WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §§ 11-10-5 and Executive Order 14-01

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 PROPOSED: 15E

TITLE OF RULE BEING PROPOSED: Consumers Sales and Service Tax and Use Tax – Mobile Homes and Similar Units and Building Materials Used and Consumed in Repair or Replacement of Flood Damaged Residences and Businesses

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 August 27, 2001 AT 5:00 PM. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Legal Division
State Tax Department
P.O. Box 1005
Charleston, WV 25324-1005

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

Brian M. Kastick

Brian M. Kastick, Secretary of Tax & Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

$4.20

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Consumers Sales and Service Tax and Use Tax – Mobile Homes and Similar Units and Building Materials Used and Consumed in Repair or Replacement of Flood Damaged Residences and Businesses.

Type of Rule: X Legislative ___Interpretive ____Procedural

Agency: State Tax Division
Address: P.O. Box 1005
Charleston, WV 25324-1005

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$ 0	$	$6 Million to $13 million	$ 0	$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	$ 6 Million to $13 Million	0	0

2. Explanation of above estimates:

The cost above reflects the estimated costs of providing an exemption from the Consumers Sales and Service Tax and Use Tax for mobile homes, house trailers, modular homes or similar units and an exemption for those building materials and supplies that are used or consumed in the repair or reconstruction of a structure or in the construction of a replacement structure. The exemption is available to residents in certain counties affected by flooding during May through July, 2001.

3. Objectives of these rules:

The rule provides an exemption from the Consumers Sales and Service Tax and Use Tax.

Rule Title: Consumers Sales and Service Tax and Use Tax – Mobile Homes and Similar Units and Building Materials Used and Consumed in Repair or Replacement of Flood Damaged Residences and Businesses.

4. Explanation of Overall Economic Impact of Proposed Rule.

   A. Economic Impact on State Government.

      General Revenue Fund collections will be reduced by $6 to $13 million in FY 2002.

   B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

      Total purchase costs of mobile homes, house trailers and basic building materials will be reduced by the normally applicable Consumers Sales and Service Tax for residents in the flood affected counties.

   C. Economic Impact on Citizens/Public at Large.

      None

Date:

Signature of Agency Head or Authorized Representative

Ronald C. Stone

Ronald C. Stone, Acting State Tax Commissioner

STATEMENT OF CIRCUMSTANCE
110 C.S.R. 15E

CONSUMER SALES AND SERVICE TAX AND USE TAX – MOBILE HOMES AND SIMILAR UNITS AND BUILDING MATERIALS USED AND CONSUMED IN REPAIR OR REPLACEMENT OF FLOOD DAMAGED RESIDENCES AND BUSINESSES

During the time period of May through July, 2001, many counties in West Virginia were ravaged sustained rains, flash-flooding and 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 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 July, 2001

In accordance with Executive Order 14-01, Emergency Legislative Rule 110 C.S.R. 15E was filed to carry-out the requirements of Executive Order 14-01. In accordance with the requirements of West Virginia Code § 29A-3-1 et seq., this proposed rule is filed for public comment.

RULE SUMMARY
110 C.S.R. 15E

CONSUMER SALES AND SERVICE TAX AND USE TAX – MOBILE HOMES AND SIMILAR UNITS AND BUILDING MATERIALS USED AND CONSUMED IN REPAIR OR REPLACEMENT OF FLOOD DAMAGED RESIDENCES AND BUSINESSES

This legislative rule explains and clarifies application of Executive Order 14-01 that was signed by the Governor of West Virginia on July 17, 2001, which exempts from Consumers Sales and Service Tax and Use Tax 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 July, 2001.

An emergency legislative rule was filed with the Secretary of State and Legislative Rule-Making Review Committee on July 20, 2001. This filing carries out the requirement to file that rule for public comment.

PROPOSED
WEST VIRGINIA LEGISLATIVE RULE
STATE TAX DEPARTMENT
TITLE 110
SERIES 15E
CONSUMER SALES AND SERVICE TAX AND USE TAX
MOBILE HOMES AND SIMILAR UNITS AND BUILDING MATERIALS USED AND CONSUMED IN REPAIR OR REPLACEMENT OF FLOOD DAMAGED RESIDENCES AND BUSINESSES

§ 110-15E-1. General.

