

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

Form #2

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FILE

2008 JUL 29 PM 1:22

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 §11-10-7(d)(b)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

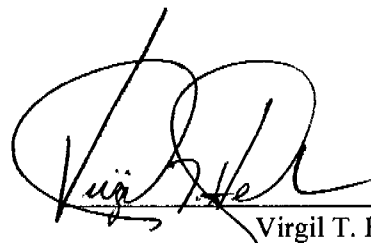
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 10K

TITLE OF RULE BEING PROPOSED: Combined Returns Pursuant To An Investigation By The Tax Commissioner

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 August 28 2008 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

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Combined Returns Pursuant to an Investigation by the Tax Commissioner
(110 CSR 10K)

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 rule, as written, merely specifies the order to which payments on combined returns are to be applied against the taxes included on the combined returns. Therefore, the approval of the rule would have no fiscal impact.

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: Combined Returns Pursuant to an Investigation by the Tax Commissioner (110 CSR 10K)

- 3. Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues:

Approval of this proposed rule will not increase or decrease revenue or costs.

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 intent of this proposed rule is to specify the order to which payments on combined returns are to be applied against the taxes reported on the return. Since the total payment made with the return itself will not change, there is no net fiscal impact.

Date: _____

Signature of Agency Head or Authorized Representative:



Virgil T. Helton,
Cabinet Secretary of the Department of Revenue

Summary for 110-10K

The proposed rule sets forth guidance on the order of application of taxes combined pursuant to West Virginia Code §11-10-7d(b). The West Virginia State Legislature has granted the Tax Commissioner the discretion to combine the tax returns of taxpayers subsequent to an investigation conducted by the Tax Commissioner or his or her designees; which results in an assessment in each of two or more taxes administered under W. Va. Code §11-10-1 *et seq.* This legislative rule provides the order of application of taxes remitted under such a combined return.

110 C.S.R. 10K
COMBINED RETURNS PURSUANT TO AN INVESTIGATION BY THE TAX
COMMISSIONER
STATEMENT OF CIRCUMSTANCES

The West Virginia State Legislature has granted the Tax Commissioner the discretion to combine the tax returns of taxpayers subsequent to an investigation conducted by the Tax Commissioner or his or her designees; which results in an assessment in each of two or more taxes administered under W. Va. Code §11-10-1 *et seq.* This legislative rule provides the order of application of taxes remitted under such a combined return.

TITLE 110
WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF TAX AND REVENUE
DIVISION OF TAX

SERIES 10K
COMBINED RETURNS PURSUANT TO AN INVESTIGATION BY THE TAX
COMMISSIONER

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SECRETARY OF STATE

§110-10K-1. General.

1.1. **Scope.** -- This rule provides guidance on the order of application of taxes combined pursuant to West Virginia Code §11-10-7d(b).

1.2. **Authority.** -- W. Va. Code §§11-10-7d(b).

1.3. **Filing Date.** --

1.4. **Effective Date.** --

§110-10K-2. Introduction.

2.1. The West Virginia State Legislature has granted the Tax Commissioner the discretion to combine the tax returns of taxpayers subsequent to an investigation conducted by the Tax Commissioner or his or her designees; which results in an assessment in each of two or more taxes administered under W. Va. Code §11-10-1 *et seq.* This legislative rule provides the order of application of taxes remitted under such a combined return.

§110-11-3. Definitions.

As used in this rule, and unless the context clearly requires a different meaning, the following terms have the meaning ascribed in this section:

3.1. **“Combined return”** means a tax return in which the Tax Commissioner has combined the returns for taxes that are the subject of an investigation by the Tax Commissioner or his or her designee.

3.2. **“Tax”** means and includes all taxes, additions to tax, and all interest and penalties levied under any applicable West Virginia statute authorizing such taxes or under W. Va. Code §11-10-1 *et seq.*

3.3. **“Tax Commissioner”** means the Commissioner of the West Virginia State Tax Department.

§110-10K-4. Order of remittance.

4.1. For combined returns of West Virginia Consumers Sales, Service and Use Tax and municipal sales and use tax, the taxes so combined and remitted shall be applied in the following order:

- (a) municipal sales and use tax
- (b) use tax imposed under West Virginia Code §11-15A-1 *et seq.*
- (c) consumers sales and service tax imposed under West Virginia Code §11-15-1 *et seq.*

4.2. For combined returns of West Virginia Corporation Net Income and Business Franchise Tax, the taxes so combined and remitted shall be applied in the following order:

- (a) business franchise tax
- (b) corporation net income

4.3. For combined returns of pass-through entities, for West Virginia personal income tax withholding and Business Franchise Tax, the taxes so combined and remitted shall be applied in the following order:

- (a) nonresident withholding tax
- (b) business franchise tax