

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

Form #3

Do Not Mark In this Box

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2005 JUL 29 P 1:14

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 § 11-12-5(b)(3)

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

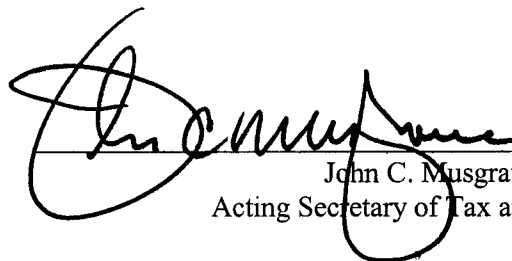
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 12D

TITLE OF RULE BEING PROPOSED: Business Registration Certificate - Suspension for Failure to Pay Personal
Property Taxes.

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.



John C. Musgrave
Acting Secretary of Tax and 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: July 29, 2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Department

Rm. W-300, Capital Bldg.

Charleston, WV 25325

EMERGENCY RULE TITLE: Business Registration Certificate – Suspension, Cancellation, Refusal to Renew, or Refusal to Issue for Failure to Pay Delinquent Personal Property Taxes

1. Authorizing statute(s) citation W. Va. Code § 11-12-5 (b)(3)
2.
 - a. Date filed in state Register with Notice of Hearing or Public Comment Period:
June 29, 2005
 - b. What other notice, including advertising, did you give of the hearing:
Included on the Tax Department Internet Web Site
 - c. Date of Public Hearing(s) or Public Comment Period ended:
July 29, 2005
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached X No comments received _____
 - e. Date you filed in state Register the agency approved proposed Legislative Rule following public hearing: (be exact)
July 29, 2005

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

John Montgomery, Managing Attorney, Legal Division, Rm. W-401, West Wing

State Capital, Telephone: 558-5330

FAX 558-8728

Jmontgomery@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)

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 taxing of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

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

- d. Attach findings and determinations and reasons:

Attached _____

**AGENCY APPROVED
WEST VIRGINIA LEGISLATIVE RULE
STATE TAX DEPARTMENT
TITLE 110
SERIES 12D
BUSINESS REGISTRATION CERTIFICATE – SUSPENSION, CANCELLATION,
REFUSAL TO RENEW, OR REFUSAL TO ISSUE FOR FAILURE TO PAY
DELINQUENT PERSONAL PROPERTY TAXES
COMMENTS RECEIVED AND RESPONSES**

Following are comments received during the comment period for the above titled agency approved legislative rule. Also included are Tax Department responses to those comments.

COMMENT: In subsection 9.2, the rule used incorrect dates stating when property taxes assessed to public service businesses become delinquent.

RESPONSE: The Tax Department, after a review of West Virginia Code § 11-6-18, agrees. Because interest is authorized to be imposed on the day after the taxes are due, without a 30 day grace period, the taxes are therefore deemed to be delinquent on that day. The correct dates are now being used.

COMMENT: Appendix A uses incorrect dates stating when property taxes assessed to public service businesses become delinquent.

RESPONSE: The Tax Department, after a review of West Virginia Code § 11-6-18, agrees. Because interest is authorized to be imposed on the day after the taxes are due, without a 30 day grace period, the taxes are therefore deemed to be delinquent on that day. The correct dates are now being used.

COMMENT: An interested party, in hand writing, asked "how does SAO [State Auditor's Office] notify Tax of delinquencies."

RESPONSE: West Virginia Code § 11-6-18 requires the State Auditor, after the date the second installment is due, to notify the sheriff of each county the amount of public service business taxes not paid. The sheriff is required to collect and account for the unpaid taxes in the same manner as other taxes levied or collected and accounted for by that Office. The sheriff is required by section 11 of the rule to notify the Tax Department of those persons delinquent in the payment of business personal property taxes. Notification by the State auditor's Office to the Tax Department is not necessary.

how does SAE notify Tax of delinquencies?

§ 110-12D-9. Property tax year and collection of property taxes.

9.1. *Assessment by county assessor.* – Property assessed by a county assessor is assessed annually, as of the first day of July, for ad valorem property taxes levied for the next property tax year, which is the next ensuing calendar year, e.g., if the assessment day is July 1, 2005, the property tax year is the calendar year beginning January 1, 2006. The county sheriff mails personal property tax tickets or statements to the persons in whose name property taxes are charged on the property books beginning July 15th of the property tax year for which the taxes are assessed. These taxes are payable in two installments. The first installment payment is due September 1st of the property tax year and becomes delinquent if not paid before October 1st of the property tax year. The second installment payment is due March 1st of the next calendar year and becomes delinquent if not paid before April 1st of that calendar year, e.g., property taxes assessed for the 2006 property tax year may be paid in two installments – the first installment is due September 1, 2006, and becomes delinquent on October 1, 2006, if not paid before that date; the second installment is due March 1, 2007, and becomes delinquent on April 1, 2007, if not paid before that date.

9.2. *Assessment by Board of Public Works.* – The operating property of a public service business is assessed annually by the Board of Public Works. After the county commissions, county boards of education and municipalities meet on the third Tuesday in April of the property tax year, to set their levy rates for that property tax year, and the rates are certified to the State Auditor, the Auditor completes his or her books and makes out a statement of the property taxes and levies, which is mailed to the owner or operator of the public service business. These taxes are payable in two installments. The first installment payment is due September 1st of the property tax year and becomes delinquent if not paid before October 1st of the property tax year. The second installment payment is due March 1st of the next calendar year and becomes delinquent if not paid before April 1st of that calendar year, e.g., property taxes assessed for the 2006 property tax year may be paid in two installments – the first installment is due September 1, 2006, and becomes delinquent on October 1, 2006, if not paid before that date; the second installment is due March 1, 2007, and becomes delinquent on April 1, 2007, if not paid before that date.

9.3. See Appendix A for additional information about the ad valorem property tax cycle.

§110-12D-10. Property tax returns and reports.

10.1. *General.* – Persons engaged in business activity in this State who own property located in this State are required to file property tax returns or reports with the county assessor in the fall of each calendar year. See Appendix B for additional

- October 1, 2005** After the July 1st assessment day and before October 1st each year, every incorporated business must file with the county assessor the report required by W. Va. Code § 11-3-12. This report includes a listing of real and personal property owned by the incorporated business. Public service businesses report only their nonoperating property.
- Before October 1st each year, individuals who receive a property tax report form from the county assessor must complete the form and return it to the assessor.
- On or before October 1st, owners of industrial real and personal property must file reports with the Tax Commissioner,
- Board of Public Works begins meeting on or before October 1st to fix the assessed value of the real and personal operating property of each public service business.
- November 1, 2005** After the July 1st assessment day and before November 1st each year, sole proprietors and unincorporated businesses must file with the county assessor the report required by W. Va. Code § 11-3-15. This report includes a listing of real and personal property owned by the unincorporated business, or by the sole proprietor and used in his or her business.
- Unincorporated businesses and sole proprietors engaged in the business of agriculture are not required to file the § 11-3-15 report. Corporations engaged in the business of agriculture are required to file the report required by § 11-3-12, which is due October 1st.
- December 31, 2005** Lien for 2006 property taxes attaches to operating property of public service business.
- January 31, 2006** County assessor completes land and personal property tax books and delivers them to the county commission, which begins meeting as a board of equalization and review on February 1, 2006.
- February 28, 2006** Boards of equalization and review must complete their work and adjourn sine die.
- April 18, 2006** County commissions, county boards of education and municipal governing bodies meet on the third Tuesday in April to set property tax levy rates for the current property tax year. The levy rates are then certified to the county assessor and to the State

Auditor

As soon as possible after the assessment of public service business property is completed, the State Auditor mails to each operator of a public service business a statement of all taxes and levies assessed.

- June 7, 2006 After the levy rates are certified to the county assessor, the assessor applies the appropriate levy rates to the assessed values of property entered in the land and personal property books for current property tax year. The completed land and personal property books must be delivered to the county sheriff by June 7th.
- July 15, 2006 County sheriff begins collecting 2006 property taxes by mailing property tax tickets or statements to owners of property listed in the land and personal property books for the current property tax year.
- September 1, 2006 A discount is allowed if first half 2006 property taxes, or taxes for the full year, are paid before September 1st to the county sheriff, or to the State Auditor in the case of property assessed by the Board of Public Works.
- First half installment payments of 2006 property taxes are due September 1st.
- October 1, 2006 First half installment payments of 2006 property taxes not paid by the end of September become delinquent on October 1st *Sept 2*
- March 1, 2007 Second half installment payments of 2006 property taxes are due March 1st.
- March 1, 2007 A discount is allowed if second half 2006 property taxes are paid before March 1st to the county sheriff, or to the State Auditor in the case of property assessed by Board of Public Works.
- Second half installment payments of 2006 property taxes are due March 1st.
- April 1, 2007 Second half installment payments of 2006 property taxes not paid by the end of March become delinquent on April 1st *March 2*
- April 2007 Sheriff prepares and publishes a notice stating in effect that unpaid property taxes assessed for the 2006 property tax year (calendar year) have become delinquent and that unless paid by April 30, 2007, will be included for publication as provided in W.