1.1. **Scope.** - This legislative rule explains and clarifies application of Executive Order 14-01 that was signed by the Governor of West Virginia on July 17, 2001, which exempts from Consumers Sales and Service Tax and Use Tax 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 July, 2001

1.2. **Authority.** – West Virginia Code § 11-10-5 and Executive Order 14-01.

1.3. **Filing date.**

1.4. **Effective date.**

§ 110-15E-2. Interpretive Note.

2.1. This legislative rule incorporates by reference legislative rule 110 C.S.R. 15, Consumer 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 rule. To the extent that this legislative rule differs from 110 C.S.R. 15, then for the purposes of the purchases, installations, repairs, restorations and reconstructions or replacements that occur under the authority of Executive Order 14-01, this legislative rule governs. However, for all other purposes, 110 C.S.R. 15 governs the application of the Consumer Sales and Service Tax and Use Tax.

§ 110-15E-3. Definitions.

3.1. **"FEMA"** means the Federal Emergency Management Agency.

3.2 **"Mobile home, house trailer, modular home or similar units"** means and includes any factory built home or manufactured home as defined in W. Va. Code §37-15-2.

§ 110-15E-4. Exempt purchases.

4.1. Purchases of mobile homes, house trailers, modular homes or similar units primarily designed for permanent habitation and occupancy, purchases of the service of installing the foregoing units and purchases of contracts for installation of the foregoing units by or for persons that have been rendered homeless by the flooding referenced in Executive Order 14-01 are exempt from Consumer Sales and Service Tax; Provided, That the mobile homes, house trailers, modular homes or similar units for which the exemption is claimed are sited and installed within the State of West Virginia for use as the primary habitation of one or more persons who have been rendered homeless by the said flood.

4.1.1 The sales tax imposed by W. Va. Code §11-15-7a and the use tax imposed by W. Va. Code §11-15A-2b on the manufacturer or seller of a modular home is not applicable to any modular homes, or building materials for incorporation therein, sold to a modular dwelling manufacturer or seller for resale to or for persons that have been rendered homeless by the flooding referenced in Executive Order 14-01; Provided, That no credit under W. Va. Code §11-15-7a(b) or W. Va. Code §11-15-2b(b) shall be given for any tax lawfully imposed and paid to another state and paid by the manufacturer on the purchase of building supplies and materials used in the manufacture of the modular dwelling.

4.2. Tangible personal property in the form of building construction materials and supplies purchased for direct and immediate use or consumption in the repair and restoration of residential and business properties located within the State of West Virginia that were damaged by the flooding referenced in Executive Order 14-01 are exempt from Consumers Sales and Service Tax and Use Tax; Provided, That the purchases are made by the owner of the damaged structure or by the person who will actually perform the repair and restoration for that owner.

4.3. Tangible personal property in the form of building construction materials and supplies purchased for direct and immediate use or consumption in the reconstruction or replacement of residential and business properties located within the State of West Virginia, that were sufficiently damaged or destroyed by the flooding referenced in Executive Order 14-01 so as to require reconstruction or replacement are exempt from Consumers Sales and Service Tax and Use Tax; Provided, That the purchases are made by the owner of the structure or by the person who will actually perform the reconstruction for that owner.

4.3.1. If the property owner relocates his or her residence or commercial building to a new site, the exemption may still be claimed in constructing a new residence or commercial building; Provided, That the new residence or commercial building is located within the State of West Virginia.

4.4. This exemption applies to those building construction materials and supplies that are used or consumed in the repair or reconstruction of a structure or in the construction of a replacement structure. This includes certain essential equipment that is classified as a fixture to the structure. Examples of building construction materials and supplies that may be purchased under this rule exempt from tax include, but are not necessarily limited to:

bathtubs
brick
cement block
central heating or central air conditioning units and ductwork
circuit breakers and circuit breaker panels
decking
doors, interior and exterior
electrical wall switches, electrical receptacles and fuse boxes
electric wiring
floor coverings, including wall-to-wall carpeting
hot water heaters
insulation
kitchen cabinets and counters
lumber
nails and screws
paint
plumbing supplies and fixtures
plywood
roofing
siding
sump pumps
wall board
wall paneling
wallpaper
well pumps, related pressure switches and water supply tanks
windows

