

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

Form #3

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**FILED**  
2008 AUG 29 PM 2:22  
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 §11-10-7(d)(b)

AMENDMENT TO AN EXISTING RULE: YES \_\_\_\_\_ NO X

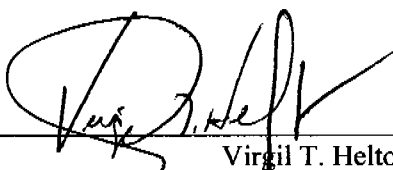
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

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.

  
\_\_\_\_\_  
Virgil T. Helton  
Cabinet Secretary of the Department of Revenue

## 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: August 29, 2008

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia State Tax Department  
Revenue Center  
1001 Lee Street East, Charleston WV 25301

LEGISLATIVE RULE TITLE: Title 110, Series 10K

1. Authorizing statute(s) citation W. Va. Code 11-10-7(d)(b)

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

July 29, 2008

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

None.

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

August 28, 2008 at 5pm

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)

August 29, 2008 prior to 3pm

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

Mark Morton, General Counsel for Revenue Operations

Revenue Center

1001 Lee Street East, Charleston WV 25301

phone: 304-558-5330

fax: 304-558-8728

email: MMorton@tax.state.wv.us

- 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)

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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.

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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### **BRIEF SUMMARY FOR TITLE 110, SERIES 10K**

The proposed rule sets forth guidance on the order of application of taxes combined pursuant to West Virginia Code §11-10-7(d)(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.

## 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   X   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<br>Increase/Decrease<br>(use "-") | Next<br>Increase/Decrease<br>(use "-") | Fiscal Year<br>(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: \_\_\_\_\_

8/29/08

Signature of Agency Head or Authorized Representative: \_\_\_\_\_

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

TITLE 110  
WEST VIRGINIA LEGISLATIVE RULE  
STATE TAX DEPARTMENT

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

FILED  
2008 AUG 29 PM 2:23

OFFICE WEST VIRGINIA  
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, the taxes so combined and remitted shall be applied in the following order:

- (a) consumers sales and service tax
- (b) consumers use tax
- (c) municipal sales and use tax

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