

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

Form #2

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FILED

2009 MAY 22 PM 3: 28

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department 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: _____

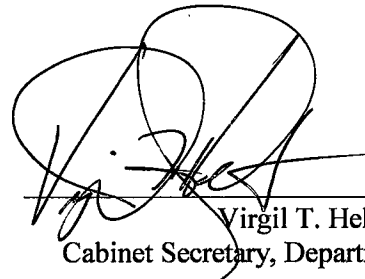
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 27

TITLE OF RULE BEING PROPOSED: Service of Notice

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 22, 2009 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, Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SUMMARY OF TITLE 110, SERIES 27 INTERPRETIVE RULE

The proposed rule sets forth the interpretation, practice and procedure established by the West Virginia State Tax Department concerning service of notice of particular assessments, notices, statements of account or other Tax Department documents governed under Article 10, Chapter 11 of the West Virginia Code.

110 C.S.R. 27
TAX PROCEDURE AND ADMINISTRATION—
SERVICE OF NOTICE
STATEMENT OF CIRCUMSTANCES

The West Virginia State Legislature authorized in West Virginia Code §11-10-5e the designation of those assessments, notices, statements of account or other Tax Department documents which shall be sent by personal service, or United States Postal Service regular mail, or certified or registered mail, or by such other means as the Tax Commissioner may determine.

In addition, the Legislature authorized in West Virginia Code §11-10-5, the general power to make “all needful rules and regulations” to administer taxes. This includes the power to designate what sales and purchases of tangible personal property or services are and are not designated per se exempt (*i.e.*, requiring no exemption certificate, material purchase certificate or direct pay permit to claim an exemption from the consumers sales and service tax and use tax).

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Service of Notice (110 CSR 27)

Type of Rule: 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 clarification of the practice and procedure established by the West Virginia State Tax Department concerning service of notice of particular assessments, notices, statements of account, or other State Tax Department documents administered under Chapter 11, Article 10 of the West Virginia Code.

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	-\$50,000	-\$50,000
Personal Services	\$0	\$0	\$0
Current Expenses	\$0	-\$50,000	-\$50,000
Repairs & Alterations	\$0	\$0	\$0
Assets	\$0	\$0	\$0
Other	\$0	\$0	\$0
2. Estimated Total Revenues	\$0	\$0	\$0

Rule Title: Service of Notice (110 CSR 27)

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues:

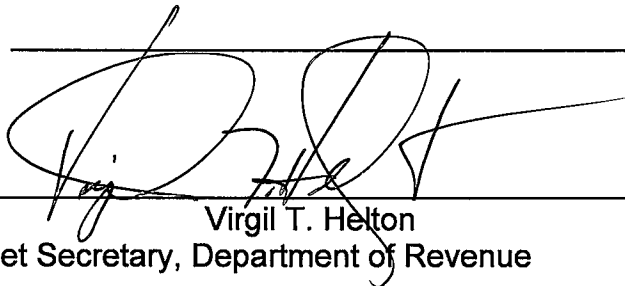
The approval of this proposed rule and the authorization permitting the State Tax Commissioner to designate the mail delivery methodology for certain State Tax Department documents may result in lower mailing costs of roughly \$50,000 per year.

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.

The rule, as written, provides clarification of the practice and procedure established by the West Virginia State Tax Department concerning service of notice of particular assessments, notices, statements of account, or other State Tax Department documents administered under Chapter 11, Article 10 of the West Virginia Code.

Date: _____



Virgil T. Helton
Cabinet Secretary, Department of Revenue

**PROPOSED
TITLE 110
INTERPRETIVE RULE
STATE TAX DEPARTMENT
SERIES 27
SERVICE OF NOTICE**

FILED

2009 MAY 22 PM 3: 28

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§110-27-1. General.

1.1. Scope. This rule sets forth the interpretation, practice and procedure established by the West Virginia State Tax Department concerning service of notice of particular assessments, notices, statements of account or other Tax Department documents administered under Chapter 11, Article 10 of the West Virginia Code.

1.2. Authority. West Virginia Code §11-10-5.

1.3. Effective Date.

1.4. Filing Date.

§110-27-2. Service of Notice

2.1. Subject to Service Rules. The following Tax Department Documents are subject to the service of notice requirements outlined in this rule.

2.1.1. Notice of Assessments. All notices of assessments shall be subject to the notice requirements of this rule.

2.1.2. Certain Business Registration Certificate Documents. All denials, revocations, and refusals to renew a Business Registration Certificate shall be subject to the notice requirements of this rule.

2.1.3. Certain Refund Documents. All denials of refunds, denials of interest, denials of claims for refund, and rejections of refund shall be subject to the notice requirements of this rule.

2.1.4. Amended Return Not Processed. All notices of Amended Returns that are not processed shall be subject to the notice requirements of this rule.

2.1.5. Other Required Documents. All documents required by the United States, or any agency, authority, commission or instrumentality of the United States, to be sent by certified mail shall be subject to the notice requirements of this rule to the extent this rule is in compliance with such requirements.

2.2. Method of Service. All documents outlined in Section 2.1 of these regulations

shall be served upon the taxpayer by personal or substituted service or by certified mail, unless such mail is refused or not claimed, upon which it may be served by regular mail. Each of these methods of service may be used at the discretion of the Tax Department and have no preference over the other method of service.

2.2.1. Service by personal or substituted service shall be valid if made by any method authorized by Rule 4 of the West Virginia Rules of Civil Procedure.

2.2.2. Service by certified mail shall be valid if accepted by the taxpayer, or if addressed to and mailed to the taxpayers usual place of business or usual place of abode or last known address on record with the Tax Department and accepted by any agent, officer, partner, employee, spouse, parent, stepparent, or child of the taxpayer over the age of eighteen.

2.2.2.1. Any document addressed and mailed in the above manner and accepted by any person shall be presumed to be accepted by such person unless proven otherwise by the taxpayer.

2.2.2.2. Any document addressed in the above manner, and which is refused or not claimed may then be served by regular mail if such notice is subsequently mailed by first class mail, postage prepaid, to the same address; and date of posting in the United States mail shall be the date of service.