

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In this Box

FILED

2009 MAY 22 PM 4: 11

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: ~~Emergency~~ Legislative CITE AUTHORITY W. Va. Code §§11-10-5 and 15-5-6

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: 15J

TITLE OF RULE BEING PROPOSED: Consumers Sales and Service Tax and Use Tax Exemptions Mandated Pursuant to Executive Order 10-09 Referring to Purchases of Mobile Homes, Building Materials and Supplies, Bottled Water, Cleaning Supplies, and Other Supplies Used for Flood Relief; Affordable Housing Trust Fee Not Exempt

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 June 24, 2009 AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

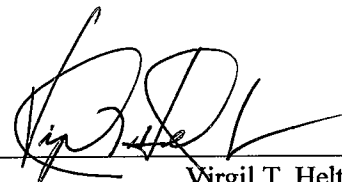
Legal Division

State Tax Department

P.O. Box 1005

Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Virgil T. Helton
Cabinet Secretary, Department of Revenue

EMERGENCY RULE 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: May 22, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Legal Division, State Tax Department, P.O. Box 1005

Charleston, WV 25324-1005

Contact Person: David L. Bissett 558-5330

EMERGENCY RULE TITLE: Consumers Sales And Service Tax And Use Tax Exemptions Mandated Pursuant To Executive Order 10-09 Referring To Purchases of Mobile Homes, Building Materials And Supplies, Bottled Water, Cleaning Supplies, And Other Supplies Used For Flood Relief; Affordable Housing Trust Fee Not Exempt

1. Date of filing _____

2. Statutory authority for promulgating emergency rule:
W. Va. Code §§ 11-10-5 and 15-5-6

3. Date of filing of proposed legislative rule: _____

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? The rule adopts 110 CSR 15I and adds additional definitions and per se exemptions based on the Governor's Executive Order No. 10-09.

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.

The rule is necessary to provide for additional definitions and per se exemptions for the

consumer sales and service tax and use tax in compliance with Executive Order No. 10-09 regarding the state of emergency in Boone, Logan, McDowell, Mingo, Raleigh and Wyoming Counties, West Virginia.

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.

The rule is necessary to provide for additional definitions and per se exemptions for the consumer sales and service tax and use tax in compliance with Executive Order No. 10-09 regarding the state of emergency in Boone, Logan, McDowell, Mingo, Raleigh and Wyoming Counties, West Virginia.

**EMERGENCY SUMMARY
WEST VIRGINIA LEGISLATIVE RULE**

110 C.S.R. 15J

**CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS
MANDATED PURSUANT TO EXECUTIVE ORDER 10-09 REFERRING TO
PURCHASES OF MOBILE HOMES, BUILDING MATERIALS AND SUPPLIES,
BOTTLED WATER, CLEANING SUPPLIES AND OTHER SUPPLIES USED FOR
FLOOD RELIEF; AFFORDABLE HOUSING TRUST FEE NOT EXEMPT**

§ 110-15J-1. General.

§ 110-15J-2. Interpretive Note.

§ 110-15J-3. Definitions.

§ 110-15J-4. Exempt Purchases.

§ 110-10J-5. Affordable Housing Trust Fee.

**EMERGENCY STATEMENT OF CIRCUMSTANCES
WEST VIRGINIA LEGISLATIVE RULE**

110 C.S.R. 15J

**CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS
MANDATED PURSUANT TO EXECUTIVE ORDER 10-09 REFERRING TO
PURCHASES OF MOBILE HOMES, BUILDING MATERIALS AND SUPPLIES,
BOTTLED WATER, CLEANING SUPPLIES AND OTHER SUPPLIES USED FOR
FLOOD RELIEF; AFFORDABLE HOUSING TRUST FEE NOT EXEMPT**

On May 13, 2009, the Governor entered Executive Order No. 10-09 declaring a state of emergency for Boone, Logan, McDowell, Mingo, Raleigh and Wyoming Counties, West Virginia. The Order was entered as a result of a storm system of heavy rains that caused severe flooding, flash flooding, river flooding, mudslides and landslides throughout West Virginia. The Order exempts the purchase of mobile homes, house trailers, modular homes, and the service of installation from Consumer Sales and Service Tax and Use Tax. The Order also provides for the exemption from Consumer Sales and Service and Use tax on the purchase of certain specified building construction supplies, cleaning supplies, bottled water and other supplies for flood relief.

