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OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #4

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-10-5d and 11-10-22

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

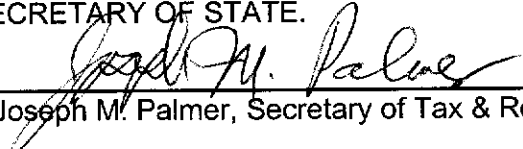
TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 10A

TITLE OF RULE BEING PROPOSED: Informational Return Required For

Analysis of Recommendations of Governor's Commission on Fair Taxation

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE
RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND
COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED
MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Joseph M. Palmer, Secretary of Tax & Revenue

**MODIFIED
WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF TAX AND REVENUE
STATE TAX DEPARTMENT**

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**TITLE 110
SERIES 10A**

**INFORMATIONAL RETURN REQUIRED FOR ANALYSIS OF RECOMMENDATIONS
OF GOVERNOR'S COMMISSION ON FAIR TAXATION.**

§ 110-10a-1. General.

1.1 **Scope.** - This rule supplements W. Va. Code § 11-10-22, which requires certain businesses to file Informational returns which are to be used solely to analyze the fiscal and economic effects if the Recommendations of the Commission on Fair Taxation are implemented. W. Va. Code § 11-10-22(d) requires the Tax Commissioner to submit finally approved legislative rules no later than August 31, 2000.

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

1.3 **Filing Date.** -

1.4 **Effective Date.** -

§ 110-10A-2. Background and Overview of the Informational Return.

2.1 On July 25, 1997, Governor Underwood created the Commission on Fair Taxation to review and make recommendations for improving State and local taxes in West Virginia. In December, 1999, the Commission submitted its Recommendations to the Governor. One of the general recommendations was enactment of a broad based tax system with fewer taxes and tax preferences in order to promote tax neutrality and consistency and economic development.

2.2 One of the specific recommendations was enactment of the Single Business Tax (SBT), which is a broad based tax imposed on the privilege of doing business in West Virginia, to replace the Business Franchise Tax, Corporate Charter Tax, Corporation Net Income Tax and Business Registration Tax. The SBT would apply to all business enterprises regardless of their type of organization. Businesses would be taxed on the basis of their economic activity rather than on the basis of their organization. The SBT would be imposed on inputs of both labor and capital, as measured by the amount of compensation, rents, interest, depreciation payments and profit made in a given year. The SBT would permit deductions for the cost of capital expenditures before application of the rate of tax, and would exempt small businesses from filing a return.

2.3 On March 11, 2000, Committee Substitute for Senate Bill 161 was enacted. The legislation was effective as of June 9, 2000. That bill enacted W. Va. Code § 11-10-22, "Information returns and due date thereof," which requires this rule.

§ 110-10A-3. Definitions.

As used in this rule and unless the context clearly requires a different meaning, the following terms have the meaning ascribed in this section.

3.1 **"Business"** means any person, organization or entity which has the business registration certificate required by W. Va. Code § 11-12-1 et seq., including a non-profit enterprise or organization.

3.2 **"Commission"** means the Commission on Fair Taxation.

3.3 **"Informational return"** means the return required by W. Va. Code § 11-10-22, including the instructions for properly completing and returning the return.

3.3.1 The informational return and the information on that return shall be treated the same as "return" and "return information" as defined in W. Va. Code § 11-10-5d "Confidentiality and disclosure of returns and return information," subject to the provisions of W. Va. Code § 11-1B-22.

3.4 **"Materially inaccurate or incomplete informational return"** means an informational return containing no information or information which is incorrect, incomplete or otherwise deficient to such a degree that the information cannot be used in predicting revenues and revenue impact on different classifications and forms of business by those organizations or agencies that are charged with the economic and revenue analysis of information return filings for the purpose of assessing the potential impact of the Commission's recommendations.

