

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

Form #7

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code § 11-10-5 and Executive Order 13-04

EMERGENCY 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 FILED AS AN EMERGENCY: 15I

TITLE OF RULE BEING AMENDED: Consumers Sales and Service Tax and Use Tax –

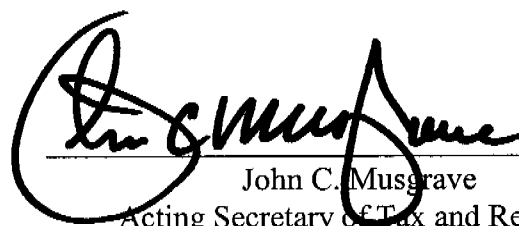
Executive Orders Declaring Emergency and Exempting from Tax Mobile Homes and Similar

Units and Building Materials used and Consumed in Repair or Replacement of Residences and

Businesses Damaged in a Disaster

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:



John C. Musgrave
Acting Secretary of Tax and Revenue

Use additional sheets if necessary

**EMERGENCY
WEST VIRGINIA LEGISLATIVE RULE
STATE TAX DEPARTMENT
TITLE 110
SERIES 15I**

**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**

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SECRETARY OF STATE

§ 110-15H-1. General.

1.1. **Scope.** - This emergency 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. This emergency rule is intended to implement the agency approved rule by the same title filed with Legislative Rule-Making Review Committee on August 16, 2004, as it relates to Executive Order 13-04 and any similar subsequent Executive Order issued prior to the date the aforementioned rule becomes effective.

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 emergency rule implements Executive Order 13-04 and any similar subsequent Executive Order issued prior to the effective date of the agency approved rule by the same title that was filed with Legislative Rule-Making Review Committee on August 16, 2004.

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: ☒ 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
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$2.4 million to \$4.9 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	\$2.4 million to \$4.9 million	0	0

2. Explanation of above estimates:

The above cost 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, June and July 2004.

3. Objectives of these rules:

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

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

General Revenue Fund collections will be reduced by \$2.4 million to \$4.9 million in FY 2005.

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

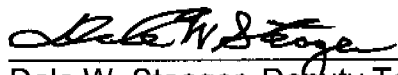
Total purchase costs of mobile homes, house trailers and basic building materials will be reduced by the normally applicable Consumers Sales and Service Tax for residents in the flood affected counties.

C. Economic Impact on Citizens/Public at Large.

None

Date: 8-18-04

Signature of Agency Head or Authorized Representative



Dale W. Steager, Deputy Tax Commissioner

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

**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 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.

On May 28, 2004, flooding occurred in several counties of West Virginia. The Governor issued Executive Order 10-04 directing that certain exemptions from Sales Tax be implemented in order to assist the flood recovery. As a result of that Executive Order, 110 C.S.R. 15H was filed. As a result of the probability of future floods and the possibility of other disasters occurring, 110 C.S.R. 15I was filed and is currently before the Legislative Rule-Making Review Committee as an agency approved rule.

On August 13, 2004, flooding again occurred. Executive Order 13-04 was issued adding two more counties to those listed in Executive Order 10-04. This emergency rule implements Executive Order 13-04. Additionally, as major flooding may very well occur prior to the effective date of the rule before the Legislative Rule-Making Review Committee, this rule will 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 new disaster, the Governor, through issuance of an executive order, may implement this rule each time a disaster occurs, thus "jump-starting" the recovery activity.

**EMERGENCY
RULE SUMMARY
110 C.S.R. 15I**

**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**

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 executive Order 13-04 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, and is intended to also implement any similar subsequent Executive Order issued prior to the effective date of the agency approved rule by the same title that was filed with Legislative Rule-Making Review Committee on August 16, 2004.

DATE: August 20, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Tax Department

Contact Person: John Montgomery, Managing Attorney

Phone: 558-5330

1. Date of filing: August ²⁴/~~20~~, 2004

2. Statutory authority for promulgating the emergency rule: W. Va. Code § 11-10-5, Executive Order 13-04

3. Date of filing of proposed legislative rule: June 28, 2004

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule: This is an emergency filing of 110 C.S.R. 15I which was filed as an agency approved rule on August 16, 2004.

5. Has the same or similar emergency rule previously been filed and expired: No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

See attached Statement of Circumstance

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

N/A