



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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

AGENCY: Tax TITLE-SERIES: 110-22
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 110-22 Property Transfer Tax

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: §11-10-5 and 11-22-5

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:

Section 3.1.2 of the Rule incorporates the new rate of the fee counties may charge for recordation of deeds or other defined documents, as authorized by the statutory enactment.
Sections 4.6, 5.2, and 7.1 of the Rule updates the rule to indicate that the State Tax Commissioner is no longer the Chief Inspector, in accordance with W. Va. Code section 6-9-11a, enacted in 1999.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/19/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/20/2017

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:

The amendments to the rule will incorporate changes to the Code, authorizing counties to increase the county excise tax on transferring real property from \$1.10 per \$500.00 of value to \$1.65 per \$500.00 of value. The amendments also update the rule by changing references to the Division of Inspection and Supervision of Public Offices and the State Tax Department to the Office of the Chief Inspector.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This amended rule incorporates changes to W.VA. CODE § 11-22-2 made by the Legislature in S.B. 433, which completed legislative action on April 7, 2017.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule would have no effect on revenue.

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

This rule would have no effect on revenue.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	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
2. Estimated Total Revenues	0	0	0

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

This rule would have no effect on revenue.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**TITLE 110
PROPERTY TRANSFER TAX
LEGISLATIVE RULES
DEPARTMENT OF TAX AND REVENUE**

**SERIES 22
PROPERTY TRANSFER TAX**

§110-22-1. General.

1.1. Scope. -- These regulations establish general operating procedures for the Property Transfer Tax.

1.2. Authority. -- W. Va. Code §§11-10-5 and 11-22-5.

1.3. Filing Date. -- ~~April 15, 1992.~~

1.4. Effective Date. -- ~~April 15, 1992.~~

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.

§110-22-2. Definitions.

2.1. "Person" includes firms, associations and corporations.

2.2. "Commissioner" means the State Tax Commissioner.

2.3 "Office of the Chief Inspector" means the State Auditor's Chief Inspection Division.

~~2.3.2.4.~~ "Transaction" means the delivering, accepting or presenting for recording of a document.

~~2.4.~~ 2.5. "Value" means in the case of any document not a gift, the amount of the full consideration paid or to be paid, including any liens to be assumed; in the case of a gift or any other document without consideration, the actual monetary value of the property conveyed or transferred.

~~2.5.~~ 2.6. "Document" means any deed or any other written instrument which transfers real property, or any interest in real property, within this State from one person to another.

~~2.5.1.~~ "Document" means ~~any deed or any other written instrument which transfers real property, or any interest in real property, within this State from one person to another.~~

~~2.5.2.~~ 2.6.1. "Document" does not mean or include the following, which are, therefore, not subject to the property transfer tax, to wit:

~~2.5.2.1.~~ 2.6.1.1 A Will.

~~2.5.2.2.~~ 2.6.1.2. A deed or other written instrument which transfers real property, or any interest therein, having a value of one hundred dollars (\$100) or less. Thus, a deed transferring real property

values at one hundred dollars and one cent (\$100.01) is taxable, while a deed transferring real property valued at one hundred dollars (\$100) or less is not taxable.

~~2.5.2.3.~~ 2.6.1.3. A testamentary trust. -- This is a transfer of property to a trustee for the benefit of a third party and which becomes effective upon death of the person making the transfer.

~~2.5.2.4.~~ 2.6.1.4. Intervivos trust. -- This is a transfer of property to a trustee for the benefit of a third party which is effective during the life of the person making the transfer.

~~2.5.2.5.~~ 2.6.1.5. A deed of partition. -- A division of land between co-owners.

~~2.5.2.6.~~ 2.6.1.6. A deed made pursuant to mergers of corporations.

~~2.5.2.7.~~ 2.6.1.7. A deed made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of subsidiary's stock. Such a transaction would be taxable if any consideration involved would exceed one hundred dollars (\$100).

~~2.5.2.8.~~ 2.6.1.8. A lease.

