

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

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§11-10-5 and 11-10-7d(b)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

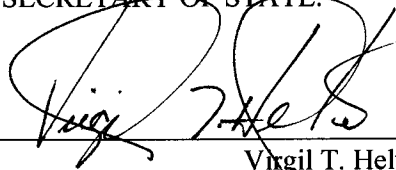
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

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, FOLLOWING REVIEW BY THE LEGISLATIVE
RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND
COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED
MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Virgil T. Helton
Cabinet Secretary of Tax and Revenue

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

FILED

2009 JAN 12 PM 4: 01

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

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 §§11-10-5 and 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 a combined return.

§110-10K-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 these 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 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 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 combined and remitted shall be applied in the following order:

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



JOE MANCHIN III
GOVERNOR

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

VIRGIL T. HELTON
CABINET SECRETARY

STATE CAPITOL
CHARLESTON, WEST VIRGINIA

CONSENT TO PROPOSAL OF RULE

To Whom It May Concern:

Pursuant to West Virginia Code § 5F-2-2(a)(12), the undersigned hereby grants consent for the following (**legislative**) rule as amended by the State Tax Department of the State of West Virginia: Title 110, Series 10K, relating to Combined Returns pursuant to an Investigation by the Tax Commissioner.

Dated this 12th day of January, 2009.

A handwritten signature in black ink, appearing to read "Virgil T. Helton", written over a horizontal line.

Virgil T. Helton
Cabinet Secretary, Department of Revenue