

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-10-5 and 11-10-5n(e)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: Payment of Taxes by Credit Card or Debit Card

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.



Brian M. Kasick, Secretary of Tax & Revenue

MODIFIED

FILED

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT
SERIES 10B

2001 OCT -4 A 11: 22

OFFICE WEST VIRGINIA
SECRETARY OF STATE

PAYMENT OF TAXES BY CREDIT CARD OR DEBIT CARD

§ 110-10B-1. General

1.1 **Scope** – This rule provides necessary direction relative to the payment by credit card or debit card of taxes administered by the State Tax Department.

1.2 **Authority** – West Virginia Code §§ 11-10-5 and 11-10-5n(e).

1.3 **Effective Date**

1.4 **Filing Date**

§ 110-10B-2. Definitions. When used in this rule and unless the context clearly requires a different meaning, the following terms have the meaning ascribed in this section.

2.1 **“Code”** means the Code of West Virginia of one thousand nine hundred thirty-one, as amended.

2.2 **“Commissioner”** or **“Tax Commissioner”** means the West Virginia Tax Commissioner or his or her delegate.

2.3 **“Credit card”** means any credit card as defined in section 103(k) of the Truth in Lending Act, 15 U.S.C. 1602(k), including any credit card, charge card or other credit device issued for the purpose of obtaining money, property, labor or services on credit.

2.4 **“Debit card”** means any accepted card or other means of access as defined in section 903(1) of the Electronic Funds Transfer Act, 15 U.S.C. 1693a(1), including any debit card or similar device or means of access to an account issued for the purpose of initiating electronic fund transfers to obtain money, property, labor or services.

2.5 **“Department”** or **“Tax Department”** means the West Virginia State Tax Department.

2.6 **“Person”** includes, but is not limited to, any individual, firm, partnership, limited partnership, copartnership, joint adventure, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, and

also any officer, employee or member of any of the foregoing persons who, as an officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of West Virginia Code § 11-10-1 et seq., and the provisions of any of the other articles of this Code which impose taxes administered by the Tax Commissioner.

2.7 "Regulated financial corporation" means:

2.7.1 An institution, the deposits, shares or accounts of which are insured under the Federal Deposit Insurance Act;

2.7.2 An institution that is a member of a federal home loan bank;

2.7.3 Any other bank or thrift institution incorporated or organized under the laws of a state that is engaged in the business of receiving deposits;

2.7.4 A credit union incorporated and organized under the laws of this state;

2.7.5 A production credit association organized under 12 U.S.C. 2071;

2.7.6 A corporation organized under 12 U.S.C. 611 through 631 (an edge act corporation);

2.7.7 A federal or state agency or branch of a foreign bank (as defined in 12 U.S.C. 3101); or

2.7.8 A corporation which derives more than fifty percent of its gross business income from one or more of the following activities:

2.7.8.a Making, acquiring, selling or servicing loans or extensions of credit which includes: secured or unsecured consumer loans; installment obligations; mortgages or other loans secured by real estate or tangible personal property; credit card loans; secured and unsecured commercial loans of any type; and loans arising in factoring;

2.7.8.b Leasing or acting as an agent, broker or advisor in connection with leasing real and personal property that is the economic equivalent of an extension of credit;

2.7.8.c Operating a credit card business; or

2.7.8.d Receiving, maintaining or otherwise handling deposits.

2.8 **"Tax" or "taxes"** includes taxes administered under the authority of West Virginia Code § 11-10-1 et seq., additions to tax, penalties and interest.

2.9 **"Taxpayer"** means any person required to file a return for any tax administered under West Virginia Code § 11-10-1 et seq., or any person liable for the payment of any tax administered under West Virginia Code § 11-10-1 et seq.

§110-10B-3. Payments by credit card and debit card.

3.1 Taxes administered by the Tax Department may be paid by credit card or debit card. Payment of taxes by credit card or debit card is voluntary on the part of the taxpayer.

3.1.1 Only credit cards or debit cards approved by the Commissioner may be used to pay West Virginia taxes. The Commissioner shall provide a listing of the approved credit cards and debit cards.

