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

Form #2

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WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code § 11-10-5

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: 151

TITLE OF RULE BEING PROPOSED: Consumers Sales and Service Tax and Use Tax - Executive Orders Declaring Emergency and Exempting From Tax Mobile Homes and Similar Units and Building Materials Used and Consumed in Repair or Replacement of Residences and Businesses Damaged in a Disaster.

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 July 30, 2004 AT 12:00 noon. 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.

John C. Musgrave
Acting Secretary of Tax and Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

PROPOSED
WEST VIRGINIA LEGISLATIVE RULE
STATE TAX DEPARTMENT
TITLE 110
SERIES 15I
CONSUMER SALES AND SERVICE TAX AND USE TAX
EXECUTIVE ORDERS DECLARING EMERGENCY AND EXEMPTING FROM TAX MOBILE HOMES AND SIMILAR UNITS AND BUILDING MATERIALS USED AND CONSUMED IN REPAIR OR REPLACEMENT OF RESIDENCES AND BUSINESSES DAMAGED IN A DISASTER

§ 110-15H-1. General.

1.1. **Scope.** - This legislative rule explains and clarifies application of an Executive Order declaring a state of emergency that exempts from Consumers Sales and Service Tax and Use Tax purchases of mobile homes, house trailers, modular homes and similar units by and for persons rendered homeless by a disaster and the service of installing them, and purchases of building construction materials and supplies used or consumed in the repair, restoration, reconstruction or replacement of structures damaged in a disaster, during the period of time stated in the Executive Order.

1.2. **Authority.** – West Virginia Code § 11-10-5.

1.3. **Filing date.**

1.4. **Effective date.**

§ 110-15H-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 as a result of the disaster referenced in the Executive Order, 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.

§ 110-15H-3. Definitions.

3.1. **"Executive Order"** means an Executive Order issued by the Governor of the State of West Virginia under the authority of West Virginia Code § 15-5-6(g) that exempts from Consumers Sales and Service Tax and Use Tax certain purchases related to recovery from damage resulting from a disaster, as that term is defined in West Virginia Code § 15-5-2.

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.

§ 110-15H-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 disaster referenced in the Executive Order 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 disaster.

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 disaster referenced in the Executive Order; 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 disaster referenced in the Executive Order 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 disaster referenced in the Executive Order 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 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, 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).

§ 110-15H-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 authorized by this rule, if the purchaser is a person rendered homeless by the disaster, 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 disaster. 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 authorized by this rule is made by a contractor or other person for and on behalf of a person who was rendered homeless by the disaster, 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 disaster. 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 authorized by this rule shall be asserted at the time the building materials are purchased by or for the property owner who has suffered disaster 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 disaster 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 damage resulting from the disaster, 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 this rule 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 damage resulting from the disaster, or a copy of the insurance adjuster's record of damage inspection.

5.3. The property owner who has suffered disaster 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 disaster 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.

§ 110-15I-6. Implementation of rule.

6.1. This rule shall be implemented only through the issuance of an Executive Order issued as a result of a specified disaster.

6.2. The exemption authorized by the Executive Order and implemented by this rule applies to eligible purchases made within the dates specified in the Executive Order.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Consumers Sales and Service Tax and Use Tax – Executive Orders Declaring Emergency and Exempting From Tax Mobile Homes and Similar Units and Building Materials Used and Consumed in Repair or Replacement of Residences and Businesses Damaged in a Disaster

Type of Rule: X Legislative __Interpretive ____Procedural

Agency: State Tax Department
Address: Legal Division
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	$ 0	$ 0	$ 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	0	0	0

2. Explanation of above estimates:

This rule is to facilitate recovery from disasters that may happen in the future. The cost will vary depending on the nature of the disaster, the counties involved, and other variables. As a result, there is not method for estimating the costs for recovery.

3. Objectives of these rules:

The objective of the rule is to facilitate recovery from a disaster. The rule may be implemented by the Governor through issuance of an Executive Order.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There will be a reduction in revenues but the reduction may not be ascertained until a disaster actually occurs.

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

This also is unknown until a disaster actually occurs.

C. Economic Impact on Citizens/Public at Large.

Affected citizens will be able to repair and rebuild residences and businesses without paying sales tax on materials.

Date: June 28, 2004

Signature of Agency Head or Authorized Representative

Rebecca Melton Craig

Rebecca Melton Craig, State Tax Commissioner

RULE SUMMARY
110 C.S.R. 15I

CONSUMER SALES AND SERVICE TAX AND USE TAX – EXECUTIVE ORDERS DECLARING EMERGENCY AND EXEMPTING FROM TAX MOBILE HOMES AND SIMILAR UNITS AND BUILDING MATERIALS USED AND CONSUMED IN REPAIR OR REPLACEMENT OF RESIDENCES AND BUSINESSES DAMAGED IN A DISASTER

This legislative rule explains and clarifies application of an exemption from Consumers Sales and Service Tax and Use Tax for purchases of mobile homes and similar units and building construction materials and supplies used or consumed in the repair, restoration, reconstruction or replacement of structures damaged by a disaster. The exemption is authorized by an executive order issued under the authority of West Virginia Code § 15-5-6 because of the occurrence of a disaster, as that term is defined in West Virginia Code § 15-5-2.

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

CONSUMER SALES AND SERVICE TAX AND USE TAX – EXECUTIVE ORDERS DECLARING EMERGENCY AND EXEMPTING FROM TAX MOBILE HOMES AND SIMILAR UNITS AND BUILDING MATERIALS USED AND CONSUMED IN REPAIR OR REPLACEMENT OF RESIDENCES AND BUSINESSES DAMAGED IN A DISASTER

In each of the last several years, many counties in West Virginia have been subject to extensive damage from flooding. As a result of each flood, the State Tax Department has, as directed in an executive order issued by the Governor, promulgated a legislative rule exempting from Sales Tax purchases of materials, mobile homes, etc., used in recovery from the flooding.

Undoubtedly, major flooding will continue to occur in West Virginia. Additionally, other disasters, as that term is defined in West Virginia Code § 15-5-2, may also occur. The purpose of this rule is to facilitate the more rapid acquisition of construction materials, mobile homes and similar units to be used in recovery from the disaster. Rather than promulgating a new rule for each disaster, the Governor, through issuance of an executive order, may implement this rule each time a disaster occurs, thus "jump-starting" the recovery activity.