

NOTICE OF AGENCY APPROVAL

LEGISLATIVE RULE: Registration Of Transient Vendors

The attached legislative rule constitutes the official rule approved by the
State Tax Department

on 18th day of August, 1986 and filed pursuant to law with the West
Virginia Secretary of State and the Legislative Rule-Making Review
Committee.


STATE TAX COMMISSIONER

FILED

1986 AUG 18 AM 9:29

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

APPROVED PROPOSED
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DEPARTMENT
Chapter 11-12
Series XII
(1986)

Filed: August 18, 1986

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Section 1. General.

1.1 Type of Regulation. -- These regulations are emergency legislative regulations as defined in W. Va. Code §§ 29A-1-2(d) and 29A-3-15.

1.2 Scope. -- These regulations establish the procedure to be followed by the Tax Commissioner in instituting forfeiture proceedings against the property of a transient vendor, as that term is defined in W. Va. Code § 11-12-2, who fails on demand to exhibit a valid business registration certificate as required by W. Va. Code § 11-12-1 et seq.

1.3 Authority. -- These emergency legislative regulations are issued under the authority of W. Va. Code §§ 29A-3-15 and 11-12-24.

1.4 Filing Date. -- These emergency legislative regulations were promulgated and filed in the State Register on July 3, 1986, and were refiled as agency approved legislative regulations on August 11, 1986.

1.5 Effective Date. -- These emergency legislative regulations become effective immediately upon filing.

1.6 Citation. -- These emergency legislative regulations may be cited as Emerg. W. Va. Leg. Reg. 11-12 Ser. XII, § _____, page _____ (1986).

Section 2. Definitions. -- As used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meanings ascribed herein, and shall apply in the singular or in the plural.

2.1 Business Activity. -- The term "business activity" shall mean and include all purposeful revenue-generating activity engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect, and all activities of this state and its political subdivisions which involve the sale of tangible personal property or the rendering of service when such service activities compete with or may compete with the activities of another person. "Business activity" shall not include:

2.1.1 Judicial sales directed by law or court order.

2.1.2 Sales for delinquent taxes of real or personal property.

2.1.3 The conduct of charitable bingo by any person licensed under article twenty, chapter forty-seven of this code.

2.1.4 The conduct of a charitable raffle by any person.

2.1.5 The conduct of a horse or dog race meeting by any racing association licensed under article twenty-three, chapter nineteen of this code.

2.1.6 The operation or maintenance of the pari-mutuel system of wagering during the conduct of a licensed horse or dog race meeting.

2.1.7 The sale of any commodity during the conduct of a licensed horse or dog race meeting.

2.1.8 The services of owners, trainers or jockeys which are essential to the effective conduct of a licensed horse or dog race meeting.

2.1.9 Occasional or casual sales of property or services.

2.2 Business Registration Certificate. -- The term "business registration certificate" shall mean a certificate issued by the Tax Commissioner authorizing a person to conduct business within the State of West Virginia; and when referred to in this regulation as a certificate of registration or a business franchise registration certificate, it shall mean a business registration certificate.

2.3 Occasional Sale Or Casual Sale. -- The terms "occasional sale" or "casual sale" shall mean a sale of tangible personal property not held or used by a seller in the course of an activity for which a business registration certificate is required, including the sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business: provided, that such sale or exchange is not one of a series of sales or exchanges sufficient in number, scope and character to constitute a business activity requiring the holding of a business registration certificate.

2.4 Person Or Company. -- The terms "person" or "company" shall mean and include any individual, firm, copartnership, joint venture, syndicate, association, corporation, estate, trust, business trust, receiver, syndicate, club, society, or other group or combination acting as a unit, or body politic or political subdivision (whether public or private, or quasi-public) and in the plural thereof as well as the singular, and when used in connection with the penalties imposed by W. Va. Code § 11-12-9 shall mean and include the officers, directors, trustees, or members of any firm, copartnership, joint venture, association, corporation, trust, business trust, syndicate or any other groups or combinations acting as a unit.

2.5 Registration Year. -- The term "registration year" shall mean a period of twelve calendar months beginning the first day of July and ending the thirtieth day of the following June.

2.6 Registrant. -- "Registrant" shall mean any person who has been issued a business registration certificate under this article for the current registration year.