~~2.5.2.9.~~ 2.6.1.9. Any transfer between husband and wife.

~~2.5.2.10.~~ 2.6.1.10. Any transfer between parent and child and his or her spouse, without consideration, or between child and parent. A parent can give his child and his or her spouse real property and the transfer is not taxable, but if he sells it to the child and his or her spouse, the transfer is taxable if the selling price exceeds one hundred dollars (\$100).

~~2.5.2.11.~~ 2.6.1.11. A transfer between any person and a "straw" party for any purpose when the transfer is without consideration.

~~2.5.2.12.~~ 2.6.1.12. Gifts to, or transfers from or between voluntary charitable or educational associations or trustees thereof and like nonprofit corporations having the same, or similar, purposes. Transfers with consideration to such associations by a third party are subject to the tax.

~~2.5.2.13.~~ 2.6.1.13. A quit claim or corrective deed without consideration. Either of this type deed with a consideration of over one hundred dollars (\$100) is subject to the tax.

~~2.5.2.14.~~ 2.6.1.14. A transfer to or from the United States, the State of West Virginia, or to or from any of their instrumentalities, agencies or political subdivision by gift, dedication deed or condemnation proceeding.

~~2.5.2.15.~~ 2.6.1.15. Deeds of Trust or mortgage given as security for a debt.

2.6. A figurative exemption exists in the case of a deed conveying real estate situated in more than one county, in that stamps representing the total value or consideration may be attached to only one of the deeds and the other documents are, therefore, not subject to the tax. A declaration stating such a situation must be attached to all documents concerned.

2.7. The law imposes the primary tax liability upon the grantor. In the event the grantee accepts a document without the tax having been paid or the stamps affixed, such tax shall be paid by the grantee.

Likewise, the grantee shall pay the tax on any transfer of real property from a trustee or a county clerk transferring real property sold for taxes.

2.8. A transfer of real estate when a life estate is retained is subject to the property transfer tax on the present day market value of said property less the computed value of the estate of the life tenant as set forth in the Statutory formula of life tenancy. (West Virginia Code article 2, chapter forty-three.)

Suggested Declaration:

I hereby declare: the true and actual value of the property transferred by the document to which this declaration is appended, is to the best of my knowledge and belief \$_____; said true and actual value having been determined by subtracting the computed value of the estate of the life tenant from the present day market value of said property.

§110-22-3. Taxation Rate.

3.1. A state excise tax is levied and imposed on and after midnight of June 30, 1959, upon the privilege of transferring title to real estate by every person who delivers, accepts, or presents for recording, any document referred to in Section 2 of these regulations, or in whose behalf any document is delivered, accepted, or presented for recording.

3.1.1. The rate of tax is one dollar and ten cents (\$1.10) for each five hundred dollars (\$500) value or fraction thereof as represented by such document as stated in the declaration of value appended thereto, which is a state tax. In addition, by an Act of the 1967 Regular Session of the West Virginia Legislature, on and after January 1, 1968, and additional county excise tax for the privilege of transferring title to real estate is imposed at the rate of fifty-five cents (.55) for each five hundred dollars (\$500) or fraction thereof as represented by such document, for a total tax of one dollar and sixty-five cents (\$1.65), which shall be payable by the grantor unless the grantee accepts the same without the tax having been paid, in which case the tax shall be paid by grantee at the time of delivery or presenting for recording of such document.

3.1.2. On and after July 1, 1989, the county excise tax of fifty-five cents (55) for each five hundred dollars (\$500) of value, or fraction thereof, may be increased to an amount equal to the State excise tax of one dollar and ten cents (\$1.10) for each five hundred dollars (\$500) of value, or fraction thereof: Provided, that on and after July 1, 2017, the county may increase the excise tax to an amount not to exceed one dollar and sixty-five cents for each five hundred dollars' value, or fraction thereof: Provided, however, That such county excise tax may only be either fifty-five cents (55) or one dollar and ten cents (\$1.10) or one dollar and sixty-five cents (\$1.65) for each five hundred dollars (\$500) of value, or fraction thereof. No such increase in the county excise tax may occur unless approved by a majority vote of the members of the county commission: Provided, That no vote may occur unless the county commission published a notice of its intention to increase such tax, and the proposed effective date of such increase, at least sixty (60) days prior to the meeting where the matter will be considered, the notice was published as a Class I legal advertisement in accordance with W. Va. Code §59-3-1 et seq., and the publication area is the county in which the county commission is located.

