

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

FILED

Jul 23 11 08 AM

OFFICE OF 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 Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code § 11-13J-5

AMENDMENT TO AN EXISTING RULE: YES NO


IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 13J

TITLE OF RULE BEING PROPOSED: Tax Credit For Qualified Agricultural
Equipment

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.



Authorized Signature
James H. Paige
State Tax Commissioner



FILED

JUL 23 11 08 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
JAMES H. BAIGE III
SECRETARY

GASTON CAPERTON
GOVERNOR

State of West Virginia
Department of Tax and Revenue

TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

CONSENT TO FILE RULE

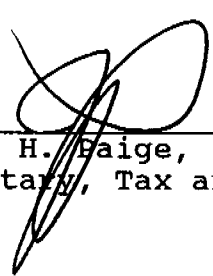
July 23, 1996

To Whom It May Concern:

Title of Rule: Tax Credit For Qualified Agricultural Equipment
Title Number: 110
Series Number: 13J

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 23rd day of July, 1996.



James H. Baige, III
Secretary, Tax and Revenue



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

JAMES H. PAIGE III
SECRETARY

SUMMARY OF THE RULE

The legislative rule implements the tax credits made available to persons involved in commercial agriculture operations under the authority of West Virginia Code § 11-13J-1 et seq.



State of West Virginia
Department of Tax and Revenue

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P. O. Box 2389
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SECRETARY

STATEMENT OF CIRCUMSTANCES

This rule is required by West Virginia Code § 11-13J-5.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Tax Credit For Qualified Agricultural Equipment

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Division

Address: P.O. Box 1005

Charleston, WV 25324-1005

1. Effect of Proposed Rule

	ANNUAL			FISCAL YEAR	
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$	\$	\$	\$	\$
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

There should be no cost in addition to any included in the legislation requiring this rule.

3. Objectives of these rules:

To explain the application of West Virginia Code § 11-13J-1 et seq. for the tax credit on the purchase of certain qualified agricultural equipment.

Rule Title: Tax Credit For Qualified Agricultural Equipment

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Persons involved in commercial agriculture operations will have tax credits available for certain purchases.

C. Economic Impact on Citizens/Public at Large.

None.

Date: July 23, 1996

Signature of Agency Head or Authorized Representative



James H. Paige III
State Tax Commissioner

DATE: August 23, 1996

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Tax Division

LEGISLATIVE RULE TITLE: Tax Credit For Qualified Agricultural Equipment.

1. Authorizing statute(s) citation: West Virginia Code § 11-13J-5

2. a. Date filed in State Register with Notice of Comment Period:
May 31, 1996

b. What other notice, including advertising, did you give of the comment period?
None

c. Date of Public Comment period: May 31, 1996 - July 1, 1996

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 23, 1996

f. Name and phone number(s) of agency person(s) to contact for additional information:

Keith Larson 558-5330

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: _____

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

d. Attach findings and detminations and reasons:

Attached _____

AGENCY APPROVED
WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF TAX AND REVENUE
STATE TAX DIVISION
TITLE 110
SERIES 13J
1996

TAX CREDIT FOR QUALIFIED AGRICULTURAL EQUIPMENT

§ 110-13J-1. General.

1.1 **Scope.** - This legislative rule implements Enrolled Committee Substitute for House Bill 4530 (1996 Regular Session), enacting W. Va. Code § 11-13J-1 et seq. West Virginia Code § 11-13J-5 requires the Tax Commissioner to propose legislative rules for certification of qualified agricultural equipment and for administration of the tax credit for purchases of such equipment.

1.2 **Authority.** - W. Va. Code § 11-13J-5.

1.3 **Filing Date.** -

1.4 **Effective Date.** -

§ 110-13J-2. Definitions.

The following terms are defined in W. Va. Code § 11-13J-2, and are applicable to this rule as if set forth herein.

2.1 **Qualified agricultural equipment.**

2.1.1 **Qualified agricultural equipment** includes only the items listed in subsections 2.2 through 2.12 of this rule, which must be certified as set forth in section 4.3.3 of this rule before this tax credit may be claimed.

2.2 **Advance technology pesticide and fertilizer application equipment.**

2.3 **Conservation tillage equipment.**

2.4 **Dead poultry composting facility.**

2.5 **Mortality incinerator.**

2.6 **Nutrient management system.**

2.7 **Streambank and shoreline protection system.**

2.8 **Stream channel stabilization system.**

- 2.9 Stream crossing or access plan.
- 2.10 Waste management system.
- 2.11 Waste storage facility.
- 2.12 Waste treatment lagoon.

§ 110-13J-3. Description of the Credit.

3.1 The purpose of this credit is to create an incentive for the agricultural industry in this State to protect the environment by purchasing and installing qualified agricultural equipment for use in agricultural operations in this State.

3.1.1 Agricultural operations include only the commercial production of food, fiber, or woodland products (but not timbering activity) by means of cultivation, tillage of the soil or by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, aquacultural activity, horticultural activity, or any other plant or animal production activity and all farm practices related, usual or incidental thereto.

