

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§11-10-5, 11-10-5z(b) and 11-10-5t

AMENDMENT TO AN EXISTING RULE: YES NO


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

TITLE OF RULE BEING AMENDED: Payment of Funds by Electronic Funds Transfer

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Charles O. Lorensen
Cabinet Secretary of the Department of Revenue

FILED

2011 APR 21 PM 3:17

WEST VIRGINIA
SECRETARY OF STATE

AGENCY APPROVED
TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT
SERIES 10F

PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER

§110-10F-1. General.

1.1 Scope - This rule will be used by the West Virginia State Tax Department in the administration of W. Va. Code §11-10-5t, which authorizes the Tax Commissioner to require certain taxpayers to make tax payments by electronic funds transfer so that the funds will be immediately available to the State Treasury on the due date of payment. If there is a conflict between this rule and other rules or laws regarding tax payments, this rule governs.

1.2 Authority – West Virginia Code §11-10-5t.

1.3 Effective Date. -

1.4 Filing Date. -

§110-10F-2. Definitions. For the purposes of this rule, the following terms used in this rule have the meanings set forth in this section, unless a different meaning is clearly indicated by the context in which the term is used.

2.1 **"ACH" or "Automated Clearing House"** means a nationwide electronic funds transfer system which is governed by the National Automated Clearing House Association (NACHA) operating rules and which provides for the clearing of electronic credit and debit entries between participating financial institutions.

2.2 **"ACH Credit"** means the electronic funds transfer payment method by which transactions are initiated and generated by the taxpayer and cleared through the ACH system for deposit into the State Treasury.

2.3 **"ACH Debit"** means the electronic funds transfer payment method by which transactions are initiated by the taxpayer, generated by the Department upon the taxpayer's instruction and cleared through the ACH system for deposit into the State Treasury.

2.4 **"ACH Trace Number"** means the unique number assigned to an electronic payment transaction by the financial institution originating the transaction.

2.5 **"Addenda record"** means that information required by the Department in an ACH Credit transaction or Fedwire transfer which identifies the taxpayer, the tax type, the period covered, the payment type and the payment amount.

2.6 **"CCD+" or "cash concentration or disbursement plus"** means the standardized data format approved by the National Automated Clearing House Association for remitting tax payments electronically.

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

2.8 **"Commissioner" or "Tax Commissioner"** means the West Virginia Tax Commissioner or his or her delegate.

2.9 **"Call-in day"** means the day on which a taxpayer communicates payment information to the West Virginia State Tax Department.

2.10 **"Call -in period"** means the specified time interval in each call- in day during which EFT payment information received by the Tax Department is processed for transactions occurring on the next business day.

2.11 **"Department" or "Tax Department"** means the West Virginia State Tax Department.

2.12 **"EFT" or "Electronic Funds Transfer"** means any transfer of funds using ACH debit, ACH credit, Fedwire transfer and any other means recognized by the Tax Commissioner for payment of taxes, (other than a transaction originated by check, draft, or similar paper instrument), that is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape, where the person initiating the transfer orders, instructs, or authorizes a financial institution to debit or credit an account using the methods specified in this rule.

2.13 **"Fedwire"** means the electronic transfer system developed and maintained by the Federal Reserve in order to enable financial institutions to transfer funds nationwide.

2.14 **"Financial institution"** means a state or national bank, a trust company, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union.

2.15 **"Immediately available funds"** means an ACH credit, an ACH debit, U.S. currency, or wire transfer that has completed the EFT process, and is deposited in the State's bank for immediate use.

2.16 **"Lookback period"** means the 12-month period between July 1 and June 30 immediately preceding the calendar year for which the determination is made that a taxpayer must pay taxes by EFT.

2.17 **“NACHA” or “National Automated Clearing House Association”** means the trade association which sets automated payments standards that govern the ACH system for financial institutions nationwide.

2.18 **“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 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 West Virginia Code § 11-10-1 et seq., and the provisions of any other article of the Code which imposes a tax administered by the Tax Commissioner.

