

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: State Tax Division TITLE NUMBER: _____

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

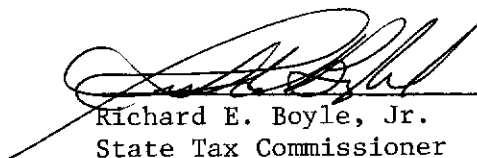
TITLE OF RULE BEING PROPOSED: Personal Income Tax Low Income Exclusion

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 157

SECTION 64-7-2(b), PASSED ON April 20, 1997

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: June 1, 1997


Richard E. Boyle, Jr.
State Tax Commissioner



STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE

CECIL H. UNDERWOOD
GOVERNOR

ROBIN C. CAPEHART
SECRETARY

TAX DIVISION
P. O. Box 2389
Charleston, West Virginia 25328-2389

PROMULGATION HISTORY

RULE TITLE: Personal Income Tax Low Income Exclusion

TITLE NUMBER: 110

SERIES: 21.1

NOTICE FILED: July 9, 1996.

HEARING DATE OR
PUBLIC COMMENT PERIOD: July 9, 1996 - August 8, 1996.

EMERGENCE RULE: N/A
E.R.D. NUMBER:
E.R.D. DATE:

FILED/
AGENCY APPROVED: August 16, 1996

FILED AS MODIFIED: October 31, 1996

LEGISLATIVE
AUTHORIZATION: SB 157

EFFECTIVE DATE: June 1, 1997

LD:JM/lr
5/13/97

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: State Tax Division

Subject: Personal Income Tax Low Income Exclusion, 110CSR21.1

PERTINENT DATES

Filed for public comment: July 9, 1996
Public comment period ended: August 8, 1996
Filed following public comment period: August 16, 1996
Filed LRMRC: August 16, 1996
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule. It also incorporates by reference several Tax Division rules.

Section 2 defines terms.

Section 3 provides that eligible taxpayers may deduct earned income from federal adjusted gross income as provided for in Section 4 of the rule.

Section 4 sets forth the maximum amounts of earned income that an eligible taxpayer may deduct from federal adjusted gross income as these amounts are set forth in the statute.

Section 5 states that an eligible taxpayer is subject to the withholding of taxes from his or her wages unless he or she is exempt from withholding under the statute.

Section 6 states that an eligible taxpayer who is required to file a return under the statute must file a return and an eligible taxpayer who is not required to file a return under the statute is not required to file one by virtue of this rule.

AUTHORITY

Statutory authority: W.Va. Code, §11-21-51 & 71

§11-21-51, which provides, in part, as follows:

...Provided, That the tax commissioner shall by legislative rule specify circumstances when an individual is not required to file a return as a result of the application of section ten of this article;

§11-21-71, which provides, in part, as follows:.

(a) General. -- Every employer maintaining an office or transacting business within this state and making payment of any wage taxable under this article to a resident or nonresident individual shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due under this article resulting from the inclusion in the employee's West Virginia adjusted gross income of wages received during such calendar year. The method of determining the amount to be withheld shall be prescribed by the tax commissioner, with due regard to the West Virginia withholding exemption of the employee and any low income exclusion allowed to such employee under section ten of this article and asserted in good faith by the employee...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has several minor technical modifications to suggest.

Senate Bill No. 213

(By Senator(s) Ross, Anderson, Macnaughtan,
Boley and Buckalew)

[Introduced March 3, 1997; referred to the
Committee on Finance; and then to the Committee
on the Judiciary.]

10 A BILL to amend and reenact section two, article seven,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the tax division to promulgate a
14 legislative rule relating to personal income tax low
15 income exclusions.

16 *Be it enacted by the Legislature of West Virginia:*

17 That section two, article seven, chapter sixty-four of
18 the code of West Virginia, one thousand nine hundred
19 thirty-one, as amended, be amended and reenacted, to read
20 as follows:

21 **ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE**
22 **TO PROMULGATE LEGISLATIVE RULES.**

23 §64-7-2. Department of tax and revenue; tax division; and

1 state tax commissioner.

2 (a) The legislative ~~rules~~ rule filed in the state
3 register on the twenty-eighth day of July, one thousand
4 nine hundred ninety-five, authorized under the authority
5 of section twelve, article fourteen-b, chapter eleven of
6 this code, modified by the tax division to meet the
7 objections of the legislative rule-making review committee
8 and refiled in the state register on the twenty-second
9 day of September, one thousand nine hundred ninety-five,
10 relating to the tax division (international fuel tax
11 agreement, 110 CSR 14B), ~~are~~ is authorized.

