

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #7

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Filing Date

FILED

2009 SEP -9 PM 3: 27

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91

CITE AUTHORITY: WV Code §17A-2-9, 17A-2A-12

EMERGENCY 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 of Tax on the Sale of a Vehicle

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

This emergency rule incorporates a new rule made necessary by legislation passed during the 2007 regular session, going into effect as an emergency rule in June, 2008 approved by the 2009 Legislature as a final rule, incorporated into House Bill 2218 (2009 Regular Session) and signed by the Governor. Due to a procedural error, the version of House Bill 2218 signed by the Governor was not the version passed by the Legislature and for technical reasons, the final changes were not authorized. This rule is being filed as an emergency rule to prevent substantial harm to the public interest. The circumstances necessitating an emergency filing are beyond the control of the Division of Motor Vehicles. DMV programs and processes were modified as a result of the passage of House Bill 2775 (2007) and the previous authorization of this rule under emergency status.

Use additional sheets if necessary


Authorized Signature



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 LEGISLATURE
Legislative Rule-Making Review Committee

Senator Joseph Minard, Cochair
Delegate Bonnie Brown, Cochair
Debra A. Graham, Chief Counsel
Felisha N. Sutherland, Administrative Assistant

Rita A. Pauley, Associate Counsel
Brian Skinner, Associate Counsel
Charles Roskovensky, Associate Counsel
Jay Lazell, Associate Counsel

September 2, 2009

Natalie Tennant, Secretary of State
State Capitol Complex Suite 157-K
Charleston, WV 25305

Dear Madam Secretary:

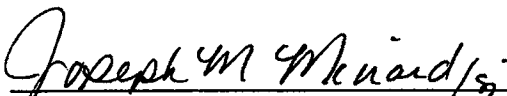
This is to advise you that House Bill 2218 which authorized the rules for the Department of Transportation was not properly enrolled. Due to a procedural error, the version of the bill signed by the Governor was not the version of the bill passed by the Legislature. Accordingly, the bill did not become law and the rules are not authorized.

Some of the rules may need to be put into effect now, therefore, it would be appropriate for those rules to be filed as emergency rules. The circumstances necessitating an emergency rule filing are beyond the control of the Division of Motor Vehicles and the Division of Highways.

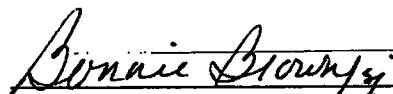
In our opinion, it would be appropriate under these circumstances to exercise your broad authority under West Virginia Code §29A-3-15 to authorize any emergency rule that may be filed by Motor Vehicles or Highways. We recognize that you are an independent elected constitutional officer. This letter is not meant, nor should it be interpreted, as an attempt to interfere with the operation of your office. Rather, it is an explanation of the unfortunate circumstances which may necessitate action on your part.

If you have any questions regarding this request you may contact either of us or our staff attorney, Rita Pauley. You may reach Mrs. Pauley at 304-357-7815.

Yours truly,



Senator Joseph M. Minard, Co-chair
Legislative Rule-Making Review Committee



Delegate Bonnie Brown, Co-chair
Legislative Rule-Making Review Committee



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

EMERGENCY RULE
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.

Circumstances Requiring Emergency Filing of This Rule

This emergency rule incorporates rule changes made necessary by legislation passed during the 2007 regular session (House Bill 2775), implemented as an emergency rule in June of 2008, and ultimately approved as a final rule by the 2009 Legislature, incorporated into House Bill 2218 (2009 Regular Session) and signed by the Governor. Due to a procedural error, the version of House Bill 2218 signed by the Governor was not the version passed by the Legislature and for technical reasons, the changes were not authorized. This rule is being filed as an emergency rule to prevent substantial harm to the public interest. The circumstances necessitating an emergency filing are beyond the control of the Division of Motor Vehicles. DMV programs and processes have been modified as a result of the passage of House Bill 2218 and the previous authorization of this rule.


Joe Miller
Commissioner

EMERGENCY RULE QUESTIONNAIRE

DATE: September 9, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Division of Motor Vehicles
Building 3, Room 319, Capital Complex
Charleston, WV 25317

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

1. Date of filing September 9, 2009
2. Statutory authority for promulgating emergency rule:
WV Code §17A-2-9 and 11-15-3a
3. Date of filing of proposed legislative rule: within two weeks
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule? New Language
5. Has the same or similar emergency rule previously been filed and expired?
Yes, because the accompanying proposed rule was approved by the Legislature and incorporated into House Bill 2218 which was subsequently declared not in effect
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

This emergency rule incorporates rule changes made necessary by legislation passed during the 2008 regular session, approved by the 2009 Legislature, incorporated into House Bill 2218 (2009 Regular Session) and signed by the Governor. Due to a procedural error, the version of House Bill 2218 signed by the Governor was not the version passed by the Legislature and for technical reasons, the changes were not authorized. This rule is being filed as an emergency rule to prevent substantial harm to the public interest. The circumstances necessitating an emergency filing are beyond the control of the Division of Motor Vehicles. DMV programs and processes have been modified as a result of the passage of House Bill 2218 and the previous authorization of this rule.

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: 9-09-2009

Signature of Agency Head or Authorized Representative



FILED

2009 SEP -9 PM 3:27

TITLE 91
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES
EMERGENCY RULE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 9

COLLECTION OF TAX ON THE SALE OF A VEHICLE

§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- September 9, 2009

1.4. Effective Date- September 9, 2009

§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.