



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/16/2019 8:39:48 AM

Office of West Virginia  
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-  
MAKING REVIEW COMMITTEE**

AGENCY: Tax TITLE-SERIES: 110-15C

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: 110-15C Consumer Sales and Service Tax and Use Tax - Drugs, Durable Medical Goods, Mobility Enhancing Equipment and Prosthetic Devices Per Se Exemption; Motor Vehicles Per Se Exemption

**PRIMARY CONTACT**

NAME: Mark S Morton

ADDRESS: PO Box 1005  
Charleston, WV 25324

EMAIL: taxlegal@wv.gov

PHONE NUMBER: 304-558-5330

CITE STATUTORY AUTHORITY: W. Va. Code §§11-10-5 and 11-15-9i

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The Tax Commissioner may make all needful rules and regulations for the taxes to which this article applies as provided in the state Administrative Procedures Act in chapter twenty-nine-a of this code pursuant to §11-10-5. This rule is used by the West Virginia State Tax Department in the administration of W. Va. Code §11-15-9i. House Bill, 2515 enacted during the 2019 Legislative Session, expanded the exemption applicable to mobility enhancing equipment necessitating revision of this rule to clarify the impact for tax administration purposes.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/13/2019

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/13/2019

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/A

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule is used by the West Virginia State Tax Department in the administration of W. Va. Code §11-15-9i, which authorizes the exemption from the consumers sales and service tax set of purchases by a health provider of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices. In addition, this legislative rule supersedes the per se exemption from consumer sales tax of the lease or sale of motor vehicle provided for in 110 C.S.R. 15.9.2. by specifically disqualifying them as a per se exemption. House Bill, 2515 enacted during the Legislative Session, expanded the exemption applicable to mobility enhancing equipment.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

West Virginia Code §§11-15-9i was amended during the 2019 Legislative session by HB 2515 to exempt the sale and installation of mobility enhancing equipment and the sale and installation of repair or replacement parts of mobility enhancing equipment from the sales and use tax to a greater extent than previously permitted and to establish the definition of mobility enhancing equipment in this section.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The exemption would have minimal impact on State revenue.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

The exemption would have minimal economic impact on the State and provide a modest benefit to residents taking advantage of the exemption.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2019 Increase/Decrease (use "-")	2020 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

**Yes**

**Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

110CSR15C

TITLE 110  
LEGISLATIVE RULE  
STATE TAX DEPARTMENT

SERIES 15C  
CONSUMERS SALES AND SERVICE TAX AND USE TAX -  
DRUGS, DURABLE MEDICAL GOODS, MOBILITY ENHANCING EQUIPMENT AND  
PROSTHETIC DEVICES PER SE EXEMPTION; MOTOR VEHICLES PER SE EXEMPTION

**§110-15C-1. General.**

1.1. Scope. -- This legislative rule explains and clarifies the exemption from consumers sales tax provided in W. Va. Code §11-15-9i as added by Com. Sub. for House Bill No. 2380 (2007) and House Bill No. 2515 (2019), exempting the purchase by a health provider of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices from the consumers sales and service tax. In addition, this legislative rule supersedes the rules for per se exemption from consumer sales tax for the lease or sale of motor vehicles.

1.2. Authority. -- W. Va. Code §§11-10-5 and 11-15-9i.

1.3. Filing Date. -- ~~May 6, 2010.~~

1.4. Effective Date. -- ~~May 11, 2010.~~

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

**§110-15C-2. Interpretive Note.**

2.1. This legislative rule incorporates by reference the Department's rule, Consumers Sales and Service Tax and Use Tax, 110CSR15, and shall be read in pari materia with that rule. The definitions, policies, and procedures provided in 110CSR15 are equally applicable to purchases made under this legislative rule. To the extent that this legislative rule differs from 110CSR15, then for the purpose of purchases by a health provider of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices, and for the purpose of leasing or selling motor vehicles this legislative rule governs. However, for all other purposes, 110CSR15 governs the application of the Consumers Sales and Service Tax and Use Tax.

**§110-15C-3. Definitions.**

Unless a specific definition is provided in this section, terms used in this rule are defined as provided in legislative rule 110CSR15, §1 et seq., unless the context in which the term is used clearly requires a different meaning. The following terms shall have the meaning ascribed in this rule.

3.1. "Drug" means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

3.1.1. Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary, and supplements to any of them;

3.1.2. Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease; or

3.1.3. Intended to affect the structure or any function of the body.

3.2. “Durable medical equipment” means equipment including repair and replacement parts for the equipment, but does not include “mobility enhancing equipment”, which:

3.2.1. Can withstand repeated use;

3.2.2. Is primarily and customarily used to serve a medical purpose;

3.2.3. Generally is not useful to a person in the absence of illness or injury; and

3.2.4. Is not worn in or on the body.

3.2.5. Includes the following examples: Home or portable oxygen equipment, home air fluidized beds, blood glucose monitors, commode chairs, nebulizers and infusion pumps.

3.3. “Health care provider” means any person licensed to prescribe drugs, durable medical goods, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment or prevention of injury or disease. For purposes of this rule, the term “health care provider” includes any hospital, medical clinic, nursing home or provider of inpatient hospital services and any provider of outpatient hospital services, physician services, nursing services, ambulance services, surgical services or veterinary services.

3.4. “Mobility-enhancing equipment” means equipment, including repair and replacement parts to the equipment, but does not include “durable medical equipment”, which:

3.4.1. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

3.4.2. Is not generally used by persons with normal mobility; and

3.4.3. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

3.4.4. Includes the following examples: Walkers, wheelchairs, crutches, canes, and orthotic shoes.

#### **§110-15C-4. Applicability of Consumers Sales Tax.**

4.1. General Rule. -- The consumers sales and service tax is imposed upon the sale of tangible personal property or selected services. All sales are presumed to be taxable unless the sale is either excepted or exempt from the tax.

4.2. Health Care Provider Exemption. -- The purchase by a health provider of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices to be dispensed upon prescription and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease is exempt from the consumers sales and service tax.

4.2.1. Per Se Exemption. -- A health care provider is not required to obtain an exemption certificate, material purchase certificate or direct pay permit to claim the health care provider exemption.

4.3. Exclusions From Per Se Exemption. -- On and after July 1, 2008, sales of motor vehicles are

## 110CSR15C

subject to the consumers sales and service tax and use tax in accordance with West Virginia Code §11-15-3c. Therefore the per se exemptions regarding leases, sales and purchases of motor vehicles set forth in the Department's rule, Consumers Sales and Service Tax and Use Tax, 110CSR15, subsections 9.2.10 and 9.2.24 and subdivisions of section 9.2.24 of the Code of State Rules are superseded by statute and are of no further force or effect. The tax imposed pursuant to the provisions of West Virginia Code §11-15-3c on motor vehicle purchases and uses is subject to the regulatory and administrative jurisdiction of the Commissioner of Motor Vehicles.

4.4. Exclusion for Mobility Enhancing Equipment. -- Notwithstanding any provision of article 15, article 15A, or article 15B of chapter 11 of the West Virginia Code, the sale and installation of mobility enhancing equipment, as defined in §11-15B-2 of the West Virginia Code, installed in a new or used motor vehicle for the use of a person with physical disabilities are exempt from the taxes imposed by article 15. Any sale and installation for the repair or replacement parts of mobility enhancing equipment, whether the repair or replacement parts are purchased separately or in conjunction with the mobility enhancing equipment, and whether the parts continue the original function or enhance the functionality of the mobility enhancing equipment, are exempt from the taxes imposed by article 15.