2.7 Tax Commissioner. -- The term "Tax Commissioner" shall mean the Tax Commissioner of the State of West Virginia or his agent.

2.8 Transient Vendor.

2.8.1 "Transient vendor" means a person who:

2.8.1.a Brings into this state, by automobile, truck or other means of transportation, or purchases in this state, tangible personal property the sale or use of which is subject to one or more taxes administered by the Tax Commissioner under W. Va. Code § 11-10-1 et seq.;

2.8.1.b Offers or intends to offer such tangible personal property for sale to consumers in this state; and

2.8.1.c Does not maintain an established office, distribution house, sales house, warehouse, service enterprise, residence from which business is conducted, or other place of business within this state.

2.8.2 The term "transient vendor" shall not include any person who:

2.8.2.a Is a commercial traveler or selling agent who sells only to persons who purchase tangible personal property for purposes of resale to others;

2.8.2.b Only sells goods, wares or merchandise by sample catalog or brochure for future delivery;

2.8.2.c Only sells or offers for sale crafts or other handmade items that were made by the seller; or

2.8.2.d Only sells agricultural and farming products, except nursery products and foliage plants.

Section 3. Registration Of Transient Vendors

3.1 Business Registration Certificate Required. -- Prior to conducting any type of business activities in this State, a transient vendor must first obtain a business registration certificate from the Tax Commissioner, pay the tax imposed by W. Va. Code § 11-12-1 et seq., and post the bond required by W. Va. Code § 11-12-21.

3.1.1 The business registration tax levied by W. Va. Code § 11-12-4 is \$15.00 for each business registration certificate.

3.1.2 A transient vendor which sells tangible personal property or services from or out of one or more vehicles needs a business registration certificate for the business activity. A copy of its business registration certificate shall be carried in each vehicle and publicly displayed while business is conducted from or out of each such vehicle.

3.2 Registration Period. -- The business registration certificate, when issued by the Tax Commissioner, shall be valid for the current registration year, as that term is defined in the preceding subsection 2.5.

Section 4. Transient Vendor Certificates.

4.1 Tax Commissioner Responsibility. -- Upon receipt of an application for a transient vendor certificate but prior to issuing such certificate, the Tax Commissioner shall assure:

4.1.1 the application is correct,

4.1.2 the required bond has been posted, and

4.1.3 the transient vendor is not delinquent in the payment of any taxes imposed by Chapter 11 of the Code of West Virginia of 1931, as amended.

4.2 Display Of Certificate.

4.2.1 A transient vendor shall keep the business registration certificate, or a true copy thereof, in his possession at all times when conducting business in this State.

4.2.2 The transient vendor shall publicly display the certificate whenever conducting business in this State and shall exhibit the certificate upon the request of an investigator, revenue agent, or other authorized employee of the Tax Commissioner or any law enforcement officer.

4.3 Renewal Of Certificate. -- Upon application for renewal, the Tax Commissioner may issue a new certificate, which shall be valid for the next registration year, provided he is satisfied that:

4.3.1 the transient vendor has complied with the provisions of W. Va. Code § 11-12-1 et seq. and these regulations, and

4.3.2 the transient vendor is not delinquent in the payment of any tax imposed by Chapter 11 of the Code of West Virginia of 1931, as amended.

4.4 Surrender Of Certificate.

4.4.1 A transient vendor may file with the Tax Commissioner a request for voluntary suspension of its business registration certificate.

4.4.2 The Tax Commissioner shall return to the transient vendor the bond posted if he is satisfied that

4.4.2.a the transient vendor has complied with the provisions of W. Va. Code § 11-12-1 et seq., and

4.4.2.b the transient vendors business registration certificate has been returned to the Tax Commissioner.

Section 5. Notice Provided By Certificate.

5.1 Notice To The Public. -- The business registration certificate shall constitute notice that the vendor named thereon has registered with the Tax Commissioner. However, possession of a business registration certificate does not validate an otherwise illegal activity.

5.2 Notice To The Vendor. -- The business registration certificate shall provide the following notice to the transient vendor.

5.2.1 Prior to entering this State to conduct business, the transient vendor must provide written notice to the Tax Commissioner of all locations in this State where it intends to transact business and the dates on which such business will be conducted.

5.2.2 The Tax Commissioner may suspend or revoke the transient vendor's business registration certificate if the transient vendor fails to provide any required notice or provides any false information.