12 (b) The legislative ~~rules~~ rule filed in the state
13 register on the twenty-eighth day of July, one thousand
14 nine hundred ninety-five, authorized under the authority of
15 section twenty-three, article twenty, chapter forty-seven
16 of this code, modified by the tax division to meet the
17 objections of the legislative rule-making review committee
18 and refiled in the state register on the twenty-fourth
19 day of January, one thousand nine hundred ninety-six,
20 relating to the tax division (bingo, 110 CSR 16), ~~are~~ is
21 authorized with the amendments set forth below:

22 "On page seven, subdivision 3.1.9, by striking out the
23 word 'are' and inserting in lieu thereof the word 'is';

1 On page nineteen, subsection 11.1, by striking out the
2 words 'limited occasion licenses' and inserting in lieu
3 thereof the words 'limited occasion licensees';

4 On page twenty-three, subdivision 16.1.4, by striking
5 out the words 'these regulations' and inserting in lieu
6 thereof the words 'this rule';

7 And,

8 On page twenty-five, subsection 18.1, by striking out
9 the words 'these regulations' and inserting in lieu thereof
10 the words 'this rule'."

11 (c) The legislative ~~rules~~ rule filed in the state
12 register on the twenty-eighth day of July, one thousand
13 nine hundred ninety-five, authorized under the authority
14 of section three, article thirteen-i, chapter eleven of
15 this code, modified by the tax division to meet the
16 objections of the legislative rule-making review committee
17 and refiled in the state register on the twenty-second
18 day of September, one thousand nine hundred ninety-five,
19 relating to the tax division (tax credit for employing
20 former members of Colin Anderson center, 110 CSR 131), ~~are~~
21 is authorized.

22 (d) The legislative ~~rules~~ rule filed in the state
23 register on the twenty-eighth day of July, one thousand

1 nine hundred ninety-five, authorized under the authority of
2 section four, article six-a, chapter eleven of this code,
3 modified by the tax division to meet the objections of the
4 legislative rule-making review committee and refiled in the
5 state register on the twenty-second day of September, one
6 thousand nine hundred ninety-five, relating to the tax
7 division (pollution control facilities, 110 CSR 6), ~~are~~ is
8 authorized.

9 (e) The legislative ~~rules~~ rule filed in the state
10 register on the twenty-eighth day of July, one thousand
11 nine hundred ninety-five, authorized under the authority of
12 section five, article ten, chapter eleven of this code,
13 modified by the tax division to meet the objections of the
14 legislative rule-making review committee and refiled in the
15 state register on the first day of December, one thousand
16 nine hundred ninety-five, relating to the tax division
17 (business and occupation tax, 110 CSR 13), ~~are~~ is
18 authorized.

19 (f) The legislative rule filed in the state register
20 on the sixteenth day of August, one thousand nine hundred
21 ninety-six, authorized under the authority of section
22 fifty-one, article twenty-one, chapter eleven, of this
23 code, modified by the tax division to meet the objections

1 of the legislative rule-making review committee and refiled
2 in the state register on the thirty-first day of October,
3 one thousand nine hundred ninety-six, relating to the tax
4 division (personal income tax low income exclusions, 110
5 CSR 21.1), is authorized.

6

7 NOTE: The purpose of this bill is to authorize the
8 Tax Division to promulgate a legislative rule relating to
9 Personal Income Tax Low Income Exclusions.

10

11 Strike-throughs indicate language that would be
12 stricken from the present law, and underscoring indicates
13 new language that would be added.

8LET

1 BILL - Tax, Personal

(By Delegate(s) Douglas, Hunt, Compton,
Faircloth, Linch and Riggs)

2

3

4

[Introduced March 3, 1997; referred to the
Committee on Finance then the Judiciary.]

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KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

TO: JOHN MONTGOMERY

AGENCY: DEPT OF TAX AND REVENUE

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: June 4, 1997

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SEP 23 1 37 PM '97

FILED

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 21.1 TITLE: 110 DEPT OF TAX AND REVENUE

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED

SIGNED: John W. Montgomery

TITLE OF PERSON SIGNING: Attorney

DATE: 9/23/97

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.