

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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1992 MAY -1 PM 3:02

OFFICE OF THE SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

RULE TYPE: Interpretive; CITE AUTHORITY W. Va. Code § 11-10-5

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 NEW RULE BEING PROPOSED: 15(I)1

TITLE OF RULE BEING PROPOSED: Baby-Sitting Services

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 June 1, 1992 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Legal Division

Dept. of Tax and Revenue

P.O. Box 1005

Charleston, WV 25325-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

James H. Paige III

James H. Paige III
State Tax Commissioner

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

2-70



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

JAMES H. PAIGE III
SECRETARY

May 1, 1992

To Whom It May Concern:

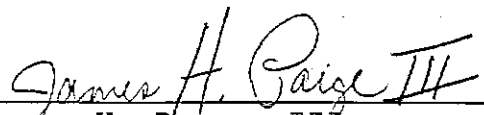
Title of Rule: Baby-Sitting Services

Title Number: 110

Series Number: 15(I)1

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 1st day of May, 1992.


James H. Paige, III
Secretary, Tax and Revenue

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Baby-Sitting Services
 Type of Rule: Legislative ☒ Interpretive ☐ Procedural
 Agency: State Tax Division Address State Capitol
Charleston, WV

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

The expense to the State should not vary from that envisioned by the Legislature when it enacted the exemption from Consumers Sales and Service Tax.

3. Objectives of these rules:

The interpretive rule explains and clarifies the exemption from Consumers Sales and Service Tax for baby-sitting services provided by individuals who baby-sit for profit. See W. Va. Code § 11-15-9(pp).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There is insufficient information available to determine any fiscal impact.

B. Economic Impact on Political Subdivisions: Specific Industries; Specific groups of citizens.

There is insufficient information available to determine any fiscal impact.

C. Economic Impact on Citizens/Public at Large.

There is insufficient information available to determine any fiscal impact.

Date: May 1, 1992

Signature of Agency Head or Authorized Representative

James H. Paige III
James H. Paige, III
State Tax Commissioner

Enclosure

PROPOSED
WEST VIRGINIA INTERPRETIVE RULE
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 15(I)1
1992

FILED
1992 MAY -1 PM 3:02
OFFICE OF WEST VIRGINIA
COMPTROLLER OF TAXES

BABY-SITTING SERVICES EXEMPTION

\$110-15(I)1-1. General.

1.1 **Type of Rule.** -- This rule is an interpretive rule as defined in W.Va. Code §29A-1-2.

1.2 **Scope.** -- This interpretive rule explains and clarifies the exemption from consumers sales tax provided in W.Va. Code §11-15-9(pp), as added by Com. Sub. for Senate Bill No. 348 (1992), exempting sales of baby-sitting services by individuals who baby-sit for profit provided the individual's gross receipts from providing baby-sitting services do not exceed \$5,000.00 in a taxable year.

1.3 **Authority.** -- This interpretive rule is promulgated under authority of W.Va. Code §11-10-5.

1.4 **Filing Date.** -- This interpretive rule was filed in the State Register for public comment on May 1, 1992.

1.5 **Effective Date.** ---

1.6 **Citation.** -- This proposed interpretive rule may be cited as Proposed 110 C.S.R. 15(I)1, §____ (1992).

\$110-15(I)1-2. Interpretive Note.

This interpretive rule shall be read in pari materia with the Consumers Sales and Service Tax and Use Tax legislative regulations (110 C.S.R. 15, § 1 et seq.) previously promulgated by the Tax Commissioner pursuant to authority granted by the Legislature in W.Va. Code §64-7-6. The definitions, policies and procedures provided in 110 C.S.R. 15, §1 et seq. are equally applicable to this interpretive rule. Should there be any inconsistency between the promulgated legislative rules and this interpretive rule, the legislative rules shall control, except to the extent the legislative rules do not reflect an amendment to the consumers sales and use tax laws which is addressed in this or another interpretive rule promulgated by the Tax Commissioner as provided in article 3, chapter 29A of the West Virginia Code.

§110-15(I)1-3. Definitions. -- Unless a specific definition is provided in this section, terms used in this rule are defined as provided in legislative rule 110 C.S.R. 15, §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 herein, and shall apply in the singular as well as in the plural.

3.1 "Baby-sitting services" means taking care of the child or children of another for a fee. This term does not include services provided by licensed day-care centers, which services are exempt under W.Va. Code §11-15-9(p). Nor does this term include other services such as music lessons, dance lessons, tutoring or any other activity the primary purpose of which is something other than the child's well-being and protection.

3.2 "Baby-sitter" means the individual providing or performing the baby-sitting service.

3.3 "Child" or "children" means an individual under the age of fifteen, or an individual under the age of eighteen who is physically or mentally incapable of self-care.

§110-15(I)1-4. 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 Baby-sitting Exemption. -- The sale of baby-sitting services by an individual who performs such services for profit are exempt from consumers sales tax when the individual providing the service reasonably estimates that his or her gross receipts from providing baby-sitting services will not exceed \$5,000.00 during the individual's taxable year for federal income tax purposes.

4.2.1 If an individual reasonably estimates that his or her gross receipts from providing baby-sitting services will exceed \$5,000.00 for the taxable year, then consumers sales tax must be collected on all charges for baby-sitting services.

4.2.2 If an individual reasonably estimates that his or her gross receipts from providing baby-sitting services during the taxable year will not exceed \$5,000.00 but, due to a material and unforeseen change in circumstances, actual gross receipts exceed \$5,000.00, then consumers sales tax must be collected on gross receipts earned in excess of \$5,000.00, or on gross receipts earned after the individual should have known that his or her gross

receipts from providing baby-sitting services would exceed \$5,000.00, whichever event occurs first.

4.2.3 An individual providing baby-sitting services for profit is engaging in "business" in this State as that term is defined in the consumers sales tax law, W.Va. Code §11-15-2, and in the business registration tax law, W.Va. Code § 11-12-2. Such person must obtain a business registration certificate from the Tax Commissioner, as provided in W.Va. Code §11-12-3, if such person's gross receipts from all business activity conducted in this State exceed \$4,000.00 for the taxable year. Application is made by filing Form WV 8.01 "Application For Business Registration" with the Tax Commissioner.

NOTE: An individual rendering baby-sitting services for profit is not required to obtain a business registration certificate unless such individual's gross receipts from all business activity will exceed \$4,000.00 for the taxable year. Gross receipts is calculated by excluding wages and other employee compensation earned by the individual as an employee.

4.2.4 This exemption applies only to sales of baby-sitting services. It does not apply to sales of tangible personal property or other services by the baby-sitter.

4.2.5 Method of Claiming the Baby-Sitting Exemption. -- A baby-sitter is not required to obtain an exemption certificate or any other proof of exemption from the person for whom the service is provided.

4.2.6 Baby-Sitter Required to Keep Accurate Records. -- A baby-sitter who earns more than \$4,000.00 during his or her taxable year from business activity (including baby-sitting for profit) must maintain adequate books and records to support his or her claim of exemption under W.Va. Code §11-15-9(pp) and these regulations.

4.3 Effective Date of Exemption. -- Exemption 11-15-9(pp) takes effect June 5, 1992, and applies to charges for baby-sitting services rendered on or after that date.