2.19 **“Prenote” or “prenotification”** means a zero-dollar entry that is sent through the ACH system prior to live entries. Prenotes provide a verification function that makes sure any bank information and TXP addenda data required is correct prior to live entries.

2.20 **“State” or “this State”** means the State of West Virginia.

2.21 **“Tax” or “taxes”** means taxes administered under the authority of West Virginia Code § 11-10-1 et seq., additions to tax and penalties and interest imposed with respect to those taxes.

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

2.2 **“Tax type”** means each separate category of tax subject to EFT payment requirements.

2.24 **“Treasury” or “State Treasury”** means the Treasury of the State of West Virginia.

2.25 **“TXP Banking Convention”** means the format to be used in the free form field of the National Automated Clearing House Association’s CCD+ entry addenda record.

§11-10F-3. Payments by Electronic Funds Transfer (EFT).

3.1 For taxable years or reporting periods beginning on or after January 1, 2004, designated EFT taxpayers shall remit tax payments to the Department by EFT as required by this rule. A determination of which taxpayers are required to remit tax payments by EFT is made by the Department, on a tax type basis, and is based on individual payments rather than the aggregate of payments made during the lookback period. The threshold amount determines if the taxpayer is subject to the EFT tax payment requirements of this rule.

3.2 The threshold amount is \$100,000.00 in tax liability per tax type per taxable year or reporting period beginning on or after January 1, 2004; Provided, That for tax years beginning on or after January 1, 2012, the threshold amount for determining whether a taxpayer shall pay electronically is \$10,000 in tax liability paid for a single tax type in the immediately preceding tax year: Provided however, That for tax years beginning on or after January 1, 2012, any taxpayer that pays more than \$10,000 for any tax type in the immediately preceding tax year shall electronically pay the taxes for all tax returns filed.

3.3 Once taxpayers are notified by the Department that they are required to make EFT payments for a tax type, they shall comply with this rule unless and until released from that obligation by the Department.

3.4 The Department shall make an annual identification of those taxpayers who are required to make payments in accordance with this rule on a tax type basis. A taxpayer may be required to make payments for one type of tax in accordance with the procedures stated in this rule, yet may not be liable to make payments for another type of tax in accordance with those procedures.

3.4.1. The Department shall notify the identified taxpayers of their requirements to file pursuant to this rule at their last known address of record.

3.4.2. The Department shall provide the identified taxpayers with forms and instructions necessary for registering to make payments for the appropriate taxes by EFT and an explanation of the payment options available to the taxpayer.

3.4.2.1. When taxpayers register to make payment by EFT, they shall select a payment option.

3.4.3. The Department shall provide identified taxpayers with instructions and procedures for payment of taxes through EFT.

3.4.4. The Department shall provide technical assistance and guidance to identified taxpayers concerning the payment of taxes through EFT. Taxpayers may call Taxpayer Services from 8:30 a.m. through 5:00 p.m. Eastern Time, Monday through Friday, with the exception of State holidays.

§110-10F-4. Tax types covered

4.1 Payments for the following tax types are subject to the EFT tax payment requirements of this rule:

4.1.1 Business and Occupation Tax;

4.1.2 Business Franchise Tax;

- 4.1.3 Tobacco Products Excise Tax;
- 4.1.4 Consumer Sales and Service Tax;
- 4.1.5 Corporation Net Income Tax;
- 4.1.6 Gasoline and Special Fuels Excise Tax;
- 4.1.7 Health Care Provider Tax;
- 4.1.8 Personal Income Tax;
- 4.1.9 Severance Tax;
- 4.1.10. Soft Drink Tax;
- 4.1.11. Solid Waste Tax;
- 4.1.12. Surface Mining Reclamation Tax;
- 4.1.13. Telecommunications Tax;
- 4.1.14. Timber Severance Tax;
- 4.1.15. Use Tax; and
- 4.1.16. Personal Income Tax Withholding;

§110-10F-5. Identification of EFT taxpayers.

5.1 On an annual basis, the Department shall review the most recently completed lookback period payment history of each taxpayer on a tax type basis to determine if the payment history requires the taxpayer to make payments through EFT for the succeeding calendar year.