3.5 **"Recommendations"** or **"Commission's recommendations"** means the "Recommendations to the Governor – December 1999" of The Governor's Commission on Fair Taxation.

§ 110-10-4. Informational return requirements.

4.1 In order to obtain the information needed to make an adequate static analysis of the fiscal and economic revenue impact on the State of implementing the Commission's recommendations, the Tax Department shall mail the informational return in the Appendix to each member of a representative sample of businesses which have current business registration certificates. The representative sample shall be a stratified random sample based on types of organization, classification of business conducted and amount of tax payments. The size of the sample shall depend on the response rate of the ten thousand or more businesses for which an informational return is required.

To maximize the response rate, W. Va. Code § 11-10-22 provides for both a financial incentive for accurate, complete and timely filing of the return, and a substantial financial penalty for failure to file or for the filing of a materially inaccurate, materially incomplete or untimely return.

4.2 Informational returns are required only after businesses in the sample have been notified, not later than July 1, 2000, that they have been selected to be members of the sample, and after the Legislature has approved the returns by authorizing this rule.

4.3 For businesses required to file the informational return, calendar year businesses shall file the informational return for calendar years 1999 and 2000, and fiscal year businesses shall file the return for their fiscal years ending in 1999 and 2000.

4.4 The due date of the informational return for tax years ending in 1999 and 2000 shall be the same as the date the business's federal income tax return or federal information return is due in calendar year 2001, including filing extensions, which is also the due date for its West Virginia business tax return Form 112, Form 112S, Form 120, Form 141 or Form 140, as the case may be. However, if the business is not required to file any of these tax returns, the informational return shall be filed on or before the fifteenth day of the fifth month following the close of its year for tax accounting or financial accounting purposes ending during the 2000 calendar year. However, in no case will the due date of an informational tax return occur prior to ninety days following the date of Legislative authorization of this rule.

4.4.1 W. Va. Code § 11-10-22(b) provides that the Tax Commissioner may grant extensions of time to file the informational return. For any business that, in accordance with W. Va. Code § 11-10-22(b), is required to file a return by the fifth month following the close of its tax year for tax accounting or financial accounting purposes ending in 1999, the time to file the informational return is hereby extended until the fifth month following the close of its calendar or fiscal tax year ending in the year 2000.

4.5 **Fiscal Analysis.** - The following information necessary for an adequate state fiscal analysis of the impact of the Commission's recommendations cannot be obtained from information in the State business tax computer system for tax years ending in 1999 and 2000:

4.5.1 Federal tax return information on gross business receipts, wages and compensation paid, health and life insurance labor compensation payments, federal or state mandated labor compensation payments (e.g., FICA tax), other not elsewhere classified labor compensation payments, interest paid, rents and royalties paid and federal taxable income before net operating loss deduction. The taxable income information is available on a non-system file for some but not all business organizations;

4.5.2 Business records on annual West Virginia capital investment and depreciation attributable to that capital investment;

4.5.3 Local government property tax records and liability for taxes on real property, personal property, business inventories, automobiles and machinery and equipment; and

4.5.4 State business tax return information on annual corporation net income tax liability, business franchise tax liability, corporate license tax liability, insurance premium tax liability, multi-state apportionment components and a list of subsidiaries for consolidated filers. Information for some taxpayers is partially available in existing sample files or other non-system files; however, this information is neither complete nor timely.

4.6 The following information could be useful, but is not absolutely necessary for an adequate state fiscal analysis, and is not requested on the informational tax return:

4.6.1 Useful information not requested on the return includes: total employment in West Virginia; a "break-out" or separate accounting of rents paid on real property, rents paid on personal property and royalties paid; a break-out between West Virginia capital investment in buildings and West Virginia capital investment in machinery and equipment; and the total value of existing investment tax credits; and

4.6.2 Reliable information not readily obtainable through the informational return process includes business purchases of various professional services, contracting services and utility services. Businesses may not have standardized accounting systems to easily break out these purchases from other purchasing activities on an annual basis.

