

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND**

ADMINISTRATIVE LAW DIVISION

Form #2

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2009 SEP 24 PM 1:30

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91 CSR 9

RULE TYPE: Legislative CITE AUTHORITY: WV Code §17A-2-9, 17A-3-4, 11-15-3c

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 91 CSR 9

TITLE OF RULE BEING PROPOSED: Collection on the Tax on the Sale of a Vehicle

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 October 26, 2009 AT 12:00 Noon ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Division of Motor Vehicles
Office of the Commissioner
Attention: Steven O. Dale
Docket Number 2010 91CSR9
Building 3, Room 319
Capitol Complex
Charleston, WV 25317

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


Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

Joe Manchin III
Governor

September 10, 2009

The Honorable Natalie Tennant
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Madam Secretary:

The Commissioner of Motor Vehicles is hereby authorized to promulgate proposed and emergency amendments to 91 CSR 9 Collection of the Tax on the Sale of a Vehicle. The promulgation of this rule is necessary because the rule, although approved by the Legislature and signed by the Governor (House Bill 2218) has been determined as not properly enrolled and not in effect.

Comments and concerns about the contents of this rule should be directed to the Commissioner of Motor Vehicles. Thank you for your assistance in this matter.

Sincerely

A handwritten signature in black ink that reads "Paul A. Mattox, Jr." with a stylized flourish at the end.

Paul A. Mattox, Jr., P.E.
Secretary of Transportation\
Commissioner of Highways

PAM:sd
Enclosure



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three • Room 319
Charleston, West Virginia 25317-0010 • 304/558-3900
TDD 1-800-742-6991 • 1-800-642-9066

Joe Manchin III
Governor

91 CSR 9

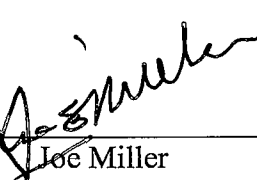
Collection of Tax on the Sale of a Vehicle

Circumstances Requiring Filing of This Rule

The promulgation this rule is necessary because the previous filing of these changes were authorized by House Bill 2218 (2009 Regular Session) which was determined to be not properly enrolled.

This new rule provides the general public and the vehicle retailing industry guidance on how the Division of Motor Vehicles enforces the provisions of W. Va. Code §17A-3-4 in light of the passage of House Bill 2775 (2007 Regular Session). This legislation changed the nature of the tax collected from a Privilege Tax on the transfer of ownership of a vehicle to a Sales Tax on the sale of a vehicle by amending Chapter 11, Article 15 Consumer Sales and Service Tax, creating a new section W.Va. Code §11-15-3c entitled "Imposition of a Sales Tax on Motor Vehicle Sales..."

The promulgation of this rule is necessary to provide guidance on determination of taxable vehicle value and transactions characterized as gifts not involving the sale of a vehicle.



Joe Miller
Commissioner



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three • Room 319

Charleston, West Virginia 25317-0010 • 304/558-3900

TDD 1-800-742-6991 • 1-800-642-9066

Joe Manchin III
Governor

91 CSR 9

Collection of Tax on the Sale of a Vehicle

Summary of Rule

This rule establishes the criteria for the collection and determination of the tax related to the titling of vehicles by the Division of Motor Vehicles. The rule establishes how the Division determines the assessment of vehicle value for tax purposes for various transfers of ownership transaction types involving the sale of a vehicle. The rule also provides for minimum taxable value and establishes the criteria for transactions involving no exchange of consideration.

This rule implements the provisions of House Bill 2775 (2007 Regular Session) which changed the nature of the tax on vehicles collected by the Division of Motor Vehicles from a Privilege Tax to a Sales Tax under the provision of West Virginia Code Chapter 11.



