

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #5

FILED  
1992 JUL 17 AM 9:51  
OFFICE OF THE SECRETARY OF STATE

NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY: W. Va. Code § 11-10-5

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE \_\_\_\_\_  
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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 NEW RULE BEING ADOPTED: 15(I)1

TITLE OF RULE BEING ADOPTED: Baby-Sitting Services

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS August 17, 1992

  
James H. Paige III  
State Tax Commissioner

2.50



State of West Virginia  
Department of Tax and Revenue

GASTON CAPERTON  
GOVERNOR

Tax Division  
P. O. Box 2389  
Charleston, WV 25328-2389

FILED  
1992 JUL 17 AM 9:51  
OFFICE OF JAMES H. PAIGE III  
SECRETARY OF STATE

July 16, 1992

To Whom It May Concern:

Title of Rule: Baby-Sitting Services

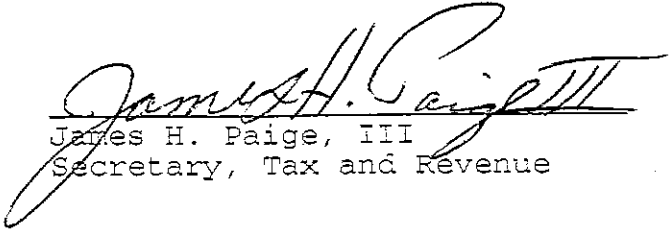
Title Number: 110

Series Number: 15(I)1

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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 16th day of July, 1992.

  
James H. Paige, III  
Secretary, Tax and Revenue

WEST VIRGINIA INTERPRETIVE RULE  
DEPARTMENT OF TAX AND REVENUE  
TITLE 110  
SERIES 15(I)1  
1992

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SECRETARY OF STATE

BABY-SITTING SERVICES EXEMPTION

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**§110-15(I)1-1. General.**

1.1 **Type of Rule.** -- This rule is an interpretive rule as defined in W.Va. Code §29A-1-2.

1.2 **Scope.** -- This interpretive rule explains and clarifies the exemption from consumers sales tax provided in W.Va. Code §11-15-9(pp), as added by Com. Sub. for Senate Bill No. 348 (1992), exempting sales of baby-sitting services by individuals who baby-sit for profit provided the individual's gross receipts from providing baby-sitting services do not exceed \$5,000.00 in a taxable year.

1.3 **Authority.** -- This interpretive rule is promulgated under authority of W.Va. Code §11-10-5.

1.4 **Filing Date.** --

1.5 **Effective Date.** -- 30 days after is is filed in the State Register.

1.6 **Citation.** -- This interpretive rule may be cited as Proposed 110 C.S.R. 15(I)1, §\_\_\_\_ (1992).

**§110-15(I)1-2. Interpretive Note.**

This interpretive rule shall be read *in pari materia* with the Consumers Sales and Service Tax and Use Tax legislative regulations (110 C.S.R. 15, § 1 et seq.) previously promulgated by the Tax Commissioner pursuant to authority granted by the Legislature in W.Va. Code §64-7-6. The definitions, policies and procedures provided in 110 C.S.R. 15, §1 et seq. are equally applicable to this interpretive rule. Should there be any inconsistency between the promulgated legislative rules and this interpretive rule, the legislative rules shall control, except to the extent the legislative rules do not reflect an amendment to the consumers sales and use tax laws which is addressed in this or another interpretive rule promulgated by the Tax Commissioner as provided in article 3, chapter 29A of the West Virginia Code.

**§110-15(I)1-3. Definitions.** -- Unless a specific definition is provided in this section, terms used in this rule are defined as provided in legislative rule 110 C.S.R. 15, §1 et seq., unless the context in which the term is used clearly requires a different meaning. The following terms shall have the meaning ascribed herein, and shall apply in the singular as well as in the plural.

3.1 "Baby-sitting services" means taking care of the child or children of another for a fee. This term does not include services provided by licensed day-care centers, which services are exempt under W.Va. Code §11-15-9(p). Nor does this term include other services such as music lessons, dance lessons, tutoring or any other activity the primary purpose of which is something other than the child's well-being and protection.

3.2 "Baby-sitter" means the individual providing or performing the baby-sitting service.

3.3 "Child" or "children" means an individual under the age of fifteen, or an individual under the age of eighteen who is physically or mentally incapable of self-care.

**§110-15(I)1-4. Applicability of Consumers Sales Tax.**

4.1 **General Rule.** -- The consumers sales and service tax is imposed upon the sale of tangible personal property or selected services. All sales are presumed to be taxable unless the sale is either excepted or exempt from the tax.

4.2 **Baby-sitting Exemption.** -- The sale of baby-sitting services by an individual who performs such services for profit are exempt from consumers sales tax when the individual providing the service reasonably estimates that his or her gross receipts from providing baby-sitting services will not exceed \$5,000.00 during the individual's taxable year for federal income tax purposes.

4.2.1 If an individual reasonably estimates that his or her gross receipts from providing baby-sitting services will exceed \$5,000.00 for the taxable year, then consumers sales tax must be collected on all charges for baby-sitting services.

4.2.2 If an individual reasonably estimates that his or her gross receipts from providing baby-sitting services during the taxable year will not exceed \$5,000.00 but, due to a material and unforeseen change in circumstances, actual gross receipts exceed \$5,000.00, then consumers sales tax must be collected on gross receipts earned in excess of \$5,000.00, or on gross receipts earned after the individual should have known that his or her gross

receipts from providing baby-sitting services would exceed \$5,000.00, whichever event occurs first.