5.2 The Department will determine whether a taxpayer meets the \$400,000 tax liability threshold ~~requiring provided in Section 3 of this rule that requires~~ payment of taxes by EFT by considering taxes paid for a single tax type, except when two or more tax types are permitted to be paid on a single return, as in the case of the Gasoline and Special Fuels Excise Tax and the Consumer Sales and Service Tax on Gasoline and Special Fuels. Whenever two or more tax types are permitted to be paid on a single return, the taxes paid for all tax types shall be considered a single payment.

5.3 The Department will determine whether a taxpayer meets the \$400,000 tax liability threshold ~~requiring provided in Section 3 of this rule that requires~~ payment of

taxes by EFT by considering the total of payments made for a single reporting period for a tax type. Examples of this are the payments made for a tax type which is required to be paid on a monthly basis, on a quarterly basis, on an annual basis, or with an extension request.

§110-10F-6. Notification of Taxpayers Required to Use EFT.

6.1 At least 90 days prior to the date of the first required payment, the Department shall mail a written notice to all EFT taxpayers identified in the annual review of transactions informing them that they are required to make payments for a tax type using EFT. The notice shall be mailed to the last address of record for the taxpayer. The notice shall (1) provide the taxpayer with an explanation of W. Va. Code §11-10-5t; (2) identify the tax types to be paid using EFT; (3) provide an explanation of the payment alternatives available to the taxpayer; and (4) provide the taxpayer with Form WV/EFT-5, Electronic Funds Transfer Application.

6.2 Within 30 days after the notice with Form WV/EFT-5 is provided to the taxpayer, the taxpayer shall return a properly completed Form WV/EFT-5 to the Department for each of the tax types the taxpayer is required to pay using EFT. The taxpayer shall use the form to make an election as to which payment method the taxpayer will use or provide a written statement explaining the reason the taxpayer seeks to be exempted from the requirement to make payments for a tax type using EFT.

6.3 Within 30 days after receipt of the taxpayer's election, the Department shall provide instructions explaining the payment procedures for the method selected to the taxpayer.

6.4 If the Department receives no response from the taxpayer within 30 days, the Department shall provide the taxpayer with a second notice, utilizing certified mail. If no response to the second notice is received within ten days, the taxpayer is subject to all applicable penalties, additions to tax, and interest for each payment that is equal to or in excess of the threshold amount for that period.

6.5 Upon a showing by the taxpayer, to the satisfaction of the Commissioner, that the taxpayer will not be making payments for a tax type equal to or in excess of the threshold amount for the period, the Commissioner shall waive the requirement to make payments by EFT. If the taxpayer subsequently makes a non-EFT payment in an amount equal to or in excess of the threshold amount for the period for which the Commissioner waived the requirement to make payments using EFT, the taxpayer may be subject to all applicable penalties, additions to tax, and interest.

§110-10F-7. Registration of EFT taxpayers.

7.1 Taxpayers shall properly complete Form WV/EFT-5, Electronic Funds Transfer Application, and return the Form to the Department by the date specified by the Department. The Department shall record pertinent taxpayer information provided

with Form WV/EFT-5. The information required to be provided with Form WV/EFT-5 includes:

7.1.1 Taxpayer identification number;

7.1.2 Taxpayer's name;

7.1.3 Taxpayer's address;

7.1.4 Tax types;

7.1.5 Primary contact person's name and title;

7.1.6 Primary contact person's address;

7.1.8 Primary contact person's telephone number;

7.1.9 Primary contact person's e-mail address;

7.1.10 Secondary contact person's name and title;

7.1.11 Secondary contact person's address;

7.1.12 Secondary contact person's telephone number;

7.1.13 Second contact person's e-mail address;

7.1.14 Financial Institution's name;

7.1.15 Financial Institution's address;

7.1.16 Financial Institution's transit/routing number ;

7.1.17 Financial Institution's account number;

7.1.18 Financial Institution's contact person;

7.1.19 Financial Institution's telephone number;

7.1.20 Signature of person authorized to complete the application;

7.1.21 Written verification from the taxpayer's bank confirming the bank routing and transit number and the bank account number of the taxpayer;

7.1.22 Application status regarding new application, change in taxpayer identification number, change of name or address, and withdrawal; and

7.1.23 Method of payment.

7.2 A taxpayer shall provide written notice of any change of information required by Form WV/EFT-5 by submitting a revised Form WV/EFT-5 to the Department within at least 30 days of the change.

