

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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MAY -1 PM 3:05

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

RULE TYPE: Interpretive; CITE AUTHORITY W. Va. Code § 11-10-5

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 15(I)2

TITLE OF RULE BEING PROPOSED: Nails and Fencing - Commercial

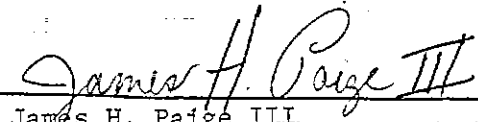
Production of an Agricultural Product

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 1, 1992 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Legal Division
Dept. of Tax and Revenue
P.O. Box 1005
Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


James H. Paige III
State Tax Commissioner

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

2-70



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

JAMES H. PAIGE III
SECRETARY

May 1, 1992

To Whom It May Concern:


Title of Rule: Nails and Fencing - Commercial Production
of an Agricultural Product

Title Number: 110

Series Number: 15(I)2

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 1st day of May, 1992.



James H. Paige, III
Secretary, Tax and Revenue

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Nails and Fencing - Commercial Production of An Agricultural Product.

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Division Address: State Capitol
Charleston, WV

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

The expense to the State should not vary from that envisioned by the Legislature when it enacted the exemption from Consumers Sales and Service Tax.

3. Objectives of these rules:

The interpretive rule explains and clarifies the exemption from Consumers Sales and Service Tax for nails and fencing used in the commercial production of an agricultural product. See W. Va. Code § 11-15-9(i).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

While there will be a negative fiscal impact from the exemption, there is not sufficient information available to determine the size of that impact.

determine the size of that impact...

- B. Economic Impact on Political Subdivisions: Specific Industries; Specific groups of citizens.

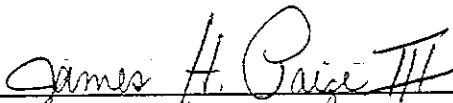
There is insufficient information available to determine the extent of any economic impact.

- C. Economic Impact on Citizens/Public at Large.

Same as B above:

Date: May 1, 1992

Signature of Agency Head or Authorized Representative



James H. Paige, III
State Tax Commissioner

PROPOSED
WEST VIRGINIA INTERPRETIVE RULE
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 15(I)2
1992

FILED
MAY -1 PM 3:05
OFFICE OF THE TAX COMMISSIONER
STATE OF WEST VIRGINIA

NAILS AND FENCING EXEMPTION
FOR COMMERCIAL PRODUCTION OF AGRICULTURAL PRODUCT

§110-15(I)2-1. General.

1.1 Type of Rule. -- This rule is an interpretive rule as defined in W.Va. Code §29A-1-2.

1.2 Scope. -- This interpretive rule explains and clarifies the exemption from consumers sales tax provided in W.Va. Code §11-15-9(i), as amended by Com. Sub. for Senate Bill No. 348 (1992), exempting sales of nails and fencing used or consumed in connection with the commercial production of an agricultural product, whether or not the fence is considered to be a permanent improvement to real property.

1.3 Authority. -- This interpretive rule is promulgated under authority of W.Va. Code §11-10-5.

1.4 Filing Date. -- This interpretive rule was filed in the State Register for public comment on May 1, 1992.

1.5 Effective Date. --

1.6 Citation. -- This proposed interpretive rule may be cited as Proposed 110 C.S.R. 15(I)2, §____ (1992).

§110-15(I)2-2. Interpretive Note.

This interpretive rule shall be read in pari materia with the Consumers Sales and Service Tax and Use Tax legislative regulations (110 C.S.R. 15, § 1 et seq.) previously promulgated by the Tax Commissioner pursuant to authority granted by the Legislature in W.Va. Code §64-7-6. The definitions, policies and procedures provided in 110 C.S.R. 15, §1 et seq. are equally applicable to this interpretive rule. Should there be any inconsistency between the promulgated legislative rules and this interpretive rule, the legislative rules shall control, except to the extent the legislative rules do not reflect an amendment to the consumers sales and use tax laws which is addressed in this or another interpretive rule promulgated by the Tax Commissioner as provided in article 3, chapter 29A of the West Virginia Code.

§110-15(I)2-3. Definitions. -- Unless a specific definition is provided in this section, 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 clearly requires a different meaning. The following terms shall have the meaning ascribed herein, and shall apply in the singular as well as in the plural.

3.1 "Fence" means a temporary or permanent partition, other than a building or other structure or a naturally occurring barrier, such as a river, erected for the purpose of enclosing a parcel of land, or any part thereof, for purposes of commercial agricultural production.

3.2 "Fencing" means materials used to build or repair a fence that are incorporated into and become part of a fence used for purposes of agricultural production. It includes, but is not limited to, hedges in a hedge fence, common rails, posts and rails, posts and planks, posts and wire, pickets and wire, slotted hardwood or softwood battens used between posts, stones in a stone fence, and tangible personal property necessary to electrify the fence, etc.

3.3 "Nail" means a slender usually pointed and headed fastener designed to be pounded into wood or another building material.

§110-15(I)2-4. 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 Commercial Agricultural Exemption. -- Sales of tangible personal property, or of taxable services, that are used or consumed in connection with the commercial production of an agricultural product the ultimate sale of which is, in this State, subject to consumers sales tax are exempt from consumers sales tax, except as provided in subdivision 3.3, provided the purchaser furnishes the vendor with a properly executed exemption certificate. Beginning June 5, 1992, purchases of nails and fencing for use or consumption in the commercial production of an agricultural product are exempt from tax, whether or not the nails and fencing are used in a permanent improvement to real property.

4.3 Exceptions to Commercial Agricultural Exemption. -- Notwithstanding the exemption specified in subsection 3.2, a person

engaged in the commercial production of an agricultural product must pay consumers sales tax on:

4.3.1 Purchases of gasoline or special fuel; and

4.3.2 Purchases of tangible personal property or taxable services used or consumed in the construction of a permanent improvement to real property. However, beginning June 5, 1992, purchases of nails or fencing are not considered to be used or consumed in constructing a permanent improvement to real property and will, therefore, be exempt from tax when they are used or consumed in the commercial production of an agricultural product.

4.4 Explanation of the nails and fencing exemption. -- In order for the purchase of nails or fencing incorporated into a permanent improvement to real property to be exempt from consumers sales tax after June 4, 1992, they must be used or consumed in the "commercial production of an agricultural product", as that phrase is defined in 110 C.S.R. 15, §2. The fact that such nails are used or consumed in a permanent improvement to real property will not destroy this exemption provided the building, fence or other structure, or other permanent improvement to real property, in which the nail is used or consumed is itself used in the commercial production of an agricultural product. Additionally, fencing is exempt whether or not the fence constitutes a permanent improvement to real property, so long as the fence is used in the commercial production of an agricultural product.

4.4.1 Nails and fencing incorporated into a fence erected to separate the farm house from an adjacent road are not exempt from tax unless the purpose of the fence is to contain farm animals, or is otherwise necessary for the commercial production of an agricultural product. In other words, as a matter of law, nails and fencing incorporated into a fence erected around a residential lot located in the city and that incorporated into a fence erected around a farm house are treated in the same manner unless the fence around the farm house is necessary for the commercial production of an agricultural product.

4.5 Method of Claiming the nails and fencing exemption. -- The nails and fencing exemption from consumers sales tax may be claimed by either presenting a properly executed exemption certificate to the seller of the nails and fencing or by paying the tax to the seller and then applying to the Tax Commissioner for a refund. If an exemption certificate is used but the nails or fencing is used for a taxable purpose or in a taxable manner, then the tax due with respect to such nails or fencing must be remitted directly to the Tax Commissioner.