4.2.3 An individual providing baby-sitting services for profit is engaging in "business" in this State as that term is defined in the consumers sales tax law, W.Va. Code §11-15-2, and in the business registration tax law, W.Va. Code § 11-12-2. Such person must obtain a business registration certificate from the Tax Commissioner, as provided in W.Va. Code §11-12-3, if such person's gross receipts from all business activity conducted in this State exceed \$4,000.00 for the taxable year. Application is made by filing Form WV 8.01 "Application For Business Registration" with the Tax Commissioner.

**NOTE:** An individual rendering baby-sitting services for profit is not required to obtain a business registration certificate unless such individual's gross receipts from all business activity will exceed \$4,000.00 for the taxable year. Gross receipts is calculated by excluding wages and other employee compensation earned by the individual as an employee.

4.2.4 This exemption applies only to sales of baby-sitting services. It does not apply to sales of tangible personal property or other services by the baby-sitter.

4.2.5 **Method of Claiming the Baby-Sitting Exemption.** -- A baby-sitter is not required to obtain an exemption certificate or any other proof of exemption from the person for whom the service is provided.

4.2.6 **Baby-Sitter Required to Keep Accurate Records.** -- A baby-sitter who earns more than \$4,000.00 during his or her taxable year from business activity (including baby-sitting for profit) must maintain adequate books and records to support his or her claim of exemption under W.Va. Code §11-15-9(pp) and these regulations.

4.3 **Effective Date of Exemption.** -- Exemption 11-15-9(pp) takes effect June 5, 1992, and applies to charges for baby-sitting services rendered on or after that date.



WEST VIRGINIA LEGISLATURE  
 LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
 Room M-152, State Capitol  
 Charleston, West Virginia 25305  
 (304) 340-3286

Senator William R. Wooton, Co-Chair  
 Delegate David Grubb, Co-Chair

June 3, 1992

Debra A. Graham, Counsel  
 Michael McThomas, Associate Counsel  
 Marie Nickerson, Admr. Assistant

James H. Paige, III, Commissioner  
 Division of Tax and Revenue  
 State Capitol Complex  
 Charleston, WV 25305

Dear Commissioner Paige:

Re: Interpretive Rules - Baby-Sitting Services;  
 Personalized Fitness Programs; Nails and Fencing -  
 Commercial Production of an Agricultural Product;  
 Services of Community-Based Service Organizations

The above mentioned rules were filed by the Division of Tax as interpretative rules with the Secretary of State's office on May 1, 1992. While I understand that the filing of the Consumer Sales and Service and Use Tax legislative rule is often subject to change by the Legislature, the rules you recently filed as interpretive are more properly classified as legislative rules which should be included within your agency's legislative rule on Consumer Sales and Service and Use Tax.

According to W.V. Code, §29A-1-2, an interpretive rule is intended to provide information or guidance regarding the agency's interpretations, policy or opinions and which is not intended to be determinative of any issue affecting private rights, privileges or interests. An interpretive rule may not be relied upon to impose a civil or criminal sanction and is not admissible in any administrative or judicial proceeding for such purpose. In contrast, a legislative rule has the force of law, supplies the basis for the imposition of civil or criminal liability, or grants or denies a specific benefit. Every rule which is determinative on any issue affecting private rights, privileges or interests is a legislative rule.

Based on the distinction between a legislative and interpretive rule, it is my opinion that the rules which your agency filed in response to the statutory changes to W.V. Code, §11-15-9 are legislative rules. The rules are analogous to your agency's rules on Consumer Sales and Service and Use Tax, 110 CSR 15. In addition, the delineations contained in the rule have the potential to be used in an administrative hearing regarding the imposition of sales tax and the failure of the vendor to collect the tax. In that instance, an assessment and a civil or criminal

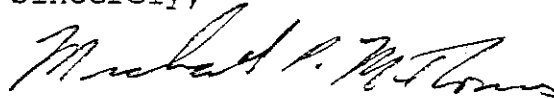
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 CHARLESTON, WV

James H. Paige, III, Commissioner  
June 3, 1992  
Page 2

penalty may be imposed. An interpretive rule may not form the basis for the imposition of a civil or criminal penalty. To the contrary, a legislative rule has the force of law.

As such, I would suggest that you withdraw the interpretive rules and refile them as legislative rules included within the rule entitled Consumer Sales and Service and Use Tax. To avoid any adverse impact to the public, your prompt attention to this matter is greatly appreciated. If you have any questions, please feel free to contact me at 340-3259.

Sincerely,



Michael P. McThomas, Counsel  
Legislative Rule-Making Review Committee

MMT:mgn

cc: Senator Wooton  
Delegate Grubb  
Alan Mierke  
John Montgomery  
Judy Cooper



WEST VIRGINIA LEGISLATURE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE  
Room M-152, State Capitol  
Charleston, West Virginia 25305  
(304) 340-3286

Senator William R. Wooten, Co-Chair  
Delegate David Grubb, Co-Chair

Debra A. Graham, Counsel  
~~Michael McThomas, Associate Counsel~~  
Marie Nickerson, Admr. Assistant

November 23, 1992

James H. Paige, III, Secretary  
Department of Tax and Revenue  
State Capitol Complex, Room W-300  
Charleston, WV 25305

Dear Mr. Paige:

RE: Interpretive Rules - Baby-Sitting Services;  
Personalized Fitness Programs; Nails and Fencing-  
Commercial Production of an Agricultural Product;  
Services of Community-Based Service Organizations

The Legislative Rule-Making Review Committee will meet on Monday, December 7, 1992, at 10:00 a.m., in the Senate Finance Committee Room, Room M-451, and will consider the above-captioned rule.

Sincerely,

Marie Nickerson  
Administrative Assistant

cc: Alan Mierke  
John Montgomery  
✓ Judy Cooper

FILED  
NOV 25 9 27 AM 1992  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SECRETARY'S OFFICE  
OFFICE OF NEW MEXICO

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