

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

Form #7

Do Not Mark In This Box
Filing Date

2008 JUL 12 AM 9:50

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

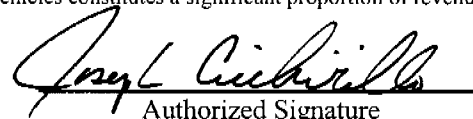
TITLE OF RULE BEING PROPOSED: Collection of tax on the Sale
of a Vehicle

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:

House Bill 2775 (2007) Regular Session changed the nature of the tax assessed on vehicles by the Division of Motor Vehicles prior to issuance of a certificate of title from a Privilege Tax to a Sales Tax subject to the limitations prescribed in W. Va. Code §11-15-3c. The 2007 legislation set an effective date for this change to go into effect on July 1, 2008. The legislation also references the authority to file this rule as an emergency contingent on filing proposed rules.

This rule must go into effect on a emergency bases to provide dealers and vehicle owners with immediate guidance as to how the division will implement the transition from a privilege tax to a sales tax. Immediate promulgation of this rule is necessary to prevent substantial harm to the public interest because the collection of tax on the sale of vehicles constitutes a significant proportion of revenue generated for the construction and repairs of highways.


Authorized Signature

Use additional sheets if necessary



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

The emergency promulgation this rule is necessary to provide the general public and the vehicle retailing industry guidance on how the Division of Motor Vehicles will handle the provisions of W. Va. Code §11-15-3c and §17A-3-4 in light of the passage of House Bill 2775 (2007 Regular Session). Immediate promulgation of this rule is necessary to prevent substantial harm to the public interest because the collection of tax on the sale of vehicles constitutes a significant proportion of revenue generated for the construction and repairs of highways. The Division processes over 700,000 titles per year.

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.

EMERGENCY RULE QUESTIONNAIRE

DATE: June 11, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

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

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

1. Date of filing June 12, 2008

2. Statutory authority for promulgating emergency rule:
WV Code §11-15-3c (i) and §17A-2-9

3. Date of filing of proposed legislative rule: June 12, 2008

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? This emergency rule adopts new language

5. Has the same or similar emergency rule previously been filed and expired?
No

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.
Not Applicable

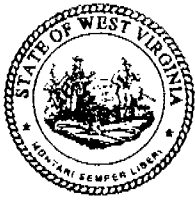
7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

W.Va. Code §11-15-3c (a) establishes the effective date of the transition from a ~~privilege tax to a sales tax~~ as July 1, 2008.

~~W.Va. Code §11-15-3c (a)(i) provides that an emergency rule may be filed if the proposed rule is filed by June 15, 2008~~

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

~~This rule must be filed on an emergency bases to provide dealers and vehicle owners with immediate guidance as to how the division will implement the transition from a privilege tax to a sales tax. Immediate promulgation of this rule is necessary to prevent substantial harm to the public interest because the collection of tax on the sale of vehicles constitutes a significant proportion of revenue generated for the construction and repairs of highways and because of the Division processes over 700,000 titles each year~~



OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland

Secretary of State

June 2008

Dear Business Owner:

As you may be aware, House Bill 4421, repealing the payment of corporate license taxes by corporations, was passed during the 2008 Legislative Session. This bill also assigned responsibility for all mailings related to annual report filings to the West Virginia Secretary of State's Office. Bill 4421 becomes effective July 1, 2008, and the only fee required of your business at this time is the annual report fee of twenty-five dollars (\$25.00).

Your annual report and fee must be submitted by July 1, 2008. Companies that do not file annual reports by the due date are at risk of being assessed monetary penalties and could be administratively dissolved or revoked. Please complete the enclosed Corporation/Limited Partnership/Voluntary Association Annual Report form and return it with the \$25.00 fee to the following address:

West Virginia Secretary of State's Office
State Capitol Building
1900 Kanawha Blvd. E., Suite 157-K
Charleston, WV 25305

Please make your check payable to the West Virginia Secretary of State. If you feel you have received this letter in error, or should you have any questions concerning the letter, please contact our office toll free at 1-866-767-8683 and ask to speak with a member of our Business Division.

Sincerely,

A handwritten signature in cursive script that reads "Penney Barker".

Penney Barker, Manager
Business and Licensing Division

Enclosure

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

CORPORATION or LIMITED PARTNERSHIP ANNUAL REPORT

DUE DATE JULY 1, 2008



Companies that do not file their annual reports by the due date are at risk of being assessed monetary penalties and/or being administratively dissolved or revoked. Complete each section. (Please Print or Type the Information)

- 1. Name of Organization: _____
- 2. Incorporation or Qualification Date in West Virginia: _____
- 3. Tax ID # _____ County Code: _____ Business Class Code: _____

To view a list of County Codes they are available at: <http://www.wvsos.com/business/helpfiles/fieldcodes.htm>
To view a list of Business Class Codes they are available at: http://www.state.wv.us/taxrev/uploads/2006_NAICS.pdf

- 4. Principal Office Address: _____
(if different, please make appropriate changes) _____

- 5. Name and mailing address of the person to whom the notice of process may be sent: _____
(if different, please make appropriate changes) _____

*If new agent furnish new agent's signature: _____

- 6. List names and addresses of the entity's parent company, if any. Also, list each entity's subsidiaries that are licensed to do business in WV. Please check whether each name is a parent or a subsidiary by checking the appropriate box for each line (P for parent, S for subsidiary). Attach list if more space is needed.

P	S	Organization Name	Mailing Address
<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

- 7. List name and address of all officers or general partners. Attach list if more space is needed, if different than what is listed, please make appropriate changes.

Title	Name	Mailing Address
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- 8. Report must be signed by an officer of a corporation or general partner of a limited partnership.

Signature: _____ Date Signed: _____

Title/Capacity of Person Signing: _____ Telephone #: _____

2008 JUN 12 AM 9:50
WEST VIRGINIA LEGISLATIVE SERVICE CENTER

EMERGENCY

TITLE 91
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES

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- June 12, 2008

1.4. Effective Date- July 1, 2008

§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 lawful designees, and where applicable the Tax Commissioner or 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)(12) and W. Va. Code §11-15-3c(f)(8) subject to the following:

1. The applicant was not a resident of West Virginia at the time the vehicle was acquired, or is a business locating to West Virginia,

2. The new West Virginia title is in the same name or names as the title from the previous jurisdiction of residence. No change of ownership may be reflected on the application for title under the provisions of this subdivision.

3. The new resident must title their vehicle in West Virginia within thirty (30) days of establishing residency.

4. The new resident must report their vehicle to the County Assessor and obtain an affidavit signed by the assessor indicating that the vehicle is on record with the County Assessor.

3.2.b. 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.

3.2.c. For the purposes of compliance with this rule by a new resident applicant, the scope of the County Assessor affidavit is limited to certifying that the County Assessor has recorded the applicant's vehicle information.

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.

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.

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.

3.7.c. 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 provide that the applicant provides a copy of the other value guide.

3.7.d. 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 must include a notarized affidavit on a form prescribed by the Commissioner. The affidavit must be signed under penalty of false swearing by both the transferor and transferee.

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 vehicles to be registered as Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the 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 shall remain in effect until the appropriate sales tax is remitted and all reinstatement fees are paid.



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

June 10, 2008

The Honorable Betty Ireland
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Madam Secretary:

The Commissioner of Motor Vehicles is hereby authorized to promulgate emergency and proposed rules pertaining to the Collection of Tax on the Sale of Vehicles.

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 cursive script that reads "Paul A. Mattox, Jr.".

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

PAM:sd
Enclosure