

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

Form #7

Do not mark in this box
Filing Date

FILED

2010 JUL -9 PM 3: 17

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§11-10-5 and 15-5-6

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: 15J

TITLE OF RULE BEING AMENDED: Consumers Sales And Service Tax And Use Tax

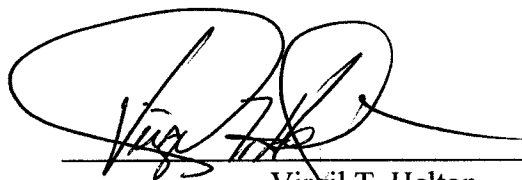
Exemptions Mandated Pursuant To Executive Orders 04-10 and 07-10 Referring To Purchases

Of Mobile Homes, Building Materials And Supplies, Bottled Water, Cleaning Supplies, and

Other Supplies Used For Flood Relief; Affordable Housing Trust Fee Not Exempt

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:



Virgil T. Helton

Cabinet Secretary of the Department of Revenue

Use additional sheets if necessary

**EMERGENCY SUMMARY
WEST VIRGINIA LEGISLATIVE RULE**

110 C.S.R. 15J

**CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS
MANDATED PURSUANT TO EXECUTIVE ORDERS 04-10 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.

§ 110-15J-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 ORDERS 04-10 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**

On June 25, 2010, the Governor entered Executive Order No. 4-10 and on July 7, 2010 entered Executive Order No. 07-10 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.

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

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: July 8, 2010

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: John Montgomery 558-5330

EMERGENCY RULE TITLE: Consumers Sales And Service Tax And Use Tax Exemptions Mandated Pursuant To Executive Orders 04-10 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

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 Orders 04-10 and 07-10.

5. Has the same or similar emergency rule previously been filed and expired:
Yes, for May 2009 flood

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 Orders 04-10 and 07-10 regarding the state of emergency in Logan, McDowell, Mingo, Wyoming and Lewis 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 Orders 04-10 and 07-10 regarding the state of emergency in Logan, McDowell, Mingo, Wyoming and Lewis Counties, West Virginia.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS MANDATED PURSUANT TO EXECUTIVE ORDERS 04-10 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 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 Orders 04-10 and 07-10 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 Orders 04-10 and 07-10.

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.

Effect of Proposal	FISCAL YEAR		Fiscal Year (Upon Full Implementation)
	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	
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	\$150,000 to -\$200,000	\$0

Rule Title: CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS MANDATED PURSUANT TO EXECUTIVE ORDERS 04-10 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 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.

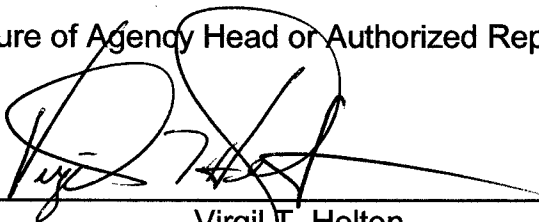
MEMORANDUM

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 J. Helton

Cabinet Secretary of the Department of Revenue

TITLE 110
EMERGENCY RULE
STATE TAX DEPARTMENT

FILED

2010 JUL -9 PM 3: 17

SERIES 15J

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**CONSUMERS SALES AND SERVICE TAX AND USE TAX EXEMPTIONS
MANDATED PURSUANT TO EXECUTIVE ORDERS 04-10 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.

1.1. Scope -- This rule provides guidance relating to the suspension of the consumers sales and service tax by Executive Orders 04-10 and 07-10 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 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 Orders 04-10 and 07-10.

§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, Wyoming County and Lewis County, as designated in Executive Orders 04-10 and 07-10, 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 Proclamations of June 14, 2010 for Logan County, McDowell County, Mingo County, Wyoming County, and June 28, 2010 for Lewis County and Executive Orders 04-10 and 07-10.

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 04-10 and 07-10 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.