§110-10F-8. Payment alternatives.

8.1 The ACH Credit method and the ACH Debit method are the payment methods that taxpayers may use to make payments for a tax type using EFT.

8.2 The Department reserves the right to revoke the ACH Credit method payment privilege of any taxpayer for the following reasons:

8.2.1 Failure to consistently transmit error-free payments;

8.2.2 Substantial variation from the requirements and specifications of this rule;

8.2.3 Failure to make timely EFT payments or to provide timely payment information; or,

8.2.4. Failure to provide a properly formatted addenda record required by this rule with the EFT payment.

8.3 Fedwire is not an EFT payment method alternative that is available to EFT taxpayers, except on an emergency basis with prior authorization by the Department.

§110-10F-9. Payment procedures - general provisions.

9.1 Taxpayers required to make payments using EFT shall initiate the transaction so that the amount due is deposited as immediately available funds to the State of West Virginia's bank account on or before the due date under the applicable tax law. If a tax payment due date falls on a Saturday, Sunday, or bank holiday, payment by EFT shall be made so that the funds are immediately available in the State Treasurer's account on the first business day after that due date. If the date on which the taxpayer is required to initiate either an ACH Debit or an ACH Credit transaction falls on a Saturday, Sunday, or a State or banking holiday, the taxpayer shall initiate the transaction on the preceding business day.

9.1.1 Each year, at least 30 days prior to the beginning of a calendar year, the Department shall provide taxpayers required to pay a tax using EFT with a schedule of holidays they will need to take into consideration when making EFT payments.

9.2 The requirement to make payment to the Department using EFT does not change any current filing requirements for tax returns. If the EFT payment is not timely made or the tax return required is not filed by the due date, penalties, additions to tax and interest shall apply under the provisions of the appropriate section of the Code.

9.3 Any taxpayer required by the Department to use EFT to make payments may apply to the Commissioner to be relieved of that requirement if it appears that taxpayer no longer meets the criteria for mandatory EFT payments. If the Commissioner grants that relief and the taxpayer subsequently makes a non-EFT payment in an amount equal to or in excess of the threshold amount for the period the taxpayer was previously required to make payments using EFT, the taxpayer is subject to all applicable penalties, additions to tax and interest.

9.4 If the taxpayer elects to use the ACH Debit payment method, the taxpayer shall furnish the Department with the information needed to complete the transaction. All transactions shall be initiated by the taxpayer by calling the Department at the toll-free telephone number specified in the instructions provided to the taxpayer.

9.5 If the taxpayer elects to use the ACH Credit payment method, the taxpayer is responsible for ensuring that the bank originating the transaction has the information necessary for timely completion of the transaction. Also, the taxpayer is responsible for the correct completion of the transaction. The taxpayer shall provide the information necessary for the bank to complete the NACHA CCD+ entry with the required TXP Banking Convention addenda record.

§110-10F-10. Procedures for payment - ACH debit payment method.

10.1 Taxpayers who elect to use the ACH Debit payment method of making EFT payments shall use the following procedures in communicating payment information to the Department.

10.2 Prior to contacting the Department, the taxpayer shall complete a worksheet provided by the Department. The taxpayer shall record the following information on the worksheet and then compute the verification code on the worksheet:

10.2.1 Bank routing number;

10.2.2 Bank account number;

10.2.3 Tax payment amount;

10.2.4 Tax period covered;

10.2.5 Tax type; and

10.2.6 Payment type

10.3 The taxpayer shall report payment information to the Department no later than 12:00 a.m. (midnight) Eastern Time on the business day before the due date of the payment at the toll-free number during the call-in period as specified in the instructions provided in order to clear the ACH for deposit in the State Treasury on the due date. The Department shall bear the costs of processing ACH Debit payments. Communication by the taxpayer during the call-in period is mandatory to ensure the timely posting of the taxpayer's payment on the following business day.