5.2.3 A transient vendor which conducts business in this State without having a valid business registration certificate or after such certificate has been suspended or revoked may be subject to criminal prosecution, the payment of fines, or subject to other penalties, or any combination of the foregoing.

Section 6. Bond Of Transient Vendors.

6.1 When Bond Posted. -- At the time of filing an application for a transient vendor business registration certificate, the transient vendor shall post with the Tax Commissioner a bond in the amount of \$500.00. Such bond may be in the form of a cash bond, a corporate surety bond, an irrevocable letter of credit, or a negotiable instrument having a market value of \$500.00. The bond shall be subject to approval by the Tax Commissioner.

6.2 Reduction Or Elimination Of Bond. -- The Tax Commissioner may reduce or eliminate entirely the required bond if he finds that over a period of at least twelve months the transient vendor has demonstrated compliance with W. Va. Code § 11-12-1 et seq. In making this determination, the Tax Commissioner shall consider, among other factors:

6.2.1 the timely filing and remittance of all taxes imposed by Chapter 11 of the Code of West Virginia of 1931, as amended,

6.2.2 the maintenance of appropriate records, and

6.2.3 the appropriate displaying of licenses.

Section 7. Notification To Tax Commissioner.

7.1 When Notification Required. -- Prior to entering this State to conduct business, the transient vendor shall notify the Tax Commissioner, in writing, of:

7.1.1 the location or locations where he intends to conduct business in the State, and

7.1.2 the date or dates when he intends to conduct such business.

7.2 Mailing Address For Notices. -- Notice or changes in notice previously submitted must be mailed to the following address: Accounting Division, State Tax Commissioner, State Capitol, Charleston, WV 25305

Section 8. Revocation Or Suspension Of Transient Vendor Business
Registration Certificate.

8.1 Grounds For Suspension Or Revocation. -- The Tax Commissioner may suspend or revoke a transient vendor's business registration certificate if it does any of the following.

8.1.1 If the transient vendor fails to provide appropriate notification as required by W. Va. Code § 11-12-22.

8.1.2 If the transient vendor provides the Tax Commissioner with false information regarding the conduct of its business within this State.

8.1.3 If the transient vendor fails to collect and timely remit to the Tax Commissioner the consumers sales and service tax or the use tax on the sales of tangible personal property or services that are subject to the taxes imposed by W. Va. Code §§ 11-15-1 et seq. and 11-15A-1 et seq.

8.1.4 If the transient vendor fails to timely file with the Tax Commissioner any tax return required by law or regulation to be filed for any tax administered by W. Va. Code § 11-10-1 et seq., or fails to timely pay the amount of tax shown to be due on any such return.

8.1.5 If the transient vendor fails to comply with the provisions of W. Va. Code § 11-5-8 providing for the assessment and payment of ad valorem property taxes on any goods or merchandise of a transient vendor which are offered or furnished for sale in this State.

8.2 Appeal From Suspension Or Revocation Of A Transient Vendor
Business Registration Certificate.

8.2.1 Prior to suspending or revoking a certificate, the Tax Commissioner shall give to the transient vendor written notice which provides the following:

8.2.1.a Notice of his intent to suspend or revoke the certificate,

8.2.1.b The reason for such suspension or revocation,

8.2.1.c The effective date of such suspension or revocation,
and

8.2.1.d The date, time and place where the transient vendor may appear and show cause why such business registration certificate should not be suspended or revoked.

8.2.2 This written notice shall be served on the transient vendor either by

8.2.2.a personal or substituted service or

8.2.2.b certified mail if addressed to and mailed to the address stated on the transient vendor's application for a business

registration certificate and accepted by any officer, partner, employee, spouse or child of the transient vendor over the age of eighteen: provided,

8.2.2.c that any notice addressed and mailed in the above manner, and which is refused or not claimed, may then be served by regular mail if mailed by first class mail, postage prepaid, to the same address, and the date of posting in the United States mail shall be the date of service.

8.2.3 The notice shall be served not less than twenty days prior to the hearing date.

8.2.4 The provisions of W. Va. Code § 11-10-1 et seq. shall govern the hearing procedures.

Section 9. Seizure Of Property Of Transient Vendors

9.1 Good Cause For Seizure Of Property. -- If a transient vendor conducting business within this State fails to exhibit a valid business registration certificate upon demand by an investigator, revenue agent, or other authorized employee of the Tax Commissioner or any law enforcement officer, such employee or any law enforcement officer in this State at the request of such employee shall have authority to seize, without warrant, the tangible personal property and automobile, truck or other means of transportation used to transport or carry that property.

