State Tax Department
of West Virginia
Charleston 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

HERSCHEL H. ROSE III
TAX COMMISSIONER

JOHN M. FARMER
ASSISTANT COMMISSIONER

GARY A. GORRELL
DEPUTY COMMISSIONER

Telephone
(304)348-2501

September 28, 1984

NOTICE OF AGENCY APPROVAL
of
PROPOSED LEGISLATIVE RULE

Legislative Rule: Proposed amendments to W. Va. Leg. Reg. (PIT) 11-10, Ser XXI, §§ 55, 56 and 56a of the Personal Income Tax Regulations

The above titled legislative rule constitutes the official rule approved by the Tax Department on September 28, 1984, and filed pursuant to law in the Office of the Secretary of State, State of West Virginia.

Herschel H. Rose III
Herschel H. Rose III
State Tax Commissioner

Sept 25, 1984
Entered

State Tax Department
of West Virginia
Charleston 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

HERSCHEL H. ROSE III
TAX COMMISSIONER
JOHN M. FARMER
ASSISTANT COMMISSIONER
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DEPUTY COMMISSIONER
Telephone
(304)348-2501

September 28, 1984

Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Manchin:

Attached are two copies of proposed amendments in final form to existing legislative regulations pertaining to the West Virginia personal income tax, W. Va. Leg. Reg. (PIT) 11-10, Ser. XXI (1964).

These proposed legislative amendments relate to declarations of estimated tax (Section 55), payment of estimated tax (Section 56) and interest and additions to tax (Section 56a).

A public hearing was held in Charleston on these proposed amendments on August 1, 1984. Public attendance at the hearing was nil. This Department held itself open for the receipt of written public comments through August 15, 1984. No written comments were received.

Very truly yours,

Herschel H. Rose III

Herschel H. Rose III
State Tax Commissioner

HHR/mmj

Attachments

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 9-28-84
Administrative Law Division

THE STATE OF WEST VIRGINIA

Montani Semper Liberi

OFFICE OF THE SECRETARY OF STATE

A. JAMES MANCHIN

CHARLESTON 25305

THE STATE CAPITOL

ROBERT W. JACKSON
DEPUTY SECRETARY OF STATE
CORPORATE AFFAIRS

STATE REGISTER FILING

I, Herschel H. Rose III, ______________
Title or Position

State Tax Commissioner, hereby submit to records in the State Register on 8 1/2 x 11" two (2) copies of

(X) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;

(X) proposed rules and regulations superseding rules and regulations already on file;

( ) notice of hearing;

( ) findings and determinations;

( ) Emergency rules and regulations

( ) Legislative ( ) Procedural ( ) Interpetive regulations

( ) other - specify ______________

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 9-28-84
Administrative Law Division

This filing pertains to

CHAPTER 11 ARTICLE 21 SECTION 55 & 56 of the West Virginia Code, 1931, as amended.

SERIES XXI, SECTION 55,56 & 56a PAGE NO. 1 to 186.24 of the Administrative Code.

September 28, 1984
Date Submitted

Herschel H Rose
Signature of Person Authorizing

State Tax Department of West Virginia

Charleston 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

HERSCHEL H. ROSE III
TAX COMMISSIONER

JOHN M. FARMER
ASSISTANT COMMISSIONER

GARY A. GORRELL
DEPUTY COMMISSIONER

Telephone
(304)348-2501

September 28, 1984

NOTICE OF SUBMISSION OF
PROPOSED LEGISLATIVE RULE TO
WEST VIRGINIA LEGISLATIVE
RULE-MAKING REVIEW COMMITTEE

Legislative Rule: Proposed amendments to W. Va. Leg. Reg. Ser. XXI, §§ 55, 56, and 56a of the Personal Income Tax Regulations

The above titled legislative rule is hereby submitted to the Legislative Rule-Making Committee.

Herschel H Rose

Herschel H. Rose III
State Tax Commissioner

Entered Sept 25, 1984

State Tax Department
of West Virginia
Charleston 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

HERSCHEL H. ROSE III
TAX COMMISSIONER
JOHN M. FARMER
ASSISTANT COMMISSIONER
GARY A. GORRELL
DEPUTY COMMISSIONER
Telephone
(304)348-2501

FISCAL NOTE

Re: Fiscal note to proposed W. Va. Leg. Reg. 11-10 Ser. XXI, §§ 55,56 and 56a (filed September 28, 1984).

The purpose of these proposed legislative regulations is to amend Sections 55 and 56 of the current administrative regulations and to add new Section 56a, all relating to filing declarations of estimated personal income tax, paying such tax in one or more installment payments, imposing interest and additions to tax for noncompliance and providing "safety zones" identifying when a taxpayer will not be charged interest and additions to tax for under estimating tax and under payment of an installment payment.

In compliance with W. Va. Code § 29A-3-4, the itemized cost of implementing these proposed amendments as they relate to this Stat and to persons affected by these rules and regulations is as follows:

A. Cost to State

The administrative costs associated with administering and enforcing these proposed regulations are projected to be nominal.

B. Cost to Taxpayers.

The cost to taxpayers associated with implementing these proposed legislative regulations will be nominal.

Submitted to the State Register on September 28, 1984, in compliance with W. Va. Code §§ 29A-3-5 and 29A-3-9.

Herschel H. Rose III
Tax Commissioner

PROPOSED AMENDMENTS

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-10
Series XXI
(1983)

Subject: Personal Income Tax -- Rules for filing declarations of estimated personal income tax, making installment payments of such tax, imposition of interest and additions to tax for noncompliance and providing "safety zones" for when interest and additions will not be imposed.

Effective: September 28, 1984

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 9-28-84
Administrative Law Division

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PROPOSED AMENDMENTS

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-10
Series XXI
(1964)

Subject: Personal Income Tax -- Rules for filing declarations of estimated personal income tax, making installment payments of such tax, imposition of interest and additions to tax for noncompliance and providing "safety zones" for when interest and additions will not be imposed.

Section 1. <u>General.</u>

1.01. <u>Type of Regulations.</u> -- These regulations are a "legislative rule" as defined in W. Va. Code §§ 29A-1-2(d) [1983].

1.02. <u>Scope.</u> -- These proposed amendments provide regulations for filing declarations of estimated personal income tax, making installment payments of such tax, imposing interest and additions to tax for noncompliance and providing "safety zones" for when interest and additions to tax will not be imposed.

1.03. <u>Authority.</u> -- This legislative rule is issued under the authority of W. Va. Code §§ 11-10-5(a).

1.04. Filing Date. -- These proposed amendments were filed in the State Register as proposed legislative regulations on June 22, 1984.

The proposed changes are summarized as follows:

(a) Amendments are made in Section 55 relating to declarations of estimated tax, which was refiled in the State Register on December 29, 1982.

(b) Amendments are made in Section 56 relating to payment of estimated tax, which was refiled in the State Register on December 29, 1982.

(c) Section 56a relating to interest and additions to tax is new.

1.05. Effective Date. -- These regulations became effective in 1964. In compliance with (a) W. Va. Code art. 29A-3 [1982] these regulations were refiled in the State Register as a legislative rule on December 29, 1982. These proposed amendments will take effect thirty days after their refiling in the State Register pursuant to an act of the Legislature authorizing their promulgation.

(b) Emergency regulations on these same subjects were filed in the State Register on September 14, 1983. Notice of extension of their effective period was filed.

1.06. Citation. -- These regulations may be cited as: W. Va. Leg. Reg. (PIT) 11-10, Series XXI, § ________, page ________ (1964) as amended.

1.07. <u>Strike-Throughs and Underscoring.</u> -- underscoring indicates language that is new. Strike-throughs indicate language that is being superceded.

Section 55 is amended.

Section 56 is amended.

Section 56a is new. Therefore, underscoring has been omitted.

Section 55. Declarations of Estimated Tax.

55.01. Requirement of Declaration.

(a) In General. -- ~~If an individual's West Virginia adjusted gross income not subject to withholding can be reasonably expected to exceed four hundred dollars plus the sum of his personal exemptions, he shall make a declaration of estimated tax for the taxable year. The declaration of estimated tax shall be made whether the individual is a resident or nonresident.~~

(1) Every resident and nonresident individual whose West Virginia adjusted gross income (other than from wages on which the proper amount of tax is withheld under W. Va. Code § 11-21-71) can reasonably be expected to exceed four hundred dollars ($400) shall make and file a West Virginia declaration of estimated tax for the taxable year unless:

(A) The estimated tax otherwise due in installment payments is remitted through additional withholding by the employer from the employee's wages during the taxable year; or

(B) Withholding satisfies at least eighty percent (80%) of the annual tax liability, or the amount not satisfied by withholding is two hundred dollars ($200) or less.

(2) If an individual receives income from wages subject to West Virginia withholding and other income, the total of his or her allowable exemptions can be counted only one time for purposes of determining the amount of withholding taxes and estimating the tax due on other income. In other words, the amount of West Virginia personal income taxes owed for the taxable year (determined before application of credit for employer withholding) must be prepaid either by employer withholding, installment payments, or a combination of both. Taxpayers are encouraged to increase the amount withheld from wages under W. Va. Code § 11-21-71 whenever practicable in order to satisfy this requirement in lieu of filing a declaration of estimated tax and remitting tax in quarterly installment payments.