This rule is adopted, in accordance with WV Code §§11-10-5 and 15-5-6, to provide necessary definitions and per se exemptions.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS MANDATED PURSUANT TO EXECUTIVE ORDER 10-09 REFERRING TO PURCHASES OF MOBILE HOMES, BUILDING MATERIALS AND SUPPLIES, BOTTLED WATER, CLEANING SUPPLIES, AND OTHER SUPPLIES USED FOR FLOOD RELIEF; AFFORDABLE HOUSING TRUST FEE NOT EXEMPT (110 CSR 15J)

Type of Rule: x (Emergency) Legislative Interpretive Procedural

Agency: State Tax Department

Address: 1001 Lee Street
 Charleston, WV 25301

Phone Number: (304) 558-5330 Email:

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule, as written, provides guidance relating to the suspension of the consumers sales and service tax by Executive Order 10-09 on purchases of bottled and containerized potable water, cleaning supplies, or other supplies for flood relief purchased in Designated flood disaster counties pursuant to Executive Order 10-09.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$0	\$0	\$0
Personal Services	\$0	\$0	\$0
Current Expenses	\$0	\$0	\$0
Repairs & Alterations	\$0	\$0	\$0
Assets	\$0	\$0	\$0
Other	\$0	\$0	\$0
2. Estimated Total Revenues	\$0	-\$800,000 to - \$1,500,000	\$0

Rule Title: CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS
MANDATED PURSUANT TO EXECUTIVE ORDER 10-09 REFERRING TO
PURCHASES OF MOBILE HOMES, BUILDING MATERIALS AND SUPPLIES
BOTTLED WATER, CLEANING SUPPLIES, AND OTHER SUPPLIES USED FOR
FLOOD RELIEF; AFFORDABLE HOUSING TRUST FEE NOT EXEMPT (110 CSR 15J)

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues:

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. Additionally, the exemption includes certain cleaning supplies and other supplies for flood relief. The exemption is available to residents in certain counties affected by flooding during May, 2009. Also, the exemption is available for certain eleemosynary purchases which are intended to be distributed at no cost.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

None.

Date: _____

Signature of Agency Head or Authorized Representative:



Virgil T. Helton

Cabinet Secretary of the Department of Revenue

**TITLE 110
EMERGENCY RULE
STATE TAX DEPARTMENT**

**SERIES 15J
CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS
MANDATED PURSUANT TO EXECUTIVE ORDER 10-09 REFERRING TO
PURCHASES OF MOBILE HOMES, BUILDING MATERIALS AND SUPPLIES,
BOTTLED WATER, CLEANING SUPPLIES, AND OTHER SUPPLIES USED FOR
FLOOD RELIEF; AFFORDABLE HOUSING TRUST FEE NOT EXEMPT**

§ 110-15J-1. General.

1.1. Scope – This rule provides guidance relating to the suspension of the consumers sales and service tax by Executive Order 10-09 on purchases of bottled and containerized potable water, cleaning supplies, or other supplies for flood relief purchased in Designated flood disaster counties pursuant to Executive Order 10-09.

1.2. Authority – West Virginia Code §§ 11-10-5 and 15-5-6.

1.3. Filing Date –

1.4. Effective Date –

§ 110-15J-2. Interpretive Note.

2.1. This emergency rule hereby incorporates by reference Title 110, Series 15I of the Code of State Rules -- *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*, and shall be read in pari materia with that legislative rule. The definitions, policies, and procedures provided in that rule apply to purchases of manufactured housing and building materials with relation to the exemptions mandated by Executive Order 10-09.

§110-15J-3. Definitions.

3.1 “Cleaning supplies” means the following items:

- Abrasive and Non Abrasive Cleaners
- Air Fresheners
- Bleach
- Disinfectants
- Dishwasher Detergents, Soaps and Additives
- Dish Soap

Floor Polish
Floor Wax
Glass Cleaner
Hand and Bath soap
Hand Sanitizer
Laundry Additives
Laundry Soap
Laundry Stain Remover
Leather Cleaner and Conditioner
Marble Fiberglass and Countertop Cleaners
Metal Cleaners & Polish
Mildicide
Mold, Mildew, Rust & Lime Cleaners
Mopping Solution
Multi-Purpose & All-Purpose Cleaners
Oven Cleaner
Rust & Stain Remover
Soft Scrubbing Cleaner
Shampoo
Stone Cleaner
Toilet Bowl Cleaners
Tub & Tile Cleaners
Upholstery Spot Remover
Wood Polish

3.2 "Other supplies for flood relief" means the following items:

Brooms
Dustpans
Wet & Dry Mops
Mop Buckets
Wet Floor Signs
Rubber, Vinyl and similar Chemical Resistant Gloves
Scouring Pads
Scrub Brushes
Sponges
Toilet Brushes
Dish Mops
Dish Cloths
Paper Towels
Towels
Garbage Bags
Trash Cans
Rolls of Heavy Plastic, Sheet Plastic and Tarpaulins
Duct tape

