



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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November 17, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Keith Larson
Tax Commissioner
Capitol Complex
Building 1, Room W-401

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Payment of Taxes by Electronic Funds Transfer, 110CSR10F**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

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SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Tax Commissioner

Subject: Payment of Taxes by Electronic Funds Transfer, 110CSR10F

PERTINENT DATES

Filed for public comment: May 29, 2002

Public comment period ended: June 21, 2002

Filed following public comment period: July 24, 2002

Filed LRMRC: July 24, 2002

Filed as emergency:

Fiscal Impact: \$10,000 increase

FILED
2002 AUG 30 A 10:01
OFFICE OF THE SECRETARY OF STATE

ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to payments by electronic funds transfer (EFT). This section requires designated electronic funds transfer taxpayers to remit tax payments by EFT beginning on or after January 1, 2004. The threshold amount is \$50,000 for all taxable years or reporting periods beginning on or after January 1, 2004, but prior to taxable years or reporting periods beginning on or after January 1, 2006. The threshold amount is \$25,000 for all taxable years or reporting periods beginning on or after January 1, 2006. This section requires the Department to annually identify those taxpayers required to make EFT payments on a tax type basis and notify the identified taxpayers of their requirements for filing.

Section 4 relates to tax types covered. It lists those tax types which are subject to the EFT tax payment requirements.

Section 5 relates to identification of EFT taxpayers. It requires the Department to review the most recently completed lookback period payment history of each taxpayer on a tax type basis to determine if the payment history requires the taxpayer to make payments through EFT for the succeeding calendar year. It requires payments to be limited to a single tax type and a single payment period for a tax type.

Section 6 relates to notification of taxpayers required to use EFT. It requires the Department to provide taxpayers written notice that they are required to make EFT payments at least 90 days prior to the date of the first required payment and specifies the information the notice must contain.

It requires the taxpayer to return the required form within 30 days after the notice and the Department to provide instructions within 30 days after receiving the taxpayer's election. This section also provides for a second notice when necessary. It also provides for a showing by the taxpayer that he or she should not be subject to the rule.

Section 7 relates to registration of EFT taxpayers. It sets forth the information required to be provided by taxpayers on the electronic funds transfer application. It requires the taxpayer to provide a written notice of any change of information to the Department within 30 days of the change.

Section 8 relates to payment alternatives. It provides that taxpayers may use the ACH Credit method and the ACH Debit method to make payments. It provides that the Department may revoke the ACH Credit method payment privilege of any taxpayer for certain specified reasons. It also provides that Fedwire may only be used on an emergency basis with prior authorization by the Department.

Section 9 relates to payment procedures - general provisions. It contains information regarding payment due dates; allows a taxpayer to apply to the Commissioner to be relieved of making EFT payments; and allows a taxpayer to apply to voluntarily make EFT payments.

Section 10 relates to procedures for payment - ACH debit payment method. It requires the taxpayer to complete a worksheet containing certain specified information and then compute the verification code on the worksheet. It also requires the taxpayer to report the information to the Department no later than midnight on the business day before the due date of the payment during the call-in period. The Department is required to compute the verification code to determine its accuracy.

Section 11 relates to procedures for payment - ACH Credit payment method. It requires that all ACH Credit transactions use the NACHA CCD+ entry with a TXP Banking Convention addenda record and sets forth the information required by the addenda record. It allows the Tax Commissioner to require a taxpayer who repeatedly fails to file the addenda record to use the ACH Debit method.

Section 12 relates to requirement for filing returns. It states that the requirement to use EFT for tax payments does not change any current filing requirements for tax returns. If an EFT indicator is not available on the return, it requires taxpayers to boldly and legibly print on the face of the return that the payment was made using EFT.

Section 13 relates to penalties, etc. for noncompliance. In addition to setting forth penalties it allows the Department to waive penalties and additions to tax, if the taxpayer's failure was due to reasonable cause and not due to willful neglect.

Section 14 relates to voluntary use of EFT to pay taxes. It allows taxpayers not required to make EFT payments for a tax type to apply for permission from the Department to make EFT payments voluntarily. The application must be made 60 days prior to the due date of the next tax payment. A taxpayer may request permission to terminate voluntary EFT payments by filing written application with the Department at least 60 days prior to the due date of the last EFT payment to be made by the taxpayer.

Section 15 relates to proof of payment. It sets forth the various methods to determine proof of payment based on the type of transaction.

Section 16 relates to correction of errors. It provides remedies where an error in the EFT payment process results in an

underpayment or overpayment of the tax. It requires the taxpayer to promptly contact the Department when an error has been made.

Section 17 relates to emergency payment. It allows the Commissioner to authorize the use of Fedwire for a payment, if the Commissioner determines that a taxpayer is unable to affect a timely EFT payment due to extenuating circumstances beyond the taxpayer's control. Unauthorized Fedwire transfers constitute late payment and are subject to appropriate penalties and late payment additions to tax and interest.

Section 18 relates to grace period during implementation. It allows the Commissioner, during the first year of implementation of the rule, to provide a grace period of no more than two business days for a taxpayer to resolve problems arising in financial institutions, Federal Reserve facilities or the automated clearing house system which result in late payment.

Section 19 relates to changes in taxpayer information. It requires a taxpayer to provide at least 30 days written notice of any change in the information required by the electronic funds transfer application by submitting a revised form.

AUTHORITY

Statutory authority: W.Va. Code, §11-10-5t, which provides, in part, as follows:

...(b) The tax commissioner may prescribe by emergency rules, administrative notices, forms and instructions, and the procedures and criteria to be followed by certain taxpayers in order to pay taxes by electronic funds transfer methods...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.