

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

Form #2

Do ~~Not~~ Mark In this Box

2009 JAN -2 PM 3: 18

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Procedural CITE AUTHORITY W. Va. Code §§11-10-5, 11-10-5z(b) and 39A-3-2

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 10D

TITLE OF RULE BEING AMENDED: Use and Acceptance of Electronic Records


IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON February 2, 2009 AT 5:00 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Legal Division
State Tax Department
P.O. Box 1005
Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


Virgil T. Helton
Cabinet Secretary of the Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

110 C.S.R. 10D
USE AND ACCEPTANCE OF ELECTRONIC RECORDS

BRIEF SUMMARY

The proposed amended procedural rule adds section §11-10D-9, Electronic Filing Required for Certain Persons, and adopts the terms of West Virginia Code §11-10-5z(a). The proposed amended rule creates a phase in period, and sets effective dates, for West Virginia Code §11-10-5z(a), which requires any person who has total annual remittance for any single tax equal to or greater than \$100,000 during the proceeding taxable year to file electronically all returns for all taxes administered under Article 10 of Chapter 11 of the West Virginia Code.

110 C.S.R. 10D
USE AND ACCEPTANCE OF ELECTRONIC RECORDS

STATEMENT OF CIRCUMSTANCES

The West Virginia State Legislature¹ authorized the Use and Acceptance of Electronic Records in West Virginia Code §§11-10-5, 11-10-5z(b) and 39A-3-2. West Virginia Code §11-10-5z(a) requires for tax years beginning on or after January 1, 2009, any person who had total annual remittance for any single tax equal to or greater than \$100,000 during the preceding taxable year to file electronically all returns for all taxes administered under Article 10 of Chapter 11 of the West Virginia Code. This amended procedural rule adds section §11-10D-9, Electronic Filing Required for Certain Persons, and adopts the terms of West Virginia Code §11-10-5z(a). The proposed amended rule creates a phase in period and sets effective dates.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Use and Acceptance of Electronic Records (110 CSR 10D)

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Department

Address: 1001 Lee Street
Charleston, WV 25301

Phone Number: (304) 558-5330 Email: _____

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The revisions in 110 C.S.R. 10D, §9 et seq. associated with this filing provide for the phase-in of the West Virginia Code §11-10-5z electronic filing mandate over a time span which aligns with development and implementation by the Tax Department of computer systems and tax administration systems currently in progress. The phase-in of the mandate will result in an undetermined, but likely minimal, decrease in State Revenue due to the difference in the timing of deposits of electronic transfers versus mailed payments.

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	\$0	\$0	\$0
Personal Services	\$0	\$0	\$0
Current Expenses	\$0	\$0	\$0
Repairs & Alterations	\$0	\$0	\$0
Assets	\$0	\$0	\$0
Other	\$0	\$0	\$0
2. Estimated Total Revenues	\$0	\$0	\$0

Rule Title: Use and Acceptance of Electronic Records (110 CSR 10D)

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues:

The phase-in of the electronic filing mandate will result in an undetermined, but likely minimal, decrease in State Revenue due to the difference in the timing of deposits of electronic transfers versus mailed payments. There would be no additional administrative costs to the Tax Department associated with this rule.

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.

The phase-in of the West Virginia Code §11-10-5z electronic filing mandate provided by this rule is expected to result in only a minimal decrease in State revenue since the taxes with the largest volume of payment transactions (i.e., the Consumers Sales and Service Tax and the Withholding Tax) have already been implemented in the Tax Department's tax administration computer system.

Date: _____

Signature of Agency Head or Authorized Representative:

Virgil T. Helton, Cabinet Secretary
West Virginia Department of Revenue

FILED

TITLE 110
PROCEDURAL RULE
STATE TAX DEPARTMENT

2009 JAN -2 PM 3: 18

SERIES 10D
USE AND ACCEPTANCE OF ELECTRONIC RECORDS

OFFICE WEST VIRGINIA
SECRETARY OF STATE**§110-10D-1. General.**

1.1. Scope. -- This procedural rule sets forth the practice and procedure established by the West Virginia State Tax Department for the use and acceptance of electronic records and electronic records that require the signature of an authorized person.