**SUMMARY OF RULE
AGENCY APPROVED
WEST VIRGINIA LEGISLATIVE RULE
STATE TAX COMMISSIONER
TITLE 110
SERIES 12D**

**BUSINESS REGISTRATION CERTIFICATE – SUSPENSION, CANCELLATION,
REFUSAL TO RENEW, OR REFUSAL TO ISSUE FOR FAILURE TO PAY
DELINQUENT PERSONAL PROPERTY TAXES**

- | | |
|--------------|--|
| §110-12D-1. | General. |
| §110-12D-2. | Application of this rule. |
| §110-12D-3. | Definitions. |
| §110-12D-4. | When a business registration certificate is required. |
| §110-12D-5. | Engaging in business activity without current business registration certificate as required by law. |
| §110-12D-6. | Time for which business registration certificate is issued. |
| §110-12D-7. | When business with current business registration certificate must apply for a new certificate during a registration period. |
| §110-12D-8. | Cancellation or suspension of business registration certificate or refusal to renew or issue or business registration certificate when registrant owes delinquent personal property taxes. |
| §110-12D-9. | Property tax year and collection of property taxes. |
| §110-12D-10. | Property tax returns and reports. |
| §110-12D-11. | Identification of delinquent taxpayers by county sheriff; notice to taxpayer; notice to Tax Commissioner. |
| §110-12D-12. | Delinquent taxpayer pursuing bankruptcy or otherwise out of business. |
| §110-12D-13. | Procedure after Tax Commissioner receives notification; notice to taxpayer. |
| §110-12D-14. | Appeals; hearing on decision to suspend, revoke, not renew, or not issue business registration certificate for failure to pay delinquent property taxes. |
| §110-12D-15. | Application of Tax Commissioners decision; multiple business locations; multiple business registration certificates. |
| §110-12D-16. | Participation by county sheriff and prosecuting attorney in event of appeal. |
| Appendix A. | Calendar for Assessment and Collection of Personal Property Taxes. |
| Appendix B. | Property Tax Returns and Reports; Listing of Property; Assessments; Exoneration; and Penalties. |

**AGENCY APPROVED
WEST VIRGINIA LEGISLATIVE RULE
STATE TAX COMMISSIONER
TITLE 110
SERIES 12D
BUSINESS REGISTRATION CERTIFICATE - SUSPENSION, CANCELLATION,
REFUSAL TO RENEW, OR REFUSAL TO ISSUE FOR FAILURE TO PAY
DELINQUENT PERSONAL PROPERTY TAXES**

STATEMENT OF CIRCUMSTANCES

The Tax Commissioner is required by W. Va. Code §11-12-5(b)(3) to, on or before July 1, 2005, propose for promulgation a legislative rule establishing ancillary procedures for suspension of business revocation certificates of a registrant that owes delinquent property taxes on personal property used in business activity in this State. This proposed rule satisfies this statutory requirement. Additionally, under the general authority of the Tax Commissioner to promulgate rules in accordance with the provisions of W. Va. Code §29A-3-1 *et seq.*, this proposed rule also explains when a business registration certificate is required to engage in business activity in West Virginia, the period of business registration and other particulars pertaining to administration of the business registration certificates.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Business Registration Certificate – Suspension for Failure to Pay Personal Property Taxes

Type of Rule: X Legislative Interpretive Procedural

Agency: State Tax Department

Address: Legal Division, P.O. Box 1005
Charleston, WV 25324-1005

Phone Number: (304) 558-5330 Email: Jmontgomery@tax.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be an approximate cost to State government of \$80,000 annually. An increase in revenues will be minimal.

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	\$ 80,000	\$ 80,000
Personal Services	0	\$ 60,000	\$ 60,000
Current Expenses	0	\$ 10,000	\$ 10,000
Repairs & Alterations	0	0	0
Assets	0	0	0
Other	0	\$ 10,000	\$ 10,000
2. Estimated Total Revenues	0	0	0

Rule Title: Business Registration Certificate – Suspension for Failure to Pay Personal Property Taxes

3. **Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The personal services component of the above costs provides for the salary and benefits of two Tax Audit Clerks for the Tax Department. The additional employees would assist in the Tax Department's procedure for the suspending or refusing to issue or renew a business registration when the holder, or applicant, thereof is delinquent in paying personal property taxes. The Tax Department responsibilities include the following: sending certified notification to taxpayers identified as delinquent in paying ad valorem taxes on personal property owned by the Taxpayer; notifying the Sheriff when a taxpayer has established that the taxes in issue were paid or exonerated; providing to the Sheriff a listing of Taxpayers that have been notified of pending action relative to the business registration certificate; and, refusing to issue, or suspending, the business registration of certificates of Taxpayers failing to pay their delinquent personal property taxes. Additional expenses would be incurred for the equipment used by the new employees and for the costs of certified and regular mailings. Additionally, the Sheriffs would incur additional costs related to the processing of information from the Taxpayer and from the State Tax Department.

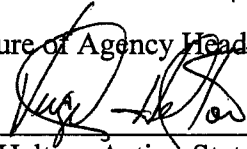
MEMORANDUM

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.

N/A

Date: June 14, 2005

Signature of Agency Head or Authorized Representative


Virgil Helton, Acting State Tax Commissioner

**AGENCY APPROVED
WEST VIRGINIA LEGISLATIVE RULE
STATE TAX DEPARTMENT
TITLE 110
SERIES 12D
BUSINESS REGISTRATION CERTIFICATE - SUSPENSION, CANCELLATION,
REFUSAL TO RENEW OR REFUSAL TO ISSUE FOR FAILURE TO PAY PERSONAL
PROPERTY TAXES**

§ 110-12D-1. General.

1.1. Scope. - This legislative rule explains and clarifies application of W. Va. Code § 11-12-5, relating to the suspension, cancellation, or refusal to renew, or issue, a business registration certificate.

1.2. Authority. - W. Va. Code §§ 11-10-5 and 11-12-5(b)(3).

1.3. Filing Date. -

1.4. Effective Date. -

§ 110-12D-2. Application of this rule.

2.1. In general, this rule applies to all persons required to obtain and display a current business registration certificate issued by the Tax Commissioner, as provided in W. Va. Code § 11-12-1 *et seq.*, as a condition precedent to engaging in business activity in West Virginia.

2.2. Additionally, this rule applies to county sheriffs and to persons who owe delinquent ad valorem property taxes on personal property held for sale or used in business activity in this State. It provides the ancillary procedures to be followed by county sheriffs and the Tax Commissioner when the county sheriff notifies the Tax Commissioner that a particular business in his or her county owes delinquent property taxes on personal property held for sale or use in business activity that remains delinquent after the lists of delinquent personal property taxes have been published in the newspaper and posted on the courthouse door, as required by law, and after the county commission has certified the list of delinquent personal property taxes.

§ 110-12D-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.

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SECRETARY OF STATE

3.1. "Ad valorem property taxes" means the taxes on real and personal property that are assessed and collected as provided in the property tax laws of this State.

3.2. "Agriculture and farming" means and includes the production of food, fiber, or woodland products (but not timbering activity) by means of cultivation or tillage of the soil, or by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, or by horticulture, or by any other plant or animal production, and all farm practices related (usual or incidental) thereto, including the storage, packing, shipping and marketing thereof, but not including any manufacturing, milling, processing or selling of such products by person other than the producer thereof.

3.3. "Assess" means the listing and valuing of property for purposes of ad valorem property taxation.

3.4. "Business activity" means and includes 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" does not include:

3.4.1. Judicial sales directed by law or court order.

3.4.2. Sales for delinquent taxes of real or personal property.

3.4.3. The conduct of charitable bingo by any person licensed under West Virginia Code § 47-20-1 *et seq.*

3.4.4. The conduct of a charitable raffle by any person.

3.4.5. The conduct of a horse or dog race meeting by any racing association licensed under West Virginia Code § 19-23-1 *et seq.*

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

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

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

3.4.9. Occasional or casual sales of property or services.

3.5. "Business registration certificate" means a certificate issued by the Tax Commissioner in accordance with W. Va. Code § 11-12-1 *et seq.*, authorizing the person named in the certificate to conduct the business, activity, or trade for which the certificate is issued at or from the location specified in the business registration certificate.