Section 55.01(a)

(A) W. Va. Personal Exemptions. The West Virginia personal exemption of a resident and nonresident individual allowed by W. Va. Code § 11-21-36 is as follows:

(1) For any taxable year beginning prior to January 1, 1983, the West Virginia personal exemption is six hundred dollars ($600) for each exemption for which the taxpayer is allowed a federal exemption for the taxable year.

(2) For a taxable year beginning after December 31, 1982, but before January 1, 1984, the West Virginia personal exemption is increased to seven hundred dollars ($700).

(3) For any taxable year beginning after December 31, 1983, the West Virginia personal exemption is increased to eight hundred dollars ($800), until amended by the Legislature.

(B) Whether or not a taxpayer is required to file a federal declaration of estimated tax for the taxable year or remit installment payments of estimated federal income tax is not relevant to determining whether or not the taxpayer is required to file a West Virginia declaration of estimated tax for the taxable year.

(b) Examples. -- Application of the provisions of Section 55.01 may be illustrated by the following examples. (Applicability of any safety zones is not considered in any of these examples.) See Section 56a.05 for discussion of safety zones.

Example No. 1. -- X, a taxpayer making his return on the calendar year basis, is married and has two dependent children. X is sole proprietor of a retail business which is his only source of income. X can reasonably ~~expects~~ expect to realize ~~$5,000~~ $25,000 from the business during 1984, based on prior year's earnings. Therefore, X is required to make a declaration of estimated tax, for his income can be reasonably expected to exceed the sum of his personal exemptions plus four hundred dollars ~~($2,800)~~ ([$800 x 4] + $400 = $3,600) for 1984.

Example No. 2. -- Y is a cash basis taxpayer with three exemptions including himself. Y is employed and expects to receive ~~$3,000~~ $23,000 subject to withholding during calendar year 1984. Also, Y expects to receive ~~$2,000~~ ($12,000) of income during the taxable year from the practice of a profession on his own account. Y is required to file a West Virginia declaration of estimated tax, for Y's ~~wages~~ ~~($2,000)~~ income ($12,000) not subject to withholding ~~do~~ exceeds four hundred dollars. The sum of his personal exemptions ~~($2,200)~~ ($800 x 3 = $2,400) was considered in determining the amount withheld from his wages for the 1984 taxable year. Alternatively, Y could increase the amount being withheld for West Virginia personal income taxes by his employer. If the amount of estimated tax due on Y's other income is remitted through additional withholding, Y will not be required to file a declaration of estimated tax and make quarterly installment payments.

Example No. 3. -- P is a taxpayer making his return on a calendar year basis. P is engaged in the practice of his profession as a sole practitioner. He has West Virginia adjusted gross income of $2,000 from his practice for each month in the first quarter of 1984. He can reasonably expect that his West Virginia adjusted gross income from his profession will continue to average

$2,000 for each month throughout the year, and that he will not have income from any other source during 1984. Since P's gross income is not subject to withholding, he is required to file a declaration of estimated tax for that year, on or before April 15, 1984. Since P's West Virginia adjusted gross income from sources other than wages subject to withholding exceeds $1,200 personal exemption plus $400), and he can reasonably expect his tax for the year to be in excess of $200, P is required to file a declaration of estimated tax for the 1984 tax year on or before April 15, 1984, and make quarterly installment payments.

Example No. 4. -- S, a married taxpayer, has been regularly employed for many years. As of January 1, 1984, his salary was $16,000 per year. S also owns stocks and other investments which he inherited when his father died in 1980, and which pay S approximately $3,000 a year. Since his West Virginia adjusted gross income not subject to withholding taxes exceeds $400, and the sum of his personal exemptions ($800 x 2 = $1,600) was considered in determining employer withholding taxes, S is required to file a declaration of estimated tax for calendar year 1984 by April 15, 1984, unless the amount of tax remitted with his 1984 annual return will be $200 or less. Alternatively, S can avoid filing a declaration of estimated tax by increasing the amount being withheld for West Virginia personal income taxes by his employer in order to pay the amount of estimated tax that otherwise would be due in installment payments.

Example No. 5. -- T, a married person, lives in Jefferson County, West Virginia but works in Pennsylvania at an annual salary of $20,000. Pursuant to West Virginia's reciprocal exchange agreement with Pennsylvania, T's salary is exempt from Pennsylvania income tax and taxable by West Virginia. T's employer does not withhold West Virginia taxes from T's biweekly paycheck. Since T's West Virginia adjusted gross income is from salary not subject to West Virginia withholding, and will be in excess of $2,000 ([$800 x 2] + $400 = 2,000) for calendar year 1984, he is required to file a declaration of estimated tax on or before April 15, 1984, unless T's tax liability will be $200 or less.

Example No. 6. -- H is a married individual with three dependent children. H is employed at an annual salary of $18,000. His spouse, W, is employed at an annual salary of $16,000. Both salaries are subject to this State's withholding taxes, which are based on joint return rates. They have additional income of $15,000 from investments. H and W will file a joint personal income tax return for calendar year 1984. Since the amount of West Virginia adjusted gross income from sources not subject to withholding taxes is in excess of $400, and the estimated tax thereon exceeds $200, a declaration of estimated tax is required for the 1984 calendar year. Additionally, this declaration must reflect the additional taxes due on their salary income due to the higher primary tax rate on their combined West Virginia taxable incomes and the temporary surtax imposed on West Virginia taxable income in excess of $20,000 (based on the filing of a joint return.) Alternatively, and in lieu of filing a declaration estimated tax, H & W can adjust the amount of West

Virginia personal income taxes being withheld by their employers so that the required amount of tax is prepaid.

Example No.7. -- Same facts as in Example No. 6. However, on July 20, 1984, W is the grand prize winner in a contest sponsored by a national magazine. The prize is an initial $5,000 plus $1,000 each month for the rest of W's life. An amended declaration of estimated tax must be filed by W (or a joint amended declaration by H and W) on or before September 15, 1984.

(c) Exemption of Spouse. -- For the purpose of determining whether a declaration of estimated tax is required under the provisions of paragraph (a) of this subsection, a married taxpayer filing a separate declaration may not take into account the exemption of his spouse, if his spouse has, or is reasonably expected to have, West Virginia adjusted gross income, or is reasonably expected to be the dependent of another taxpayer for the taxable year.

(d) Income of Child. -- In estimating the amount of West Virginia adjusted gross income for the taxable year, a parent should not include the income of his or her minor child. Such income is not includible in the gross income of the parent. See 26 U.S.C. § 73 and Treas. Reg. § 1.73-1.

~~(b)~~ (e) Partnerships~~,~~ ~~trusts-and-estates~~. -- A partnership is not subject to tax under the West Virginia Personal Income Tax Act. See W. Va. Code § 11-21-3(b). However, partners ~~and-beneficiaries~~ must file declarations of estimated income tax in their individual capacity, taking into consideration their estimated distributive shares of income from the partnership~~,~~ ~~trusts or estates~~.

(f) Estates and Trusts. -- An estate or trust is generally taxed as an individual. However, it is not required to file a declaration of estimated tax, or remit estimated tax in installment payments during the taxable year. Beneficiaries of estates and trusts must file declarations of estimated tax in their individual capacities and must take into consideration their estimated distributive shares of income from estates and trusts.

~~(c)~~ (g) Death of Taxpayer. -- No declaration of estimated income tax is required to be filed for a decedent subsequent to the date of his or her death. However, a short year tax return may need to be filed and interest and additions to tax may be due for any failure of the decedent: (1) to timely file a declaration of estimated tax required by W. Va. Code § 11-21-55; (2) to timely pay any installment of estimated tax required by W. Va. Code § 11-21-56; or (3) to properly estimate his or her tax. See Section 56.03 of these regulations relative to the making of an amended declaration by a surviving spouse if a joint declaration had been made before the death of the decedent.

~~(d)~~ (h) Fiscal Year Taxpayers. -- The provisons of this regulation are equally applicable to fiscal year taxpayers. See Section 55.10 of these regulations.

(i) Declaration for Taxable Year of 52-53 Weeks. -- No declaration may be made for a period of more than 12 months. For purposes of this subsection, a taxable year of 52 or 53 weeks, in the case of a taxpayer who computes his or her taxable income for federal income tax purposes in accordance with the election permitted by 26 U.S.C. § 441(f) shall be deemed a period of 12 months. A separate declaration for a fractional part of a year is required where the taxpayer has a short taxable year for federal income tax purposes.

(j) When Preceding Year Was A Loss Year.