1.2. Authority. -- W. Va. Code §§11-10-5, and 11-10-5z(b) and 39A-3-2.

1.3. Filing Date. --

1.4. Effective Date. --

§110-10D-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. "Accept an electronic signature" means to accept an electronic record which requires the signature of an authorized person when that electronic record contains an electronic signature in lieu of an original signature.

2.2. "Code" means the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

2.3. "Commissioner" means the State Tax Commissioner or his or her delegate.

2.4. "Department" or "Tax Department" means the West Virginia State Tax Department.

2.5. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or any other similar capabilities.

2.6. "Electronic record" means a record created, generated, sent, communicated, received or stored by electronic means, but does not include any record transmitted by facsimile.

2.7. "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Electronic signatures include, but are not limited to:

2.7.a. A "digital mark" which consists of a electronic code indicating approval or confirmation which is entered into a protected digital record following access protocols which identify the user and require a password, personal identification number, encrypted card or other security device which restricts access to one or more authorized individuals;

2.7.b. A "digital signature" which consists of a message transformed using an asymmetric cryptosystem so that a person having the initial message and the signer's public key can accurately

determine whether the transformed message was created using the private key that corresponds to the signer's public key and whether the initial message has been altered since the message was transformed; and,

2.7.c. A "digitized signature" which may consist of a handwritten signature entered on a recording device utilizing electronic recording software which simultaneously converts the image created to a digital record and attaches it to the electronic document to which it relates or a graphic image file of a person's signature and is attached to the electronic document to which it relates may be used for illustrative purposes and shall not be construed as or considered an "electronic signature" in the context of this rule.

2.8. "Person" shall mean, 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 who, as such officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of Article 10, Chapter 11 of the Code or the provisions of any of the other articles of Chapter 11 that impose taxes administered by the Commissioner, unless the intention to give a more limited or broader meaning is disclosed by the context in which the term is used.

2.9. "Tax" or "taxes" means the taxes specified in W. Va. Code §11-10-3, additions to tax, penalties and interest, unless the intention to give the same a more limited meaning is disclosed by the context.

2.10. "Taxpayer" means any person required to file a return for any tax administered under Article 10, Chapter 11 of the Code, or any person liable for the payment of any tax administered under that article.

2.11. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, and includes, but is not limited to, a message, document, tax form, tax return or other instrument that is transmitted electronically from an authorized officer or other person to the Department to meet the requirements of law or to execute an essential transaction. An informal communication will not be considered an electronic record for purposes of this rule.

2.12. "West Virginia Taxpayer Signature PIN" is a personal identification number that is assigned by the Commissioner to a taxpayer electing to file tax returns electronically, that serves to verify the identity of the taxpayer filing the return as the individual authorized so to do, and that satisfies the requirement of a signature on the return.

§110-10D-3. Electronic Records That May be Filed Electronically.

3.1. The Commissioner shall designate those Tax Department forms and applications that will be accepted for filing as electronic records.

3.2. The designated forms and applications currently approved include, but are not limited to the forms listed in Appendix 1 to this rule. The Commissioner may designate additional forms and applications that may be filed electronically.

3.3. Taxpayers will have access to the designated forms and applications through the Department website.

§110-10D-4. Acceptance of Electronic Signatures.

4.1. The Commissioner shall designate the type or types of electronic signature that shall be used when electronically filing Tax Department forms and applications.

4.2. Where the Commissioner has permitted the filing of a return by electronic means, the taxpayer may, in lieu of filing a related document on which a signature is affixed, provide the taxpayer's name and such other information as the Commissioner may require in order to provide sufficient identification of the taxpayer, or provide both the taxpayer's name and personal identification information and the taxpayer's West Virginia Taxpayer Signature PIN.

4.2.a. The West Virginia Taxpayer Signature PIN is a personal identification number that will be assigned by the Department to a person filing an electronic record requiring an authorized signature.