10.4 When the Department receives the information provided by the taxpayer, it shall compute the verification code. If the information is correct, the verification code computed by the Department will be identical to the verification code computed by the taxpayer.

10.5 If the verification code computed by the Department is identical to the verification code computed by the taxpayer, the Department shall confirm the code to the taxpayer. The taxpayer shall retain the worksheet and record the date and time of the call for an audit trail of the payment.

10.6 If the verification code is not identical, the Department shall ask the taxpayer to provide the information again, until it can be verified that the exchange of information is correct.

10.7 Successful completion of the call to the Department fulfills the taxpayer's obligation to initiate an ACH Debit transaction.

10.8 The payment of taxes through EFT does not relieve the taxpayer from filing the appropriate tax returns or applicable information returns required by the Department. Taxpayers shall complete any EFT payment indicators on the returns. If an EFT payment indicator is not available on a return, the taxpayer shall boldly and legibly indicate on the face of the return that payment was made using EFT. Returns are filed in the normal manner, except that they shall be mailed to the following address:

West Virginia State Tax Department
RD-EFT
P. O. Box 11895
Charleston, WV 25339-1985

§110-10F-11. Procedures for payment - ACH credit payment method.

11.1 Taxpayers who elect to use the ACH Credit payment method of making EFT payments shall use the procedures in this section to communicate payment information to the Department. The Department intends to examine each taxpayer's compliance with the requirements of this rule.

11.2 If a taxpayer has elected the ACH Credit payment method but repeatedly fails to correctly complete the payment transactions in accordance with this rule, the Department may in its discretion require the taxpayer to make future payments by the ACH Debit payment method.

11.3 To assure the timely receipt of payment, a taxpayer shall ensure that the financial institution originating the transaction does so in sufficient time for the payment to be deposited as immediately available funds to the State Treasury on or before the appropriate due date of the payment.

11.4 All ACH Credit transactions shall use the NACHA CCD+ entry with a TXP Banking Convention addenda record. The TXP Banking Convention addenda record requires the following information:

11.4.1 Taxpayer's identification number;

11.4.2 Tax type code;

11.4.3 Tax period end date;

11.4.4 Payment type; and

11.4.5 Amount of payment.

11.5 If a taxpayer repeatedly fails to provide the Department with a required addenda record that conforms to the requirements of the Department, the taxpayer may be required at the discretion of the Commissioner to use the ACH Debit method.

11.6 A taxpayer electing to use the ACH Credit payment method shall first determine the total amount of tax due with respect to the tax type for which the payment is being made. At a time arranged between the taxpayer and the taxpayer's financial institution, the taxpayer shall provide the taxpayer's financial institution with the information necessary to initiate a timely ACH Credit transaction utilizing the NACHA CCD+ entry and the TXP Banking Convention. A timely ACH Credit transaction shall be initiated and posted as immediately available funds to the State of West Virginia's bank account on or before the due date of the payment.

11.7 Taxpayers electing to use the ACH Credit payment method shall coordinate with their financial institutions to ensure that ACH Credit payments are timely initiated. Taxpayers shall consider the impact of prescribed ACH time frames and nightly cycles as well as the impact of weekends and holidays.

11.8 Taxpayers with a zero tax liability for a reporting period are not required to transmit a zero balance ACH Credit transaction. However, they shall file their tax return at the address noted in Subsection 11.9 of this rule.

11.9 When a taxpayer files a required return, any EFT payment indicators on the return shall be completed. If an EFT indicator is not available, taxpayers shall boldly and legibly print on the face of the return that payment was made using EFT. Tax returns for which payment was made using EFT shall be mailed to the following address:

West Virginia State Tax Department
RD-EFT
P. O. Box 11895
Charleston, WV 25339-1985

11.10 Taxpayers electing to use the ACH Credit method, prior to receiving final approval to transmit ACH Credit transactions, shall provide prenotification and receive approval of the prenotification from the Department prior to making live transactions.