Garden Hoses and Nozzles
Work Gloves
Disposable Tyvek and similar Overalls & Protective Clothing
Face Masks with breathing filters
Rubber Boots
Spray Canisters and Backpack Sprayers for applying mildicide and disinfectants
Shovels
Rakes
Hoes
Mattocks
Pulaski Tools
Floor Squeegees
Foor Scrapers
Snow Shovels which can be used as a substitute for a floor scraper
Buckets
Sheets of Plywood (for temporary walkways, and staging areas for debris cleanup)
Camping Type Portable Toilets

3.3. "Designated flood disaster counties" means Boone County, Logan County, McDowell County, Mingo County, Raleigh County and Wyoming County, as designated in Executive Order 10-09, and such other counties of this State as may, in the future, be designated flood disaster counties by Executive Order with relation to the flooding addressed in the Governor's Proclamation of May 11, 2009, and Executive Order 10-09.

3.4. "Potable containerized water" means and includes bottled potable water, and potable water sold in any size container, jug, bottle, tank or drum. Potable containerized water does not include soft drinks, beer or any alcoholic beverage or "near beer," or any flavored or carbonated beverage or any beverage other than water.

§110-15J-4. Exempt Purchases.

4.1. Purchases of potable containerized water, cleaning supplies, or other supplies for flood relief, as enumerated in this rule, purchased in a designated flood disaster county are exempt per se from the consumers sales and service tax and use tax for that period of time mandated by Executive Order 10-09 and such further period of time as the Governor may lawfully designate.

4.1.1. Per Se Exemption – A purchaser is not required to provide an exemption certificate, material purchase certificate, or direct pay permit for purchases of potable containerized water, cleaning supplies, or other supplies for flood relief purchased in any designated flood disaster county.

4.1.2. Eleemosynary purchases of potable containerized water, cleaning supplies, or other supplies, which are intended to be distributed to distributees at no cost, for flood relief by a church, volunteer fire department or any organization exempt from the federal income tax under section 501(c) of the Internal Revenue Code, which purchases are made in a county of this State that is **not** a designated flood disaster county, are exempt from the consumers sales and service tax and use tax, if the tangible personal property is purchased for delivery into a designated flood disaster county.

4.1.2.1. Such purchases must be made pursuant to the execution of a special flood exemption certificate by the purchaser.

4.1.2.2 However if the purchaser has previously been issued a West Virginia direct pay permit, the purchaser may use its direct pay permit number to make such purchases.

4.1.2.3 If the purchaser is authorized to make purchases of tangible personal property pursuant to a per se exemption described in section 110-15-9.2 of the Code of State Rules, then such purchases may be made pursuant to that per se exemption authorized under section 110-15-9.2 of the Code of State Rules.

4.1.3. Exclusions – The exemptions authorized pursuant to this rule do not apply to purchases of tools, vehicles, appliances or items of tangible personal property other than those specifically listed in this rule, notwithstanding the fact that the tool, vehicle, appliance or tangible personal property may be of direct or indirect use in flood recovery. For example, no tax exemption shall apply to purchases of any bulldozer, four wheel drive motor vehicle, AM, FM, or shortwave, receiver or transmitter, walkie talkie, or public service radio scanner or any other radio, or any all terrain vehicle, backhoe, power washer, endloader, floor fan, skip loader, excavator, welder, or, chain saw.

§110-15J-5. Affordable Housing Trust Fee.

5.1. Unless exempt or excepted pursuant to the terms of W.Va. Code §11-15-4c and Article 15, Chapter 11 of the West Virginia Code, no purchase made pursuant to this rule or pursuant to Title 110, Series 15I of the Code of State Rules shall be exempt from the Affordable Housing Trust Fee established in W.Va. Code §11-15-4c.

STATE OF WEST VIRGINIA
EXECUTIVE DEPARTMENT
CHARLESTON
EXECUTIVE ORDER NO. 10-09
By the Governor

WHEREAS, beginning May 3, 2009, a storm system of heavy rains caused severe flooding, flash-flooding, river flooding, mudslides and landslides throughout West Virginia; and

WHEREAS, a State of Emergency was declared on May 9, 2009, for Boone County, Logan County, McDowell County, Mingo County, Raleigh County and Wyoming County due to the effects of heavy sustained rains; and

WHEREAS, in accordance with a declaration filed on May 11, 2009, the State of Emergency is in effect for those counties until June 10, 2009; and

WHEREAS, on May 12, 2009, I requested from the President of the United States federal disaster assistance for Mingo County and Wyoming County because of the magnitude and severity of flood damage in those counties; and

