

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

FILED
JUL 17 AM 9:53
OFFICE OF THE SECRETARY OF STATE

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

AGENCY: State Tax Division 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

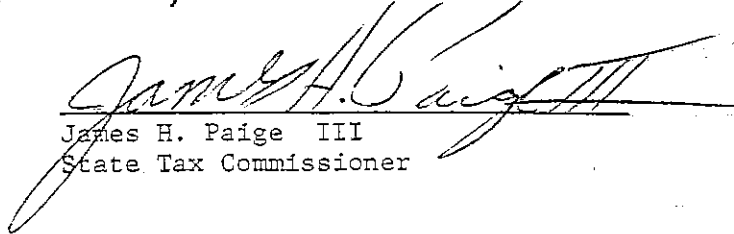
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING ADOPTED: Nails and Fencing - Commercial
Production of an Agricultural Product.

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS August 17, 1992


James H. Paige III
State Tax Commissioner

2.70



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

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

FILED

1992 JUL 17 AM 9:53

OFFICE OF JAMES H. PAIGE III
SECRETARY OF REVENUE

July 16, 1992

To Whom It May Concern:

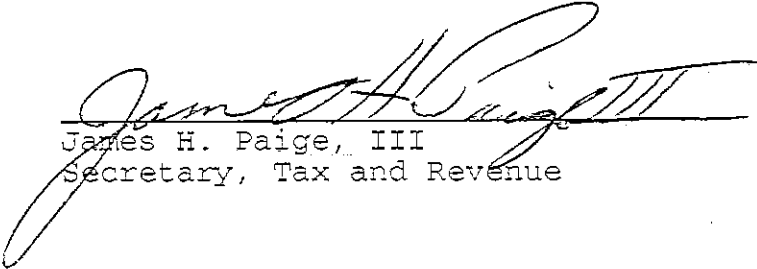
Title of Rule: .. Nails and Fencing - Commercial Production of an
Agricultural Product

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 16th day of July, 1992.


James H. Paige, III
Secretary, Tax and Revenue

COMMENT AND RESPONSES TO
NAILS AND FENCING EXEMPTION REGULATIONS

COMMENT: The definition of nails should include staples.

RESPONSE: The State Tax Division is in agreement and the definition of "nail" has been changed accordingly.

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

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.** --

1.5 **Effective Date.** -- 30 days after filing in the State Register.

1.6 **Citation.** -- This 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 or a staple designed to be pounded or otherwise forcibly inserted 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 4.3, 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 or property are not exempt from tax unless the purpose of the fence is to protect crops or 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.

West Virginia Farm Bureau

Member of American Farm Bureau Federation

1 Red Rock Road, Buckhannon, WV 26201

304/472-2080



May 15, 1992

Richard E. Boyle, Jr.
Director
Legal Division
West Virginia Tax Department
State Capitol Building
Charleston, WV 25305

Dear Mr. Boyle:

Thank you for sending me a copy of the interpretive regulations dealing with nails and fencing.

The only comment I have is in section 3.3, the definition of a nail. I believe it was the intent of the legislature that staples be included.

It appears that under 3.3, staples would be included, but to make it perfectly clear, I would suggest that staples be included. Webster defines a staple as "a 'u' shaped metal loop both ends of which are driven into a surface to hold the hook, hasp, or bolt of a lock, secure a rope, or fix a wire in place."

Again, thanks for your assistance.

Sincerely,

Richard S. (Steve) Hannah
Executive Secretary

RSH/ps

RECEIVED
92 MAY 18 PM 3:29
STATE TAX DEPARTMENT
LEGAL SERVICES