

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

Form #3

Do Not Mark In this Box

2009 JUN 25 PM 4:00

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 Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§11-10-5, 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

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.



Virgil T. Helton

Cabinet Secretary of the Department of Revenue

**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: June 23, 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: Mark S. Morton 558-5330

EMERGENCY RULE TITLE: Consumers Sales and Service Tax and Use Tax Exemptions Mandated Pursuant To Execute 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. Authorizing statute(s) citation W. Va. Code §§ 11-10-5 & 15-5-6

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
May 22, 2009

b. What other notice, including advertising, did you give of the hearing:  
None

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
June 24, 2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.  
Attached \_\_\_\_\_ No comments received X

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

June 23, 2009

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

Mark S. Morton, Legal Division, State Tax Department

P.O. Box 1005, Charleston, WV 25324-1005

Telephone: (304) 558-5330 Fax: (304) 558-8728

MMorton@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)

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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.

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b. Date of hearing or comment period:

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- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore:

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- d. Attach findings and determinations and reasons:

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**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.

**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.

**TITLE 110  
AGENCY APPROVED  
STATE TAX DEPARTMENT**

FILED

2009 JUN 25 PM 4:00

**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**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

§ 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.

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:  (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  
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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