

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

Form #2

Do Not Mark In This Box

**FILED**

2002 DEC 27 P 2:30

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Legislative CITE AUTHORITY: W. Va. Code § 11-10-23

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 10G

TITLE OF RULE BEING PROPOSED: Alternative Resolution of Tax Disputes

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 January 29, 2003 AT 5:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

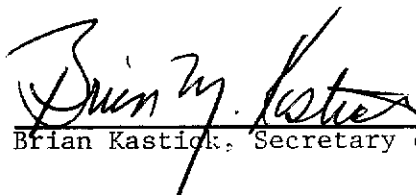
Legal Division

State Tax Department

P.O. Box 1005

Charleston, WV 25324-1005

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



Brian Kastick, Secretary of Tax & Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**SCANNED**

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Alternative Resolution of Tax Deposits

Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Tax Division  
 Address: P.O. Box 1005  
Charleston, WV 25324-1005

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	52,000	0	30,000	52,000	52,000
PERSONAL SERVICES	52,000	0	30,000	52,000	52,000
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

The above cost reflects the estimated cost of hiring a Taxpayer Rights Advocate.

3. Objectives of these rules:

This rule provides a procedure for the alternative resolution of tax disputes.

Rule Title: Alternative Resolution of Tax Disputes

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Expenditures of the Tax Department will increase \$30,000 in FY 2003, to \$52,000 in FY 2004 and then continue at \$52,000 thereafter.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: December 30, 2002

Signature of Agency Head or Authorized Representative

  
Rebecca Melton Craig - State Tax Commissioner

## **RULE SUMMARY**

### **110 C.S.R. 10G**

#### **ALTERNATIVE RESOLUTION OF TAX DISPUTES**

The rule provides a procedure for resolving tax disputes without going through the administrative hearing procedure. Under the rule, a taxpayer, subsequent to receipt of an assessment issued pursuant to a field audit, may petition the Tax Department for resolution through conciliation. The rule establishes the requirements and procedures necessary for the alternative resolution of tax disputes.

## **STATEMENT OF CIRCUMSTANCES**

**110 C.S.R. 10G**

### **ALTERNATIVE RESOLUTION OF TAX DISPUTES**

West Virginia Code § 11-10-23 requires the Tax Commissioner to file by December 31, 2002, a proposed legislative rule that adopts and implements an alternative dispute resolution mechanism that offers taxpayers a voluntary and cost-efficient method of resolving tax disputes. This rule accomplishes that requirement.

TITLE 110  
LEGISLATIVE RULE  
STATE TAX DEPARTMENT  
SERIES 10G

FILED

2007 DEC 27 P 2:30

ALTERNATIVE RESOLUTION OF TAX DISPUTES

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

§ 110-10G-1. General.

1.1 **Scope** -- This rule adopts and implements alternative dispute resolution mechanisms in order to encourage taxpayers to resolve tax disputes through voluntary settlements rather than litigation. If there is a conflict between this rule and other rules which have been previously promulgated, this rule governs.

1.2 **Authority** -- W. Va. Code § 11-10-23.

1.3 **Effective Date** --

1.4 **Filing Date** --

§ 110-10G-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 in the context in which the term is used.

2.1 **“Alternative dispute resolution”** means an alternative to courtroom litigation or agency adjudication, including conciliation with the Tax Department and mediation and hearings before the Board of Tax Appeals.

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

2.3 **“Code”** or **“this Code”** means the Code of West Virginia, one thousand nine hundred thirty-nine, or amended.

2.4 **“Conciliation”** means a method of dispute settlement in which parties clarify issues and narrow differences through the aid of an individual called a “conciliator”.

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

2.6 **“Mediation”** means a method of dispute resolution in which parties use an impartial third person called a “mediator” to assist the parties to negotiate a settlement.

2.7 **“Office of Tax Appeals”** means the West Virginia Office of Tax Appeals created by W. Va. Code § 11-10A-1 et seq. as an independent, quasi-judicial agency that is in the Department of Tax and Revenue for administrative purposes only.

