

Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

State of West Virginia
Joe Manchin, III
Secretary of State

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Corporations: (304) 558-8000
FAX: (304) 558-0900
www.wvsos.com

July 9, 2002

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: STATE TAX DEPARTMENT

RULE: NEW RULE, 110CSR15G, CONSUMER SALES & SERVICE TAX & USE TAX
-- MOBILE HOMES & SIMILAR UNITS & BUILDING MATERIALS USED &
CONSUMED IN REPAIR OR REPLACEMENT OF FLOOD DAMAGED
RESIDENCES & BUSINESSES

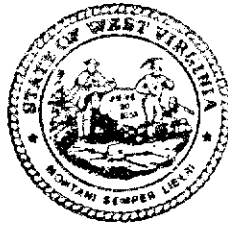
DATE FILED AS AN EMERGENCY RULE: JULY 3, 2002

DECISION NO. 18-02

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.


JOE MANCHIN, III
Secretary of State

SCANNED



Secretary of State's Office
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

State of West Virginia
Joe Manchin, III
Secretary of State

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Corporations: (304) 558-8000
FAX: (304) 558-0900
www.wvsos.com

EMERGENCY RULE DECISION
(ERD 18-02)

AGENCY: State Tax Department
RULE: New Rule, 110CSR15G, 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 3, 2002 and with the LRMRC July 3, 2002.

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 5-02 states in part:

(4) Through August 2, 2002, 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 18-02 or ERD 18-02 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
2002 JUL -9 PM 12:34
DEPT. OF STATE
SECRETARY OF STATE

STATE OF WEST VIRGINIA
EXECUTIVE DEPARTMENT
CHARLESTON
EXECUTIVE ORDER NO. 5-02

By the Governor

WHEREAS, the declared State of Emergency, originally issued on May 2, 2002 for McDowell County and certain parts of other surrounding West Virginia counties that have been ravaged by heavy sustained rains, flash-flooding and strong winds, has been extended by proclamation; and

WHEREAS, no proclamation terminating such extended 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 the personal property located on or within a significant number of private businesses, educational, vocational, or rehabilitation institutions, and health care facilities; and

WHEREAS, the flooding in such counties also severely damaged or destroyed the personal property of certain political subdivisions of this State; and

WHEREAS, the physical effects of such flooding are persistent and continuing; 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;" and

WHEREAS, providing State-possessed surplus property would substantially improve the prospects of economic recovery for the affected businesses, institutions and facilities in the flooded areas of McDowell County and certain surrounding counties; and

WHEREAS, suspending consumer sales and service tax and use tax on purchases and uses of certain building construction materials and supplies would substantially improve efforts to restore and reconstruct flood-affected property in McDowell County and certain surrounding counties.

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 that:

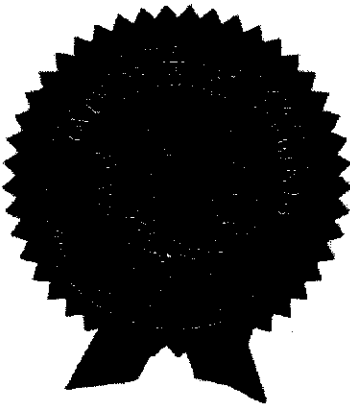
(1) Without regard to any provisions of the West Virginia Code or the Code of State Rules to the contrary, the Purchasing Division of the Department of Administration make available to the Office of Emergency Services for transfer, sale, and distribution to certain affected private businesses, educational, vocational, or rehabilitation institutions, health care facilities, and political subdivisions of this State the surplus furniture and office-related equipment in its possession or control as of the date of this Executive Order and through such time as ordered otherwise; and

(2) The Secretaries of the Department of Administration and the Department of Military Affairs and Public Safety will develop guidelines and other criteria establishing suitability and eligibility for the transfer, sale, and distribution of such surplus property to the affected entities and oversee the implementation of such guidelines and criteria for the duration of the effectiveness of this Executive Order; and

(3) Through August 2, 2002, 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

(4) Through August 2, 2002, 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 Governor

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

Bob Mox
GOVERNOR

Robert M. Mox
SECRETARY OF STATE