(1) In General. -- If an individual had zero or negative West Virginia taxable income for the preceding taxable year, a declaration of estimated tax is not required to be filed for the current taxable year until such time as the individual can reasonably estimate that his or her West Virginia adjusted gross income for the current tax year will exceed the amount of his or her allowable

exemption(s) plus $400 unless the zero or negative West Virginia taxable income in the preceding taxable year was due to:

(A) the carry forward of a loss from a preceding taxable year unless the loss will also be carried forward to the current taxable year with like effect; or

(B) unusual events or occurrences not reasonably expected to affect the current taxable year with like effect.

(2) Notwithstanding the provisions of paragraph (1), above, a declaration of estimated tax is not required for the current year if the amount remitted or that should be remitted with the annual return for that year is:

(A) $200 or less; or

(B) Twenty percent (20%) or less of the tax liability for the taxable year (determined before application of any credits) for employer withholding taxes, W. Va. Code § 11-21-73, and installment payments of estimated tax.

55.02. Contents of Declaration.

(a) In General.

(1) The declaration of estimated tax by an individual shall be made on Form 140-ES.

~~[55.01](e)~~ (2) For the purpose of making the declaration, the amount of West Virginia adjusted gross income which the taxpayer can reasonably be expected to receive or accrue, depending upon the method of accounting upon which his or her taxable income is computed, and the sum of the estimated allowable deductions and credits to be taken into account in computing the amount of estimated income tax shall be determined upon the basis of the facts and circumstances existing at the time prescribed for the filing of the declaration as well as those reasonably to be anticipated for the taxable year. If, therefore, the taxpayer is employed at the date prescribed for filing his or her declaration at a given wage or salary, it should, in the absence of circumstances indicating the contrary, be presumed by him or her for purposes of the declaration that such employment will continue to the end of the taxable year at the wage or salary received by him or her as of such date. In the case of income other than wages and salary, the expected regularity with regard to the payment of income, such as dividends, interest, rents, royalties, and estate and trust distributions, it is ~~to-be-taken-into-consideration.~~ the responsibility of the taxpayer to estimate correctly or comply with provisions of these regulations allowing the timely filing of an annual return to be accepted as a declaration of estimated tax. ~~Thus, if the taxpayer owns shares of stock in a corporation and dividends have been paid regularly for several years upon such stock, the taxpayer in the preparation of his declaration should, in the absence of information indicating a change in the dividend policy, include the prospective dividends from the corporation for the taxable year as well as those actually received in such year prior to the filing of the declaration.~~ In the case of a taxpayer engaged in a trade, business or profession on his own account, he or she ~~may~~ shall make an estimate of gross income, deductions and credits in the light of the best available information affecting the trade, business or profession.

(3) In determining whether or when the filing of a declaration of estimated tax is required by law

and these regulations, and in determining the amount of estimated tax, the burden is on the taxpayer to show he or she complied with the law and these regulations. If, upon filing of the annual return, more than twenty percent (20%) of the taxpayer's liability is remitted or should have been remitted with the return it will be presumed that there was noncompliance. Similarly, a taxpayer's total West Virginia personal income tax liability for the taxable year, as shown on his or her annual return for that year, will be divided by five (5) to determine whether tax was timely remitted in "equal" installment payments in compliance with the law and these regulations.

(b) Computation of Estimated Tax. -- In computing the amount of estimated tax, the taxpayer should take into account the following:

(1) The amount estimated to be the primary tax imposed by W. Va. Code § 11-21-3(a)(1) for the taxable year on the West Virginia taxable income of every individual, whether resident or nonresident, after application of any allowable amounts estimated as:

(A) Business and occupation tax credit under W. Va. Code § 11-21-8(a),

(B) Carrier income tax credit under W. Va. Code § 11-21-8(b),

(C) Credit for income tax of another state under W. Va. Code § 11-21-20,

(D) Credit for income tax of state of residence under W. Va. Code § 11-21-40, and

(E) Credit for overpayments of West Virginia personal income tax.

No consideration shall be given at this point in the computation to the credit under W. Va. Code § 11-21-73 for tax withheld on wages.

(2) The amount estimated to be the temporary surtax imposed by W. Va. Code § 11-21-3(a)(2) for the taxable year on the amount estimated in subparagraph (1), above, to be the gross primary tax for the taxable year (determined prior to and without regard to any credits reducing the gross primary tax).

(3) The amount estimated to be the minimum tax imposed by W. Va. Code § 11-21-3(a)(3) for the taxable year. The West Virginia minimum tax is twenty-five percent of the taxpayer's federal minimum or alternative minimum tax for the taxable year minus the sum of paragraphs (1) and (2).

(4) The amounts estimated by the taxpayer as the credits under W. Va. Code § 11-21-73 for tax withheld on wages.

(5) The excess, if any, of the sum of the amounts shown under subparagraphs (1), (2) and (3) of this paragraph over the amount shown under subparagraph (4) of this paragraph, which excess shall be the amount of estimated tax for the taxable year.

(c) Use of Prescribed Form. -- Copies of Form 140-ES will, so far as possible, be furnished to the taxpayer by the Tax Commissioner. A taxpayer will not be excused from making a declaration, however, by the fact that no form has been furnished to him or her. Taxpayers not supplied with the proper form should make application therefor to the Director of the Personal Income Tax Division in ample time to have their declarations prepared, verified, and filed with the Tax Commissioner on or before the date prescribed for filing the declaration. If the prescribed form is not available, a statement disclosing the amount estimated as the tax, the estimated credits, and the estimated tax after deducting such credits should be filed as a tentative declaration within the prescribed time, accompanied by the payment of the required installment. Such tentative declaration should be supplemented, without unnecessary delay, by a declaration made on the proper form.

~~55.02.~~ 55.03. Definition of "Estimated Tax."

(a) In General. -- In the case of an individual, the term "estimated tax" means:

(1) The amount which an individual estimates to be his or her West Virginia primary income tax liability for the taxable year (determined before any credits) in accordance with subsection 55.01 of this regulation, plus

(2) The amount which an individual estimates to be his West Virginia surtax for the taxable year, plus

(3) The amount estimated to be the minimum income tax liability for the taxable year, less

(4) The amount which he or she estimates to be the sum of any credits allowable against the West Virginia income tax, including but not limited to:

(A) Business and occupation tax credit under W. Va. Code § 11-21-8(a),

(B) Carrier income tax credit under W. Va. Code § 11-21-8(b),

(C) Credit for income tax as paid another state under W. Va. Code § 11-21-20,

(D) Credit for income tax of state of residence under W. Va. Code § 11-21-40,

(E) Credit for West Virginia income withheld from wages under W. Va. Code § 11-21-71, and

(F) Credit for overpayment of State personal income tax.

(b) Example. -- The application of the provisions of this subsection may be illustrated by the following examples. (Applicability of any safety zones is not considered in these examples.) See Section 56a.05 for discussion of safety zones.

Example No. 1. -- B is a taxpayer with two exemptions including himself. He is a salaried employee of a corporation at an annual salary of ~~$6,000~~ $16,000, and West Virginia income tax is withheld from his salary. B expects ~~$50~~ $314.86 to be withheld from his wages during the taxable year ~~1963~~ 1984. B is also a partner in the XY Partnership. B expects, based on prior year's earnings, that his distributive share of partnership profits will be $5,000. The business and occupation tax is imposed against the partnership; therefore, B can reasonably anticipate a business and occupation tax credit of $50.00 against his West Virginia income tax. B will complete a West Virginia declaration of estimated tax similar to the following:

Section 55.03(b)

~~1. Estimated West Virginia income tax .... $105.00~~

~~2. West Virginia tax expected to be withheld .... 50.00~~

~~3. Estimated credits against tax .... 30.00~~

~~4. West Virginia estimated tax (line 1, less lines 2 and 3) .... $ 25.00~~

WEST VIRGINIA ESTIMATED TAX COMPUTATION SCHEDULE

1.	Enter total amount of income expected in current year	$21,000.00
2.	Itemized deductions or standard deduction	1,000.00
3.	Subtract line 2 from line 1	$20,000.00
4.	Enter your exemptions ($800.00 for each exemption)	1,600.00
5.	Subtract line 4 from line 3. This is your WV taxable income ...	$18,400.00
6.	Tax on amount of line 5. See tax rate schedule	500.00
*7.	Surtax is 12% of your tax liability	-0-
8.	Add line 6 to line 7. This is your WV tax liability	$ 500.00
9.	Tax expected to be withheld from wages and other credits	364.86
10.	Subtract line 9 from line 8. This is your WV estimated tax	$ 135.14

*For calendar year 1984, the surtax is 12% of your tax liability beginning with taxable income in excess of $10,000 for single and unmarried heads of household and taxable income in excess of $20,000 for joint returns. For calendar year 1983, the surtax was 9% and for calendar year 1985, the surtax will be 6%. *See* W. Va. Code § 11-21-3(a)(2) (1983).

Example No. 2. -- B, a self employed individual, estimates that his liability for income tax for 1984 will be $1,600. B is required to make and file a declaration of estimated tax for 1984 and pay tax in four equal installments. The declaration and first installment of $400 are due on April 15, 1984. The second, third and fourth installments are due on June 15, 1984, September 15, 1984 and January 15, 1985 respectively.

