

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
Corporations: 342-8000



STATE OF WEST VIRGINIA  
SECRETARY OF STATE  
Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

RICHARD O. HARTMAN  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

January 11, 1989

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

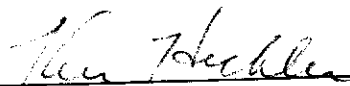
AGENCY: Tax Department

RULE: Repeal & Replace Series 21; Personal Income Tax

DATE FILED AS AN EMERGENCY RULE: November 30, 1988

DECISION NO. 2-89

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

  
KEN HECHLER  
Secretary of State

FILED  
1989 JAN 11 PM 4:05  
CLERK OF COURT  
SECRETARY OF STATE

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

ROBERT E. WILKINSON  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

Telephone: (304) 345-4000  
Corporations: 342-8000



## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON  
Chief of Staff

RICHARD O. HARTMAN  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

DECISION

EMERGENCY RULE DECISION  
(ERD 2-89)

AGENCY: Tax Department  
RULE: Repeal & Replace Series 21, Personal Income Tax  
FILED AS AN EMERGENCY RULE: November 30, 1988

- par. 1 The Tax Department has filed, as an emergency, a repeal and replacement of Series 21.
- par. 2 West Virginia 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(a)].
- par. 4 (A) Procedural Compliance: WV 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 Fire Commission (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD 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 has filed this emergency rule with supporting documents with the Secretary of State on November 30, 1988 and with the LRMRC on December 1, 1988.

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

par. 8 (B) Statutory Department -- WV Code §11-10-5 reads in part:

*§11-10-5. General power; regulations and forms.*

*The tax commissioner shall administer and enforce each tax to which this article applies and, in connection therewith, shall prescribe all necessary forms. The tax commissioner may make all needful rules and regulations for the taxes to which this article applies as provided in the State Administrative Procedures Act in chapter twenty-nine-a (§29A-1-1 et seq.) of this code: Provided, That all rules and regulations of the tax commissioner presently in effect on the effective date of this article (July 1, 1986) shall remain in full force and effect until amended or repealed by the tax commissioner in the manner prescribed by law.*

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: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) 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:

With the exception of Sections 110-21-55 and 56, the current Personal Income Tax Regulations, 110 C.S.R. 21, are identical to those regulations filed in 1964. While there have been changes in the personal income tax statutes since 1964, the changes which occurred in the 1987 and 1988 legislative sessions are so substantial as to require completely new regulations. Because reliance on the current regulations would result in erroneous tax liabilities and the imposition of penalties on taxpayers, and it is necessary for accurate regulations to be in effect to guide taxpayers, these new regulations necessary to protect and preserve the public welfare and prevent substantial harm to the public interest.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency.

par. 14 This decision shall be cited as Emergency Rule Decision 2-89 or ERD 2-89 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Department, the Attorney General and the Legislative Rule Making Review Commission.

  
\_\_\_\_\_  
KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_

FILED  
1989 JAN 11 PM 4:06  
STILL IN PROCESS  
SECRET