

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

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2009 JUN 23 PM 4:01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§11-10-9i, 11-15-9i

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 RULE BEING PROPOSED: 15C

TITLE OF RULE BEING PROPOSED: Consumers Sales and Service Tax and Use Tax - Drugs, Durable Medical Goods, Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; Motor Vehicles Per Se Exemption

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Virgil T. Helton  
Cabinet Secretary of the Department of Revenue

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: June 23, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Legal Division, State Tax Department, P.O. Box 1005

Charleston, WV 25324-1005

Contact Person: Mark S. Morton 558-5330

EMERGENCY RULE TITLE: Consumers Sales and Service Tax and Use Tax - Drugs, Durable Medical Goods, Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; Motor Vehicles Per Se Exemption

1. Authorizing statute(s) citation W. Va. Code §§ 11-10-5 & 11-15-9i

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
May 20, 2009

b. What other notice, including advertising, did you give of the hearing:  
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
June 22, 2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached \_\_\_\_\_ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

June 23, 2009

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f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Mark S. Morton, Legal Division, State Tax Department

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P.O. Box 1005, Charleston, WV 25324-1005

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Telephone: (304) 558-5330 Fax: (304) 558-8728

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MMorton@tax.state.wv.us

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g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

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b. Date of hearing or comment period:

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- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore:

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- d. Attach findings and determinations and reasons:

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## **SUMMARY OF TITLE 110, SERIES 15C LEGISLATIVE RULE**

The proposed rule authorizes the exemption from the consumers sales and service tax set of purchases by a health provider of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices. In addition, this legislative rule supersedes the per se exemption from consumer sales tax of the lease or sale of motor vehicles provided for in 110 C.S.R. 15.9.2 by specifically disqualifying them as a per se exemption.

**110 C.S.R. 15C**  
**CONSUMER SALES AND SERVICE TAX AND USE TAX –**  
**DRUGS, DURABLE MEDICAL GOODS, MOBILITY ENHANCING EQUIPMENT AND**  
**PROSTHETIC DEVICES PER SE EXEMPTION; MOTOR VEHICLES PER SE**  
**EXEMPTION**  
**STATEMENT OF CIRCUMSTANCES**

The West Virginia State Legislature authorized in West Virginia Code §11-15-9i the designation of the purchase of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices by health care providers as a per se exemption from the consumer sales and service tax and use tax.

In addition, the Legislature authorized in West Virginia Code §11-10-5, the general power to make “all needful rules and regulations” to administer taxes. This includes the power to designate what sales and purchases of tangible personal property or services are and are not designated per se exempt (i.e., requiring no exemption certificate, material purchase certificate or direct pay permit to claim an exemption from the consumers sales and service tax and use tax).

**110 C.S.R. 15C**  
**Consumers Sales and Service Tax and Use Tax - Drugs, Durable Medical goods,  
Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; Motor  
Vehicles Per Se Exemption**

**COMMENTS AND RESPONSES**

No public comments were received during the comment period for this rule.

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Consumers Sales and Service Tax and Use Tax – Drugs, Durable medical Goods, Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; Motor Vehicles per Se Exemption (110 CSR 15C)

Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Tax Department

Address: 1001 Lee Street  
Charleston, WV 25301

Phone Number: (304) 558-5330 Email: \_\_\_\_\_

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule, as written, clarifies the exemption from consumers sales tax provided in W. Va. Code §11-15-9i as added by Com. Sub. for House Bill No. 2380 (2007), exempting the purchase by a health provider of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices from the consumers sales and service tax. In addition, this legislative rule supersedes the per se exemption from consumer sales tax for the lease or sale of motor vehicles.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

| FISCAL YEAR                 |                                     |                                  |                                        |
|-----------------------------|-------------------------------------|----------------------------------|----------------------------------------|
| Effect of Proposal          | Current Increase/Decrease (use "-") | Next Increase/Decrease (use "-") | Fiscal Year (Upon Full Implementation) |
| 1. Estimated Total Cost     | \$0                                 | \$0                              | \$0                                    |
| Personal Services           | \$0                                 | \$0                              | \$0                                    |
| Current Expenses            | \$0                                 | \$0                              | \$0                                    |
| Repairs & Alterations       | \$0                                 | \$0                              | \$0                                    |
| Assets                      | \$0                                 | \$0                              | \$0                                    |
| Other                       | \$0                                 | \$0                              | \$0                                    |
| 2. Estimated Total Revenues | \$0                                 | \$0                              | \$0                                    |

Rule Title: Consumers Sales and Service Tax and Use Tax – Drugs, Durable medical Goods, Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; Motor Vehicles per Se Exemption (110 CSR 15C)

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues:

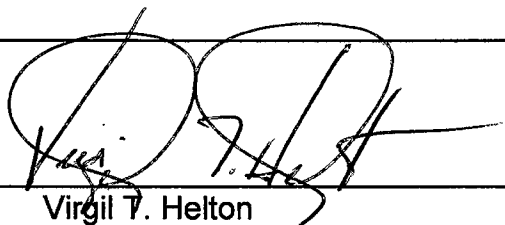
Approval of this proposed rule will not increase or decrease revenue or costs.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The rule, as written, clarifies the exemption from consumers sales tax provided in W. Va. Code §11-15-9i as added by Com. Sub. for House Bill No. 2380 (2007), exempting the purchase by a health provider of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices from the consumers sales and service tax. In addition, this legislative rule supersedes the per se exemption from consumer sales tax for the lease or sale of motor vehicles. Since the rule merely clarifies the application of previously enacted Legislation, the rule itself does not have any net fiscal impact.