3.1.2 Only the tax liabilities specified by the Commissioner may be paid by credit card or debit card.

3.1.3 All payments by credit cards and debit cards shall be made in the manner and in accordance with the forms, instructions and procedures prescribed by the Commissioner.

3.1.4 This rule applies only to payments by credit card and debit card. Payments by electronic funds transfer other than payment by credit card or debit card are not subject to this rule.

3.2 A payment of tax by credit card or debit card shall be considered made on the date when the charge was made; Provided, That the issuer of the credit card or debit card properly authorizes the transaction, the payment is actually received by the Department in the ordinary course of business and the payment is not returned pursuant to section 5 of this rule.

3.2.1 If a taxpayer uses an approved credit card or debit card to pay a tax lien created under the provisions of West Virginia Code § 11-10-12, the lien shall not be released until all of the following have occurred:

3.2.1.a The payment of tax is actually received by the Department;

3.2.1.b The payment is credited against the taxpayer's account that is the basis for the tax lien; and

3.2.1.c The time for error resolution as provided in section 5 of this rule has elapsed.

3.3 Continuing liability for payment of tax.

3.3.1 A taxpayer who tenders payment of taxes by credit card or debit card is not relieved of liability for the taxes until the payment is actually received by the Commissioner and the time for error resolution as provided in section 5 of this rule has elapsed. This continuing liability of the taxpayer is in addition to, and not in lieu of, any liability of the issuer of the credit card or debit card or regulated financial corporation imposed pursuant to subdivision 3.3.2 of this rule.

3.3.2 If a taxpayer has tendered a payment of taxes to the Department by credit card or debit card, and the credit card or debit card transaction has been expressly guaranteed by the issuer of the card or a regulated financial corporation, and the Department is not duly paid, the Department shall have a lien for the guaranteed amount of the transaction upon all the assets of the card issuer or corporation making the guarantee. The unpaid amount shall be paid out of the assets in preference to any other claims whatsoever against the guaranteeing corporation, except the necessary costs and expenses of administration and the reimbursement of the State of West Virginia for the amount expended in the redemption of the circulating notes of the card issuer or regulated financial corporation.

§ 110-10B-4. Resolution of errors related to paying taxes by credit card or debit card.

4.1 To the extent permitted by federal law, any payment of taxes by credit card or debit card are not subject to section 161 of the Truth in Lending Act, 15 U.S.C. 1666, or section 908 of the Electronic Fund Transfer Act, 15 U.S.C. 1693f, or any similar provisions of state law, for the purpose of resolving errors if the error alleged relates to the underlying tax liability.

4.2 To the extent permitted by federal law, any payment of taxes under the authority of West Virginia Code § 11-10-1 et seq. is not subject to Section 170 of the Truth in Lending Act, 15 U.S.C. § 1666I, or any similar provisions of state law.

4.3 Payments of taxes by credit card or debit card are subject to section 161 of the Truth in Lending Act, 15 U.S.C. 1666, section 908 of the Electronic Fund Transfer Act, 15 U.S.C. 1693f, or Section 170 of the Truth in Lending Act, 15 U.S.C. § 1666I, or any similar provisions of state laws, for the resolution of errors relating to the credit card or debit card account, but not for the purpose of resolving errors, disputes or adjustments relating to the underlying tax liability. The resolution procedures apply to the following types of errors:

4.3.1 An incorrect amount posted to the taxpayer's account as a result of a computational error, numerical transposition, or similar mistake;

4.3.2 An amount posted to the wrong taxpayer's account;

4.3.3 A transaction posted to the taxpayer's account without the taxpayer's authorization; and

4.3.4 Similar types of errors that would be subject to resolution under these procedures in ordinary commercial transactions.

4.4 Any error in the payment of taxes by credit card or debit card that does not relate to the underlying tax liability is a legal issue only between the taxpayer and the regulated financial corporation or issuer of the credit card or debit card.

4.5 The resolution of any issue relating to the erroneous payment of taxes by credit card or debit card shall not include the resolution of any errors, disputes or adjustments relating to the underlying tax liability.

4.5.1 The resolution of any issue involving any error, dispute or adjustment relating to the underlying tax liability is an issue only between the taxpayer and the Department, and it shall be resolved through the assessment or petition for refund process and administrative procedure authorized in West Virginia Code § 11-10-1 et seq.