3.5.1. A business registration certificate is not assignable to any other person, W. Va. Code §11-12-6.

3.6. "Employed exclusively" means that the preponderant and sole gainful use is for the designated purpose.

3.7. "Grazing" means the use of land for pasturage.

3.8. "Horticulture" means plant production of every character except forestry.

3.9. "Includes" and "including" when used in this rule may not be deemed to exclude other things otherwise within context of the sentence in which the term is used.

3.10. "Occasional sale" or "casual sale" of tangible personal property means 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. This includes the bulk sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of any business, when the 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.

3.10.1. "Occasional sale" or "casual sale" of a service means a sale of a service not furnished by a provider in the course of an activity for which a business registration certificate is required: Provided, That such sale is not one of a series of sales sufficient in number, scope and character to constitute a business activity requiring the holding of a business registration certificate.

3.10.2. A sale of tangible personal property or service shall not be designated a casual sale or occasional sale because the species or type of property sold or the service sold is unusual or of a type not typically the subject of a sale by the Taxpayer. If a sale of tangible personal property or service is undertaken in the course of business, other than a bulk sale or exchange of all or substantially all the assets of any business and the reorganization or liquidation of the business, and other than the performance of services related to such bulk sale or exchange or reorganization or liquidation, then a sale of tangible personal property or services will be presumed to be neither casual nor occasional within the meaning of this rule.

3.11. "Officer or employee of this State" includes, but is not limited to, any former officer or employee of the state of West Virginia.

3.12. "Office of Tax Appeals" means the West Virginia Office of Tax Appeals created by W. Va. Code § 11-10A-3.

3.13. "Person" includes, but is not limited to, any individual, firm, partnership, limited partnership, copartnership, joint venture, association, corporation, organization, estate, trust, guardian, executor, administrator, 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, unless the intention to give a more limited or broader meaning is disclosed by the context of this rule.

3.14. "Personal property," for purposes of this rule, means personal property used, or held for use, or sale, in the conduct of business activity and includes all fixtures attached to land, if not included in the valuation of the land entered in the proper landbook; all things of value, moveable and tangible, which are the subjects of ownership; and all chattels real and personal. "Personal property" for purposes of this rule does not include real property or personal property owned by an individual unless the property is used in business activity.

3.15. "Products of agriculture" means those things the existence of which follows directly from the activity of agriculture, horticulture or grazing, including dairy, poultry, bee and any other similar products, whether in the natural form or processed as an incident to the marketing of the raw material.

3.16. "Producer of a product of agriculture" means the person who is actually engaged in the agriculture, horticulture and grazing which gives existence and fruition to products of agriculture as distinguished from the broker or middleman, or third party manufacturer or food processor.

3.17. "Property tax year" or "tax year" when used in referenced to property taxes means the calendar year that begins after the July first assessment day for property assessed by the county assessor. That calendar year is also the year for which property taxes are assessed by the Board of Public Works on operating property of public service businesses. For example, if the assessment day is July 1, 2005, the property tax year begins January 1, 2006.

3.18. "Property taxes" means ad valorem taxes assessed or levied on property in accordance with provisions of articles 1A, 1C, 3, 4, 5, 6, 6A, 6B, 6C, 6E, 6F, 6G or 8, chapter 11, of the Code, as may be applicable to the specie or species of property being taxed.

3.19. "Registration period" means a period of twenty-four calendar months beginning the first day of July and ending twenty-four months later on the thirtieth day of June.

3.20. "Registrant," as used in W. Va. Code §11-12-5 and this rule, means any person who (1) has applied for a business registration certificate under W. Va. Code §11-12-1 *et seq.*, (2) has applied for renewal of a business registration certificate, or (3) has been issued a business registration certificate for the current registration period.

3.21. "Service" means all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge, which activities involve predominantly the performance of a service as distinguished from selling property.

3.22. "Tax," "taxes," "taxable," and "taxation," as used in this rule with respect to property taxes, means all levies on personal property made by any of the taxing units named in W. Va. Code § 11-8-4. Those tax units are (1) the State, (2) county commissions, (3) county boards of education, and (4) municipalities.

3.23. "Tax Commissioner" or "Commissioner" means the Tax Commissioner of the State of West Virginia, or his or her designee.

3.24. "Taxpayer," as used in this rule with respect to property taxes, means any person required to file a property return or report for ad valorem property tax purposes with the county assessor or the Board of Public Works, or any person liable for the payment of any ad valorem property tax collected by the county sheriff or the State Auditor under the laws of this State.

3.25. "The Code" means the Code of West Virginia, 1931, as amended.

3.26. "This State" means the State of West Virginia.

3.27. "While owned by the producer of a product of agriculture" means while title is in the producer of a product of agriculture as defined in subsection 3.16 of this section.

§ 110-12D-4. When a business registration certificate is required; posting.

4.1. *Registration required.* – Except as otherwise provided in W. Va. Code § 11-12-1 *et seq.* or this rule, no person may engage in or prosecute in the State of West Virginia any business activity without first obtaining a business registration certificate from the Tax Commissioner. In addition to having a current business registration certificate:

4.1.1. A transient vendor must also comply with the provisions of W. Va. Code §11-12-20 through 11-12-25.

4.1.2. A person that provides collection agency services must also comply with the provisions of W. Va. Code § 47-16-1 *et seq.*

4.1.3. A person that provides employment agency services must also comply

with the provisions of W. Va. Code § 21-2-1 *et seq.*

4.1.4. A person that sells drug paraphernalia must also comply with the provisions of W. Va. Code § 47-19-1 *et seq.*

4.1.5. A person engaging in or prosecuting other business activities in this State may be subject to other provisions of the West Virginia Code which he or she must satisfy before commencing or while engaging in a business activity in this State.

4.2. *Business activity defined.* – “Business activity” means and includes 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” does not include:

4.2.1. Judicial sales directed by law or court order.

4.2.2. Sales for delinquent taxes of real or personal property.

4.2.3. The conduct of lawful charitable bingo by any person licensed under West Virginia Code § 47-20-1 *et seq.*

4.2.4. The conduct of a lawful charitable raffle by any person.

4.2.5. The conduct of a horse or dog race meeting by any racing association licensed under West Virginia Code § 19-23-1 *et seq.*

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

4.2.7. The sale of any commodity during the conduct of a licensed horse or dog race meeting held pursuant to W. Va. Code § 19-23-1 *et seq.*

4.2.8. The services of owners, trainers or jockeys which are essential to the effective conduct of a licensed horse or dog race meeting held pursuant to W. Va. Code § 19-23-1 *et seq.*

4.2.9. Occasional or casual sales of property or services.

4.3. *Multiple business registration certificates.* – A separate business registration certificate is required for each fixed business location from which property or services are offered for sale or lease to the public as a class, or to a limited portion of the public; or at which customer accounts may be opened, closed or serviced.

Example 1. XYZ Dry Goods has two retail stores in West Virginia. Each store is required to have a business registration certificate.

Example 2. In addition to the two retail stores, XYZ Dry Goods also has a warehouse. No sales are made at the warehouse and customers cannot go there to return or exchange merchandise or to open, close or pay on an account with the store. The warehouse does not need a separate business registration certificate.

Example 3. In addition to the two retail stores and warehouse mentioned in examples one and two, XYZ Dry Goods has a warehouse at which customers may pick up orders or return orders and receive credit against their account for the returned merchandise. A separate business registration certificate is needed for this warehouse.

Example 4. In addition to the two retail stores and the two warehouse, XYZ Dry Goods has its offices at another location. Customers may go to the office to open or close their account or make payments on account balances. The office needs a separate business registration certificate.

4.4. *Coin-operated machines.* – A separate business registration certificate is not required for each “coin-operated” machine. A separate certificate is required for each location from which making coin-operated machines available to the public is itself a business activity. As used here, “coin-operated” machine includes any machine or other device into which the customer must insert coins, tokens, United States currency, a credit or debit card or other card pursuant to which the customer pays money or other consideration for use of the machine or other device.