Example No. 3. -- B, a self employed individual, estimates that his liability for income tax for 1984 will be $1,600. B files a declaration of estimated tax for 1984 on April 15, 1984. B pays four installments of $400 on or before the following dates: April 15, 1984; June 15, 1984; September 15, 1984; and January 15, 1985. B's actual West Virginia tax liability for 1984 is $1,900. B does not fall within the $200 safety zone. However, since B prepaid in installment payments at least 80% of his 1984 tax liability, he will not be penalized for underestimating ($1,900 x 80% = $1,520 x 1/4 = $380). B falls within the 80% safety zone since he prepaid in quarterly installments of $400 each. Therefore, no additions to tax or interest is due on the amount of tax paid with B's annual return filed April 15, 1985.

Example No. 4. -- C, a self employed individual, estimates that his liability for West Virginia personal income tax for 1984 will be $1,200. C files a declaration of estimated tax for 1984 on April 15, 1984. C also pays four installments of $300 each. However, C's actual West Virginia tax liability for 1984 is $1,600. Since C did not prepay at least 80% of his tax liability, interest and additions, to tax will be due on the amount remitted with his annual return on April 15, 1985.

(1)	Total tax due for the year	$1,600
(2)	80% of line (1)	$1,280
(3)	Line (2) ÷ number of installments	$ 320

(4) The quarterly underpayment is the excess of line (3) over the actual amount paid or credited toward that installment. ($320 - 300 = $20 each installment X 4 = $80)

Therefore, C can be assessed penalty and interest for underpayment of estimated tax ($1,600 X 80% = $1,280 x 1/4 = $320). Interest and additions to tax are calculated based on the date the tax should have been remitted. In this example only $300 was paid each quarter instead of the $320 that was actually due. The amount remitted balance due with the annual return was $400. This is more than both $200 and 20% of his total tax for the year.

~~55.03.~~ 55.04. Joint Declaration of Husband and Wife.

(a) In General. -- A husband and wife may make a joint declaration of estimated income tax as if they are one taxpayer, even though they are not living together, except as provided in paragraph (b). A joint declaration may be made even though one spouse is expected to have no income during the taxable year. If a husband and wife make a joint declaration, their liability with respect to the estimated tax shall be joint and several.

(b) Exceptions. -- ~~However, no~~ A joint declaration of estimated income tax may not be made if the husband and wife are separated under a decree of divorce or of separate maintenance, or if they have different taxable years. Also, joint declaration of estimated tax may not be filed if the husband and wife do not have the same residence status unless both elect to determine their joint West Virginia taxable incomes as if both were residents. See W. Va. Code § 11-21-11(b)(3).

(c) Application to Separate Returns. -- ~~If~~ The fact that a joint declaration of estimated income tax is made by a husband and wife ~~but they elect~~ will not preclude them from electing to determine their West Virginia income taxes ~~separately~~ on separate annual returns. In case a joint declaration is made but a joint annual return is not made for the same taxable year, the installment payments of ~~the~~ estimated tax for such year may be treated as payments on account of the tax liability of either the husband or wife for the taxable year or may be divided between them in ~~any~~ such manner as they may ~~so elect one~~ agree. One spouse may claim the entire amount of estimated tax paid during the year. If the husband and wife do file separate returns, the spouse claiming the estimated tax paid, or each spouse if each claims a portion of the estimated tax paid, must make a notation on his or her West Virginia income tax return to the effect that the estimated tax paid was by a joint declaration. In the event the husband and wife fail to agree to a division, such payments shall be allowed between them in accordance with the following rule. The portion of such payments to be allocated to a spouse shall be that portion of the aggregate of all such payments as the amount of tax imposed by W. Va. Code § 11-21-3 shown on the separate return of the taxpayer bears to the sum of the taxes imposed by § 11-21-3 shown on the separate returns of both the taxpayer and his or her spouse. For example, assume that for calendar year 1982 H and his spouse, W, make a joint return of estimated tax and pursuant thereto, pay a total of $900 of estimated tax. H and W subsequently file separate returns for 1982 showing tax imposed by W. Va. Code § 11-21-3 in the amount of $548 and $450 respectively. H and W fail to agree to a division of the estimated tax paid. The amount of the aggregate estimated tax payments allocated to H is computed as follows:

(1) Amount of tax imposed by W. Va. Code § 11-21-3 as shown on H's return........ $548

(2) Total taxes imposed by W. Va. Code § 11-21-3 as shown on W's return.........$450

(3) Total taxes imposed as shown on both H's and W's returns.....................$998

(4) Proportion of taxes on H's return to the total amount of taxes shown on both returns. ($548 ÷ 998)...........54.90%

(5) Amount of estimated tax payments allocated to H.......................$494.10

Accordingly, H's return would show remaining tax liability in the amount of $53.90 ($548 taxes shown less than $494.10 estimated tax allocated.)

(d) Death of Spouse.

(1) A joint declaration may not be made after the death of either the husband or wife. However, if it is reasonable for a surviving

spouse to assume that there will be filed a joint return for himself and the deceased spouse for his taxable year and the last taxable year of the deceased spouse he may, in making a separate declaration for his taxable year which includes the period comprising such last taxable year of his spouse, estimate the amount of tax imposed by W. Va. Code § 11-21-3 on his and his spouse's taxable income on an aggregate basis and compute his estimated tax in the same matter as though a joint declaration had been filed.

(2) If a joint declaration is made by a husband and wife and thereafter one spouse dies, no further payments of estimated tax on account of the joint declaration are required from of the estate of the decedent. The surviving spouse, however, shall be liable for the payment of any subsequent installments of the joint estimated tax unless an amended declaration setting forth the separate estimated tax for the taxable year is made by the surviving spouse. Such separate estimated tax

shall be paid at the times and in the amounts determined under the rules prescribed in Section 56 of these regulations. For the purposes of making the amended declaration by the surviving spouse, and for the allocation of payments made pursuant to a joint declaration between the surviving spouse and the legal representative of the decedent in the event a joint return is not filed, the payments made pursuant to the joint declaration may be divided between the decedent and the surviving spouse in such proportion as the surviving spouse and the legal representative of the decedent may agree. In the event the surviving spouse and the legal representative of the decedent fail to agree to a division, such payments shall be allocated in accordance with the following rule. The portion of such payments to be allocated to the surviving spouse shall be that portion of the aggregate amount of such payments as the amount of tax imposed by W. Va. Code § 11-21-3 shown on the separate return of the surviving spouse bears to the sum of the taxes imposed by W. Va. Code § 11-21-3 shown on the separate returns of the surviving spouse and of the decedent; and the balance of such payments shall be allocated to the decedent. This rule may be illustrated by analogizing the surviving spouse described in this rule to H in the example contained in paragraph (c) of this subsection and the decedent in this rule to W in that example.

(e) Signing of Joint Declaration. -- A joint declaration of a husband and wife (if not made by an agent of one or both spouses) shall be signed by both spouses. The provisions of Section 55.12, relating to returns made by agents shall apply where one spouse signs a declaration as agent for the other or where a third party signs a declaration as agent for both spouses. See W. Va. Code § 11-21-53.

~~55.04.~~ 55.05. Time for Filing Declaration.

(a) In General. -- A declaration of estimated income tax of an individual, other than a farmer, shall be filed on or before April 15th of the taxable year, except that if the requirements of subsection 55.01 of these regulations are first met:

~~(a)~~ (1) After April 1st and before June 2nd of the taxable year, the declaration shall be filed on or before June 15th, or

~~(b)~~ (2) After June 1st and before September 2nd of the taxable year, the declaration shall be filed on or before September 15th, or

~~(c)~~ (3) After September 1st of the taxable year, the declaration shall be filed on or before January 15th of the succeeding year. See W. Va. Code § 11-21-55(d).

(b) Exceptions. -- A declaration of estimated tax need not be filed for the taxable year if:

(1) At least eighty percent (80%) of the annual tax liability is satisfied by withholding; or

(2) The amount of taxes due for the taxable year that will be remitted (or should be remitted) with the annual return is two hundred dollars ($200) or less.

See Section 55.07 of these regulations.

(c) Optional Rule for Farmers. -- See Section 55.06 of these regulations.

(d) Fiscal Year Taxpayers. -- An individual's tax year for purposes of this tax shall be the same as his or her taxable year for federal income tax purposes. See W. Va. Code § 11-21-6(a). Fiscal year taxpayers, except farmers, shall file declarations of estimated tax in accordance with Section 55.10 of these regulations.

~~55.05~~ 55.06. Declarations of Estimated Tax by Farmers.

(a) In General.

(1) In the case of an individual on a calendar year basis, if ~~an~~ that individual expects to derive at least two-thirds of his or her estimated West Virginia adjusted gross income from farming, he or she may file a declaration of estimated income tax at any time on or before January 15th of the succeeding year in lieu of the time for filing set forth in W. Va. Code § 11-21-55(d). See W. Va. Code § 11-21-55(e).

