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

Form #3

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2001 SEP -5 A 10: 10

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 Division TITLE NUMBER: 110

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

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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.

Brian M. Kastick

Brian M. Kastick, Secretary of Tax and Revenue

$5.80

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.

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.

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: <u>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.</u>

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

CAWV COMMENTS
PROPOSED EMERGENCY SALES TAX REGS
JULY 27, 2001

Section 110-15D-1:
1.1: Refers to flooding that occurred in certain counties during May through July, 2001. How will the State process claims for refunds in these areas and what will the procedures be for doing this, communicating this to the taxpayers and expediting the refunds?

1.4: What will the effective date of the Emergency Rule be?

Section 110-15D-4:
4.1: Refers to the purchase and installation of mobile homes etc. "for persons that have been rendered homeless by the flooding ...". Should this exception apply to businesses that may have operated in such units or may have operated from an existing permanent facility that was damaged and they elect to purchase replacement property in the form of a mobile or modular home, etc.?

Service Issue: If an improvement constitutes a capital improvement for consumer sales tax purposes, the contractor's fee is not subject to consumer sales tax. However, if the repair does not constitute a capital improvement, the services provided would be subject to sales tax as a service. For example, the painting of a home may be a service and not a capital improvement. Does the emergency exemption apply to services also?

Section 110-15D-5:
5.5: Provides that the emergency rule applies to eligible purchases made on or after the effective date of this emergency rule and before January 15, 2002. Some purchases may have been made before July 17, 2001 (i.e. from May flooding). Are these purchases exempt?

General Note:
Obviously it is very important for contractors, service providers and suppliers to maintain the appropriate documentation so there are no problems with future Tax Department audits and inquiries etc. If they do not, they could be held responsible for the sales and use tax.

We understand that the WV Division of Highways may be put in charge of rebuilding bridges for private homeowners. If the project is advertised and awarded through the WVDOH for these private bridges, is the material tax exempt?

Will there be a specific exemption certificate or some other document that will allow the contractor to buy material tax exempt?

COMMENTS AND RESPONSES
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

Following are the comments received to proposed legislative rule 110 C.S.R. 15E, Consumer Sales and Service Tax – Mobile Homes and Similar Units and Building Materials Used and Consumed In Repair or Replacement of Flood Damaged Residences and Businesses, and the responses to those comments.

Comment: Section 110-15E-1 refers to flooding that occurred in certain counties during May through July, 2001. How will the State process claims for refunds in these areas and what will the procedures be for doing this, communicating this to taxpayers and expediting the refunds?

Response: In order for a taxpayer to claim a refund for Sales Tax paid on the purchase of exempt building construction materials and supplies, whether as a result of flooding in May or July, 2001, the taxpayer need only complete and file a completed regular Claim for Refund or Credit for Sales Tax Paid on Exempt Purchases, form WV/CST-240, with a copy attached of the FEMA housing assistance letter, a copy of the proof of settlement of an insurance claim for flood damage or a copy of the insurance adjuster's record of damage inspection.

This procedure will be communicated through appropriate means of notification. Additionally, the emergency rule will be amended and refiled.

Comment: What will be the effective date of the Emergency Rule be?

Response: The Emergency Rule Decision was issued by the Secretary of State on July 24, 2001. Therefore, in accordance with West Virginia Code § 29A-3-15(a), the emergency rule was effective July 24, 2001.

Comment: Section 110-15E-4.1 refers to the purchase and installation of mobile homes etc. "for persons that have been rendered homeless by the flooding…". Should this exception apply to businesses that may have operated in such units or may have operated from an existing permanent facility that was damaged and they elect to purchase replacement property in the form of a mobile or modular home, etc.?

Response: Executive Order 14-01 states 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 not applicable to purchases and uses of such mobile homes, house trailers, modular homes or similar units by or for such persons rendered homeless by flooding in the aforementioned counties."

As the Executive Order refers to only purchases and uses of mobile homes, house trailers, modular homes or similar units by or for persons that were made homeless by the flooding, the Emergency Rule may not extend the suspension of Sales Tax to the purchases of those types of units when they are used to house a business. There is, however, an exception to this and that is when a business is engaged in the business activity of renting mobile homes to persons as residential property (for example by a business that runs a mobile home court where the mobile homes are rented to residents); in that situation, the purchases of those mobile homes by that business would be subject to the exemption.

