

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

Form #2

Do Not Mark In this Box
2010 AUG -9 AM 10:58
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 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: _____

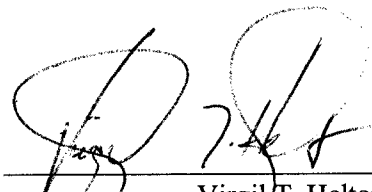
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 15J

TITLE OF RULE BEING PROPOSED: Consumers Sales and Service Tax and Use Tax Exemptions Mandated Pursuant To Executive Orders 4-10 and 7-10 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 September 9, 2010 AT 5:00 pm. 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 of the Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**TITLE 110
PROPOSED LEGISLATIVE RULE
STATE TAX DEPARTMENT**

FILED
2010 AUG -9 AM 10: 58

**SERIES 15J
CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS
MANDATED PURSUANT TO EXECUTIVE ORDERS 4-10 AND 7-10 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**

CASE FILED IN
OFFICE OF THE CLERK
STATE OF WEST VIRGINIA

§ 110-15J-1. General.

1.1. Scope -- This rule provides guidance relating to the suspension of the consumers sales and service tax by Executive Orders 4-10 and 7-10 on purchases of bottled and containerized potable water, cleaning supplies, or other supplies for flood relief purchased in designated flood disaster counties.

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 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 Orders 4-10 and 7-10.

§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
Floor 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 Logan County, McDowell County, Mingo County, Lewis County and Wyoming County and Lewis County, as designated in Executive Orders 4-10 and 7-10.

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 Orders 4-10 and 7-10 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 ORDERS 4-10 AND 7-10 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: Legislative Interpretive Procedural

Agency: State Tax Department

Address: 1001 Lee Street
Charleston, WV 25301

Phone Number: (304) 558-5330

Email: John.E.Montgomery@wv.gov

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 Orders 4-10 and 7-10 on purchases of bottled and containerized potable water, cleaning supplies, or other supplies for flood relief purchased in designated flood disaster counties.

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 ORDERS 4-10 AND 7-10 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 and sustained high winds during June 2010. Also, the exemption is available for certain eleemosynary purchases which are intended to be distributed at no cost.

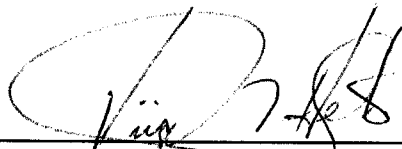
MEMORANDUM

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

SUMMARY

WEST VIRGINIA LEGISLATIVE RULE

110 C.S.R. 15J

**CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS
MANDATED PURSUANT TO EXECUTIVE ORDERS 4-10 AND 07-10 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 ORDERS 4-10 AND 7-10 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 June 25, 2010, the Governor entered Executive Order 4-10 and on July 7, 2010 entered Executive Order 7-10 declaring a state of emergency for Logan, McDowell, Mingo, Wyoming and Lewis Counties, West Virginia. The Orders were 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 Orders exempt the purchase of mobile homes, house trailers, modular homes, and the service of installation from Consumer Sales and Service Tax and Use Tax. The Orders also provide 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.

An emergency rule was filed on July 9, 2010 to immediately authorize the necessary information to exempt from Sales Tax certain purchases that will facilitate the recovery from the severe flooding, flash flooding, river flooding, mudslides and landslides. The filing of this proposed rule will allow continuation of necessary purchases to facilitate the recovery.