4.2.b. The Department will establish a secure registry of persons authorized to sign filings and records using a West Virginia Taxpayer Signature PIN and will utilize that secure registry for verification of the identity of the signer.

4.2.c. A taxpayer that seeks to become authorized to file with the Department using a West Virginia Taxpayer Signature PIN shall first file with the Department a signed Form WV/EFT-1, Application for West Virginia Taxpayer Signature PIN, stating that the taxpayer:

4.2.c.1. Will not share with any other person the password, code or other security key required for use of the PIN;

4.2.c.2. Agrees that use of the PIN represents confirmation of a record;

4.2.c.3. Agrees to notify the Department immediately upon becoming aware that security has been compromised; and

4.2.c.4. Understands that the provisions of W. Va. Code § 61-3C-10 prescribes the penalties for the unauthorized disclosure of a West Virginia Taxpayer Signature PIN or other confidential security information.

4.2.d. Each authorized person shall utilize a unique number or other personal authorization which shall be encrypted and which shall indicate the approval of that person to file electronically.

4.2e. Upon receipt of the signed Form WV/EFT-1 required in subdivision 4.2.c of this rule, the Department shall issue to an authorized person a West Virginia Taxpayer Signature PIN and shall enter that PIN, name and date of authorization into the secure registry.

4.3. The stating by a person of the taxpayer's name or the providing of a West Virginia Taxpayer Signature PIN, or both, when that person is requested so to do, shall have the same validity, status and consequences as an actual signature by that person on a paper return that is filed with the Department.

4.4. A return that is filed by electronic means shall be treated as filed on the date the electronic return is transmitted if: 1) the return enters an information processing system that the Commissioner has designated or uses for the purpose of receiving electronic records and from which the Commissioner is able to retrieve the electronic record transmitted; and 2) the return is in a form capable of being processed by that system.

4.4.a. An electronic return will only be deemed as timely filed if it is received by the Department in a retrievable format through a designated information processing system on or before the statutory due date of the return.

4.4.b. Any payment/remittance made to the Department prior to the electronic filing of a return may be made through the use of any commercially acceptable means and shall be deemed to be received on the date the payment is actually received by the Department.

4.4.c. Any payment/remittance made concurrently with the filing of an electronic return shall be paid using electronic funds transfer and shall be deemed to be received by the Commissioner on the date the funds are actually transferred to the Department.

4.4.d. Any payment/remittance made to the Department subsequent to the electronic filing of a return may be made through the use of any commercially acceptable means and shall be deemed to be received on the date the payment is actually received by the Department.

4.5. Where a signature is required to be verified or made under oath, the requirement is satisfied if the electronic signature of the person authorized to sign the return is attached to or logically associated with the return.

4.6. Nothing in this rule shall be construed to require the Department to accept electronic signatures in lieu of written signatures.

4.7. For purposes of electronically filing a State income tax return, nothing in this rule shall prevent a taxpayer from using and the Commissioner from accepting the same personal identification number chosen and used by the taxpayer for the purpose of filing his federal income tax return.

4.8. For purposes of electronically filing all other state tax returns, nothing in this rule shall prevent a taxpayer from using and the Commissioner from accepting the same personal identification number chosen and used by the taxpayer for the purpose of filing his federal income tax return; Provided, that the personal identification number is registered in the Department's secure registry prior to being used to electronically file such a return with the Department.

§110-10D-5. Who May Electronically Sign.

5.1. Any individual who is authorized by statute to sign a paper return may use an electronic signature to file an electronic record.

5.2. Any authorized person using a third party to prepare and file an electronic record may grant signature authority to that third party.

5.2.a. A grant of signature authority allows a third party to input the taxpayer's personal identification number when filing electronic records on behalf of the taxpayer.

5.2.b. A grant of signature authority by an authorized person to a third party must be evidenced by a written record.

5.2.c. Prior to filing an electronic record, Form WV/EFT-2, Authorization Granting Electronic Signature Authority to a Third Party, must first be filed with and received by the Department so as to evidence the grant of signature authority to a third party.