~~(b)~~ (2) "Farming" Defined. -- Income is attributable to farming if it is obtained from cultivation of the soil, the raising or harvesting of any agricultural or horticultural commodities, the raising, etc., of livestock, bees, poultry, fur-bearing animals, or wildlife. In other words, the requisite percentage of West Virginia adjusted gross income must be derived from the operation of a stock, dairy, poultry, fruit or truck farm. If an individual receives for the use of his or her land income in the form of a share of the crops produced thereon, such income is from farming.

(b) Fiscal Year. -- In the case of an individual on a fiscal year basis, if that individual expects to derive at least two-thirds of his or her estimated West Virginia adjusted gross income for farming, he or she may file a declaration of estimated income tax at any time on or before the 15th of the first month of the succeeding year.

(c) Joint Return. -- If a joint declaration of estimated tax will be filed by a husband and wife, at least two-thirds of their combined estimated West Virginia adjusted gross income must be from farming before that declaration may be filed under paragraph (a) or (b). Otherwise, the rules of Section 55.05 of these regulations shall be followed.

~~55.06. Declaration of estimated tax of forty dollars or less.~~

55.07. Automatic Extension of Time for Filing Declarations of Estimated Tax.

(a) In General. -- If an individual determines that his or her estimated income tax, as defined in Section 55.03, for the taxable year is ~~$40~~ two hundred dollars ($200) or less, or that the amount of tax to be remitted with his or her annual return for the taxable year will be twenty percent (20%) or less of the amount of tax shown (or that should have been shown) to be due on the annual return for the taxable year determined before application of credits for employer withholding taxes, W. Va. Code § 11-21-73, and installment payments of estimated tax, whichever is greater, he or she ~~may file a declaration of estimated tax at any time on or before January 15~~ is only required to file an annual return for the taxable year and pay the amount of tax shown thereon to be due, on or before April 15th of the succeeding tax year. For this purpose, all eligible taxpayers are granted an automatic extension of time from the date when the declaration of estimated tax and installment payments would otherwise be lawfully due until April 15th of the next tax year. See W. Va. Code §§ 11-21-55 and 11-21-57.

(1) A husband and wife who file a joint declaration of estimated tax or a joint annual return are treated as one individual for purposes of paragraph (a).

(2) An individual with estimated tax in excess of $40 would in the absence of paragraph (a) be required to file his or her declaration of estimated tax as provided in Section 55.05 of these regulations.

(3) An individual with estimated tax of $40 or less would in the absence of paragraph (a) be required to file his or her declaration of estimated tax on or before January 15th of the succeeding tax year. See W. Va.Code § 11-21-55(h).

(b) Interest and Additions to Tax.

(1) If the amount remitted with the annual return is two hundred dollars ($200) or less, or if one of the safety zones applies (See Section 56a.05) no interest or additions will begin to accrue on the amount due until April 16th of the succeeding tax year (16th day of the 4th month of the succeeding tax year if filing on a fiscal year basis).

(2) If the amount remitted with the annual return exceeds two hundred dollars ($200) and if none of the safety zones apply (See Section 56a of

of these regulations), interest and additions shall be imposed and shall be calculated from the date when the declaration of estimated tax and the first installment payment should have been remitted. Interest and additions to tax shall similarly be applied to any subsequent installment payments that should have been remitted, calculated from the date such installments should have been paid.

(3) See Sections 56a.01, 56a.03, 56.a.04 and 56a.05 of these regulations for application and computation of interest and additions to tax and application of safety zones.

~~55.07.~~ 55.08. Amendment of Declaration.

(a) In General. -- In making a declaration of estimated income tax, the taxpayer is required to take into account the then existing facts and circumstances as well as those reasonably to be anticipated relating to prospective West Virginia adjusted gross income, allowable deductions and estimated credits for the taxable year. Amended or revised declarations may be made in any case in which the taxpayer estimates that his or her West Virginia adjusted gross income, deductions or credits will differ from the West Virginia adjusted gross income, deductions or credits reflected in the previous declaration. An amended declaration may also be made based upon a change in the number of exemptions to which the taxpayer may be entitled for the current taxable year. However, only one ~~an~~ amended declaration may be filed during the interval between ~~made only as of an~~ installment ~~date~~ dates and no further amendment may be made until a succeeding installment date. An amended declaration may be filed jointly by husband and wife even though separate declarations have previously been filed.

(b) Payments. -- Subsequent installment payments shall be proportionally increased or decreased based on the amended declaration. No refund will be issued due to the filing of an amended declaration.~~, as consideration~~ Consideration will be given to a refund only in connection with a completed annual return filed by a taxpayer for the taxable year covered by his or her declaration, and/or amended declaration.

(c) Time for Filing Amended Declaration. -- An amended declaration of estimated income tax may be filed ~~only~~ on or after an installment date prescribed for the taxable year. However, no amended declaration may be filed until after the original declaration has been filed, and only one amended declaration may be filed during any interval between installment due dates.

(d) Forms. -- An amended declaration shall be made on Form 140-ES clearly marked "AMENDED". If the proper form is not available, the procedure outlined in subsection 55.01 of these regulations must be followed.

~~55.08.~~ 55.09. Return as Declaration or Amendment.

(a) In General. -- If the annual return of the taxpayer is filed as hereinafter provided, the annual return may be treated as the declaration or amended declaration of estimated tax.

(b) Time for Filing Return.

(1) Return as declaration; February 15th. If the taxpayer files his or her return for the calendar year on or before Februrary 15th of the succeeding calendar year (or if the taxpayer is on a fiscal year basis, the ~~date corresponding thereto~~ 15th day of the second month) and pays therewith the full amount of the tax shown to be due on the return, then such return shall be considered as the taxpayer's declaration ~~(a)~~ if the declaration is not required to be filed during the taxable year, but is otherwise required to be filed on or before January 15th of the succeeding year (or the ~~date corresponding thereto~~ 15th day of the first month in the case of a fiscal year). See W. Va. Code §§ 11-21-55(h) and 11-21-55(i). ~~such return shall be considered as such declaration; or~~

(2) Return as amendment of declaration; January 15th. If the taxpayer files his or her return for the calendar year on or before January 15th

of the succeeding calendar year (or if on a fiscal year basis, the 15th day of the first month), and pays therewith the full amount of the tax shown to be due on the return, then ~~(b)~~ if a declaration was filed during the taxable year, such return shall be considered as the amendment of the declaration ~~permitted to be filed on or before January 15th of thesucceeding year (or the date correspondingthereto in the case of a fiscal year),~~ if the tax shown on the return is greater than the estimated income tax shown in the declaration. See W. Va. Code §§ 11-21-55(h) and 11-21-55(i).

(3) Examples.

Example No. 1. -- An individual taxpayer on the calendar year basis who, subsequent to September 1, ~~1962~~ 1982, first meets the requirements of ~~section (a)~~ subsection 55.01 of these regulations for filing a declaration for ~~1962~~ 1982, may satisfy such requirements by filing his or her return for ~~1962~~ 1982 on or before February 15, ~~1963~~ 1983, and paying in full at the time of such filing the tax shown thereon to be payable.

Example No. 2. -- Similarly, if a taxpayer files on or before September 15, ~~1962~~ 1983, a timely declaration for such year and on or before ~~February~~ January 15, ~~1963~~ 1984, files a ~~1962~~ 1983 return on which the tax shown is greater than the estimated income tax shown on such declaration, and pays at the time of such filing the tax shown by the return to be payable, such return shall be treated as the amended declaration permitted to be filed on or before January 15, ~~1963~~ 1984. See also ~~sections~~ subsections 55.05 and 55.06 of these regulations regarding the time for filing a declaration of estimated tax by a farmer and by an individual having total West Virginia estimated income tax of ~~$40~~ $200 or less.

(c) Interest and Additions to Tax.

(1) Compliance with the provisions of W. Va. Code § 11-21-55(h) will enable a taxpayer to avoid paying interest and additions to tax with respect to an underpayment of the installment not required to be paid until January 15th of the succeeding calendar year.

(2) With respect to an underpayment of any earlier installment, compliance with section 11-21-55(h) will not relieve the taxpayer from the interest imposed by W. Va. Code § 11-21-16 and the additions to tax imposed by section 11-10-18. However, the period of the underpayment with respect to an earlier installment will terminate on January 15th of the succeeding calendar year.

(3) Example. -- A taxpayer discovers on January 10, 1984, that he underpaid his estimated tax for the calendar year 1983. He may in lieu of filing the amended declaration on January 15, 1984, file his annual return on Janaury 15th, and pay in full the amount computed thereon as payable. By so doing he will avoid the interest and additions to tax with respect to the installment payment that was due January 15, 1984. The periods of underpayment of the installments due April 15, 1983, June 15, 1983, and September 15, 1983, will also terminate on January 15, 1984.

(4) See Section 56a.05 of these regulations for application of safety zones.