WHEREAS, the State, in conjunction with the Federal Emergency Management Agency, is working to provide necessary disaster relief and assistance to the citizens of Mingo County and Wyoming County and other counties affected by floods; and

WHEREAS, West Virginia Code § 15-5-6(g) authorizes the Governor “[t]o suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules or regulations of any state agency, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency;” and

WHEREAS, West Virginia Code § 15-5-6(k) authorizes the Governor “[t]o perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population;” and

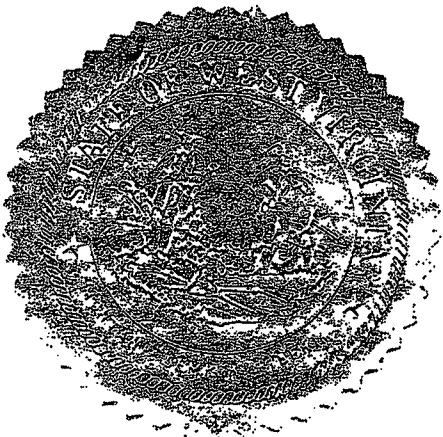
WHEREAS, suspending the consumer sales and service tax and the use tax on purchase and use of certain building construction materials and supplies, mobile homes, house trailers, modular homes, and similar units and other supplies for flood relief would substantially improve efforts to restore and reconstruct flood-affected property in Boone County, Logan County, McDowell County, Mingo County, Raleigh County and Wyoming County.

NOW, THEREFORE, I, JOE MANCHIN III, by virtue of the authority vested in me as the Governor of the State of West Virginia, and in consideration of the foregoing situation, do hereby **ORDER** and **DIRECT** that:

(1) Until June 10, 2009, or, if further extended, through the existing State of Emergency, unless otherwise ordered, by the exercise of powers and duties necessary to promote and secure the safety and protection of the civilian population in accordance with § 15-5-6(k) of the West Virginia Code, 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 the purchase and use of such mobile homes, house trailers, modular homes or similar units in Boone County, Logan County, McDowell County, Mingo County, Raleigh County and Wyoming County by or for those persons rendered homeless by flooding and its consequences in those counties; and further

(2) Until June 10, 2009, or, if further extended, through the existing State of Emergency, unless otherwise ordered, 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 the purchase or use of specified building construction materials and supplies and other supplies for flood relief, including but not limited to bottled water and cleaning supplies purchased in Boone County, Logan County, McDowell County, Mingo County, Raleigh County and Wyoming County and 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 in Boone County, Logan County, McDowell County, Mingo County, Raleigh County and Wyoming County, or for persons who have suffered damage to their property as a result of flooding in Boone County, Logan County, McDowell County, Mingo County, Raleigh County and Wyoming County, all such purchases being subject to the restrictions and requirements prescribed in such emergency rules.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



DONE at the Capitol, in the City of Charleston,
State of West Virginia, this thirteenth day of May,
in the year of our Lord, two thousand nine, and in
the one hundred forty-sixth year of the State.


GOVERNOR

By the Governor


SECRETARY OF STATE

FILED

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

2009 MAY 22 PM 4: 13

SERIES 15I

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**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**

§110-15I-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. -- W. Va. Code §11-10-5.

1.3. Filing Date. -- May 5, 2005.

1.4. Effective Date. -- June 1, 2005

§110-15I-2. Interpretive Note.

2.1. This legislative rule incorporates by reference legislative rule Consumer Sales and Service Tax and Use Tax, W. Va. Code §110-15, and shall be read in pari materia with that rule. The definitions, policies, and procedures provided in that rule are equally applicable to purchases made under this rule. To the extent that this legislative rule differs from W. Va. Code §110-15, 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, W. Va. Code §110-15 governs the application of the Consumer Sales and Service Tax and Use Tax.

§110-15I-3. Definitions.

3.1. "Executive Order" means an Executive Order issued by the Governor of the State of West Virginia under the authority of W. Va. 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 W. Va. Code §15-5-2.

3.2. "FEMA" means the Federal Emergency Management Agency.

3.3. "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.

§110-15I-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 those units and purchases of contracts for installation of those 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 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 in the modular home, 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, he or she may still claim the exemption 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 of hot tubs
 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 of swimming pools
 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).

§10-15I-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 shall 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. The seller shall retain a copy of this set of documents in the sales records 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 shall 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. The seller shall retain a copy of this set of documents in the sales records 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 the 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 any other documentation determined by the Tax Department 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, the purchaser may claim a refund 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 the property owner shall file one set of the documentation specified in subsection 5.2 of this section 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 shall 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 file 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.