5.3. Taxpayers filing joint returns must each register for a separate West Virginia Taxpayer Signature PIN.

5.4. Each taxpayer filing a joint return must sign the electronic return using their assigned West

Virginia Taxpayer Signature PIN.

5.5. For a third party to file an electronic return on behalf of joint filers, signature authority must be granted to that third person by each individual taxpayer for whom the third party will file the return.

5.5.a. Prior to electronically filing a joint return, a signed Form WV/EFT-2 must first be filed with the Department by each individual taxpayer granting signature authority to a third party.

5.6. Where a taxpayer has granted signature authority to a third party to electronically file that taxpayer's federal income tax return and an IRS e-file Signature Authorization form was properly executed by the parties, the taxpayer may forego filing a copy of that IRS e-file Signature Authorization with the Department's secure registry; provided, that the third party retains the completed copy of the IRS e-file Signature Authorization in their records for three years.

5.7. Any taxpayer granting signature authority to a third party for filing purposes may revoke that authority by filing with the Department a signed statement evidencing such revocation.

5.7.a. A revocation of signature authority shall take effect on the date that such written revocation is actually received by the Department.

5.7.b. Once signature authority is revoked, the third party will no longer be allowed to file on behalf of that taxpayer.

5.7.c. A taxpayer wishing to reassign signature authority to a third party will need to both register for a new West Virginia Taxpayer Signature PIN and file a new Form WV/EFT-2 with the Department.

§110-10D-6. Restrictions on Electronic Filing.

6.1. Any taxpayer or any person filing on behalf of a taxpayer that elects to use the electronic filing and electronic signature procedures as established in this rule shall be presumed to understand and agree that the provisions of W. Va. Code § 11-9-1 et seq. prescribes the penalties for the abuse of those procedures.

6.1.a. For example, a taxpayer that knowingly files a false or fraudulent electronic return is subject to the same penalties ascribed in W. Va. Code §11-9-10 as is a taxpayer that knowingly files a false or fraudulent paper return.

6.2. Each abuse of any procedure established herein constitutes a separate and distinct violation of this rule and subjects the taxpayer or person filing on behalf of the taxpayer to a new and separate penalty as prescribed in W. Va. Code §11-9-1 et seq.

6.3. Upon discovery of a second violation of the procedures established herein, the West Virginia Taxpayer Signature PIN assigned that taxpayer shall be deactivated for the current and two immediately succeeding tax years. This deactivation shall occur in addition to the imposition of an appropriate penalty prescribed in W. Va. Code §11-9-1 et seq.

6.4. A taxpayer whose West Virginia Taxpayer Signature PIN has been deactivated shall only be permitted to apply to reactivate the taxpayer's West Virginia Taxpayer Signature PIN if, after the full penalty period, the taxpayer agrees in writing to desist from further violations of this rule. The Commissioner shall retain discretion when determining whether to reactivate a West Virginia Taxpayer Signature PIN.

6.4.a. If, after having the West Virginia Taxpayer Signature PIN reactivated by the Commissioner, a taxpayer again violates the procedures described herein, that taxpayer in addition to being subject to the appropriate penalty prescribed in W. Va. Code § 11-9-1 et seq. shall have their assigned West Virginia Taxpayer Signature PIN revoked.

6.5. Where the abuse of procedures is determined to be the fault of a person acting with authority to file on behalf of a taxpayer but not the fault of the taxpayer, that taxpayer may apply for a new West Virginia Taxpayer Signature PIN so as to facilitate the electronic filing of the taxpayer's return by either the taxpayer or a person authorized by the taxpayer; provided, that the taxpayer applying for a new PIN must agree not to grant signature authority to a third party that, in previously filing the taxpayer's return, abused the procedures established herein.

6.5.a. A person that has been granted signature authority to file on behalf of a taxpayer and that is found to have abused the procedures of this rule on more than one occasion shall have its signature authority revoked and shall not be approved by the Commissioner to file any future electronic returns on behalf of any taxpayer.

§110-10D-7. Implementation.