~~55.09.~~ 55.10. Fiscal Year Taxpayers. -- In the case of individuals on a fiscal year basis, other than those referred to in Sections ~~55.05 and~~ 55.06 and 55.07 of this regulation, the declaration must be filed on or before the 15th day of the fourth month of the taxable year. The provisions of this section and of section 56 of these regulations shall apply to a taxable year other than a calendar year by the substitution of the corresponding fiscal year months for the calendar year months referred to in this section. See W. Va. Code § 11-21-6 relating to accounting periods and tax years.

~~55.10.~~ 55.11. Short Taxable Periods.

(a) In General. -- If a taxpayer is required to make a declaration of estimated income tax pursuant to Section 55.01 of this regulation, and a short taxable year is involved, a separate declaration for such fractional part of the year is required, except as hereinafter noted. See W. Va. Code § 11-21-55(j).

(b) Income and Income Tax Placed on Annual Basis.

(1) In order to determine whether a declaration of estimated tax needs to be filed for a short taxable year, West Virginia adjusted gross income and the taxes imposed by W. Va. Code § 11-21-3 shall be placed on an annual basis in the manner prescribed in 26 U.S.C. § 443(b)(1).

(2) Example. -- A taxpayer changes from a calendar year to a fiscal year basis beginning July 1st. The taxpayer will have a short taxable year beginning January 1st, and ending June 30th. The anticipated West Virginia adjusted gross income (excluding wages on which tax is withheld) for such short taxable year is $3,000. His West Virginia adjusted gross income for the purpose of determining whether a declaration is required is $6,000, which is the amount obtained by placing the anticipated income of $3,000 upon an annual

basis ($3,000 multiplied by 12 and divided by 6).

~~(b)~~ (c) Four Months or Less. -- No declaration is required if the short taxable year is a period of less than ~~six~~ four months or the estimated tax liability for the year is $200 or less or one of the safety zones applies.

(d) Time for Filing.

(1) General. -- In the case of a short taxable year, the declaration shall be filed by individuals (other than those referred to in ~~sections~~ Section 55.05 and 55.06 of ~~this regulation~~ these regulations) on or before the 15th day of the fourth month of such taxable year. If the requirements prescribed in ~~section~~ Section 55.01 of ~~this regulation~~ these regulations are first met after the first day of the fourth month but before the second day of the sixth month, the declaration must be filed on or before the 15th day of the sixth month. If the requirements of ~~subsection~~ Section 55.01 are first met after the first day of the sixth month but before the second day of the ninth month, the declaration must be filed on or before the 15th day of the ninth month.

(2) Short Year of More Than Six but Less Than Nine Months. -- If, however, the period for which the declaration is filed is at least six months

but less than nine months and the requirements of ~~section~~ Section 55.01 of ~~this regulation~~ these regulations are not met until after the first day of the fourth month, ~~or~~ the declaration may be filed on or before the 15th day of the succeeding taxable year.

(3) Short Year of More Than Nine Months. -- If, however, the period for which the declaration is filed is for nine months or more and such requirements are not met until after the first day of the sixth month, the declaration may be filed on or before the 15th day of the succeeding taxable year.

~~55.11.~~ 55.12. Declaration Made by Agent For Individual Under Disability.

(a) In General. -- The declaration of estimated tax for an individual who is unable to make a declaration by reason of minority, disease, injury, or other disability may be made and filed by his or her guardian, committee, fiduciary or other person charged with care of the individual or his property (other than a receiver in possession of only a part of his property), or by his or her duly authorized agent in accordance with subsection (b). See W. Va. Code § 11-21-55(k).

(b) Procedure.

(1) General. -- Whenever a declaration is made by a duly authorized agent, it must be accompanied by a power of attorney (or copy thereof) authorizing the agent to represent his or her principal in making, executing, or filing the declaration. A copy of Federal Form 2848, when properly completed, is sufficient.

(2) Disabled Spouse. -- Where one spouse is physically unable by reason of disease or injury to sign a joint declaration, the other spouse may,

with the oral consent of the one who is incapacitated, sign the incapacitated spouse's name in the proper place in the declaration followed by the words "By..............Husband (or Wife)," and by the signature of the signing spouse in his or her own right, provided that a dated statement signed by the spouse who is signing the declaration is attached to and made a part of the declaration stating:

(A) The name of the declaration being filed,

(B) The taxable year,

(C) The reason for the inability of the spouse who is incapacitated to sign the declaration and

(D) That the spouse who is incapacitated consented to the signing of the declaration.

(c) Liability of Taxpayer and Agent.

(1) The taxpayer and his or her agent, if any, are responsible for the declaration as filed and incur liability for any penalties for erroneous, false, or fraudulent declarations.

(2) "Agent" defined. For purposes of this section, the term "agent" includes guardian, committee, fiduciary or other person charged with

care of the individual under a disability, and a duly authorized agent of the taxpayer.

(d) Example. -- X, a calendar year taxpayer, leaves for Europe on February 1, 1983, and expects to return to the United States sometime in June. Since X will be out of the country on April 15th, his or her declaration of estimated tax for the 1983 taxable year may be filed by an authorized agent.

Section 56. Payment of Estimated Tax.

56.01. General.

(a) Manner of Payment. -- The amount of estimated income tax due as shown on a declaration of estimated income tax may be paid in installments or, at the election of the taxpayer, may be paid in full at the time of filing the declaration. If the estimated income tax is paid in installments, the first payment must accompany the declaration. See W. Va. Code § 11-21-56. Special rules regarding payment of 1983 estimated taxes are provided in Section 56.09.

(b) Installment Dates. -- In the case of a declaration of estimated income tax for a calendar year, the initial payment date and the subsequent installment payment dates are set forth in the following table:

(SEE FOLLOWING PAGE FOR TABLE)

Date of Filing Declaration	Dates of Installment Payments
~~(a)~~ (1) On or before April 15th	In four equal installments - one at time of filing declaration (on or before April 15), one on or before June 15, one on or before September 15, and one on or before January 15 of the succeeding taxable year.
~~(b)~~ (2) After April 15 and before June ~~15~~ 16, if not required to be filed on or before April 15	In three equal installments - one at time of filing declaration (on or before June 15), one on or before September 15, and one on or before January 15 of the succeeding taxable year.
~~(c)~~ (3) After June 15 and before September ~~15~~ 16, if not required to be filed on or before June 15 or	In two equal installments - one at time of filing declaration (one on or before September 15), and the other on before January 15 of the succeeding taxable year.
~~(d)~~ (4) After September 15, if not required to be filed on or before September 15.	In full at time of filing declaration.

~~(e)~~ (c) Filing After The Prescribed Time. -- If a declaration is filed after the time prescribed in Section 55 of these regulations, or after the expiration of ~~without consideration to~~ any extension of time, paragraphs ~~(b)~~ (2), ~~(c)~~ (3) and ~~(d)~~ (4) of this subsection shall not apply, and there shall be paid at ~~such time~~ the time of filing the declaration of estimated tax all installments of the estimated tax which would have been payable on or before such date of filing if the declaration had been ~~timely~~ filed on or before its due date, determined without regard to any extension of time. The remaining installments shall be paid at the time and in the amounts in which they would have been payable if the declaration had been ~~timely~~ filed when originally due. Thus, for example, B, who was required to file a declaration of estimated income tax on or before April 15, ~~1962~~ 1984, files his declaration for ~~1962~~ 1984 on September 15, ~~1962~~ 1984. In such case, at the time of filing his declaration, B was delinquent in the payment of two installments of his estimated income tax for the taxable year of ~~1962~~ 1984, and therefore three-fourths of the estimated tax shown thereon must be paid. Special rules apply for 1983 estimated tax. See Section 56.09 of these regulations.

56.02. Estimated Income Tax Payments by Farmers. Special provisions are made with respect to the filing of the declaration and the payments of the tax by an individual whose estimated West Virginia adjusted gross income for the taxable year is at least two-thirds from farming. (See Section 55.05 of these regulations). The declaration of such an individual may be filed on or before January 15th of the succeeding taxable year, in lieu of the time prescribed for taxpayers generally. Where such an individual makes a declaration of estimated income tax after September 15th of the taxable year, the estimated income tax shall be paid in full at the time of the filing of the declaration. See W. Va. Code § 11-21-56(b).

Section 56a. Interest and Additions to Tax.

56a.01. Applicability. -- The interest and additions to tax provisions of W. Va. Code §§ 11-10-17 and 11-10-18 are applicable to underpayments of estimated personal income tax. They will be applicable regardless of whether there is a failure to pay the entire amount of any installment of estimated tax on or before its due date (See W. Va. Code § 11-21-56), or the amount of estimated tax (employer withholding tax plus installment payments) paid during the taxable year was less than eighty percent (80%) of the tax due for the taxable year. Exceptions to this rule, hereinafter referred to as "safety zones," are set forth in Section 56a.05 of these regulations.

56a.02. How Underpayment of Estimated Tax Is Measured.

