



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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September 17, 2001

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FILED
2001 SEP 19 A
SECRETARY OF STATE
WEST VIRGINIA

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: John Montgomery
Tax Commissioner
P.O. Box 1005
Charleston, WV 25324

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Payment of Taxes by Credit Card or Debit Card, 110CSR10B**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SECRETARY OF STATE
WEST VIRGINIA

FILED

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ANALYSIS OF PROPOSED LEGISLATIVE RULES A 10:39

Agency: Tax Commissioner

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Subject: Payment of Taxes by Credit Card or Debit Card, 110CSR10B

PERTINENT DATES

Filed for public comment: May 25, 2001
Public comment period ended: June 30, 2001
Filed following public comment period: July 23, 2001
Filed LRMRC: July 23, 2001
Filed as emergency:

Fiscal Impact: The fiscal note indicates an initial increase of \$11,000 to purchase equipment with a \$1,000 increase in the following years.

ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to payments by credit card and debit card. It provides that taxes administered by the Tax Department may be paid by credit card or debit card. The Commissioner is required to provide a listing of approved cards and specific tax liabilities which may be paid by the cards. A payment of tax by credit or debit card is considered paid on the date the charge was made. If a card is used to pay a tax lien, the lien will not be released until the Department actually receives payment, and the payment is credited to the taxpayer's account.

A Taxpayer's liability continues until the Commissioner actually receives payment, and the time for error resolution has lapsed. If the Department is not paid, the Department has a lien for the guaranteed amount of a transaction upon all the assets of a card issuer or corporation that has made an expressed guarantee.

Section 4 relates to resolution of errors related to paying taxes by credit card or debit card. It sets forth those federal laws which do or do not apply to errors. It provides that any error in the payment of taxes by credit or debit card that does not relate to the underlying tax liability is a legal issue only between the taxpayer and the issuer of the card. The resolution of any issue involving the underlying tax liability is an issue between the taxpayer and the Tax Department.

Section 5 relates to the return of funds pursuant to error resolution procedures. It allows the Commissioner to return funds to a taxpayer by arranging a credit to the taxpayer's account with the issuer of the card. If the refund is due the taxpayer as a result of participating in administrative procedures, the Commissioner is to pay the refund to the taxpayer.

Section 6 relates to fees or charges. It prohibits the Department from imposing any fee or charge upon taxpayers paying by credit or debit card.

Section 7 relates to authority to enter into agreements. It authorizes the Commissioner to enter into agreements related to receiving payments by credit or debit card. The Commissioner is to use the Treasury's contracts and system for receiving payments by credit or debit card.

Section 8 relates to use and disclosure of information relating to payment of taxes by credit or debit card. Information obtained from payment of taxes with a credit or debit card is confidential, except for in direct furtherance of servicing cardholder accounts and other specified purposes. Credit card and debit card account numbers in possession of the Commissioner or Treasurer are confidential.

AUTHORITY

Statutory authority: W.Va. Code, §11-10-5n, which provides, in part, as follows:

...(e) *Payment by other means.* --

(1) *Authority to prescribe rule.* -- The tax commissioner shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, as the tax commissioner considers necessary to receive payment by commercially acceptable means...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Tax Commissioner

Subject: Senior Citizen Tax Credit for Property Taxes Paid,
110CSR21B

PERTINENT DATES

Filed for public comment: May 25, 2001
Public comment period ended: June 30, 2001
Filed following public comment period: July 23, 2001
Filed LRMRC: July 23, 2001
Filed as emergency:

Fiscal Impact: \$11,250,000 decrease in revenue

ABSTRACT

The proposed rule is new. The following is a section-by-section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to senior citizen tax credit. It provides that a low income taxpayer who qualifies for a homestead exemption is allowed a credit against West Virginia personal income tax in an amount equal to the ad valorem property taxes paid by that person on up to the first \$10,000 of taxable assessed value of the homestead. The credit commences for taxes paid for property tax years beginning on or after January 1, 2002.

Section 4 relates to qualification for the homestead exemption. It states that the assessor of the county in which the property owner resides determines whether or not the property owner

qualifies for the homestead exemption. It sets forth information that the assessor is to enter into the System regarding the qualifying property of a qualified property owner.

Section 5 relates to determination of eligibility. It states that the Commissioner is to use the information in the System to annually determine the taxpayers that qualify for the homestead exemption as well as the amount of the tax credit.

Section 6 relates to notice of eligibility, forms and instructions. It requires the Commissioner to annually issue a taxpayer specific notice to the respective taxpayers.

Section 7 relates to calculation of credit. It defines "taxes paid" to be the amount remaining either after the tax amount due is reduced by the application of a discount or before the tax amount due is increased by the addition of any interest or penalties.

Appendix sets forth examples of calculating the credit.

AUTHORITY

Statutory authority: W.Va. Code, §11-21-21, which provides, in part, as follows:

...(c) *Legislative rule* - The tax commissioner shall propose a legislative rule for promulgation as provided in article three, chapter twenty-nine-a of this code to explain and implement this section...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.