Example 1: ABC Vending Machine Company owns vending machines that are located at various places in the State of West Virginia. The Company maintains an office/warehouse in Charleston. Company employees service these machines and restock them with merchandise. The Company needs one business registration certificate for the office/warehouse. It does not need a separate business registration certificate for each location where a vending machine is physically located and available to consumers.

Example 2: Same facts as in example one, except that the Company also operates at a separate location a self-service laundry facility that has coin-operated washing machines and dryers and vending machines for sale of goods such as laundry detergent, bleach, fabric softener and soft drinks. A separate business registration certificate is needed for this facility.

4.5. *Mobile businesses selling to customers.* – A business that sells tangible personal property or services from or out of one or more vehicles must have a separate business registration certificate for each fixed location in this State from or out of which business is conducted. A copy of its business registration certificate must be carried in each vehicle and publicly displayed while business is conducted from or out of the vehicle.

4.6. *Exemption from registration.* – Any person engaging in or prosecuting business activity in this State who is not required by law to collect or withhold a tax administered under the West Virginia Tax Procedure and Administration Act, W. Va. Code §11-10-1 *et seq.*, and who does not claim an entity-based or use-based exemption from paying consumers sales and use taxes on its purchases of tangible personal property, taxable services and custom software for use in business including, but not limited to, goods and services purchased for resale, is exempt from the requirement to have a business registration certificate.

4.7. *Posting of certificate.*

4.7.1. A person to whom a business registration certificate has been issued under W. Va. Code §§11-12-1 *et seq.* shall keep the certificate posted in a conspicuous location in the place where the privilege of engaging in business is exercised so that it can be read by the public. W. Va. Code §11-12-7.

4.7.2. Each registrant who operates at a temporary location, including from a truck, wagon, portable stand, or other merchandising device, shall prominently display the certificate so that it can be readily seen and read by the public. Transient vendors who do not operate from such a truck, wagon, portable stand, or other merchandising device shall have their certificates in their possession and shall display them upon request.

4.8. *Inspection of certificate.* – The certificate of registration must be produced for inspection whenever required by the Tax Commissioner or by any law-enforcement officers of this State, including those of a county or municipality in which the privilege to conduct business is being exercised. W. Va. Code §11-12-7.

§110-12D-5. Engaging in business activity without a current business registration certificate as required by law.

5.1. In general, no person may engage in business activity in West Virginia unless the person has a current business registration certificate issued by the Tax Commissioner and the certificate is conspicuously posted as required by W. Va. Code §§11-12-1 *et seq.*

5.1.1. Application for the certificate must be made before the person begins to engage in business activity in this State, see Section 4.1 of this rule.

5.1.2. A separate business registration certificate is needed for each fixed business location in this State from which property or services are offered for sale or lease to the public as a class, or to a limited portion of the public, or at which customer accounts may be opened, closed or serviced, see Section 4.3 of this rule.

5.1.3. Business activity may not be conducted under a business registration

certificate after it expires on the June 30th date stated on the certificate, or after the certificate becomes void by operation of law, see Section 7 of this rule.

5.1.4. Business activity may not be conducted under a business registration certificate after it is suspended or cancelled by the Tax Commissioner in accordance with the provisions of W. Va. Code §11-12-5.

5.2. It is a misdemeanor if any person engages in business within the State of West Virginia without obtaining a business registration certificate when required by law, W. Va. Code §11-9-12.

5.3. It is also a misdemeanor for any person to, for more than thirty days, do any of the following (each day or part thereof that any violation continues is a separate offense):

5.3.1. Engage in business without posting a business registration certificate in the place of business in the manner required by law, W. Va. Code §11-9-11(1).

5.3.2. Engage in business without paying the business registration tax when required by law, W. Va. Code §11-9-11(2).

5.2.3. Engage in business after expiration of the period of time for which the certificate was granted without obtaining a new certificate, W. Va. Code §11-9-11(3).

5.2.4. Engage in business after the business registration certificate has been revoked.

5.2.4.1. A business registration certificate that is suspended is temporarily not in effect.

5.2.4.2. A business registration certificate that is revoked, is taken back by the Tax Commissioner, and is null and void.

§110-12D-6. Time for which business registration certificate is issued.

Except for short years resulting from an initial or reestablished registration commencing on a date other than the first day of July, the period for which a business registration certificate is issued begins on the first day of July and expires twenty-four months later on the thirtieth day of June, unless the certificate expires before that day because it is revoked by the Tax Commissioner, for one or more of the reasons set forth in W. Va. Code §11-12-5, or the certificate expires sooner by operation of law for one or more of the reasons set forth in W. Va. Code §11-12-6.

§110-12D-7. When business with current business registration certificate must apply for a new certificate during a registration period.

7.1. *Change in name of business.* – A change in the name of the business voids the current business registration certificate and requires that application be made to the Tax Commissioner for issuance of a new certificate in the new name of the business. W. Va. Code §11-12-6.

7.2. *Change in business location.* – A change in the physical location at which or from which business is conducted voids the current business registration certificate and requires that application be made to the Tax Commissioner for issuance of a new certificate showing the new physical location at which or from which business is conducted. W. Va. Code §11-12-6.

7.3. *Change in ownership.* – A change in the ownership of the business, or a change in the real parties in interest in the business, voids the current business registration certificate and requires that application be made to the Tax Commissioner for issuance of a new certificate. However, a change in the partners in a partnership, or in the members of a limited liability company or in the composition of any other group of combination acting as a unit does not in and of itself require issuance of a new business registration certificate. A new certificate would be required if in addition to adding a partner or a member (or the withdrawal of a partner or member) the name of the business is changed, or the location changes at or from which the business is conducted. W. Va. Code §11-12-6.

7.3.1. A change in the names of the officers of a corporation does not void the current business registration certificate and does not require that application be made to the Tax Commissioner for issuance of a new certificate. W. Va. Code §11-12-6.

7.4. *Change in business activity.* – A change in the business, activity, or trade being conducted at or from the location specified in the business registration certificate may require that application be made to the Tax Commissioner for issuance of a new certificate.

7.4.1. If after a business registration certificate is issued, the business begins to sell cigarettes, other tobacco products, or cigarette wrappers, at wholesale or retail, the business must apply for a new business registration certificate. W. Va. Code § 11-12-4a.

7.4.2. If after a business registration certificate is issued, the business makes a business decision to no longer sell cigarettes, other tobacco products, or cigarette wrappers, at wholesale or retail, the business must apply for a new business registration certificate. W. Va. Code § 11-12-4a.

7.4.3. If after a business registration certificate is issued, the business decides to also conduct business as a collection agency, or as an employment agency, or to sell drug paraphernalia, application must be made to the Tax Commissioner to engage in those activities before the business begins to (1) furnish collection agency services, (2) furnish employment agency services or (3) sell drug paraphernalia. W. Va. Code §11-12-

3(b)(4).

7.4.4. If after a business registration certificate is issued to also conduct business as a collection agency, or as an employment agency, or to sell drug paraphernalia, a business decision is made that the business no longer wants to engage in the particular activity, application must be made to the Tax Commissioner for a new business registration certificate. W. Va. Code §11-12-3(b)(4).

§110-12D-8. Cancellation or suspension of a business registration certificate; refusal to issue or renew business registration certificate when registrant owes delinquent personal property taxes.

8.1. *Discretionary authority.* – The Tax Commissioner may cancel or suspend a business registration certificate at any time during a registration period (the period for which the certificate is issued) if:

8.1.1. The person applying for a business registration certificate filed with the Tax Commissioner an application for business registration that is false or fraudulent.

8.1.2. The person applying for renewal of a business registration certificate files an application for renewal with the Tax Commissioner that is false or fraudulent.

8.1.3. The registrant willfully refused or neglected to file a tax return or to report information required by the Tax Commissioner for any tax imposed pursuant to chapter 11 of the Code.

8.1.4. The registrant willfully refused or neglected to pay any tax, additions to tax, penalties or interest, or any part thereof, when they became due and payable under chapter 11 of the Code, determined by including in the time for payment any authorized extension of time for paying the tax, additions to tax, penalties or interest;

8.1.5. The registrant willfully refused or neglected to pay over to the Tax Commissioner on or before its due date, determined by including any authorized extension of time for paying the tax, any consumers sales or service tax or use tax collected from customers, any employer withholding taxes and any other tax imposed by chapter 11 of the Code that the registrant collects from any person and holds in trust for the State of West Virginia.