4.5. The exemption allowed by Executive Order 14-01 and this rule does not apply to the replacement or repair of tangible personal property that, although destroyed, is not classified as a permanent fixture to the structure. The exemption does not apply to non-essential or luxury items or to typical household appliances. Examples of non-exempt purchases include, but are not limited to:

backhoes

boats
bulldozers
clothes dryers
computers
cooking utensils, pots and pans
dish washers (whether or not built-in)
draperies
food
freezers
furniture
guns
hand tools
hot tubs or components thereof
lawnmowers
microwave ovens (whether or not built-in)
power tools
refrigerators (whether or not built-in)
stoves (whether or not built-in)
swimming pools or components thereof
tangible personal property used in carrying on a business*
television satellite dishes
televisions
washing machines

* These purchases are taxable unless the purchase is exempt under a provision of the consumers sales and service tax law or the use tax law other than Executive Order 14-01, or unless the purchase is exempt under another provision of the West Virginia Code. For example: Purchases of some business inventory items may be subject to the purchases for resale exemption of W. Va. Code §11-15-9(a)(9).

§ 110-15E-5. Procedure for claiming the exemption.

5.1. **Mobile homes, house trailers, modular homes and similar units** In the case of purchases of mobile homes, house trailers, modular homes and similar units that qualify for the exemption set forth in Executive Order 14-01, if the purchaser is a person rendered homeless by the flooding, the purchaser must present to the seller a set of documentation consisting of a completed and executed special exemption certificate (developed by the Tax Department for this rule) and a copy of a FEMA housing assistance letter showing the purchaser to be a person who has a housing need resulting from the flood. A copy of this set of documents shall be retained in the sales records of the seller subsequent to the sale.

5.1.1 If the purchase of a mobile home, house trailer, modular home or similar unit that qualifies for the exemption set forth in Executive Order

14-01 is made by a contractor or other person for and on behalf of a person who was rendered homeless by the flood, the purchaser must present to the seller a set of documentation consisting of a completed and executed special exemption certificate (developed by the Tax Department for this rule) and a copy of a FEMA housing assistance letter showing the person for and on behalf of whom the purchase is made to be a person who has a housing need resulting from the flood. A copy of this set of documents shall be retained in the sales records of the seller subsequent to the sale.

5.2. **Building construction materials.** In the case of purchases of building materials the exemption allowed by Executive Order 14-01 and this rule shall be asserted at the time the building materials are purchased by or for the property owner who has suffered flood related damage, by presenting to the vendor a set of documentation consisting of a completed and executed special exemption certificate (developed by the Tax Department for this rule) and documentation verifying the flood related losses of the property owner by or for whom such purchases are made. For example: a copy of a FEMA housing assistance letter, proof of settlement of an insurance claim for flood damage, an insurance adjuster's record of damage inspection or such other documentation as the Tax Department may determine to be acceptable.

5.3. The property owner who has suffered flood related damage or a contractor or other person making purchases of building materials for repair, reconstruction or replacement of property of such owner must file one set of the documentation specified in subsection 5.2 for each damaged or destroyed structure with each vendor. If the purchaser is claiming the exemption on purchases from more than one vendor, the property owner shall have a set of documentation on file with each of the vendors from whom exempt purchases are made. If the purchaser has two structures that suffered damage, then the purchaser shall have a set of documentation on file with each vendor for each loss. The required documentation needs to be filed with a vendor only one time. The vendor is required to keep records that tie each exempt purchase to the appropriate documentation.

5.4. If the purchaser is a contractor who is doing the repair or reconstruction work, or, in the case of a property owner who has suffered flood related damage and who relocates, a contractor doing the construction work for that relocated property owner, the contractor shall be responsible for filing the required set of documentation with each vendor.

5.4.1. The contractor may only assert the exemption for building construction materials and supplies that are purchased for direct and immediate use or consumption in the repair or reconstruction of the residential and business property to which the exemption certificate applies.

5.4.2. If the property owner relocates to a different site in West Virginia, the contractor may only assert the exemption for building construction materials and supplies that are purchased for direct and immediate use and consumption in the construction of the residential property or commercial structure to which the exemption certificate applies.

5.4.3. The contractor may only assert the exemption in relation to qualified structures located within the State of West Virginia.

5.5. The exemption authorized by Executive Order 14-01 and this rule applies to eligible purchases made on or after the effective date of this emergency rule and on or before January 15, 2002.