7.1. This rule shall be implemented when the Department has developed and demonstrated the capacity to properly administer the rule.

§110-10D-8. Contact Information.

8.1. For additional information on electronic filings and electronic signatures, contact:

Director, Revenue Division
State Tax Department
1001 Lee St., E., Revenue Center
Charleston, WV 25308
(304) 558-8500

esign@tax.state.wv.us

§110-10D-9. Electronic filing required for certain persons.

9.1. West Virginia Code §11-10-5z(a) mandates electronic filing for taxes administered under West Virginia Code Article 11-10-1 et seq. for tax years beginning on or after January 1, 2009, for those Taxpayers that had annual remittance of any single tax equal to or greater than \$100,000 during the immediately preceding taxable year. West Virginia Code §11-10-5z states that "The Tax Commissioner shall implement the provisions of West Virginia Code §11-10-5z using any combination of notices, forms, instructions and rules that he or she determines necessary." The Tax Commissioner hereby deems it necessary to phase in this West Virginia Code §11-10-5z electronic filing mandate over a time span which aligns with development and implementation by the Tax Department of computer systems and tax administration systems currently in progress.

9.1.1. Implementation of the 11-10-5z electronic filing provision will be phased in over a period of time based on the ability of the Tax Department to accept electronic filings for the taxes administered under West Virginia Code Article 11-10-1 et seq.

9.2. Unless otherwise specifically required by the Tax Commissioner, and subject to the technical requirements of the Tax Department, taxpayers subject to the requirements of W. Va. Code § 11-10-5z, may voluntarily file required returns electronically for tax years beginning January 1, 2009.

9.3. Unless otherwise specifically required by the Tax Commissioner, taxpayers subject to the requirements of W. Va. Code § 11-10-5z, that are required to file a return with attached schedules, shall provide the information in the return electronically, and shall retain the attached schedules for their records for a period of no less than three years. The Tax Commissioner may require paper returns or schedules or both to be submitted for specified taxes, in lieu of electronic filings, as the Tax Commissioner may from time to time require.

9.3.1. Unless otherwise specifically required by the Tax Commissioner, for tax years beginning January 1, 2011, taxpayers with a total annual remittance for any single tax equal or greater than \$100,000 during the immediately preceding taxable year shall file electronically all returns for taxes administered under West Virginia Code Article 11-10-1 *et seq.* The Tax Commissioner may require paper returns or schedules or both to be submitted for specified taxes, in lieu of electronic filings, as the Tax Commissioner may from time to time require.

APPENDIX 1

FORMS THAT MAY BE FILED ELECTRONICALLY

Form WV/IT-101	Employer Return for Income Tax Withheld
Form WV/IT-103	Annual Reconciliation of Income Tax Withheld
Form WV/IT-140	Personal Income Tax Resident Long Form
Form WV/IT-140S	Personal Income Tax Resident Short Form
Form WV/CST-200	Consumers Sales and Service Tax Return
Form WV/BOT-300F	Business and Occupation Tax – Synthetic Fuel
Form WV/BOT-300G	Business and Occupation Tax – Gas Storage
Form WV/BOT-301E	Business and Occupation Tax – Electric Power Businesses
Form WV/TEL-501	Telecommunications Tax Return
Form WV/CFT-01/02	Information Return
Form WV/BUS-APP	Application for Business Registration



JOE MANCHIN III
GOVERNOR

DEPARTMENT OF REVENUE

VIRGIL T. HELTON
CABINET SECRETARY

OFFICE OF THE SECRETARY

STATE CAPITOL
CHARLESTON, WEST VIRGINIA

CONSENT TO PROPOSAL OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent for the following (**procedural**) rule as amended by the State Tax Department of the State of West Virginia: Title 110, Series 10D, relating to Use of Acceptance of Electronic Records.

Dated this 2nd day of January, ²⁰⁰⁹ 2008.

A handwritten signature in black ink, appearing to read "Virgil T. Helton", written over a horizontal line.

Virgil T. Helton
Cabinet Secretary, Department of Revenue