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December 17, 2003

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: STATE TAX DIVISION

RULE: NEW SERIES, 110CSR15H, CONSUMER SALES & SERVICE TAX & USE TAX - MOBILE HOMES & SIMILAR UNITS & BUILDING MATERIALS USED AND CONSUMED IN REPAIR OR REPLACEMENT OF FLOOD DAMAGED RESIDENCES & BUSINESSES

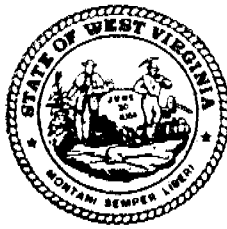
DATE FILED AS AN EMERGENCY RULE: DECEMBER 16, 2003

DECISION NO. 15-03

FILED
2003 DEC 17 P 3:59
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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.


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**EMERGENCY RULE DECISION
(ERD 15-03)**

AGENCY: STATE TAX DIVISION

RULE: NEW SERIES, 110CSR15H, CONSUMER SALES & SERVICE TAX & USE TAX - MOBILE HOMES & SIMILAR UNITS & BUILDING MATERIALS USED AND CONSUMED IN REPAIR OR REPLACEMENT OF FLOOD DAMAGED RESIDENCES & BUSINESSES

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- par. 1 The State Tax Division (Tax) has filed the above new rule as an emergency 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 Tax filed this emergency rule with supporting documents with the Secretary of State December 16, 2003 and with the LRMRC December 16, 2003.

par. 7 It is the determination of the Secretary of State that Tax 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 It is the determination of the Secretary of State that Tax has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (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. 11 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. 12 The facts and circumstances as presented by Tax are as follows:

During November, 2003, Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Mason, McDowell, Mercer, Mingo, Monongalia, Monroe, Nicholas, Pocahontas, Putnam, Raleigh, Roane, Summers, Taylor, Wayne, Webster, Wirt and Wyoming & surrounding counties in West Virginia were ravaged by flash-flooding. 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 issued Executive Order 25-03 to provide means to assist in alleviating the threats. Executive Order 25-03 suspended, nullified & deemed not applicable the application of the Consumers Sales & Service

Tax & Use Tax on the purchase of mobile homes, house trailers, modular homes and similar units and the service of installing them, and exempts purchases of building construction materials and supplies used or consumed in the repair, restoration, reconstruction or replacement of structures damaged by flooding that occurred in the affected counties in November, 2003.

Emergency Legislative Rule 110CSR15H was filed to provide the authorization necessary to utilize the exemptions.

par. 13 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). . . "Health, safety & welfare"

par. 14 This decision shall be cited as Emergency Rule Decision 15-03 or ERD 15-03 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Tax Division, the Attorney General and the Legislative Rule Making Review Committee.



JOE MANCHIN, III
Secretary of State

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