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(Plus all the volunteer
help we can get)

July 28, 2000

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Tax Department

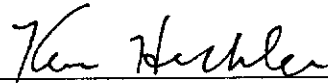
RULE: New Rule, Series 17, Cigarette Excise Tax

DATE FILED AS AN EMERGENCY RULE: June 16, 2000

DECISION NO. 7-00

OFFICE OF THE
SECRETARY OF STATE
JUL 28 11 51 AM '00
FILED

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.



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EMERGENCY RULE DECISION
(ERD 7-00)

AGENCY: State Tax Department
RULE: New Rule, Series 17, Cigarette Excise Tax
FILED AS AN EMERGENCY RULE: June 16, 2000

- par. 1 The State Tax Department (Department) has filed the above new rule as an emergency rule.
- par. 2 W. Va. Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Department filed this emergency rule with supporting documents with the Secretary of State June 16, 2000 and with the LRMRC June 16, 2000.

par. 7 It is the determination of the Secretary of State that the Department has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- W. Va. Code §60-9-5(a) reads:

(a) The state tax commissioner may revoke or suspend the authorization to affix the tax stamp of any person for a violation of this article or any legislative rule related to this article that is promulgated by the commissioner pursuant to §29A of this code and, in conjunction, the alcohol beverage control commissioner may impose on the person a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$500, upon finding a violation by such person of this enactment, or the rules promulgated by the commissioner.

par. 9 It is the determination of the Secretary of State that the Department has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Department are as follows:

On March 11, 2000, the Legislature enacted SB 475, effective June 9, 2000, which placed certain dual enforcement responsibilities upon both the State Tax Commissioner and the Alcohol Beverage Control Administrator relative to the sale of imported cigarettes and cigarettes produced for export. In order to satisfy those responsibilities, the Tax Commissioner is authorized to share tax information with the Alcohol Beverage Control Commissioner and other agencies as necessary. Additionally, WV Code §11-17-1 et seq., and addresses information sharing authorized by WV Code §60-9-8. Also, this rule in part addresses the collection of information to assure compliance with the Master Tobacco Settlement Agreement, and the exchange of cigarette tax information & related information for use by the Attorney General in administering & implementing the Tobacco Master Settlement agreement under WV Code §16-9B-1 et seq. The Attorney General is designated a materially interested party for the receipt of information necessary to fulfill the due diligence requirements imposed on the Attorney General under the Tobacco Master

Settlement Agreement.

Because SB 475 is effective June 9, 2000, and the compliance enforcement activities must commence at that time, it is necessary for the Tax Department and the ABCC to share applicable information to fulfill the mandates of the statute which address public health & welfare.

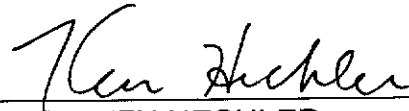
Implementing legislation for the Tobacco Master Settlement Agreement was effective upon passage on March 12, 1999. Because WV Code §16-9B-3 requires that certain deposits be made by certain cigarette manufactures by April 15, 2000, and annually thereafter for a period of years. the AG was required to undertake enforcement of these provisions on or about that date. Information from the cigarette excise tax records of the Tax Department is crucial in identifying manufactures subject to this requirement, for verifying amounts required to be deposited, and for collection of vital information such as names, addresses and units of tobacco products sold in WV.

Promulgation of a non-emergency legislature rule can be accomplished at the earliest by approximately March, 2001. Failure of the AG to enforce the requirements of WV Code §16-9B-3 pursuant to the statutorily prescribed time constraints could place the AG in violation of the due diligence requirements of the Tobacco Master Settlement Agreement, and could jeopardize the State's compliance with the Agreement.

Thus, it is necessary to implement an emergency rule, designating the AG as a person having a material interest in tax information within the meaning of WV Code §11-10-5d(f), allowing immediate exchange of cigarette tax and related information between the Tax Department and the Attorney General.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare"

par. 14 This decision shall be cited as Emergency Rule Decision 7-00 or ERD 7-00 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Tax Department, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
Secretary of State

OFFICE OF THE SECRETARY OF STATE

JUL 28 11 51 AM '00

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