§110-10F-12. Requirement for filing returns.

12.1 The requirement to use EFT to make tax payments does not change any current filing requirements for tax returns. If the EFT payment is not timely made or the tax return required is not filed by the due date, the provisions for penalties, late payment additions to tax, late filing additions to tax and interest apply under the provisions of the appropriate Section of the Code, except as provided in this rule.

12.2 Most tax return forms will have an EFT payment indicator for the taxpayer to complete. In the absence of an EFT payment indicator, taxpayers shall boldly and legibly print on the face of the return that payment was made using EFT.

12.3 Taxpayers shall file the required returns. Any EFT payment indicators on the return shall be completed. If an EFT indicator is not available, taxpayers shall boldly and legibly print on the face of the return that payment was made using EFT. Tax returns for which payment was made using EFT shall be mailed to the following address:

West Virginia State Tax Department
RD-EFT
P. O. Box 11895
Charleston, WV 25339-1985

§110-10F-13. Penalties, etc. for noncompliance

13.1 The provisions of West Virginia Code 11-10-1 et seq., govern the administration of any tax, interest, additions to tax or penalty assessed due to late EFT payments, except as provided in this rule.

13.2 West Virginia Code §11-10-5t imposes, in addition to any other additions to tax or penalties that may be applicable, a civil penalty for failing or refusing to use an

appropriate EFT method when required to do so. The amount of the penalty is three percent of the total tax liability which is or was to be paid by EFT.

13.3 Failure of a taxpayer to respond to the notification from the Department concerning the required use of EFT to make payments for a tax type or failure to timely or properly make EFT payments in accordance with this rule subjects the taxpayer to applicable penalties, additions to tax and interest, as provided by the Code, for delinquent or underpaid tax payments. If payment is made for a tax type for which a taxpayer was required to make payments using EFT and the payment is made in a method which is not in accordance with the procedures stated in this rule, penalties, interest and additions to tax for late filing and late payment, for that tax type, may be assessed as specified in the Code. In addition to any penalty that may be imposed, interest shall be added to the amount of tax due from the due date of the tax payment to the date that the funds become available to the State Treasury.

13.4 The Department may waive the penalty and additions to tax if the taxpayer can demonstrate that the failure was due to reasonable cause and not due to willful neglect. Errors made by the Department, the State Treasury or the taxpayer's bank which result in a late payment by the taxpayer do not subject the taxpayer to penalties, additions to tax, or interest.

13.5 When a taxpayer uses the ACH Debit payment method, the State of West Virginia's bank is the originating bank and is responsible for the accuracy of the transmission. If the taxpayer has timely initiated the ACH Debit transaction, received a confirmation of the verification number, and demonstrated that adequate funds were available in the bank account, then the fact that the transaction is not properly completed does not subject the taxpayer to penalties, additions to tax or interest.

13.6 When a taxpayer uses the ACH Credit payment method, the taxpayer's bank is the originating bank and the taxpayer is primarily responsible for the accuracy and proper completion of the transaction. In order to prove timely compliance, the taxpayer shall show timely initiation of the transaction; shall have provided the correct information for the NACHA CCD+ entry and the required TXP Banking Convention addenda record; and shall show that there were sufficient funds in the account and that the financial institution properly completed the transaction in a timely manner. If the taxpayer makes this showing, no penalties, additions to tax or interest apply to the payment if the transaction is not properly completed.

13.7 A taxpayer required to make EFT payments, but unable to make a timely payment because of system failures within the Automated Clearing House system which are beyond the taxpayer's control, is not subject to penalties, additions to tax or interest for late payment.

§110-10F-14. Voluntary use of EFT to pay taxes.

14.1 Taxpayers not required to make EFT payments for a tax type may apply for permission from the Department to voluntarily make EFT payments for that tax type.

14.2 Taxpayers making voluntary EFT payments for a tax type are subject to the provisions of this rule to the same extent as taxpayers who are required to make EFT payments.

