



FILED

WEST VIRGINIA LEGISLATURE 2002 SEP 17 A 10: 36  
Legislative Rule-Making Review Committee

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

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September 15, 2002

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NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: John Montgomery  
Tax Commissioner  
Capitol Complex  
Building 1, Room W-401

FROM: Legislative Rule-Making Review Committee

Proposed Rule: Tax Credit for Medical Malpractice Insurance Premiums, 110CSR13P

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
- 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 Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Tax Commissioner

Subject: Tax Credit for Medical Malpractice Insurance Premiums,  
110CSR13P

PERTINENT DATES

Filed for public comment: May 24, 2002  
Public comment period ended: June 28, 2002  
Filed following public comment period: July 24, 2002  
Filed LRMRC: July 24, 2002  
Filed as emergency:

Fiscal Impact: None

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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 defines terms.

Section 3 relates to tax credit authorized. It provides that the credit is available for tax years beginning after December 31, 2001, and will not be allowed for any taxable year ending after December 31, 2004. It provides that an eligible taxpayer may not assert the credit on any tax return due prior to July 1, 2002. It sets forth the statutory amount of the credit.

Section 4 relates to excess credit forfeited. It contains provisions of the statute which provides that any excess credit may not be carried back or carried forward, but is forfeited.

Section 5 relates to the determination of tax base for application of the credit. It sets forth those fees which are subject to the Health Care Provider Tax and the method for determining fees where discounts are provided; where services are provided to employees; and where there are professional discount agreements between health care providers. It also sets forth the Health Care Provider Tax rates through July 1, 2010, when the tax is eliminated.

Section 6 relates to filing of the return and payment of tax. It sets forth the dates when the health care provider tax return is due and requires the eligible taxpayer to file with the return the schedule prescribed by the Tax Commissioner. This schedule must show for the taxable year either the adjusted annual medical liability insurance premium for the taxpayer's specialty or subspecialty group or the taxpayer's actual annual medical liability premium, the amount of credit allowed, the taxes against which the credit is being applied and any other information required by the Tax Commissioner. This section allows taxpayers who make estimated monthly payments to use 1/12 of the credit authorized for the taxable year when calculating each estimated payment. It requires that the total annual tax liability and total credit are to be adjusted and reconciled on the annual Health Care Provider Tax return.

Section 7 relates to computation and application of credit. This section contains the provisions of the statute regarding computation and application of the credit.

Section 8 relates to burden of proof. It states that the burden of proof is on the person claiming the credit to establish by clear and convincing evidence that the person is entitled to the amount of credit asserted for the taxable year.

#### AUTHORITY

Statutory authority: W.Va. Code, §11-13P-8, which provides as follows:

The tax commissioner shall propose for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this

code such rules as may be necessary to carry out the purposes of this article.

#### 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.

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 PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.