(a) In General. -- To determine whether an individual's estimated tax payments for the taxable year equal at least eighty percent (80%) of his or her actual liability for the primary tax, surtax and minimum tax imposed by W. Va. Code § 11-21-3, the following procedure shall be applied. The term "estimated tax payments" includes both the amount of installment payments remitted under W. Va. Code § 11-21-56, and the amount of taxes actually deducted and withheld at the source from wages under W. Va. Code § 11-21-71. See W. Va. Code § 11-21-73.

(1) Determine the sum of the individual's primary income tax shown on his or her return for the taxable year (as reduced by the amount of allowable credits) plus his or her surtax and minimun tax for the taxable year. If no annual return was filed, take one hundred percent (100%) of the total tax determined to be due for the taxable year.

(2) Take eighty percent (80%) of the above amount.

(3) Divide the amount of (2), above, by the number of installments required for the year. Generally, this will require dividing by four, but may be three, two or one. See Section 56.01 of these regulations.

(4) For each installment as computed in (3), above, find the excess, if any, over the amount actually paid or credited toward that installment payment. (Add in any overpayments available from a previous installment). If there is no excess, no further computation is necessary for that installment. For purposes of subparagraph (4), it is presumed that wages are received in equal payments throughout the year and that taxes are withheld under W. Va. Code § 11-21-7 in equal installments.

(b) <u>Amount of Underpayment.</u> -- Any excess computed in (4), above, for any installment is the amount of underpayment of that installment. If the actual payment made which is an underpaid installment does not meet at least one of the available safety zone tests, interest plus additions to tax must be paid on the amount of that underpayment of estimated tax. <u>See</u>

(1) Section 56a.03 of these regulations for Computing Interest.

(2) Section 56a.04 of these regulations for Computing Additions to Tax.

(3) Section 56a.05 of these regulations for Safety Zones.

56a.03. Computing Interest.

(a) In General. -- Nonwaivable simple interest calculated at the rate of eight percent (8%) per year (2/3% per month) shall be imposed for the number of days from the due date of the installment payment to the earlier of:

(1) the fifteenth day of the fourth month after the close of the taxable year, or

(2) the date on which the tax or the underpayment of the installment is paid. An overpayment of a subsequent installment stops the running of the interest to the extent that it wipes out the previous underpayment. For this purpose, the fifteenth day of the fourth month after the end of the taxable year is taken as the day to which the interest is computed even though that is a Saturday, Sunday or legal holiday.

(b) Determination Of Due Date. -- The due date of an installment is determined with regard to any authorized extension of time for paying the installment. If the amount to be remitted with the annual return for the taxable year is two hundred dollars ($200) or less, or is twenty percent (20%) or less of the total tax shown to be due on the annual return, an automatic extension of time is granted for filing the declaration of estimated tax so that only the annual return needs to be filed. In this case the annual return shall be considered as the declaration of estimated tax. See Section 55.07 of these regulations relating to automatic extension of time for filing declaration.

(c) Application Of Payments Not In Excess Of The Amount Due. -- A payment that is not in excess of the amount due for that installment period applies to it, and cannot be used to credit an earlier period.

Example. -- A calendar year taxpayer receives most of its or her income during the last six months of the taxable year. He or she makes only a timely fourth quarter installment payment on January 15th, equal to 25% of 80% of the ultimate tax liability for the year. This taxpayer will not be deemed to have underpaid the installment due for the fourth quarter. However, interest and additions to tax will apply to the other installments.

(d) Application Of Payments In Excess of Amount Due. -- If an installment payment exceeds the amount due for that installment, the excess is applied to the amount delinquent from any earlier installment period. The excess is applied first to satisfy the delinquent tax for the earliest installment period and then to interest and additions to tax for that deficiency. Any excess is applied to the next earliest installment period in the same fashion. (Any excess remaining after all delinquent installments plus interest and additions to tax are satisfied, is credited to subsequent installments). If the next installment payment also exceeds the amount due, the excess is similarly applied, first to tax and then to interest and additions to tax. The oldest delinquency is satisfied first.

(e) Credit of Prior Year's Overpayment. -- A prior year's overpayment of tax can be credited against the current year's estimated tax only if the annual return for the preceding year and the declaration of estimated tax for the current tax year are filed at the same time. Once a declaration of estimated tax has been filed taking such a credit against the current year's estimated tax, the taxpayer may not subsequently file an amended declaration of estimated tax and assert a claim for refund in the amount of the purported overpayment. If it is subsequently determined that the taxpayer was not entitled to the amount of credit claimed on his or her annual return for the preceding year, the result will be a deficiency for the prior year. The effect is the same as if the claimed overpayment was refunded when it was credited against the estimated tax for the ensuing taxable year.

(f) Application of Safety Zone. -- If one of the safety zones applies to the underpayment of estimated tax, no interest will begin to accrue on the amount of the underpayment until the day after the day the annual return should have been filed (generally April 15th of the succeeding tax year) and the remaining amount of tax due paid.

56a.04. Computing Additions to Tax.

(a) General. -- In addition to interest calculated and applied as provided in Section 56a.03 of these regulations, additions to tax shall be imposed as provided in this Section.

(b) Additions to tax. -- The additions to tax provisions of W. Va. Code § 11-10-18 apply to any underpayment of estimated personal income tax, regardless of whether such underpayment is because of a failure to pay the entire installment payment when due (determined with regard to any authorized extension of time), or because the amount of tax due for the taxable year is underestimated unless one of the safety zones apply. See Section 56a.05 of these regulations relating to safety zones.

(1) Failure to timely file declaration of estimated tax. -- In the case of failure to make and file a declaration of estimated tax (or amended declaration) on or before the date prescribed by law, there shall be added to the amount of estimated tax shown (or that should have been shown) on the declaration 5% of the amount thereof if the failure is for more than one month plus an additional 5% for each month or fraction thereof

during which there is a failure to file the declaration. This addition to tax may not exceed 25% of the estimated tax liability. It is waivable by the Tax Commissioner where the taxpayer shows that failure to timely file the declaration was due to reasonable cause and not due to willful neglect. In the case of an amended declaration, this penalty applies only to the net amount of the additional estimated tax. The following examples illustrate application of this penalty.

Example No. 1. -- X reports on a calendar year basis. He failed to file his declaration of 1984 estimated tax that was due April 15, 1984. If that return had been filed, it would have shown estimated tax of $20,000. A penalty of 25% ($5,000) is imposed for the failure to timely file the declaration of estimated tax. This penalty is waivable if the taxpayer presents cogent evidence that his failure to timely file the declaration was due to reasonable cause and not due to willful neglect. This example assumes that no safety zone is available to prevent the accrual of interest and additions to tax.

Example No. 2. -- X reports on a calendar year basis. He timely obtains from the Tax Commissioner an extension of time for filing his declaration of 1984 estimated tax from April 15, 1984 to June 15, 1984. X does not file his declaration until July 20, 1984. The estimated tax shown on the declaration is $20,000. A penalty of 10% is imposed for failure to file the declaration on June 15, 1984 (5% because the failure was for more than one month plus 5% for the succeeding month or fraction thereof during which the failure continued). This addition to tax is waivable if the taxpayer presents cogent evidence that his or her failure to timely file the declaration (determined with regard to any authorized extension of time) was due to reasonable cause and not due to willful neglect. This example assumes that no safety zone is available to prevent the accrual of interest and additions to tax.

Example No. 3. -- X reports on a calendar year basis. He timely files his declaration of estimated 1984 tax on April 15, 1984, and remits 25% of the estimated tax. On August 20, 1984, X accepts an unanticipated offer from a purchaser resulting in the sale of some capital assets. X's declaration showed estimated 1984 tax of $20,000. Capital gain from the sale results in additional taxes of $10,000. X was required to file an amended declaration of 1984 estimated tax on or before September 15, 1984, which he did not do. X files his 1984 annual return on April 15, 1985. A penalty equal to 25% of the additional tax that should have been shown on the amended declaration is imposed for failure to file the amended declaration. Because taxpayer's actual 1984 tax was $30,000 and its declaration showed $20,000 of estimated tax, the penalty assessed will be 25% of $4,000, or $1,000. The penalty computation is ($30,000 x 80% = $24,000 -$20,000 = 4,000 x 25% = $1,000). This example assumes that no safety zone is available to prevent the accrual of interest and additions to tax.

(2) Failure to timely pay an installment of estimated tax. -- In the case of failure to pay the entire amount of any installment payment of estimated tax, on or before its due date, there shall be added to the amount due 0.5% thereof if the failure is for one month or less plus an additional 0.5% for each month or fraction thereof during which there was a failure to pay the installment or any part of the installment then due. This addition to tax may not exceed 25% of the installment payment that is delinquent. This addition to tax is waivable by the Tax Commissioner if the taxpayer presents cogent evidence that the failure to timely pay is due to reasonable cause and not due to willful neglect.

(3) Application of paragraph (1) and (2). -- In computing additions to tax, paragraph (1) applies to any failure to file the declaration of estimated tax. Paragraph (2) applies where:

(A) The declaration of estimated tax was timely filed but the taxpayer failed to remit, in whole or in part, the amount of the installment payment which was due on the date the declaration was required to be filed, determined without regard to any extension of time for filing the declaration unless an extension of time for paying the installment was also granted.