2.8 **“Party”** means the Tax Department or the taxpayer seeking to resolve a tax dispute through alternative dispute resolution.

2.9 "Tax" means any tax administered by the Tax Department to which the alternative dispute resolution mechanisms set forth in this rule applies, and includes within its meaning any applicable interest, additions to tax and penalties.

2.10 "Taxpayer" means any person liable for payment of, or required to file a return for, any tax administered under W. Va. Code § 11-10-1 et. seq.

**§ 110-10G-3. Jurisdiction and Scope of Alternative Dispute Resolution.**

3.1 Rather than appeal a tax assessment to the Office of Tax Appeals, a taxpayer may request alternative dispute resolution after receipt of notice of proposed assessment. Unsuccessful alternative dispute resolution shall not preclude a subsequent appeal to the Office of Tax Appeals if it is timely filed.

3.1.1 Conciliation resulting in a final agreement shall be conclusive and binding on both parties and unless there is fraud, malfeasance or misrepresentation of a material fact, the agreement shall preclude any subsequent appeal of the matters agreed to in the final agreement and the matters so agreed upon shall not be reopened or the agreement modified.

3.2 A taxpayer may petition either the Tax Department for conciliation, or the Office of Tax Appeals for mediation.

3.2.1 The Office of Tax Appeals shall promulgate any rules necessary or useful to adopt and implement a mediation program pursuant to W. Va. Code §§ 11-10A-8(6) and 11-10A-20.

3.2.2 The Tax Department shall promulgate any procedural rules, forms, instructions, and publications necessary or useful to implement the conciliation program adopted in this rule.

3.3 Alternative dispute resolution shall not apply to financial hardship claims, collection cases, disputes already in litigation, constitutional issues, licensing laws administered by the Commissioner, jeopardy assessments or assessments made pursuant to interstate taxing agreements. However, participation in alternative dispute resolution shall not prevent the Commissioner from making jeopardy assessments in accordance with W. Va. Code § 11-10-7(b).

3.4 Alternative dispute resolution shall not be available if authoritative resolution of an issue is needed for precedential value, if formal resolution is needed to avoid variation in treatment of taxpayers, or if a formal proceeding before the Office of Tax Appeals is otherwise in the public interest or sound tax administration.

3.5 A taxpayer shall file the request for alternative dispute resolution within thirty calendar days after the date the taxpayer received written notice of proposed assessment. If the request is not timely received, the Department shall send the taxpayer a notice of assessment and the time limitations set forth in the Code for filing a petition for hearing in the Office of Tax Appeals shall commence to run.

3.5.1 Notice of proposed assessment shall be served in the same manner that notice of assessment is served under W. Va. Code § 11-10-5e.

3.6 Conciliation shall not suspend the accrual of any amount which may be due for interest, additions to tax and penalties.

**§ 110-10G-4. Conciliation.**

4.1 The Tax Commissioner shall appoint a conciliation coordinator, an assistant conciliation coordinator and conciliators from available staff of the Tax Department.

4.1.1 If funds are available, the Tax Commissioner may enter into contracts with individuals and organizations to conduct conciliation.

4.2 A taxpayer who has received notice of proposed assessment pursuant to a field or internal desk audit may request conciliation by filing a written request with the conciliation coordinator. The notice shall inform the taxpayer of the right to request conciliation or mediation and the requirements that must be met by the taxpayer in order to file a request.

4.2.1 The conciliation coordinator or assistant conciliation coordinator shall assign a date, time and place for a conciliation conference when a request for conciliation is approved, and shall notify the parties by written notice at least twenty calendar days in advance of the conference date, which shall be within forty-five calendar days after the request is received, unless continued for good cause.

4.3 A conciliator assigned to a particular case may have no financial or personal conflict of interest with respect to the taxpayer or issue in controversy in that case.

