

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

MAY -1 PM 3:10

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

RULE TYPE: Interpretative; CITE AUTHORITY WV Code § 11-10-5

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 PROPOSED: 15(I)4 Services of Certain

TITLE OF RULE BEING PROPOSED: Services of Certain Community-Based
Service Organizations Exempt From Tax

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 1, 1992 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Legal Division
Dept. of Tax and Revenue
P.O. Box 1005
Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

James H. Paige III
James H. Paige III
State Tax Commissioner

ATTACH A BRIEF SUMMARY OF YOUR PROPOSAL

2.90



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

May 1, 1992

To Whom It May Concern:

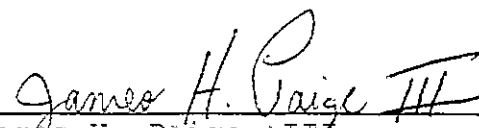
Title of Rule: Services of Certain Community-Based
Nonprofit Service Organization Exempt
From Tax

Title Number: 110

Series Number: 15.(I)4

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

Signed this 1st day of May, 1992.


James H. Paige, III
Secretary, Tax and Revenue

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

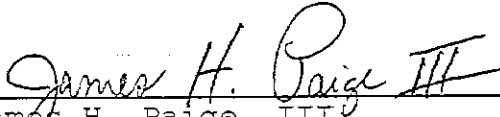
There is not sufficient information available to determine the economic impact.

C. Economic Impact on Citizens/Public at Large.

There is not sufficient information available to determine the economic impact.

Date: May 1, 1992

Signature of Agency Head or Authorized Representative



James H. Paige, III
State Tax Commissioner

PROPOSED
WEST VIRGINIA INTERPRETIVE RULE
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 15(I)4
1992

5/1/92
11:30 AM - 1 PM 3:10
10:00 AM - 11:00 AM

SERVICES OF CERTAIN COMMUNITY-BASED NONPROFIT
SERVICE ORGANIZATIONS EXEMPT FROM TAX

§110-15(I)4-1. 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 §11-15-11, as added by Com. Sub. for Senate Bill No. 348 (1992), exempting sales of taxable services by certain community-based service organizations such as YMCA's and YWCA's.

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

1.4 Filing Date. -- This interpretive rule was filed in the State Register for public comment on May 1, 1992.

1.5 Effective Date. --

1.6 Citation. -- This proposed interpretive rule may be cited as Proposed 110 C.S.R. 15(I)4, §____ (1992).

§110-15(I)4-2. Interpretive Note.

This interpretive rule shall be read in *pari materia* with the Consumers Sales and Service 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)4-3. 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 "Aged" means individuals who are older than sixty-five (65) years of age.

3.2 "Charitable" means of, or for, charity.

3.3 "Charity" means a gift to be applied consistently with the existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government. It is immaterial whether the purpose is called charitable in the gift itself if it is so described as to show that it is charitable. Any gift not inconsistent with existing laws which is promotive of science or tends to the education, enlightenment, benefit or amelioration of the condition of mankind or the diffusion of useful knowledge, or is for the public convenience is a charity.

3.4 "Corporation" or "organization" means a corporation or other organization that is exempt from federal income tax under I.R.C. § 501(c)(3), and these terms are used interchangeably in this rule.

3.5 "Education" means the moral, intellectual and physical training of an individual.

3.6 "Educational" means of, or for, education.

3.7 "Family" means a collective body of two (2) or more individuals related by blood or marriage and living together in one residential unit as their common home.

3.8 "Health and fitness" means physical health and fitness of individuals but does not include mental health and fitness or spiritual health and fitness.

3.9 "Youth" means individuals less than eighteen (18) years of age.

§110-15(I)4-4. 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 Exemption for Taxable Services Provided by Certain Community-Based Nonprofit Service Organizations. -- Sales of taxable services by a community-based nonprofit corporation or organization that meets the requirements specified in subsection 4.3 of this rule are exempt from consumers sales tax, unless the gross income derived from the sale is taxable under Section 511 of the Internal Revenue Code of 1986, as amended.

4.2.1 This exemption does not apply to sales of tangible personal property.

4.2.2 This exemption does not apply when the gross income derived from selling the service is taxable under Section 511 of the Internal Revenue Code.

4.2.3 This exemption does not apply to the sale of taxable services by a non-qualifying corporation or organization even though the sale occurs or takes place through the sponsorship of or at the facilities of a qualifying corporation or organization. To illustrate, the charges imposed by a business which provides scuba diving lessons to its students at a YMCA are taxable eventhough the YMCA receives a portion of the charges paid by the participants. In contrast, if the YMCA contracts with a third party to provide scuba diving lessons at the YMCA's pool but the students contract with the YMCA for the lessons rather than with the third party, the charges paid by ther students will be exempt.

4.2.4 This exemption does not apply to a 501(c)(3) hospital or nursing home.

4.3 Requirements for Exemption. -- The exemption provided in W. Va. Code §11-15-11 does not apply unless the community-based service organization satisfies all of the requirements specified in this subsection 4.3.

4.3.1 The corporation or organization must be exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

4.3.1.1 The corporation or organization must have a determination letter from the Internal Revenue Service finding that it is exempt from federal income tax under Section 501(c)(3), and that letter must be in effect for the current taxable year.

4.3.2 The corporation or organization must be organized and operated primarily for charitable or educational purposes and its activities and programs must contribute importantly to (1) promoting the general welfare of youth, families and the aged, (2) improving health and fitness, and (3) providing recreational opportunities to the public.

4.3.2.1 The charitable or educational purposes for which the corporation or organization is organized must be stated in the corporation's or organization's articles of incorporation or by-laws.

4.3.2.2 A corporation or organization is not operated primarily for charitable or educational purposes unless the normal usage of its facilities and programs are predominantly for charitable or educational purposes, as those terms are defined in this rule. See Section 110-15(I)4-3.

4.3.3 The corporation or organization must offer memberships or participation in its programs and activities to the general public, and the charges, fees or dues for membership or participation must allow its programs and activities to be accessible by a reasonable cross-section of the community.

4.3.3.1 The programs and activities of the corporation or organization must be available to all members of the general public, regardless of ability to pay for participation.

4.3.3.2 The memberships, programs and activities must be obtainable regardless of race, creed, color or national origin.

4.3.4 The corporation or organization must offer financial assistance, on a regular and on-going basis, to individuals unable to afford the corporation's or organization's membership dues, or its fees or charges, imposed for participation in any of its programs or activities.

4.3.4.1 The corporation or organization must have official guidelines or rules on eligibility for financial assistance.

4.3.4.2 While the corporation or organization may require sufficient information to satisfy it that financial assistance is needed, the standards for determining the awarding of financial assistance may not be such that only those individuals who are destitute qualify for such assistance.

4.3.4.3 Financial assistance to qualifying individuals may take the form of reduced dues, fees or charges, or the provision of free taxable services.

4.4 Method of Claiming Exemption. -- A community-based nonprofit service organization of corporation that qualifies for this exemption is not required to obtain an exemption certificate or any other proof of exemption from persons participating in the organization's tax exempt activities.

4.5 Organization Required to Keep Accurate Recods. -- A community-based nonprofit service organization is required to keep accurate books and records to support the accuracy of gross receipts it claims are exempt from consumers sales tax and the basis for the exemption(s) claimed.

4.6 Effective Date of Exemption. -- Exemption 11-15-11 takes effect June 5, 1992.