8.1.6. The registrant abused the privilege afforded to it in the consumers sales and use tax laws of this State, W. Va. Code §§ 11-15-1 et seq., §§11-15A-1 et seq., and §§11-15B-1 et seq., to be exempt from payment of sales and use taxes imposed on some or all of the registrant's purchases for use in business upon issuing to the seller of the good or taxable service a properly executed exemption certificate, by (1) failing to timely pay sales or use tax on taxable purchase for use in business, or (2) failing to give to the seller

of the good or taxable service a properly executed exemption certificate, a copy of the registrant's direct pay permit or a multiple points of use certificate, as provided in or required by the consumers sales and use tax laws of this State.

8.1.7. The registrant failed to pay in full personal property due and owing for the calendar year immediately preceding the calendar year in which application is made to the Tax Commissioner for a business registration certificate, or for renewal of a business registration certificate.

8.2. *Nondiscretionary duty.* – As provided in W. Va. Code §11-12-5(d), the Tax Commissioner may not issue, or renew, a business registration certificate when the county sheriff, informs the Tax Commissioner, by the method designated by the Tax Commissioner, that the applicant for a business registration certificate, or the applicant for renewal of a business registration certificate, owes delinquent ad valorem personal property taxes for the calendar year immediately preceding the calendar year in which the application is filed with the Tax Commissioner, on personal property held for sale or used in business activity in this State.

§ 110-12D-9. Property tax year and collection of property taxes.

9.1. *Assessment by county assessor.* – Property assessed by a county assessor is assessed annually, as of the first day of July, for ad valorem property taxes levied for the next property tax year, which is the next ensuing calendar year, e.g., if the assessment day is July 1, 2005, the property tax year is the calendar year beginning January 1, 2006. The county sheriff mails personal property tax tickets or statements to the persons in whose name property taxes are charged on the property books beginning July 15th of the property tax year for which the taxes are assessed. These taxes are payable in two installments. The first installment payment is due September 1st of the property tax year and becomes delinquent if not paid before October 1st of the property tax year. The second installment payment is due March 1st of the next calendar year and becomes delinquent if not paid before April 1st of that calendar year, e.g., property taxes assessed for the 2006 property tax year may be paid in two installments – the first installment is due September 1, 2006, and becomes delinquent on October 1, 2006, if not paid before that date; the second installment is due March 1, 2007, and becomes delinquent on April 1, 2007, if not paid before that date.

9.2. *Assessment by Board of Public Works.* – The operating property of a public service business is assessed annually by the Board of Public Works. After the county commissions, county boards of education and municipalities meet on the third Tuesday in April of the property tax year, to set their levy rates for that property tax year, and the rates are certified to the State Auditor, the Auditor completes his or her books and makes out a statement of the property taxes and levies, which is mailed to the owner or operator of the public service business. These taxes are payable in two installments. The first installment payment is due September 1st of the property tax year and becomes delinquent if not paid

on or before that date. The second installment payment is due March 1st of the next calendar year and becomes delinquent if not paid on or before that date, e.g., property taxes assessed for the 2006 property tax year may be paid in two installments – the first installment is due September 1, 2006, and becomes delinquent on September 2, 2006, if not paid before that date; the second installment is due March 1, 2007, and becomes delinquent on March 2, 2007, if not paid before that date.

9.3. See Appendix A for additional information about the ad valorem property tax cycle.

§110-12D-10. Property tax returns and reports.

10.1. *General.* – Persons engaged in business activity in this State who own property located in this State are required to file property tax returns or reports with the county assessor in the fall of each calendar year. See Appendix B for additional information about these returns or reports and the date they are due.

10.2. *Property appraised by Tax Commissioner.* – The appraised value of natural resource property and manufacturing property is determined by the Tax Commissioner. The appraised values of these properties are provided to the county assessor of the county in which the property is located. The county assessor then determines the assessed value of the property based upon the appraised value provided by the Tax Commissioner. Owners of property appraised by the Tax Commissioner are also required to annually file certain returns or reports with the Tax Commissioner. See Appendix B for additional information on these returns and reports and their due dates.

10.3. *Public service business - operating property.* – Owners and operators of public service businesses are required to file a return with the Board of Public Works by the first day of May each year. If the public service business owns property that is not subject to assessment by the Board of Public Works – nonoperating property must be reported the county assessor.

10.4. *Penalties for failure to timely report property.* – When property is not returned to the county assessor, the Tax Commissioner or the Board of Public Works, as required by law, the appraised and assessed values of that property are determined using information available to the appraiser or assessor, and the owner forfeits the right to contest the property taxes levied on the property. Additionally, money penalties, called forfeiture penalties, may be imposed and collected as provided in W. Va. Code §11-3-10.

§ 110-12D-11. Identification of delinquent taxpayers by county sheriff; notice to taxpayer; notice to Tax Commissioner.

11.1. The county sheriff is required, by W. Va. Code § 11A-2-11, to annually prepare, by tax district, and alphabetically, by taxpayer name, a list of personal property taxes that are delinquent as of April 30th each calendar year. The sheriff must also

separately identify persons that may be subject to the provisions of this rule and, by September 15th, notify those persons, by certified mail of the following:

11.1.1. That the person's respective personal property taxes are delinquent;

11.1.2. The amount of delinquent personal property taxes due, including separately stated accrued interest, penalties and all fees;

11.1.3. The property tax year for which the delinquent taxes are owed;

11.1.4. The personal property for which the delinquent taxes are owed;

11.1.5. The actions to be taken if the full amount of delinquent personal property taxes are not paid or exonerated by September 30th of the calendar year in which the notice is mailed;

11.1.6. The sheriff may elect to accept only certified funds in payment of the delinquent personal property taxes; and

11.1.7. That current personal property taxes shall not be received by the sheriff until any delinquent ad valorem property taxes for the prior tax year are paid in full.

11.1.8. Additionally, the sheriff's certified letter shall, at a minimum, include the following statement:

"If you fail to pay the full amount of your delinquent personal property taxes, or those delinquent personal property taxes are not exonerated, on or before September 30, 20__, the _____ County Sheriff will notify the West Virginia Tax Commissioner that your West Virginia business registration certificate is to be suspended or not renewed or reissued until the delinquent tax liability is paid in full or exonerated. The conduct of any business activity in West Virginia without having a current business registration certificate, or after a business registration certificate has been suspended or canceled, is illegal and subject to prosecution. If your business registration certificate is suspended, canceled or not renewed or reissued by the West Virginia Tax Commissioner for failure to pay personal property taxes, you will be charged a processing fee of \$50 by the Tax Commissioner for reinstatement or renewal of your business registration certificate. This amount is in addition to the delinquent tax owed, as well as any interest and penalties imposed upon your delinquent personal property tax bill by this Office."

11.2. The sheriff may impose a fee on the delinquent taxpayer not to exceed \$10.00 for the preparation and mailing of the certified letter authorized in this section.

11.3. Commencing with ad valorem property tax year 2005, the sheriff shall provide

to the Tax Commissioner, in the electronic format prescribed by the Tax Commissioner, a listing by tax year of those persons that may be subject to the procedures provided in this rule because they each have, for the tax year in issue, delinquent personal property taxes in the minimum amount of \$100.00. However, if a sheriff does not have a data processing system available that can provide the required listing in the electronic format prescribed by the Tax Commissioner and there are no more than 50 taxpayers with delinquent business personal property taxes, the required listing may be filed on paper in the format specified by the Tax Commissioner. The sheriff shall provide the listing for each tax year, commencing with October 15, 2006, for the 2005 tax year and shall thereafter provide a monthly listing continuing for each succeeding month until the delinquent personal property taxes are paid or exonerated. The procedure provided in this rule shall not apply to any tax year prior to tax year 2005, except that the provisions of W. Va. Code § 11A-1-7 shall apply to delinquent property taxes owed for tax years preceding calendar year 2005.

11.4. The listing shall include for each person listed:

11.4.1. The person's name;

11.4.2. The person's last known mailing address;

11.4.3. The person's federal employer identification number (F.E.I.N.) or other identification number acceptable to the Tax Commissioner;

11.4.4. If different from the mailing address, the business address, or businesses addresses if the person has more than one business location or business address in the county;

11.4.5. The property tax year for which the personal property taxes are delinquent on business personal property;

11.4.6. The amount of delinquent personal property taxes, interest and penalties; and

11.4.7. A listing of the business personal property for which delinquent property taxes are owed.

11.5. The person's name shall be removed from the list when that person's delinquent property taxes are paid or exonerated. The sheriff shall notify the Tax Commissioner, by the electronic format prescribed by the Tax Commissioner, except as provided in this subsection, when a person's delinquent property taxes have been paid or exonerated:

11.5.1. The notification required by subsection 11.3 shall be provided by the sheriff every Friday unless that day is a legal holiday in this State. When Friday is a legal holiday in this State, notification shall be provided on the next day that is not a Saturday,

Sunday, or legal holiday in this State.