Joe Miller
Commissioner

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: September 22, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Motor Vehicles
Building 3 Capitol Complex
Charleston, WV 25317
Phone 304 558-2723

LEGISLATIVE RULE TITLE: Collection of Tax on the Sale of a Vehicle

1. Authorizing statute(s) citation W.Va. Code §17A-2-9, §11-15-3c

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

September 24, 2009

b. What other notice, including advertising, did you give of the hearing?

Previous filing of this rule previously authorized under House Bill 2218 (2009 Regular Session)
included Notice to WV Dealers Association and State Tax Department.

c. Date of Public Hearing(s) *or* Public Comment Period ended:

Public Comment Period expires October 26, 2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received x

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Commissioner Joe Miller 304 558-2723 / joe.e.miller@wv.gov

Assistant General Counsel Adam Holley 304 558-3611/ adam.j.holley@wv.gov

Assistant to Commr Steven O. Dale steven.o.dale@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Collection of Tax on the Sale of a Vehicle

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Division of Motor Vehicles

Address: Building 3, Room 319, Capital Complex
Charleston, WV 25317

Phone Number: 304 558-2723 Email: steven.o.dale@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

This rule in and of itself does not increase or decrease the revenue collected by the State or change any costs.

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			
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title:

Collection of Tax on the Sale of a Vehicle

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

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

MEMORANDUM

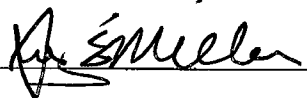
Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

This rule implements the provisions of House Bill 2775 (2007 Regular Session) which changed the nature of the tax collected on the sale of vehicles from a privilege tax to a sales tax.

This statutory change to a sales tax requires the dealer to collect the tax on each sale and changes how transactions are treated as gifts verses exchange of compensation.

Date: 9-22-2009

Signature of Agency Head or Authorized Representative



FILED

TITLE 91
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES
PROPOSED
SERIES 9
COLLECTION OF TAX ON THE SALE OF A VEHICLE

2009 SEP 24 PM 1:30

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§91-9-1. General.

1.1. Scope – This legislative rule establishes the criteria for the collection and determination of the sales tax required to be collected prior to the issuance of a certificate of title to a vehicle, and provisions implementing the requirements of House Bill 2775 (2007 Regular Session).

1.2. Authority – W. Va. Code §17A-2-9, §17A-3-4 and §11-15-3c.

1.3. Filing Date-

1.4. Effective Date-

§91-9-2. Application and Enforcement.

2.1. Application – This rule applies to the calculation of tax for the titling of vehicles defined in W. Va. Code §17A et seq.

2.2. Enforcement – Enforcement of this rule is vested with the Commissioner of Motor Vehicles or his or her lawful designees, and where applicable the Tax Commissioner or his or her lawful designees.

§91-9-3 Determination of Tax Due Prior to Issuance of Title to a Vehicle.

3.1. An application for a certificate of title for a vehicle shall be accompanied by the amount of tax determined by the Division in accordance with the provisions of W.Va. Code §11-15-3c, §17A-3-4 and this rule unless otherwise exempt by the provisions of W.Va. Code §11-15-3c, §17A-3-4 or this rule.

3.2. The Division shall collect the sales tax prior to issuing a title irrespective of whether the applicant has paid a similar sales or privilege tax on the motor vehicle in any other jurisdiction except as follows:

3.2.a. A new resident establishing domicile in West Virginia is exempt from paying the tax on vehicles titled previously in the former state in his or her name in accordance with W. Va. Code §17A-3-4(b)(14) and W. Va. Code §11-15-3c(f)(8).

3.2.a.1. For the purposes of this rule, the term new resident may mean a person or business entity and may include applicants who may have previously resided or operated as a business entity in West Virginia; and

3.2.a.2. For the purposes of compliance with this rule by a new resident applicant, the responsibility of the County Assessor is limited to determining that the County Assessor has recorded the applicant's vehicle information in accordance with W. Va. Code §17A-3-4(b)(14) and W. Va. Code §11-15-3c(f)(8).