4.7 Economic Analysis. - Although it does not appear that the State Tax Department will itself perform an economic analysis of the impact of the Commission's recommendations, the following information not available from the State business tax computer system and listed in Subsection 4.4 of this rule will be required by the university which prepares economic or financial forecasts, projections, analyses, and statistical studies and related activities pursuant to W. Va. Code § 11-10-22(g)(2):

4.7.1. Gross business receipts, wages and compensation paid, health and life insurance labor compensation payments, federal or state mandated labor compensation payments (e.g., FICA tax), other not elsewhere classified labor compensation payments, interest paid, rents and royalties paid, federal taxable income before net operating loss deduction, annual West Virginia capital investment, depreciation attributable to such capital investment, real property tax, personal property tax, business inventory tax, automobile property tax, machinery and equipment property tax, annual corporation net income tax liability, business franchise tax liability,

corporate license tax liability, insurance premium tax liability, and multi-state apportionment components

4.7.2 Any tax return, tax return information, informational return or informational return information obtained by employees, officials, independent contractors or agents of the university, however designated, shall remain confidential and shall not be disclosed to anyone other than Tax Department employees and officials to whom disclosure is authorized, except as aggregate data in economic or financial forecasts, projections, analyses and statistical studies pursuant to W. Va. Code §§ 11-10-5d(g) and 22.

4.8 **Financial Incentive** – Each business in the selected sample which files a complete and accurate information return that is timely received is entitled to a financial incentive payment, payable by check, in the amount of \$150 for a paper return filed by mail or other acceptable conventional means, or \$200 for a return filed by electronic means, if the capability for filing and receipt of electronically filed returns is established by the Tax Department in future. The incentive payment check shall be issued to the Taxpayer in the tax year in which the return is filed, and shall typically be issued within 90 days of the receipt of an accurate, complete and timely filed informational return. Not more than one check shall be issued for any Taxpayer's filing of an information return, notwithstanding the filing of multiple, redundant or amended returns.

4.8.1 The financial incentive payment may be taken as a credit asserted against certain tax liabilities of a business that has filed a complete, accurate and timely information return only with prior written authorization of the Tax Department pursuant to the filing of a written request by the Taxpayer, which shall be filed at least 60 days prior to the due date of the tax return on which the credit is asserted, determined without extensions of time to file.

4.8.2 Any authorized credit shall be claimed in the tax year in which the return is filed, first against the Taxpayer's liability for Business Franchise Tax, and if there is any unused credit remaining after application against the Business Franchise Tax, then against the Taxpayer's Personal Income Tax or Corporate Net Income Tax liability.

4.8.3 Incentive payments are only available to business organizations that are included within the Tax Department's selected random sample.

4.8.4 The informational return requirement and financial incentives are only available after Legislative authorization of this rule. If this rule is not authorized by the Legislature, no financial incentive shall be paid or payable.

4.9 **Financial Penalty.** -- If a business required to file an informational return (1) fails to do so in a timely manner, (2) files an informational return that is materially incorrect or incomplete, or (3) both, the business is subject to a \$1000 civil penalty.

4.9.1 However, the Tax Commissioner may waive this penalty if the business in a timely manner corrects the failure, inaccuracy or incompleteness (hereafter "infraction") or shows that the infraction is due to reasonable cause and not due to willful neglect.

4.9.3 The taxpayer shall pay this penalty on notice and demand by the Tax Commissioner and in the same manner as tax.

4.9.4 A business is required to pay the penalty only after (1) being notified of its infraction with reasonable specificity in writing; (2) not correcting its infraction within thirty calendar days after notification of its failure; (3) receiving a notice of assessment for the penalty as provided by W. Va. Code § 11-10-8; and (4) exhausting or forgoing its rights to an administrative hearing and to a judicial appeal under W. Va. Code § 11-10-1, et seq.