3.1.2 Commercial production consists of annual sales by the producer thereof of at least \$1,000 of agricultural products, except that for the first 12 months after (1) the occurrence of a catastrophe (such as fire, drought or flood), other than merely mechanical breakdowns, which substantially destroyed the agricultural product being produced or the means for harvesting that product or (2) the commercial producer of an agricultural product has first commenced such production activity, the requirement of annual sales of at least \$1,000 of agricultural products need not be satisfied in order for the activity to be the commercial production of an agricultural product.

3.2 This credit may be applied against an eligible taxpayer's Personal Income Tax or Corporation Net Income Tax liability for taxable years beginning on or after July 1, 1997.

3.2.1 For calendar year taxpayers, this credit will be available beginning in tax year 1998.

3.2.2 In no event may credit from any purchase be applied against both Personal Income Tax and also Corporation Net Income Tax.

3.3 This credit is available to taxpayers who purchase and install qualified agricultural equipment for use in their agricultural operations in this State and who meet the requirements of W. Va. Code § 11-13J-1 et seq. and this rule.

3.3.1 This credit is not available for purchases of equipment for resale or for any purpose other than for use in the taxpayer's own agricultural operations in this State.

3.4 The total amount of credit available to any taxpayer for purchases during a taxable year is 25% of the total purchase price of all certified expenditures for qualified agricultural equipment purchased during the taxable year.

3.4.1 Only expenditures made in taxable years beginning on or after July 1, 1997 may be included in the amount certified. However, for calendar year taxpayers, only expenditures made on or after January 1, 1998 may be included in the amount certified.

3.4.2 The amount of credit which may be used in any single taxable year may not exceed the lesser of \$2,500, or the amount of the taxpayer's Personal Income Tax or Corporation Net Income Tax liability for the year the equipment was purchased.

3.4.3 If the amount of credit available exceeds the taxpayer's income tax liability for the taxable year in which the equipment was purchased, the amount of the excess credit may be carried over and used in any one or more of the next consecutive five taxable years until no excess credit remains or until the time for claiming the credit has expired, after which time any unused credit is forfeited.

3.4.3.1 If any excess credit is not claimed in a tax year in which it could be claimed, it is forfeited. However, such unclaimed credit is not forfeited if subsequently claimed for that tax year on a timely filed amended return.

3.4.3.2 Any excess credit carried over to subsequent tax years must be applied before any new tax credit for qualified agricultural equipment purchased in subsequent years, but after any other type of tax credit (except for credit for overpayment of tax).

3.4.3.3 Credit for any purchase of qualified agricultural equipment may be used only by one taxpayer, is limited to the actual amount paid by that taxpayer, and may not be assigned or otherwise transferred to any other taxpayer. However, a husband and wife filing a joint personal income tax return may both claim the credit.

3.4.4 **Example.**

Farmer Glick is a calendar year taxpayer with a personal income tax liability of \$8,000 in tax year 1998. As a calendar year taxpayer, Farmer Glick is able to use the credit for the first time in tax year 1998. He purchased qualified agricultural equipment for his farm for \$12,000 in 1998, and the equipment was properly certified. The total amount of credit he could use in tax years 1998 through 2003 would be 25% of \$12,000, or \$3,000. The maximum amount of the \$3,000 credit which he could use in tax year 1998 would be the lesser of either \$2,500 or \$8,000 (his 1996 tax liability), which is \$2,500. The remaining \$500 excess credit may be

carried over and used in tax year 1999. Farmer Glick is able to carryover and use the entire \$500 excess credit in tax year 1999 and does so, so none of this credit remains to be used in future tax years and none is forfeited.

§ 110-13J-4. General Procedure and Administration.

4.1 To claim this credit, a taxpayer must comply with the provisions of W. Va. Code § 11-13J-1 et seq. and this rule, and must timely provide complete and accurate forms, schedules and other information required by the Tax Commissioner.

4.2 When applying for this credit, a taxpayer is also subject to the provisions of W. Va. Code §§ 11-21-1 et seq. (personal income tax) or 11-24-1 et seq. (corporation net income tax) and rules issued pursuant thereto, as well as to the provisions of W. Va. Code § 11-10-1 et seq. (Procedure and Administration) which provide for administration of those taxes.

4.3 In order to use this credit, the taxpayer must submit with the appropriate tax return adequate proof of entitlement to the credit for each and every item for which credit is claimed. Adequate proof consists of:

4.3.1 Proof of purchase, which must be legible, complete and sufficiently specific to clearly identify the item as (1) one of the items listed in subsection 2.1 of this rule, and (2) purchased by the taxpayer.

4.3.2 Certification in a notarized statement by the taxpayer that the items meet the two requirements of subsection 4.3.1 of this rule, and were purchased, and will be used exclusively, for the taxpayer's agricultural operations in West Virginia.

4.3.3 Certification in writing by the Commissioner of Agriculture that each item purchased is in fact qualified agricultural equipment listed in subsection 2.1.1 of section 2 of this rule, except that

4.3.3.1 Advanced technology pesticide and fertilizer application equipment must instead be certified in writing by the West Virginia Division of Environmental Protection, and

4.3.3.2 Mortality incinerators must instead be certified in writing by the Air Pollution Control Commission.

§ 110-13J-5. Severability.

TITLE 110
SERIES 13J
PAGE 5

The severability rule for statutes set forth in West Virginia Code § 2-2-10(cc) shall also apply to this rule.