§ 110-10B-5. Return of funds pursuant to error resolution procedures.

5.1 If a taxpayer is entitled to a return of funds pursuant to the error resolution procedures of section 4 of this rule, the Commissioner may, in the Commissioner's sole discretion, effect the refund by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or any other regulated financial corporation or person that participated in the transaction in which the error occurred.

5.2 If as a result of participating in the administrative procedures authorized in West Virginia Code § 11-10-1 et seq. a taxpayer is entitled to a refund of taxes paid, the refund shall be paid to the taxpayer absent instructions from the taxpayer to the contrary.

§ 110-21B-6. Fees or charges.

6.1 The Department may not impose any fee or charge on taxpayers making payment of taxes by credit card or debit card. This section does not prohibit the imposition of fees or charges by issuers of credit cards or debit cards or by any other regulated financial corporation or person participating in the credit card or debit card transaction. The Department may not receive any part of any fees that may be charged.

§ 110-21B-7. Authority to enter into agreements.

7.1 The Commissioner may enter into agreements related to receiving payments of tax by credit card or debit card. However, the Commissioner shall use the

West Virginia State Treasurer's contracts and system for receiving payments by credit card or debit card. The Department may not pay any fee or charge or provide any other monetary consideration under the contracts for the payments. The Treasurer is not authorized to pay any fee or provide any consideration for receiving payments of taxes or fees under those contracts.

§ 110-21B-8. Use and disclosure of information relating to payment of taxes by credit card and debit card.

8.1 Information obtained by any person other than the taxpayer in connection with payment of taxes by a credit card or debit card shall be treated as confidential, and is covered under the confidentiality provisions of West Virginia Code § 11-10-5d, regardless whether the information is received from the Department or from any other person, including the taxpayer. No person other than the taxpayer shall use or disclose the information except as follows:

8.1.1 Card issuers, regulated financial corporations, or other persons participating in the credit card or debit card transaction may use or disclose the information for the purpose and in direct furtherance of servicing cardholder accounts, including the resolution of errors in accordance with Section 4 of this rule. This authority includes the following:

8.1.1.a Processing of the credit card or debit card transaction, in all of its stages through and including the crediting of the amount charged on account of tax to this State;

8.1.1.b Billing the taxpayer for the amount charged or debited with respect to payment of the tax liability;

8.1.1.c Collection of the amount charged or debited with respect to payment of the tax liability; and

8.1.1.d Returning funds to the taxpayer.

8.1.2 Card issuers, regulated financial corporations or other persons participating in the credit card or debit card transaction may use and disclose the information only for the purpose and in direct furtherance of any of the following activities:

8.1.2.a Assessment of statistical risk and profitability;

8.1.2.b Transfer of receivables or accounts or any interest therein;

8.1.2.c Audit of account information;

8.1.2.d Compliance with Federal, State, or local law; and

8.1.2.e Cooperation in properly authorized civil, criminal, or regulatory investigations by Federal, State, or local authorities.

8.1.3 Notwithstanding the foregoing, use or disclosure of information relating to credit card and debit card transactions for purposes related to any of the following is not authorized:

8.1.3.a Sale or exchange of the information separate from the underlying receivable or account;

8.1.3.b Marketing for any purpose, for example, marketing tax- related products or services, or marketing any product or service that targets those who have used a credit card or debit card to pay taxes; or

8.1.3.c Furnishing the information to any credit reporting agency or credit bureau, except with respect to the aggregate amount of a cardholder's account, with the amount attributable to payment of taxes not separately identified.

8.2 Credit card and debit card account numbers in the possession of the Commissioner or the State Treasurer that have been submitted in payment of state taxes are confidential and exempt from the provision of West Virginia Code §29b-1-1, et seq. (Freedom of Information Act).

8.3 The Commissioner may disclose to card issuers, regulated financial corporations or other involved persons any information the Commissioner considers necessary in connection with processing credit card and debit card transactions to effectuate payment of taxes, billing or collection of the amounts charged or debited, including resolution of errors relating to the credit card or debit card account.