Office supplies (paper clips, rubber bands,
legal pads, post-it notes, etc.)

Rented computers or computer accessories
Repair of computers or computer accessories
Role playing games

Pencils, including mechanical and refills
Pens, including felt, ballpoint, fountain and
refills
PDA's
Portfolios
Poster board
Poster paper
Printer cartridges
Printers
Protractors
Router

Required reading materials other than
textbooks

Rulers

S - T - V - W - Z

Exempt

Scanners
Scissors
Sheet protectors
Software (nonrecreational)
Speakers (computer)
Storage devices (disks, CD's and backup)
Tape and tape refills and dispenser
Thesauruses
Watercolor paint set
Word-processing software
Zip drives

Taxable

Software (games and entertainment)
Sports games
Strategy games
Supplies used in a trade or business
Tape recorders and microcassettes
Video computer camera
Videogames
Videogame devices



STATE OF WEST VIRGINIA

Department of Revenue


State Tax Department

Bob Wise
Governor

Rebecca Melton Craig
State Tax Commissioner

MEMORANDUM

TO: Judy Cooper, Director
Administrative Law Division
Office of the Secretary of State

FROM: John E. Montgomery
Managing Attorney
State Tax Department 

RE: 110 C.S.R. 15F, Sales Tax Holiday

DATE: June 22, 2004

Please be advised that no public comments were received in regard to the above referenced rule.