Date: \_\_\_\_\_



Virgil T. Helton

Cabinet Secretary of the Department of Revenue

FILED

2009 JUN 23 PM 4: 01

**TITLE 110  
AGENCY APPROVED  
STATE TAX DEPARTMENT**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**SERIES 15C  
CONSUMERS SALES AND SERVICE TAX AND USE TAX -  
DRUGS, DURABLE MEDICAL GOODS, MOBILITY ENHANCING EQUIPMENT AND  
PROSTHETIC DEVICES PER SE EXEMPTION; MOTOR VEHICLES PER SE  
EXEMPTION**

**§110-15C-1. General.**

1.1. Scope. -- This legislative rule explains and clarifies the exemption from consumers sales tax provided in W. Va. Code §11-15-9i as added by Com. Sub. for House Bill No. 2380 (2007), exempting the purchase by a health provider of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices from the consumers sales and service tax. In addition, this legislative rule supercedes the rules for per se exemption from consumer sales tax for the lease or sale of motor vehicles.

1.2. Authority. -- W. Va. Code §§11-10-5 and 11-15-9i.

1.3. Filing Date. --

1.4. Effective Date. --

**§110-15C-2. Interpretive Note.**

2.1. This legislative rule incorporates by reference legislative rule 110 C.S.R. 15, Consumers Sales and Service Tax and Use Tax and shall be read in *pari materia* with that rule. The definitions, policies, and procedures provided in 110 C.S.R. 15 are equally applicable to purchases made under this legislative rule. To the extent that this legislative rule differs from 110 C.S.R. 15, then for the purpose of purchases by a health provider of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices, and for the purpose of leasing or selling motor vehicles this legislative rule governs. However, for all other purposes, 110 C.S.R. 15 governs the application of the Consumers Sales and Service Tax and Use Tax.

**§110-15C-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. "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages.

3.1.1. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, and supplement to any of them;

3.1.2. Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease; or

3.1.3. Intended to affect the structure or any function of the body.

3.2. "Durable medical equipment" means equipment including repair and replacement parts for the equipment, but does not include "mobility enhancing equipment", which:

3.2.1. Can withstand repeated use;

3.2.2. Is primarily and customarily used to serve a medical purpose;

3.2.3. Generally is not useful to a person in the absence of illness or injury;

and

3.2.4. Is not worn in or on the body.

3.2.5. Examples: Home or portable oxygen equipment, home air fluidized beds, blood glucose monitors, commode chairs, nebulizers, infusion pumps.

3.3. "Health care provider" means any person licensed to prescribe drugs, durable medical goods, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease. For purposes of this rule, the term "health care provider" includes any hospital, medical clinic, nursing home or provider of inpatient hospital services, nursing services, ambulance services, surgical services or veterinary services.

3.4. "Mobility-enhancing equipment" means equipment, including repair and replacement parts to the equipment, but does not include "durable medical equipment", which:

3.4.1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

3.4.2. Is not generally used by persons with normal mobility; and

3.4.3. Does not include any motor vehicle or equipment on a motor vehicle

normally provided by a motor vehicle manufacturer.

3.4.4. Examples: Walkers, wheelchairs, crutches, canes, orthotic shoes.

#### **§110-15C-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. Health Care Provider Exemption. – The purchase by a health provider of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease shall be exempt from the consumers sales and service tax.

4.2.1. Per Se Exemption. – A health care provider is not required to obtain an exemption certificate, material purchase certificate or direct pay permit to claim the health care provider exemption.

4.3. Exclusions From Per Se Exemption. – On and after July 1, 2008, sales of motor vehicles are subject to the consumers sales and service tax and use tax in accordance with section 11-15-3c of the West Virginia Code. Therefore the per se exemptions regarding leases, sales and purchases of motor vehicles set forth in Title 110 Series 15 subsections 9.2.10 and 9.2.24 and subdivisions of section 9.2.24 of the Code of State Rules are superceded by statute and are of no further force or effect. The tax imposed pursuant to the provisions of West Virginia Code section 11-15-3c on motor vehicle purchases and uses is subject to the regulatory and administrative jurisdiction of the Commissioner of Motor Vehicles.