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February 8, 2011

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Tax Department

RULE: 110CSR10F, Amendment, Payment of Taxes by Electronic Funds Transfer

DATE FILED AS AN EMERGENCY RULE: December 29, 2010

DECISION NO. 1-11

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script, appearing to read "Natalie E. Tennant", written over a horizontal line.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 1-11-10)

AGENCY: State Tax Department
RULE: 110CSR10F, Amendment, Payment of Taxes by Electronic Funds Transfer
FILED AS AN EMERGENCY RULE: December 29, 2010

- par. 1 The State Tax Department (Department) has filed the above amendment to an existing rule as an emergency rule.
- par. 2 W. Va. Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State December 29, 2010 and with the LRMRC December 29, 2010.
- par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §11-10-5t(b) reads:

(b) The Tax Commissioner may prescribe by emergency rules, administrative notices, forms and instructions, and the procedures and criteria to be followed by certain taxpayers in order to pay taxes by electronic funds transfer methods.

par. 9 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

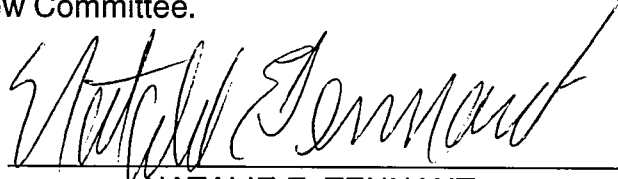
par. 12 The facts and circumstances as presented by the Department are as follows:

West Virginia Code §§ 11-10-5t and 5z were amended during the 2010 Legislative session to require electronic filing and the payment of tax by electronic funds transfer for those who had a total annual remittance during the preceding tax year an amount of \$10,000 or more for any single tax; prior to the amendment, the requirement applied to those persons who had a total annual remittance for any single tax equal to or greater than \$100,000 during the immediately preceding tax year. The required changes to the data processing system could not be made and sufficiently tested by January 1, 2011; however, the system changes will be completed by January 1, 2012. Therefore, the filing and payment requirements are effective for tax years beginning on or after January 1, 2012. As a result, this rule is amended to provide for the implementation of those requirements. Because the Tax Department is outside the rule-making time frame for the 2011 legislative session and the rule must be effective for tax years beginning on or after January 1, 2012, the rule is being filed as an emergency rule.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "to prevent substantial harm to the public interest"

par. 14

This decision shall be cited as Emergency Rule Decision 1-11-10 or ERD 1-11-10 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Tax Department, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

Entered _____

DEPARTMENT OF REVENUE
SECRETARY OF STATE

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