

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code § 11-13J-5

AMENDMENT TO AN EXISTING RULE: YES  NO

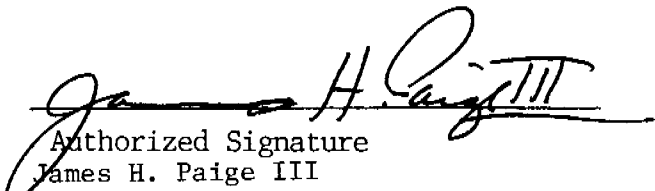
IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

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

  
Authorized Signature  
James H. Paige III  
State Tax Commissioner

3.40



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Oct 31 10 36 AM '96

GASTON CAPERTON  
GOVERNOR

State of West Virginia  
Department of Tax and Revenue

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

OFFICE OF WEST VIRGINIA  
SECRETARY OF TAXES  
JAMES H. PAIGE III  
SECRETARY

CONSENT TO FILE RULE

October 28, 1996

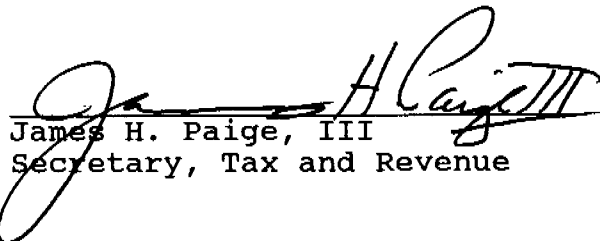
To Whom It May Concern:

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

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

Signed this 28th day of October, 1996.

  
James H. Paige, III  
Secretary, Tax and Revenue

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

FILED  
Oct 31 10 56 AM '96  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TAX CREDIT FOR QUALIFIED AGRICULTURAL EQUIPMENT

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§ 110-13J-1. General.

1.1 **Scope.** - This legislative rule implements W. Va. Code § 11-13K-1 et seq. West Virginia Code § 11-13K-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 the equipment.

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

1.3 **Filing Date.** -

1.4 **Effective Date.** -

§ 110-13J-2. Definitions.

The terms in Subsections 2.1 through 2.12 of this Section are defined in W. Va. Code § 11-13K-2, and are applicable to this rule as if set forth in this rule. The terms in Subsections 2.13 and 2.14 of this Section are defined in Subsections 3.1.1 and 3.1.2 of Section 3 of this Rule.

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 section, which must be certified as set forth in subdivision 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.
- 2.13 Agricultural operations.
- 2.14 Commercial production.

**§ 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 to the operations.

3.1.2 Commercial production consists of annual sales by the producer 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 the 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 agricultural 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 The taxpayer may include only expenditures made in taxable years beginning on or after July 1, 1997 in the amount certified. However, for calendar year taxpayers, the taxpayer may include only expenditures made on or after January 1, 1998 in the amount certified.

3.4.2 The amount of credit which the taxpayer may use 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 qualified agricultural 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 qualified agricultural equipment was purchased, the taxpayer may carry over the amount of the excess credit and use it 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 a taxpayer does not claim any excess credit in a tax year in which it could be claimed, it is forfeited. However, the unclaimed credit is not forfeited if subsequently claimed for that tax year on a timely filed amended return.

3.4.3.2 The taxpayer must apply any excess credit carried over to subsequent tax years 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 § 11-13K-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 to those statutes, 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 item meets the two requirements of subdivision 4.3.1 of this section, and was purchased, and will be used exclusively, for the taxpayer's agricultural operations in West Virginia; and

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

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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.



**West Virginia Legislature  
Legislative Rule-Making Review Committee**

**Room NB47-State Capitol  
Charleston, West Virginia 25305  
(304) 347-4840**

**Senator Mike Ross, Co-Chair  
Delegate Vicki Douglas, Co-Chair**

**Debra A. Graham, Counsel  
Joe Altizer, Associate Counsel  
Marie Nickerson, Admr. Assistant**

October 15, 1996

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register  
TO: Mr. Keith Larson  
State Tax Division  
P. O. Box 1005  
Charleston, WV 25324-1005  
FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Tax Credit for Qualified Agricultural Equipment

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency   X
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: John Montgomery  
Legal Division

ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** State Tax Division

**Subject:** Tax Credit for Qualified Agricultural Equipment

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PERTINENT DATES

Filed for public comment: May 31, 1996  
Public comment period ended: July 1, 1996  
Filed following public comment period: July 23, 1996  
Filed LRMRC: July 23, 1996  
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 sets forth those items which are considered "qualified agricultural equipment" as that term is defined in the statute.

Section 3 describes the credit. It states that the purpose of the credit is to create an incentive for the agricultural industry to protect the environment by purchasing and installing qualified agricultural equipment. It defines the terms "agricultural operations" and "commercial production". It provides that the credit may be applied against either the taxpayer's Personal Income Tax or Corporation Net Income Tax beginning July 1, 1997 or January 1, 1998 for calendar year taxpayers. The credit is available to taxpayers who purchase and install qualified agricultural equipment for use in their agricultural operations.

This section also sets forth the amount of the credit as is set forth in the Code as well as carryover and forfeiture provisions. An example of how the credit works is provided.

Section 4 sets forth the procedures with which the taxpayer must comply in order to claim the credit. It requires adequate proof for each and every item for which credit is claimed and

delineates what constitutes adequate proof.

Section 5 is a severability section.

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**AUTHORITY**

Statutory authority: W.Va. Code, §11-13J-5, which provides, in part, as follows:

On or before the thirty-first day of May, one thousand nine hundred ninety-six, the tax commissioner and the agricultural commissioner shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code to determine the equipment which shall be certified as qualified agricultural equipment for purposes of application of the credit provided for in this article not inconsistent with the provisions of section two of this article. The tax commissioner shall also propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code regarding the administration of the credit established pursuant to this article.

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**ANALYSIS**

**I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?**

No.

**II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?**

Yes.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

**Agency:** State Tax Division

**Subject:** Tax Credit for Qualified Agricultural Equipment

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ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes, the proposed rule was specifically required by the statute.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has several minor technical modifications to suggest.