11.5.2. The notification required by subsection 11.3 shall include the names of each person who paid delinquent personal property taxes or whose delinquent personal property taxes were exonerated during the reporting period ending at the close of business on the immediately preceding Wednesday and any additional information required by the Tax Commissioner.

11.5.3. If a person who owed delinquent personal property taxes has more than one business location in the county, the sheriff shall indicate the location or locations for which the delinquent personal property taxes have been paid or exonerated as well as the location or locations for which delinquent personal property are still owed by the person.

11.5.4. *Exception to electronic notification.* -- If a sheriff does not have available a data processing system that can provide the required listing in the electronic format prescribed by the Tax Commissioner and there are no more than 50 taxpayers with delinquent business personal property taxes, the required listing may be filed on paper in the format specified by the Tax Commissioner.

§ 110-12D-12. Delinquent taxpayer pursuing bankruptcy or otherwise out of business.

12.1. *Out of business.* -- A delinquent taxpayer that has ceased doing business prior to its personal property taxes becoming delinquent may not be subject to actions authorized by this rule. If the Taxpayer applies for a new business registration certificate under his or her name, or under a different business name, but the business activity and business assets are those used in the previous business, the Tax Commissioner may not issue a business registration certificate for the new business until the delinquent personal property taxes from the previous business have been paid or exonerated as provided in this rule.

12.2. *Bankruptcy.* -- A person who owes delinquent personal property taxes may have filed for protection of the United States Bankruptcy Court.

12.2.1. The sheriff, as ex officio treasurer of the county, and charged with collection of ad valorem property taxes assessed against personal property in the county, should file with the bankruptcy court in which the petition for bankruptcy was filed a proof of claim for the delinquent personal property taxes as well as for real and personal property taxes for the current property tax year, in an effort to collect the property taxes from a bankrupt estate.

12.2.2. Prior to filing the list with the Tax Commissioner, as required by subsections 11.3 or 11.4 of this rule, the sheriff shall determine whether or not the sheriff's

office has received official notification that a person has sought the protection of the United States Bankruptcy Court. Any person determined to be in bankruptcy shall not be included on the list of delinquent taxpayers reported to the Tax Commissioner pursuant to this rule.

§ 110-12D-13. Procedure after Tax Commissioner receives notification; notice to taxpayer.

13.1. Upon receipt of the listing required by subsection 11.3 of this rule, the Tax Commissioner shall forthwith notify the taxpayer by certified letter:

13.1.1. That the sheriff of the specified county has identified the taxpayer as being delinquent in paying ad valorem taxes on personal property owned by the taxpayer on the specified July 1 assessment date;

13.1.2. That if the Taxpayer can establish that the taxes in issue were in fact paid or exonerated, the taxpayer must contact the sheriff to demonstrate that fact and to then have the sheriff remove taxpayer's name from the listing;

13.1.2.1. Immediately after the taxpayer demonstrates to the sheriff the payment or exoneration of the applicable personal property taxes, the sheriff shall notify the Tax Commissioner either that the taxpayer has paid the taxes that were reported as being delinquent or that the taxes reported as delinquent were exonerated, as provided in subsection 11.4 of this rule;

13.1.3. That if the taxpayer is not able to establish that the taxes in issue were in fact paid or exonerated, the taxpayer's business registration certificate will be suspended and the effective date of the suspension; and,

13.1.4. That if taxpayer continues to engage in business subsequent to the day its business registration certificate is suspended, taxpayer shall in addition to all other penalties provided by law be subject to the penalties provided in W. Va. Code § 11-12-9.

13.2. The Tax Commissioner, within five days after sending the required letter to the respective taxpayers, shall send to the sheriff a listing of the persons that have been notified of the pending suspension or cancellation of their business registration certificates. Failure to deliver the letter to the person because it is either unclaimed by the person or undeliverable by the U. S. Postal Service shall not stay or prevent the Tax Commissioner, the sheriff, or both the Tax Commissioner and the sheriff from performing their respective duties as provided in this rule.

13.3. If the sheriff does not notify the Tax Commissioner within the 21 days immediately succeeding the date the Tax Commissioner notified the Taxpayer, as required in this section 13, and subsections thereof, that the person's name has been removed from the list of persons that owe delinquent personal property taxes on business personal

property, the Tax Commissioner shall immediately either:

13.3.1. Refuse to renew or issue the person's business registration certificate; or

13.3.2. Suspend the person's business registration certificate.

13.4. If the sheriff, within the 21 days immediately succeeding the date the Tax Commissioner notified the taxpayer, as required in this section 12, and subsections thereof, notifies the Tax Commissioner that the delinquent taxes have been paid or exonerated, the Tax Commissioner shall not suspend or refuse to renew, or issue, the person a business registration certificate. Nothing contained in this subsection or elsewhere in this rule herein may be construed to limit or prevent the Tax Commissioner from exercising his or her power to suspend or refuse to renew, or reissue, a business registration certificate in accordance with one or more other provisions in W. Va. Code § 11-12-5.

13.5. If the Tax Commissioner suspends the person's business registration certificate, the person shall pay to the Tax Commissioner a fee in the amount of \$50.00 for each business registration certificate reinstated or issued to the person in response to the sheriff removing the person's name from the list of persons owning delinquent personal property taxes. The fee collected for reinstatement or issuance of a business registration certificate shall be deposited in the special fund as directed by statute.

§ 110-12D-14. Appeals; hearing on decision to suspend, revoke, not renew, or not issue business registration certificate for failure to pay delinquent property taxes.

14.1. A taxpayer may request a hearing before the West Virginia Office of Tax Appeals challenging the Tax Commissioner's notice of suspension, cancellation, non-issuance or non-renewal of taxpayer's business registration certificate. A proceeding before the Office of Tax Appeals shall be initiated by the taxpayer timely filing a written petition with the Office of Tax Appeals, within 60 days after receiving the Tax Commissioner's notice that succinctly states:

14.1.1. The nature of the case;

14.1.2. The facts on which the appeal is based; and

14.1.3. Each question presented for review by the Office of Tax Appeals.

14.1.4. A petition filed pursuant to subsection 14.1 of this section is timely filed if postmarked or hand delivered to the Office of Tax Appeals within sixty days of the date the taxpayer received written notice of the Tax Commissioner's suspension, non-

issuance or non-renewal of taxpayer's business registration certificate.

14.2. Taxpayer may not continue to engage in business activities while either the hearing, the administrative decision resulting from the hearing, or any resulting appeal is pending in the courts of this State.

14.3. Because the Tax Commissioner is required by W. Va. Code § 11-12-5 to suspend, cancel, or refuse to renew, or issue a business registration certificate when the county sheriff, in writing, notifies the Tax Commissioner, that the taxpayer's personal property taxes are delinquent, the Office of Tax Appeals may only determine whether or not the taxpayer is delinquent in paying personal property taxes on personal property held for sale or use in taxpayer's business.

14.3.1. Only evidence relevant to the payment or non-payment of the personal property taxes in issue may be considered. The Office of Tax Appeals has no jurisdiction to determine either the value or taxability of the property.

14.3.2. If the Office of Tax Appeals determines the taxpayer was delinquent in payment of personal property taxes for the specified property tax year(s), the Office of Tax Appeals must uphold the Tax Commissioner's action in suspending, canceling, or refusing to renew or issue, taxpayer's business registration certificate.

14.3.3. If the Office of Tax Appeals determines the sheriff was not correct in stating the taxpayer was delinquent in payment of personal property taxes for the specified property tax year(s), the Office of Tax Appeals will order the taxpayer's business registration certificate be reinstated, renewed or issued, as is appropriate under the circumstances of the case.

14.4. When the taxpayer has multiple business registration certificates subject to the Tax Commissioner's notice, this section of the rule, including the provision for appeal, applies to each business registration certificate the Tax Commissioner intends to suspend, cancel, or not renew, or issue, as the case may be, for failure to pay ad valorem personal property taxes, as stated in the notice served on the taxpayer.

14.5. When the taxpayer receives a separate notice of the Tax Commissioner's intent to suspend, cancel, or not renew, or issue, as the case may be, for some but not all of the taxpayer's business registration certificates, a separate petition must be filed with the Office of Tax Appeals for each separate notice.