3.3. The sales tax on a new vehicle shall be determined at the rate of five percent (5%) of the actual purchase price or consideration as certified by the dealer and as provided by the selling dealer to the purchaser. The dealer shall collect the sales tax at the time of sale.

3.4. The sales tax on a used vehicle purchased from a dealer shall be determined at the rate of five percent of the actual purchase price or consideration as certified by the dealer and as provided by the selling dealer to the purchaser. The dealer shall collect the tax at the time of sale.

3.5. The sales tax on applications for title on a vehicle purchased from a dealer either in state or out of state is based on the purchase price minus any applicable trade-in subject to the following:

3.5.a. The trade in vehicle must be titled in West Virginia; and

3.5.b. Rebates received after the sale is consummated do not reduce the taxable purchase price.

3.6. The sales tax on applications for title on a vehicle purchased from a person or business not licensed as a dealer by this state or another jurisdiction is assessed as follows:

3.6.a. Vehicles two model years old or less are assessed on the present fair market value as shown in the most recent edition of a nationally distributed and recognized vehicle value guide as determined by the Division regardless of a bill of sale;

3.6.b. Vehicles over two model years old are assessed on the sale price as certified by the seller and buyer on the back of the title or on a notarized bill of sale, if the purchase price is fifty percent (50%) or more of the fair market value as shown in the most recent edition of a nationally distributed and recognized vehicle value guide as determined by the Division; and

3.6.c. Vehicles over two model years old with a sale price of less than fifty percent (50%) than the fair market value as shown in the most recent edition of a nationally distributed and recognized vehicle value guide as determined by the Division are assessed on the fair market value unless accompanied by a notarized bill of sale which may be subject to verification by the Division.

3.7. The minimum taxable value of a vehicle is five hundred dollars (\$500) regardless of the indicated actual sale price on either the application for title, the back of the title or a notarized bill of sale, except as follows:

3.7.a. The minimum taxable value of vehicles that are branded reconstructed or salvage, classified as small utility trailers (Class T), motorboats less than 16 foot, welfare to work or similar type program vehicles, assembled vehicles and trailers, travel campers (Class R), and older vehicles no longer included in editions of nationally distributed and recognized vehicle value guides as determined by the division, is one hundred dollars (\$100);

3.7.b. Transactions between individuals (casual sales) characterized as “even trades” are not taxed provided that the vehicle has been previously titled in West Virginia as a taxable transaction regardless of the fair market value of either vehicle. Transactions between individuals (casual sales) involving a trade with a net difference after trade-in are assessed on the difference. The only deduction applicable to reduce the taxable value is high mileage based on a nationally distributed and recognized vehicle value guide deduction for high mileage. The Division will accept a fair market value determination based on another nationally distributed and recognized vehicle value guide if the applicant provides a copy of the other value guide; and

3.7.c. The Division will base the sales tax assessment on vehicles branded as salvage or similar brand or previously branded by West Virginia based on fifty percent (50%) of the fair market value as determined by the most recent nationally distributed and recognized vehicle value guide used by the Division.

3.8. The sales tax does not apply to transfer of ownership without consideration such as gifts, donations, or an inheritance. The application for title for any transfer of ownership without consideration shall include a notarized affidavit on a form prescribed by the Commissioner. Both the transferor and transferee shall sign the affidavit under penalty of false swearing.

3.9. The sales tax does not apply to vehicles to be registered as Class H vehicles or Class M vehicles used in interstate commerce. The tax does not apply to Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to Class C semitrailers, full trailers, pole trailers and converter gear. However, if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender the

exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle.

3.10. Any application for transfer of ownership which provides incorrect, false or fraudulent information about the consideration exchanged, subjects the applicant to the revocation, suspension and/or cancellation of any and all driver's licenses, registration plates, cards, and permits issued to the applicant in accordance with West Virginia Code §17A-2-16. Any revocation, suspension and/or cancellation remains in effect until the appropriate sales tax is remitted and all reinstatement fees are paid.