Comment: If an improvement constitutes a capital improvement for consumer sale tax purpose, the contractor's fee is not subject to consumer sales tax. However, if the repair does not constitute a capital improvement, the services provided would be subject to sales tax as a service. For example, the painting of a home may be a service and not a capital improvement. Does the emergency exemption apply to services also?

Response: In accordance with subsection 4.2 of the rule, the purchase of the materials to be used in making the repair is exempt from Sales Tax. Executive Order 14-01 applies only to purchases of building materials and certain mobile homes and manufactured housing. Therefore, repair service is subject to Sales Tax and purchases of materials for use or consumption in making the repair are exempt from Sales Tax.

Comment: Section 110-15E-5.5 provides that the emergency rule applies to eligible purchases made on or after the effective date of this emergency rule and before January 15, 2001. Some purchases may have been made before July 17, 2001 (i.e. from May flooding). Are these purchases exempt?

Response: Provided the purchases are to repair or replace structures damaged in the flooding that occurred in May or July, 2001, and is the subject of Executive Order 14-01, the purchases are exempt. Because the purchases occurred prior to the filing of the emergency rule, the purchaser may file a claim for a refund of the Sales Tax paid.

Comment: We understand that the WV Division of Highways may be put in charge of rebuilding bridges for private homeowners. If the project is advertised and awarded through the WVDOH for these private bridges, is the material tax exempt?

Response: Executive Order 14-01 authorizes the exempt purchase of building construction materials and supplies necessary for the reconstruction and restoration of flood damaged property by or for persons who have suffered damage to their property from the flooding. When those persons purchase the materials necessary to rebuild private bridges, the materials may be purchased exempt from Sales Tax.

Certain documentation is necessary when claiming the exemption. The documentation should consist of a completed and executed special exemption certificate, and verification of the flood related losses of the property owner; i.e., 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.

The Tax Department has not been fully apprized of any proposal to have the West Virginia Department of Highways build or reconstruct bridges for private homeowners. Therefore, we are unsure as to what transactional structure may apply to the purchases of building materials that might relate to such a project. Construction projects that are bid and awarded through the State would not typically fall within the guidelines. In those instances, it may very well be the State that is making the purchases. In which case, purchases of tangible personal property by the State are exempt from tax under West Virginia Code § 11-15-9(a)(3).

If the State will be purchasing building materials for and on behalf of a person who has suffered property damage as a result of the flood, and if that person can provide a copy of a FEMA housing assistance letter or other documentation (as outlined above) to the West Virginia Department of Highways for presentation, in turn, to the vendor of the building materials, then the State, like any person making purchases of building materials for or on behalf of a person that has suffered property damage as a result of the flooding, can buy the building materials under the tax exemption.

Comment: Will there be a specific exemption certificate or some other document that will allow the contractor to buy material tax exempt?

Response: A specific exemption certificate has been developed for use by either a property owner or a contractor purchasing for a property owner necessary building construction materials and supplies to be used or consumed in the repair, restoration, reconstruction or replacement of structures damaged in the flooding referenced in Executive Order 14-01.

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: August 31, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Division, Room W-300, State Capital Bldg., Charleston, WV 25325

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

1. Authorizing statute(s) citation W. Va. Code § 11-10-5 and Executive Order 14-01

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

   July 24, 2001

   b. What other notice, including advertising, did you give of the hearing?

   None

   c. Date of ~~Public Hearing(s) or~~ Public Comment Period ended:

   August 27, 2001

   d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

   Attached X No comments received ______

   Contractors Association of West Virginia Amended Section 110-15E-5.2.1

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

September 4, 2001

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

John Montgomery, Attorney, Legal Division

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

Phone: 558-5330, FAX 558-8728,

e-mail JMontgomery@tax.state.wv.us

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)

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.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

____

d. Attach findings and determinations and reasons:

Attached ____

AGENCY APPROVED
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.

5.2.1. For purchases qualified for exemption in accordance with Executive Order 14-01 and that were made prior to the availability of the special exemption certificate, a refund may be claimed by filing form WV/CST-240 with an attached copy of the FEMA housing assistance letter, a copy of the proof of settlement of an insurance claim for flood damage, or a copy of the insurance adjuster's record of damage inspection.

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 before January 15, 2002.