14.3 A taxpayer seeking to make voluntary EFT payments shall file written application with the Department at least 60 days prior to the due date of the next payment of the tax type for which permission to make EFT payments is sought.

14.3.1 A taxpayer may request permission to terminate voluntary EFT payments for a tax type by filing written application with the Department at least 60 days prior to the due date of the last EFT payment to be made by the taxpayer.

14.3.2 A taxpayer may not make more than one application to terminate voluntary EFT payments per calendar year.

14.3.3 A taxpayer making an application for termination shall continue to make payment by the payment method elected in accordance with the procedures stated in this rule, until the Commissioner in writing releases the taxpayer and approves payment by another method.

14.4 Applications to voluntarily make or to terminate making voluntary EFT payments shall be directed to the West Virginia State Tax Department, RD-EFT, P. O. Box 11895, Charleston, WV 25339-1985 and shall include a properly completed Form WV/EFT-5, Electronic Funds Transfer Application.

§110-10F-15. Proof of payment.

15.1 In the case of an ACH credit transaction or Fedwire, the Department shall consider the tax to have been paid on the date the money is received by the State of West Virginia's bank account. In the case of an ACH debit transaction, the Department shall consider the tax paid on the next business day after the transaction was initiated by the taxpayer. The proof of payment by the taxpayer depends on the payment method used.

15.2 Payment in an ACH Debit transaction may be proven by use of the verification code received from the Department when the transaction was initiated, together with a statement from the taxpayer's bank showing a transfer that decreases the taxpayer's account balance by the correct amount, the date of the transfer and the identity of the payee as the State of West Virginia.

15.3 Since an ACH Credit transaction is initiated and generated by the taxpayer, the taxpayer has responsibility for the proper and timely completion of the transaction. The taxpayer has the responsibility to ensure that it is provided an ACH trace number by the bank originating the transaction. This trace number; proof of the NACHA CCD+ entry showing the State's bank routing and transit number and bank account number; and a statement from the taxpayer's bank showing a transfer that decreased the taxpayer's account balance by the correct amount, the date of the transfer and the identity of the payee as the State of West Virginia together, constitute proof of payment by the taxpayer.

§110-10F-16. Correction of errors.

16.1 If an error in the EFT payment process results in either an underpayment or an overpayment of the tax, the taxpayer shall promptly contact the Department. An overpayment may be used as a credit against a future tax liability or the taxpayer may apply for a refund. The Department shall make every reasonable effort to expedite a refund requested by the taxpayer to correct an EFT overpayment error.

16.2 When possible, the taxpayer shall attempt to correct errors made in initiating an ACH Debit payment made during the call-in period on the same day the transaction was initiated by the taxpayer. Otherwise, the taxpayer shall contact the Department on the next business day after the error is discovered for specific instructions on how to correct the error.

16.3 In the event a taxpayer using the ACH Debit method communicates payment information to the Department after 12:00 a.m. (midnight) Eastern Time on the business day before the due date, the payment shall be posted to the taxpayer's account on the next business day following the due date and constitutes late payment.

16.4 Failure of a taxpayer to make a timely EFT payment because of circumstances under the taxpayer's control, including but not limited to insufficiency of funds in the taxpayer's account or a direct payment to the Department using an unauthorized payment method, subjects the taxpayer to penalties, additions to tax and interest.

§110-10F-17. Emergency payment.

17.1 In the event the Commissioner determines that a taxpayer is unable to effect a timely EFT payment due to extenuating circumstances beyond the taxpayer's control, the Commissioner may allow the taxpayer to use Fedwire.

17.1.1 For example, if on the due date of an EFT payment the taxpayer becomes aware that an error was made in the EFT payment which cannot be corrected on that day, the taxpayer may contact the Department and request authorization to correct the payment with Fedwire. The Commissioner may grant authorization to use Fedwire for that one payment. The Commissioner shall base that decision upon the

taxpayer's payment history as well as the taxpayer's compliance with prescribed rules regarding EFT payments.

