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July 23, 2001

FILED
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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: STATE TAX DEPARTMENT

RULE: NEW RULE, 110CSR15E, 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 FIRST EMERGENCY RULE: September 5, 2001

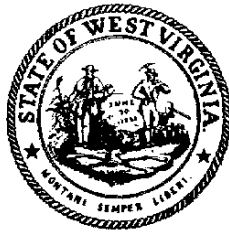
DATE ORIGINALLY FILED AS AN EMERGENCY RULE: JULY 20, 2001

DECISION NO. 10-01

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

By:
Administrative Assistant



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EMERGENCY RULE DECISION
(ERD 10-01)

AGENCY: State Tax Department
RULE: New Rule, 110CSR15E, 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 FIRST EMERGENCY RULE: September 5, 2001
FILED AS AN EMERGENCY RULE: July 20, 2001

- par. 1 The State Tax Department (Department) has filed the above amendments to new rule as an emergency amended 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 September 5, 2001 and with the LRMRC September 5, 2001.

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 14-01 states in part:

(3) That 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:

This rule was filed for public comment on July 24, 2001. One comment related to purchases otherwise exempt that occurred before the special exemption certificate became available. In order to assure that flood victims are able to claim

refunds for those purchases, §110CSR15E-5.2.1 has been amended into the rule. 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.

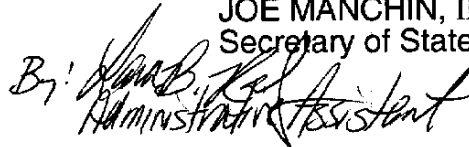
In accordance with Executive Order 14-01, Emergency Legislative Rule 110CSR15E is hereby filed to provide to the public necessary guidance and clarification so as to facilitate satisfying the intent and requirements of Executive Order 14-01.

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 10-01 or ERD 10-01 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

By: 
Administrative Assistant

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