

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-21-51(a)(1) and 11-21-71(a)

AMENDMENT TO AN EXISTING RULE: YES NO

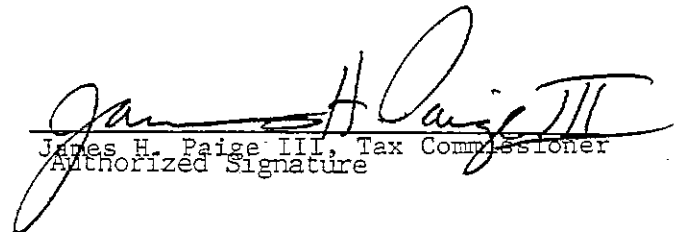
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 21.1

TITLE OF RULE BEING PROPOSED: Personal Income Tax Low Income Exclusion

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


James H. Paige III, Tax Commissioner
Authorized Signature



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GASTON CAPERTON
GOVERNOR

State of West Virginia
Department of Tax and Revenue
TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
JAMES H. PAIGE III
SECRETARY

CONSENT TO FILE RULE

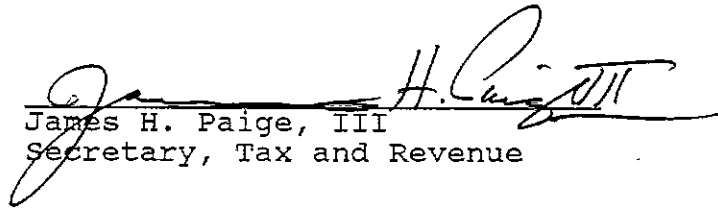
October 28, 1996

To Whom It May Concern:

Title of Rule: Personal Income Tax Low Income Exclusion
Title Number: 110
Series Number: 21.1

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

Signed this 28th day of October, 1996.


James H. Paige, III
Secretary, Tax and Revenue

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MODIFIED
WEST VIRGINIA LEGISLATIVE RULE
DEPARTMENT OF TAX AND REVENUE OFFICE OF WEST VIRGINIA
STATE TAX DIVISION SECRETARY OF STATE
TITLE 110
SERIES 21.1
1996

PERSONAL INCOME TAX LOW INCOME EXCLUSIONS

§ 110-21.1-1. General.

1.1 **Scope.** - This legislative rule explains and clarifies the low income exclusion set forth in Senate Bill 17 enacted by the West Virginia Legislature on January 23, 1996. The exclusion is codified in West Virginia Code §§ 11-21-10, 11-21-51 and 11-21-71.

1.2 **Incorporations.** - This low income exclusion rule should be read in pari materia with State Tax Division Legislative Rule, Personal Income Tax, 110 C.S.R. 21. Specifically, 110 C.S.R. 21, §§ 110-21-51 (Returns and Liabilities) and 110-21-71 (Requirement of Withholding Tax From Wages) are incorporated by reference as if fully set forth in this rule.

1.3 **Authority.** - W. Va. Code §§ 11-21-51(a)(1) and 11-21-71(a).

1.4 **Filing Date.**

1.5 **Effective Date.**

§ 110-21.1-2. Definitions.

As used in this rule and unless the context clearly requires a different meaning, the following terms have the meaning ascribed in this rule.

2.1 The term "eligible taxpayer" means:

2.1.1 An unmarried individual with a federal adjusted gross income of \$10,000.00 or less;

2.1.2 A husband and wife who file a joint return with a total federal adjusted gross income of \$10,000.00 or less; or

2.1.3 A husband or wife who files a separate return and who has a federal adjusted gross income of \$5,000.00 or less.

2.2 For the purposes of this deduction, the term "earned income" includes:

2.2.1 Wages, salaries, tips and other employee compensation as set forth on the eligible taxpayer's W-2 form; and

2.2.2 Net earnings from self-employment activity as defined in Section 1402(a) of the Internal Revenue Code minus any deduction available to the taxpayer pursuant to Section 164 of the Internal Revenue Code.

2.3 For the purposes of this deduction, the term "earned income" excludes:

2.3.1 Income attributable to a taxpayer on the basis of a divorce decree or separation agreement to distribute community property;

2.3.2 Income received from a pension, IRA distributions, 401(k) distributions, payments or distributions from a deferred compensation plan, retirement annuity, or any other retirement plan;

2.3.3 Any annuity; and

2.3.4 Income received by a taxpayer while that taxpayer was an inmate at a penal institution.

§ 110-21.1-3. Taxable Income Calculation. - Eligible taxpayers may deduct earned income from federal adjusted gross income to the extent it is included in federal adjusted gross income as set forth in Section 4 of this rule in order to determine the taxpayer's West Virginia taxable income.

§ 110-21.1-4. Amount of Deduction. - Eligible taxpayers may deduct the following maximum amounts of earned income from federal adjusted gross income to the extent it is included in federal adjusted gross income.

4.1 For tax years beginning after December 31, 1996:

4.1.1 Individual taxpayers: \$10,000.00;

4.1.2 Married taxpayers filing jointly: \$10,000.00; and

4.1.3 Married taxpayers filing separately: \$5,000.00 for each spouse who qualifies as an eligible taxpayer.

4.2 For the tax year beginning January 1, 1996, eligible taxpayers may only deduct earned income received after June 30, 1996, from federal adjusted gross income to the extent it is included in federal adjusted gross income, as follows:

4.2.1 Individuals: \$5,000.00;

4.2.2 Married individuals filing jointly: \$5,000.00; and

4.2.3 Married individuals filing separately: \$2,500.00 for each spouse who qualifies as an eligible taxpayer.

§ 110-21.1-5. Withholding.

If an eligible taxpayer is not subject to withholding of taxes from wages pursuant to West Virginia Code § 11-21-71, then he or she is not subject to withholdings pursuant to this rule. Otherwise, an eligible taxpayer under this rule is subject to withholding of taxes from wages.

§ 110-21.1-6. Filing of a Return.

If an eligible taxpayer is not required to file a West Virginia personal income tax return pursuant to West Virginia Code § 11-21-51, then he or she is not required to file a return pursuant to this rule. Otherwise, an eligible taxpayer under this rule shall file a personal income tax return.