

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

Form #6

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE
AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: State Tax Department TITLE NUMBER: 110

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB-227

SECTION 64-7-1(b), PASSED ON April 11, 2009

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE
FOLLOWING DATE: June 1, 2009



Virgil T. Helton
Cabinet Secretary
West Virginia Department of Revenue

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

FILED

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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.** -- June 1, 2009.

1.4. **Effective Date.** -- June 1, 2009.

§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