§110-22-4. Stamps, Affixation And Cancellation.

4.1. Evidence of Payment. -- The payment of the tax imposed upon the privilege of transferring title to real estate shall be evidenced by the affixing of the documentary stamp, or stamps, to every document by the person executing, delivering, or presenting for recording such document.

4.2. Affixing Stamps. -- Each stamp shall be affixed in such a manner that its removal will require the continued application of steam or water.

4.3. Cancellation of Stamps.

4.3.1. The person using or affixing such stamps shall write or stamp, or cause to be written or stamped thereon, the initials of his name and the date upon which stamps were affixed or used so that stamps may not again be used.

4.3.2. In the event the person presenting the document for recording has failed to cancel the stamps affixed thereto, the county clerk must then cancel the stamps by writing the date on the face of each stamp.

4.3.3. Where recorded documents are not microfilmed or otherwise photographically reproduced for recordation, the clerk shall write or stamp on the recorded copy of each such document the amount of tax stamps which were affixed thereto and the date of cancellation of such stamps.

4.4. Availability. -- Stamps shall be offered for sale by the clerks of the various county courts. The stamps must be purchased from the county clerk and the tax collected in the county where the document is first admitted to record. Such stamps to be furnished to the county clerk by the State Tax Commissioner.

4.5. Denominations and Description.

4.5.1. Documentary adhesive stamps, as prepared and furnished the county clerks by the Commissioner, are 1-1/8 x 1-1/4 inches with roulette perforations, slightly larger than a standard U.S. postage stamp. The top center bears a facsimile of the obverse side of the West Virginia State Seal. Immediately under the seal is imprinted "Property Transfer Tax"; and immediately under the caption are the words "state and county"; and immediately under this caption is the denomination of the stamp printed in the same color ink as the stamp; immediately under the denomination is the serial number for each individual stamp with the letter prefix indicating the denomination. Just above and to the right of the "y" in the word "Property", is the symbol for copyright and "W. Va."

4.5.2. Stamps are issued by the Commissioner to the county clerks in sheets of 50 (fifty) stamps. The "A" series are gray in color and one dollar and sixty-five cents (\$1.65) denomination; the "B" series are red in color and four dollars and ninety-five cent (\$4.95) denomination; the "C" series are blue in color and thirteen dollars and twenty cent (\$13.20) denomination; the "D" series are green in color and twenty-one dollar and forty-five cent (\$21.45) denomination; the "E" series are purple in color and fifty-one dollars and fifteen cents (\$51.15) denomination; the "F" series are brown in color and ninety-four dollars and five cents (\$94.05) denomination. An additional denomination, series "H" will be issued in quantities of less than sheets fifty (50) stamps to be used on property transfers with a value of ninety-nine thousand five hundred dollars and one cent (\$99,500.1) to one hundred thousand dollars (\$100,000); the "H" series are olive green in color and three hundred thirty dollars (\$330) denomination.

4.6. Issuance and Receipt. -- Upon request by the county clerk, stamps are issued by the Commissioner, accompanied with two, of three, typewritten copies of the following receipt. One copy is for the records of the county clerk and one copy for signature of acknowledgement of the clerk and returned to the Commissioner. The Commissioner sends the third copy to the ~~Division of Inspection and Supervision of Public Offices and the State Tax Department~~ Office of the Chief Inspector for future audit.

§110-22-5. Reports.

5.1. Proceeds from Sale of Stamps. -- The clerk shall, at the end of the month, pay all of the proceeds collected from the sale of stamps for the State excise tax to the State Auditor in the manner provided by law. The proceeds shall be credited to the state general revenue fund. The clerk shall, at the end of the month pay all of the proceeds from the sale of stamps for the county excise tax into the county general fund for the use of the county.