9.1.1 The Tax Commissioner's employee making the seizure shall issue a receipt of the transient vendor signed by the representative and the transient vendor.

9.1.2 The receipt shall contain an inventory of the property seized from the transient vendor, and the name and address of the Tax Commissioner's employee making the seizure.

9.1.3 If the transient vendor refuses to sign the receipt, another individual may witness the inventory and sign the receipt.

9.1.4 Property so seized shall be deemed to be contraband and shall be subject to immediate forfeiture proceedings instituted by the Tax Commissioner.

9.2 Release Of Property Seized. -- Property seized pursuant to W. Va. Code § 11-12-24(a) shall be released to the transient vendor upon the occurrence of any of the following:

9.2.1 The transient vendor presents a valid business registration certificate to an authorized employee of the Tax commissioner, such certificate having been issued prior to the date the property was seized; or

9.2.2 The transient vendor registers with the Tax Commissioner and posts a bond in the amount of \$500.00, either immediately or within fifteen days after the property was seized; or

9.2.3 A court with appropriate jurisdiction issues an order directing the release of the seized property.

Section 10. Forfeiture Proceedings.

10.1 Filing Petition. -- In order to institute the proceedings to secure an order of forfeiture of the seized property, the Tax Commissioner must within thirty days after seizure file a petition in the Circuit Court of the county wherein the property was seized.

10.2 Petition Not Timely Filed. -- In the event the petition is not filed within the prescribed time, all tangible personal property shall be returned to the person from whom it was seized or to the owner thereof.

10.3 Procedural Rules. -- All service of process shall be accomplished in accordance with the West Virginia Rules of Civil Procedure.

10.4 Finding Of The Court.

10.4.1 The Circuit Court may docket the petition for a hearing upon ten days notice to the transient vendor, and to the owner of the property seized and any person having a lawful security interest in the property seized, if such person or persons and their mailing address are known. Upon concluding the hearing, the Circuit Court will render a decision which will dispose of all issues in question.

10.4.2 The Circuit Court may proceed in a summary manner and may direct the property seized be forfeited to the Tax Commissioner; provided, that any person claiming to have either an ownership interest or a lawful security interest in any of the property seized shall be provided the opportunity to appear and to be heard by the Circuit Court on a date certain.

10.4.3 Unclaimed Property. -- If the Circuit Court orders property returned to the transient vendor, owner or claimant thereof, and if such person or persons fail to remove the property, the Tax Commissioner will give such person notice of the court order by mailing a copy thereof by certified mail return receipt requested to his last known address. Should such person fail to remove the property within thirty days of the mailing date of the notice, the property shall be considered as abandoned and it shall be disposed of as such under W. Va. Code § 36-8-1 et seq.

10.5 Disposition Of Forfeited Property. -- Property which has been forfeited to the Tax Commissioner may be disposed of by sale in accordance with the procedures provided in W. Va. Code §§ 11-10-13c through 11-10-13k, as appropriate; however, no person shall have the right to redeem property subsequent to forfeiture but prior to its sale, or at any time subsequent to its sale.

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State Tax Department
of West Virginia

Charleston 25305

ARCH A. MOORE, JR.
GOVERNOR

MICHAEL E. CARYL
COMMISSIONER

JOHN F. LEABERRY
ASSISTANT COMMISSIONER

August 18, 1986

The Honorable Ken Hechler
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Mr. Hechler:

In accordance with W. Va. Code § 29A-3-9, the State Tax Department is today filing in the State Register the agency approved legislative rule which governs the registration of transient vendors with the Tax Department.

This rule is promulgated pursuant to authority granted in W. Va. Code §§ 11-12-24 and 29A-3-15.

This legislative rule was filed in the State Register as an emergency legislative rule on July 3, 1986. A public comment period commenced on the day of filing and continued until 5:00 p.m. on August 15, 1986. No comments were received from the public. This legislative rule has not been modified subsequent to being filed as an emergency legislative rule.

Very truly yours,


Michael E. Caryl
State Tax Commissioner

MEC/jmt