(B) An extension of time for filing the declaration of estimated tax is granted without a concomitant extension of time for remitting the installment payment due on the day the declaration was originally due, e.g., the 15th day of fourth month of the tax year, and for any subsequent installment payments that become due and are not timely remitted.

(C) Any subsequent installment payment is not paid on or before its due date. The occurrence of the due date of each installment payment is a separate event.

(D) The taxpayer receives an extension of time to file its declaration of estimated tax, but does not obtain a concomitant extension of time for paying the first installment payment and any subsequent installment payment that becomes due during the extension period granted for filing the declaration.

(4) <u>Negligence or intentional disregard of rules and regulations.</u> -- In the case of any underestimating of estimated tax, except as provided in

subsection 56a.05(d) of these regulations, which is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there shall be added to the amount of tax underestimated (determined after multiplying the actual tax liability for the taxable year by 80%), divided by the number of installment payments due, 5% for each month of the deficiency up to 25% of the deficiency until it is paid.

56a.05. "Safety Zones" Bar Imposition of Interest and Additions to Tax for Underpayment of Estimated Tax.

(a) In General. -- Interest and additions to tax will not be imposed for any underpayment of any installment of estimated tax if, on or before the date prescribed for payment of the installment (determined with regard to any authorized extension of time for payment), the total amount of all payments of estimated tax made equals or exceeds the least of the amounts due under "Safety Zones" 3 through 5 unless "Safety Zones" 1 or 2 apply.

(1) Safety Zone No. 1. -- The amount of tax due with the annual return on the fifteenth day of the fourth month following the close of the taxable year is two hundred dollars ($200) or less.

(2) Safety Zone No. 2. -- The amount of tax due with the annual return on the fifteenth day of the fourth month following the close of the taxable year is twenty percent (20%) or less of the tax liability for the taxable year.

(3) Safety Zone No. 3. -- The amount of "tax shown" on the previous year's West Virginia personal income tax return, if such preceding year began after December 31, 1982, and was a taxable

year of twelve (12) months reduced by the amount of West Virginia withholding taxes for the current year. Safety zone no. 3 avoids interest and additions to tax if the total payments of estimated tax made by each installment date are at least equal to the amount which would have been required on that installment date if the estimated tax was the amount of "tax shown" on the previous year's West Virginia personal income tax return reduced by the amount of West Virginia withholding taxes for the current year. In applying safety zone no. 3, the following rules apply:

(A) An individual that did not file a West Virginia personal income tax return for the preceding year cannot use safety zone no. 3.

(B) A married couple that did not file a joint West Virginia personal income tax return for the preceding tax year cannot use safety zone no. 3.

(C) Safety zone no. 3 cannot be used when the preceding tax year was a tax year that began prior to January 1, 1983.

(D) The applicable tax credits are those allowed on the annual return for the preceding tax year.

(E) If the annual return for the preceding year is not filed on or before the due date of the declaration of estimated tax for the taxable year, the declaration of estimated tax for the current tax year cannot be based on last year's tax.

(4) Safety Zone No. 4. -- The amount of tax which would be due if computed based on the facts and law applicable to the West Virginia personal income tax return for the preceding year, but using current year rates, personal exemptions and credits. This safety zone avoids interest and additions to tax if the total payments of estimated tax already made by the installment date are at least equal to an amount which would have been required on that installment date if the estimated tax was a tax based on the facts shown on the previous year's return and the previous year's law, but using current year rates, personal exemptions and credits. In applying safety zone no. 4, the following rules apply:

(A) Nonrecurring items of income and deductions are not to be excluded.

(B) An individual who did not file a West Virginia personal income tax return for the preceding tax year cannot use safety zone no. 4.

(C) A married couple that did not file a joint West Virginia personal income tax return for the preceding tax year cannot use safety zone no. 4.

(5) Safety Zone No. 5. -- The amount of West Virginia personal income tax which would have been required to be paid on or before the date prescribed for payment if the estimated tax were an amount equal to eighty percent (80%) of the tax computed by placing on an annual basis the taxable income for the calendar months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this paragraph, taxable income shall be placed on an annualized basis by:

(A) Multiplying by twelve (12) (or the number of months in the taxable year if less that twelve (12)) the West Virginia adjusted gross income and the greater of West Virginia itemized deductions for the calendar months in the taxable year ending before the month in which the installment is required to be paid, or the amount which is the lesser of ten percent (10%) of the West Virginia adjusted gross income or $83.33 multipled by the number of such calendar months,

(B) Dividing the resulting amounts by the number of such calendar months, and

(C) Deducting from the annualized West Virginia taxable income the West Virginia deduction for personal exemptions (such exemptions being determined as of the date prescribed for payment of the installment).

(b) Application of Safety Zones to Short Tax Years -- Interest and additions to tax for under payment of estimated tax apply equally to short tax years where a declaration of estimated tax is required to be filed. In computing the safety zones for short taxable years, the estimated tax (whether based on that shown on the previous year's return, based on the previous year's facts, or annualized current income) is reduced by multiplying the estimated tax for a full year by the percentage which the number of months in the short tax year bears to twelve. For this safety zone, the precentage figure will be applied to reduce the tax.

(A) If the preceding taxable year was a short year, estimated tax for the current year (for purposes of safety zone no. 4) will be computed on an annual basis (income x 12 ÷ number of months in the short year). The tax will not be reduced because of the short year.

(B) If the tax rates for the year of underpayment have changed from the preceding year, the estimated tax must be computed using current rates.

(c) Application of Safety Zones to 52-53 Week Tax Years. -- If a taxpayer has a 52-53 week taxable year, the rules on 52-53 week years are applied in determining whether a taxable year was a year of 12 months, and in determining the commencement of the 3-month period, or the 3- or 5-month period, or the 6- or 8-month period, or the 9- or 11-month period, whichever is applicable. If a 52-53 week year begins on December 26, 1981, taxable income for the first six months in computing safety zone no. 4 will be the taxable income for the period beginning on December 26, 1982 and ending on June 30, 1983. The reason is that the taxable year for a 52-53 week year is deemed to begin on January 1, 1983.

(A) If the end of any accounting period employed by the corporation (e.g., any of either thirteen 4-week periods, or four 13-week periods) does not correspond with the end of the applicable period used in annualizing, the taxable income is determined as follows:

(1) Determine the taxable income from the beginning of the taxable year to the close of the accounting period ending immediately before the end of the period used in annualizing.

(2) Determine the taxable income from the beginning of the taxable year to the close of the accounting period which straddles the end of the 6, 8, 9 or 11-month period.

(B) The difference in taxable income between that in paragraph (1) and that in paragraph (2) is multiplied by the number of days from the close of the first accounting period to the end of the period used in annualizing and divided by the number of days between the termination dates of the two accounting periods.

(C) The amount computed under paragraph (B) is added to (or subtracted from) paragraph (1) to determine the taxable income for the period.

(D) Illustration: A 52-53 week year individual has a taxable year beginning on December 26, 1982 and uses thirteen 4-week accounting periods in determining taxable income. Taxable income from December 26, 1982 to the close of the 4-week period ending on June 11, 1983 is $200,000; to the end of the 4-week accounting period ending on July 9, 1983 is $228,000. Taxable income for the 6-month period ending on June 30, 1983 is $219,000, computed as follows:

Taxable income for period ending before June 30		$200,000
Taxable income for period stradding June 30		228,000
Difference		$ 28,000
Days from end of first accounting period to June 30	19	
Days from end of first accounting period to end of second accounting period	28	
19/28 of $28,000		$ 19,000
Taxable income for period ending June 11		200,000
Taxable income for period ending June 30		$219,000

(d) Safety Zone Requirements. -- Safety zone requirements must be satisfied on each installment date to avoid the imposition of interest and additions to tax on an underpayment of estimated tax as of the installment date. For purposes of paragraph (d), it is presumed that a taxpayer's West Virginia taxable income is received in equal installments throughout the taxable year. The taxpayer bears the burden of proof to establish that the West Virginia taxable income was received during the taxable year in some other manner.

(e) Return for the Preceding Taxable Year. -- The term "return for the preceding taxable year means the West Virginia personal income tax return required to be filed by W. Va. Code § 11-21-51 for the taxable year immediately preceding the current taxable year. If an amended return was filed for the preceding taxable year before the due date of the declaration of estimated tax for the current taxable year (determined with regard to any extension of time for filing), then it constitutes the return for the preceding taxable year if it is a reasonable estimate of the amount of tax due for the current taxable year.

(f) "Facts Shown on the Preceding Year's Return." -- The facts shown on the preceding year's return include:

(A) A net operating loss deduction properly claimed on the preceding year's return.

(B) The facts shown on a West Virginia joint personal income tax return for the preceding taxable year where the individual no longer qualifies to file a joint return.

(C) Tax credits claimed on the return for the previous year, even though allowable credits for the current taxable year are reasonably expected to be greater than or less than those allowed for the preceding year.

TEMPORARY

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-10
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