4.4 A conciliator shall conduct conciliation impartially and informally, without regard to the rules of evidence, in a conference where the parties are afforded the opportunity to resolve their disagreements on the facts and issues in dispute. The conciliator's role is to guide the parties to mutual agreement, rather than imposing an agreement on the parties. The goal of the conciliator shall be, where possible, in whole or in part, to eliminate the need for a hearing at the Office of Tax Appeals or to narrow the scope of the facts and issues in dispute if there is a hearing.

4.5 The Tax Department shall develop a form requesting the following information and any other information deemed relevant.

4.5.1 The name and address of the taxpayer;

4.5.2 The name and address of the taxpayer's representative, if any;

4.5.3 The type and amount of tax in controversy and all applicable taxable periods involved;

4.5.4 The action or decision being protested and the operating unit or division taking that action or making that decision;

4.5.5 The facts and law which the taxpayer believes to be relevant to the controversy;

4.5.6 The signature of the taxpayer or the taxpayer's representative, beneath statements to the effect that the facts set forth in the request are truthful and accurate; that no

relief has previously been granted for the same controversy; that the running of time limitations on making assessments is suspended during conciliation; and that the taxpayer acknowledges and waives any potential conflict of interest the conciliator may have as an employee of the Department.

4.5.7 A legible copy of the notice of proposed assessment that is at issue; and

4.5.8 An original copy of a power of attorney, if applicable.

4.6 The Tax Department may at any time prior to or during conciliation request that the taxpayer supply additional information in order to process the request for conciliation or resolve the issues in the request.

4.7 Taxpayers requesting conciliation may represent themselves, or may be represented by an attorney, accountant, enrolled agent or any other person.

4.7.1 A partnership may act through one of its general partners without filing a power of attorney, and may act through one of its limited partners or employees if a power of attorney is filed.

4.7.2 A corporation may act through one of its officers without filing a power of attorney, and may act through one of its employees if a power of attorney is filed.

4.7.3 A limited liability company may act through one of its officers or managers without filing a power of attorney, and may act through one of its employees if a power of attorney is filed.

4.7.4 An individual requesting conciliation may be represented by a friend or member of the family who is not an attorney only if a power of attorney is filed, unless the individual is present during conciliation or permission is received by the individual from the conciliation coordinator or assistant conciliation coordinator.

4.8 The conciliation coordinator may reject a request for conciliation that is frivolous or that is filed for the purpose of delaying collection of tax.

4.9 Because conciliation is a voluntary process, both parties are required to agree in order to reach a settlement or other agreement. Either party may withdraw from conciliation for any reason at any time prior to the termination of conciliation by notifying the conciliator and the other party in writing.

4.10 In order to expedite the prompt resolution of disputes, the Tax Commissioner may delegate to the conciliator in advance of the conciliation conference the right to waive or modify interest, penalties, additions to tax and such other matters the Commissioner deems appropriate, in accordance with the Commissioner's authority under the Code.

4.11 If the parties reach an agreement, one of the parties or the conciliator shall memorialize the agreement in writing, and the taxpayer shall sign, date and return it.

4.11.1 The agreement shall include a waiver of the right to petition for a hearing before the Office of Tax Appeals.

4.11.2 The agreement shall have no precedential value or estoppel effect in any other proceeding.

4.12 The conciliator may not be called as a witness in any litigation or mediation involving the parties in any way relating to the dispute that is the subject of conciliation.

**§ 110-10G-5. Confidentiality.**

5.1 The provisions of W. Va. Code § 11-10-5d, concerning confidentiality and disclosure of tax returns and information are applicable to all aspects of conciliation.

5.2 Confidentiality shall not be interpreted to require the exclusion at a subsequent hearing of any information otherwise available or discoverable merely because the information was presented in the course of conciliation.

5.3 All aspects of conciliation shall be exempt from the requirements of W. Va. Code §§ 6-9A-1 et seq. "Open Government Proceedings" and 29B-1-1 et seq. "Freedom of Information."