§110-12D-15. Application of Tax Commissioners decision; multiple business locations; multiple business registration certificates.

15.1. *One business registration certificate.* – When a taxpayer who owes delinquent personal property taxes has multiple business locations in this State, in different counties,

but is required by law to have only one business registration certificate, that certificate will be suspended, cancelled, not reissued or not issued until such time as the county sheriff of each county in which delinquent personal property taxes on business personal property is owed notifies the Tax Commissioner that the full amount of delinquent personal property taxes, including any applicable penalties and interest, have been paid in full or exonerated, or partially exonerated and the balances paid. Upon the effective date of the Tax Commissioner's order of suspension, revocation, non-renewal or non-issuance, as the case may be, the taxpayer may no longer exercise the privilege of doing business in this State and shall immediately cease doing business at all locations of the taxpayer in this State.

15.2. *Multiple business registration certificates all in same county.* – When a taxpayer who owes delinquent personal property taxes on business personal property has multiple business locations all in the same county in this State, some of which have separate business registration certificates, the Tax Commissioner's order of suspension, cancellation, or refusal to renew, or issue, as appropriate, shall apply to all of the taxpayer's business registration certificates and business activity in this State even though as to any particular location that has a business registration certificate, personal property taxes are not delinquent with respect to business tangible personal property at a particular location. Upon the effective date of the Tax Commissioner's order of suspension, revocation, non-renewal or non-issuance, as the case may be, the taxpayer may no longer exercise the privilege of doing business in this State and shall immediately cease doing business at all business locations of the taxpayer in this State.

15.3. *Multiple business registration certificates, multiple counties, but personal property taxes delinquent in some but not all counties in which business personal property has a tax situs.* – When a taxpayer who owes delinquent personal property taxes on business personal property in one or more counties of this State has multiple business locations in this State some of which have separate business registration certificates, as required by law, but only some locations are in counties where the taxpayer owes delinquent personal property taxes, the Tax Commissioner's order of suspension, cancellation or refusal to renew, or issue, as appropriate, shall apply to the business registration certificate for registrant's primary business location in this State and to each separate business registration certificate for locations in counties in which the taxpayer owes delinquent personal property taxes. The affected business registration certificates shall be identified in the Tax Commissioner's order. Upon the effective date of the Tax Commissioner's order of suspension, revocation, non-renewal or non-issuance, as the case may be, the taxpayer may no longer exercise the privilege of doing business in this State at those locations and all business activities at those locations shall immediately cease. Application of the Tax Commissioner's order of suspension, cancellation or refusal to renew, or issue, as appropriate, to the business registration certificate for the registrant's primary business location in this State shall be effective without regard to whether the primary business location in this State is located inside of, or outside of, a county where the taxpayer owes delinquent personal property taxes.

15.4. *Filing petition for appeal does not suspend Tax Commissioner's order.* – The Tax Commissioner's order of suspension, cancellation, revocation, non-renewal, or nonissuance of a business registration certificate remains in place until the county sheriff of each county in which delinquent personal property taxes on business personal property notifies the Tax Commissioner that the full amount of the registrant's delinquent personal property taxes, including any applicable penalties and interest, have been paid in full or exonerated, or partially exonerated and the balances paid, as the case may be or until there is a determination by the Office of Tax Appeals or court of this State that becomes final, holding that the delinquent property taxes are exonerated due to property taxes on the business personal property having been paid in full to all counties to which they were owed.

15.5. *Perishable property.* – In the event that immediate cessation of business activity is likely to result in personal property at one or more locations perishing or becoming greatly reduced in price or value, or the property cannot be kept from spoilage without great expense, taxpayer shall forthwith notify the county sheriff of the county in which delinquent personal property taxes are owed and in which the property is located of that fact and identify the property that is likely to spoil and the sheriff shall exercise authority provided in W. Va. Code §11A-2-1 to distraint upon any goods and chattels belonging to the taxpayer in his or her county for payment of the delinquent personal property taxes.

§110-12D-16. Participation by county sheriff and prosecuting attorney in event of appeal.

In the event a registrant appeals the Tax Commissioner's order of the suspension, revocation, non-renewal or non-issuance of a business registration certificate, the Tax Commissioner shall defend his or her actions and the sheriff of each county, and the prosecuting attorney thereof, that notified the Tax Commissioner that the registrant owed delinquent property taxes on business personal property are responsible for defending the county's notification to the Tax Commissioner that the registrant owed delinquent property tax on business personal property located in that county.

APPENDIX A. Calendar for Assessment and Collection of Property Taxes.

1.1. Tangible personal property assessed by the county assessor is assessed annually, as of the first day of July, for ad valorem property taxes assessed for the next property tax year, which is the next ensuing calendar year after the July 1st assessment day. The county sheriff mails personal property tax tickets or statements to property owners beginning July 15th of the property tax year for which the taxes are levied. These taxes are payable in two installments. The first half installment payment is due September 1st of the property tax year and becomes delinquent if not paid before October 1st of the property tax year. The second installment payment is due March 1st of the next calendar year and becomes delinquent if not paid before April 1st of that calendar year. A discount is allowed when property taxes are paid before the date they become due.

1.2. Operating real and personal property of public service businesses is assessed annually by the Board of Public Works for the next property tax year.

1.3. Illustration of property tax cycle for property assessed by the county assessor or Board of Public Works.

May 1, 2005	On or before May 1 st each year, public service businesses must file property tax returns with the Board of Public Works, covering their operations during preceding calendar year.
July 1, 2005	Property assessed as of this day for 2006 property taxes.
August 1, 2005	On or before August 1 st , owners of producing and reserve oil and natural gas properties file reports with Tax Commissioner.
September 1, 2005	On or before September 1 st , owners of actively mined coal property and owners of actively mined other minerals file reports with Tax Commissioner.
September 15, 2005	On or before September 15 th , owners of reserve coal properties and owners of reserve mined minerals file reports with Tax Commissioner.
September 15, 2005	On or before September 15 th , owners of other natural resource properties file reports with Tax Commissioner.
September 15, 2005	On or before September 15 th each calendar year, the Tax Commissioner must furnish to the Board of Public Works tentative assessed values of the operating property of each public service business.
October 1, 2005	After the July 1 st assessment day and before October 1 st each year, every incorporated business must file with the county assessor the report required by W. Va. Code § 11-3-12. This report includes a

listing of real and personal property owned by the incorporated business. Public service businesses report only their nonoperating property.

Before October 1st each year, individuals who receive a property tax report form from the county assessor must complete the form and return it to the assessor.

On or before October 1st, owners of industrial real and personal property must file reports with the Tax Commissioner,

Board of Public Works begins meeting on or before October 1st to fix the assessed value of the real and personal operating property of each public service business.

November 1, 2005 After the July 1st assessment day and before November 1st each year, sole proprietors and unincorporated businesses must file with the county assessor the report required by W. Va. Code § 11-3-15. This report includes a listing of real and personal property owned by the unincorporated business, or by the sole proprietor and used in his or her business.

Unincorporated businesses and sole proprietors engaged in the business of agriculture are not required to file the § 11-3-15 report. Corporations engaged in the business of agriculture are required to file the report required by § 11-3-12, which is due October 1st.

December 31, 2005 Lien for 2006 property taxes attaches to operating property of public service business.

January 31, 2006 County assessor completes land and personal property tax books and delivers them to the county commission, which begins meeting as a board of equalization and review on February 1, 2006.

February 28, 2006 Boards of equalization and review must complete their work and adjourn sine die.

April 18, 2006 County commissions, county boards of education and municipal governing bodies meet on the third Tuesday in April to set property tax levy rates for the current property tax year. The levy rates are then certified to the county assessor and to the State Auditor.

As soon as possible after the assessment of public service business property is completed, the State Auditor mails to each operator of a public service business a statement of all taxes and levies assessed.