17.2 If the Commissioner authorizes the request, he or she shall provide the taxpayer with a Fedwire Authorization Number and additional information to be included in the free-form field of the Fedwire.

17.3 To request authorization the taxpayer shall contact the Revenue Division Director at (304) 558-8500. The taxpayer shall present the extenuating circumstances which prevent timely compliance using the ACH Debit method or ACH Credit method, and request authorization to use Fedwire to transfer the payments in question to the State Treasury.

17.4 The Department shall give taxpayers who are granted authorization to use Fedwire transfer specific instructions regarding the payment information that must accompany the transfer.

17.5 All Fedwire transfers shall be accompanied by an addenda record, in the format specified by the Department, including the following information:

17.5.1 Taxpayer's identification number;

17.5.2 Tax type code;

17.5.3 Tax period end date;

17.5.4 Payment type; and

17.5.5 Amount of payment.

17.6 The Department shall not bear any costs associated with the Fedwire transfer.

17.7 Unauthorized Fedwire transfers constitute late payment and are subject to appropriate penalties, additions to tax and interest.

17.8 Authorized Fedwire transfers which are not received by the State Treasury on or before the due date of the transmitted payments constitute late payment and are subject to appropriate penalties, additions to tax and interest.

§110-10F-18. Grace period during implementation.

18.1 During the first year of implementation of this rule, the Commissioner may, in his or her discretion, extend a grace period of no more than two business days for a taxpayer to resolve problems arising in financial institutions, Federal Reserve facilities, or the Automated Clearing House system which result in late payment.

18.2 To qualify for a grace period, the taxpayer shall demonstrate that a good faith attempt was made to comply with the provisions of this rule, due diligence was exercised to initiate the payment timely and correctly, and sufficient funds were available in the taxpayer's bank account, but circumstances beyond the taxpayer's control prevented compliance by the required date.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: March 30, 2011

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Department, Legal Division, 1001 Lee Street, East, Charleston, WV 25324-1005 (304) 558-5330

LEGISLATIVE RULE TITLE: Payment of Taxes by Electronic Funds Transfer

1. Authorizing statute(s) citation W. Va. Code §§ 11-10-5t and 11-10-5z

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

January 21, 2011

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Public Hearing(s) or Public Comment Period ended:

February 24, 2011

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John Montgomery, Managing Attorney

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

304-558-8728 (fax)

John.E.Montgomery@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

- b. Date of hearing or comment period:

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

- d. Attach findings and determinations and reasons:

Attached

**AGENCY APPROVED
TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT
SERIES 10F
PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER
SUMMARY**

This rule is used by the West Virginia State Tax Department in the administration of W. Va. Code §11-10-5t, which authorizes the Tax Commissioner to require certain taxpayers to make tax payments by electronic funds transfer so that the funds will be immediately available to the State Treasury on the due date of payment. The amendments to this rule establish the threshold amount when requiring the payment of taxes by electronic funds transfer.

**AGENCY APPROVED
TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT
SERIES 10F
PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER
STATEMENT OF CIRCUMSTANCES**

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 was filed as an emergency rule in December, 2010 and is now being filed as a legislative rule so as to assure the continuation of the effectiveness of the emergency rule.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Payment of Taxes by Electronic Funds Transfer

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 amendments to this rule will have very little, if any, impact on the costs and revenues of state government.

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: Payment of Taxes by Electronic Funds Transfer

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

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

There should be no increase or decrease in fees resulting from this amended rule.

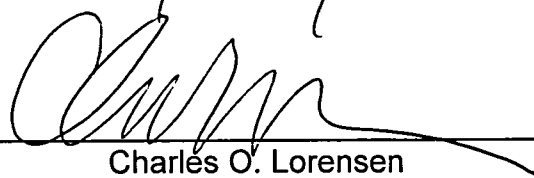
MEMORANDUM

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 amendments to the rule merely reduce the threshold for paying taxes electronically which may have a slight impact due to the receipt of revenues resulting from the electronic transfer of funds.

Date: _____

4/21/2011



Charles O. Lorensen

Cabinet Secretary of the Department of Revenue