5.2. Inventory Report. -- The county clerk shall prepare and submit to the ~~Division of Inspection and Supervision of Public Offices, State Tax Department,~~ Office of the Chief Inspector a semi-annual inventory of Documentary Stamps on a form available from the tax commissioner.

§11-22-6. Penalties.

6.1. Recording Without Stamps. -- Any clerk who shall record any document without the proper documentary stamp or stamps affixed thereto, as is indicated in such document or accompanying declaration, shall, upon conviction in a court of competent jurisdiction, be fined fifty dollars. Whenever an instrument, claimed to be not a document subject to the tax, is presented for recording, the clerk shall require the instrument to contain a declaration stating why such instrument is not a taxable document within the meaning of the property transfer tax statute. No taxable document may be recorded without the proper amount of stamps affixed, but if recorded without said stamps, it cannot be used as the basis for any legal proceedings or as evidence in any legal proceeding until the proper amount of stamps are affixed.

6.2. Unlawful Acts. -- It is unlawful for any person to knowingly or willfully violate any of the provisions of the property transfer law and upon conviction of any violations, a person shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or be imprisoned for not more than five (5) years or both.

§110-22-7. Refunds And Credits.

7.1. Credit to Clerk for Lost, Destroyed, or Mutilated Stamps. -- The Commissioner will credit the account of the county clerk for stamps issued; for mutilated, but identifiable, stamps, or stamps lost or destroyed by fire or flood, when the clerk makes and forwards to the Commissioner, an affidavit setting forth information in detail, to the satisfaction of the Commissioner, regarding the loss or destruction by fire, flood, or otherwise. In the case of mutilated stamps, the affidavit shall set forth the circumstances of the mutilation in detail - the number and denominations involved, and the fact that the mutilated stamps are being returned to the Tax Commissioner. Such affidavits and mutilated stamps shall be returned to the Tax Commissioner, who will maintain a file of such mutilated stamps and affidavits in order that proper credit and consideration be given the clerks in subsequent audits by the ~~Division of Inspection and Supervision of Public Offices of the State Tax Department~~ Office of the Chief Inspector.

7.2. Refunds by County Clerk or State Auditor.

7.2.1. Any person who may have been required to pay the Property Transfer Tax because of any mistake of law or fact, or because the tax was improperly collected, may apply for a refund thereof either to the county clerk receiving such payment, or to the State Auditor for the state excise tax portion of the Property Transfer Tax and to the county clerk who had received such payment for the county excise tax portion of the Property Transfer Tax.

7.2.2. If the erroneous payment is discovered within the calendar year that the tax was paid, the petition for refund shall be filed with the county clerk where the tax was paid.

7.2.3. If the erroneous payment was made in a calendar year preceding its discovery, then the petition for refund should be filed with the State Auditor for the state excise tax portion and to the county clerk where the payment was made for the county excise tax portion.

7.2.4. The following instruments should be filed with all applications for refund:

7.2.4.1. A "Petition for Refund," making a full detailed disclosure of the factual situation, claims for refund, the statutory authority, prayer for refund, and be properly attested to by a Notary Public.

7.2.4.2. A "Declaration of Consideration or Value" signed by the grantor and attested to by a Notary Public, incorporating by reference either the cancelled documentary stamps, or photostatic copies thereof.

7.2.4.3. Relevant information or written instruments may be attached to the petition, such as cancelled checks, deeds of trust, charters or by-laws of voluntary charitable or educational associations and like nonprofit corporations having the same, or similar purposes, etc.

7.2.4.4. If the application for refund is being filed with the State Auditor, Capitol Building, Charleston, West Virginia, there must also be filed an affidavit signed by the county clerk and attested to by Notary Public, warranting the county clerk collected the amount of money prayed for in the petition which has been paid to the State Auditor and vouching for the authenticity of the documentary stamps attached to the "Declaration of Consideration or Value."