June 7, 2006 After the levy rates are certified to the county assessor, the assessor applies the appropriate levy rates to the assessed values of property entered in the land and personal property books for current property

	tax year. The completed land and personal property books must be delivered to the county sheriff by June 7 th .
July 15, 2006	County sheriff begins collecting 2006 property taxes by mailing property tax tickets or statements to owners of property listed in the land and personal property books for the current property tax year.
September 1, 2006	A discount is allowed if first half 2006 property taxes, or taxes for the full year, are paid before September 1st to the county sheriff, or to the State Auditor in the case of property assessed by the Board of Public Works. First half installment payments of 2006 property taxes are due September 1st. For public service businesses, the first half installment payment of 2006 property taxes are delinquent if not paid by September 1, 2006.
October 1, 2006	First half installment payments of 2006 property taxes not paid by the end of September become delinquent on October 1 st .
March 1, 2007	Second half installment payments of 2006 property taxes are due March 1 st .
March 1, 2007	A discount is allowed if second half 2006 property taxes are paid before March 1st to the county sheriff, or to the State Auditor in the case of property assessed by Board of Public Works. Second half installment payments of 2006 property taxes are due March 1st. For public service businesses, the second half installment payment of 2006 property taxes are delinquent if not paid by March 1, 2007.
April 1, 2007	Second half installment payments of 2006 property taxes not paid by the end of March become delinquent on April 1 st .
April 2007	Sheriff prepares and publishes a notice stating in effect that unpaid property taxes assessed for the 2006 property tax year (calendar year) have become delinquent and that unless paid by April 30, 2007, will be included for publication as provided in W. Va. Code § 11A-2-10a.
May 1, 2007	On or before May 1st, the sheriff prepares a list of delinquent property taxes, on both real and personal property, for the preceding property tax year (calendar year), as provided in W. Va. Code § 11A-2-11. This list must be posted on the front door of the courthouse and published as a Class 1-O legal advertisement at least two weeks

before the meeting of the county commission at which the list is presented for examination. W. Va. Code §11-2A-13.

June 15, 2007

On or before June 15th, the sheriff must present the list of delinquent property taxes to the county commission for examination. After review by the county commission, the sheriff may begin using remedies provided in the West Virginia Code to collect delinquent personal property taxes from those who owe the tax. W. Va. Code §11-2A-14.

July 1, 2007

On or before July 1st, the list of delinquent real property taxes must be certified to the State Auditor as provided in W. Va. Code § 11A-2-15.

Appendix B. Property Tax Returns and Reports; Listing of Property; Assessments; Exoneration; and Penalties.

1.1. Persons engaged in business activity in this State are required to annually file certain reports with the county assessor. Public service businesses report operating property information to the Board of Public Works and report nonoperating property to county assessors.

1.1.1. *Incorporated businesses.* -- Except as provided in subdivision 1.1.2 or subdivision 1.1.5 of this subsection, each incorporated company, whether foreign or domestic, having its principal office or chief place of business in this State, is required to annually, between July 1st and October 1st, make a written report to the county assessor, as of the first day of July, verified by the oath of the president or chief accounting officer, to the assessor of the county in which its principal office or chief place of business is situated, or in which its property subject to taxation in this State is located, if the corporation does not have a principle office or chief place of business in this State. W. Va. Code § 11-3-12. This report includes, among other things, the kinds, quantities and fair market values of all of its tangible personal property in each tax district in which it is located on the first day of July.

1.1.2. *Public service businesses.* -- The operating property of a public service business is returned to the West Virginia Board of Public Works for assessment as provided in W. Va. Code § 11-6-1 *et seq.* Nonoperating property of a public service business is reported to the county assessor as provided in subdivision 3.1.1 or 3.1.3 of this section. "Public service business" includes railroads, telegraph and express companies, telephone companies, pipelines, car line companies and other public utilities.

1.1.3. *Sole proprietors and other unincorporated businesses.* -- Except as provided in subdivision 3.1.4 or 3.1.5 of this subsection, the owner, agent, or chief account of every sole proprietorship or unincorporated trade or business carried on in any county of this State is required to annually, between July 1st and November 1st, make a written report to the county assessor, as of the first day of July, showing the items required by W. Va. Code § 11-3-15, including, but not limited to, (a) the amount, fair market value and classification of all tangible personal property, including, but not limited to, chattels real, used in connection with the sole proprietorship or unincorporated trade or business and (b) the amount, fair market value and classification of all goods and property kept for sale and remaining unsold as of the first day of July. Items (a) and (b) are entered in the personal property book of the county, in the tax district, in which these items are kept or located for the greater part of year.

1.1.4. *Unincorporated agricultural businesses.* -- Individuals and unincorporated business engaged in the business of farming are not required to file the report required by W. Va. Code § 11-3-15. Incorporated agricultural businesses are required to file the report required by W. Va. Code § 11-3-12.

1.1.5. *Special valuation methods.*

1.1.5.1. A special method for appraising dealer vehicle inventory is provided in W. Va. Code § 11-6C-1 *et seq.* Returns of this specie of property are filed with the county assessor as provided in W. Va. Code § 11-6C-3.

1.1.5.2. A special method for valuing certain manufacturing production property is provided in W. Va. Code § 11-6E-1 *et seq.* Returns of this specie of property are filed with the county assessor in which the specific item of property is located on the first day of July of the assessment year. W. Va. Code § 11-6E-4.

1.1.5.3. A special method for valuing qualified capital additions to a manufacturing facility, including the real and personal property associated with the qualified capital addition to a qualified manufacturing facility, as defined in W. Va. Code § 11-6F-2(d), is returned to the county assessor of the county in which the manufacturing facility is located, W. Va. Code § 11-6F-4, and taxed as provided in W. Va. Code § 11-6F-3.

1.1.5.4. A special method for taxing interstate motor vehicles registered under the international proportional registration agreement is provided in W. Va. Code § 11-6G-1 *et seq.*

1.2. *Listing and assessment of property.*

1.2.1. *General rule.* -- Except as provided in subdivision 3.2.2 of this subsection, every person required by law to list personal property for ad valorem property taxation must list the tangible personal property in the tax district wherein it is located on the first day of July of the assessment year. Chattels real are listed in the tax district wherein the land to which they relate is located. W. Va. Code § 11-5-4.

1.2.2. *Exception.* -- However, the capital (except real estate and chattels real) employed in any trade or business (other than agriculture) belonging to a company whether it is incorporated or not, or to an individual, is listed and assessed for taxation in the county and tax district wherein the principal office for the transaction of the financial concerns pertaining to the trade or business is located in this state; or, if there is no such office, then in the county and tax district where the operations are carried on. W. Va. Code § 11-5-4.

1.2.3. *Catchall.* -- Goods and chattels and other tangible personal property not exempt from taxation which may not be assessed for taxation in the county and tax district where the same were located on the first day of July of the assessment year, but which have been removed therefrom, are assessed in the tax district where they are on the first day of July of the assessment year. W. Va. Code § 11-5-4.

1.5. *Exoneration.* -- The assessment and payment of ad valorem property taxes on any item of property in any county of this State for any tax year shall exonerate the owner of the property from assessment and payment of taxes assessed on the same property in any other county of this State for that same property tax year. W. Va. Code § 11-5-4.

1.6. *Forfeiture penalties.*

1.6.1. *Refusal to list property.* -- Any person, firm or corporation whose duty it is by law to list any real estate or personal property for ad valorem property taxation refuses to furnish a proper list of the property to the county assessor or Tax Commissioner, within the time required by law, or refuses to list the property with the county assessor or the Tax Commissioner, within the time required by law, is, at the discretion of the county assessor or Tax Commissioner, subject to a forfeiture penalty of not less than \$25 nor more than \$100, if good cause is shown for the refusal. Additionally, the person, firm or corporation is denied all remedy provided by law for correction of any assessment made by the county assessor or Board of Public Works. W. Va. Code § 11-3-10.

1.6.2. *False statements.* -- Any person, firm or corporation whose duty it is by law to list any real estate or personal property for ad valorem property taxation refuses to answer any question of the county assessor or the Tax Commissioner, or answers any question asked by the county assessor or the Tax Commissioner, or refuses to deliver any statement required by law, at the discretion of the county assessor or Tax Commissioner, is subject to a forfeiture penalty of not less than \$25 nor more than \$100, if good cause is shown for the refusal. Additionally, the person, firm or corporation is denied all remedy provided by law for correction of any assessment made by the county assessor or Board of Public Works. W. Va. Code § 11-3-10.

1.6.3. *Failure to file required return.* -- Any person, firm or corporation required by law to make return of property for ad valorem taxation, whether the return is to be made to the county assessor, the Board of Public Works, the Tax Commissioner, or any other assessing officer or body, who fails to return a true list of all property which should be assessed in this State, in addition to all other penalties provided by law, shall forfeit one percent of the value of the property not yet returned and not otherwise taxed in this State. W. Va. Code § 11-3-10.

1.6.4. *Separate offenses.* -- Each failure to make a true return as required by law constitutes a separate offense, and a forfeiture applies to each of them, but all forfeitures, to which the same person, firm or corporation is liable, may not exceed five percent of the value of the property not returned. W. Va. Code § 11-3-10.