

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #2

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2001 JUN 22 A 10:50

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

RULE TYPE: Procedural; CITE AUTHORITY W. Va. Code §§ 11-10-5, 11-21-8(e)(b)

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: 21C

TITLE OF RULE BEING PROPOSED: Method of Reporting the Alternative Method for

Distribution of Qualified Rehabilitated Buildings Investment Credit

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 31, 2001 AT 5:00 pm. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Legal Division

State Tax Department

P.O. Box 1005

Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Brian M. Kastick, Secretary of Tax & Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Method of Reporting the Alternative Method for Distribution of Qualified Rehabilitated Buildings Investment Credit

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Division
 Address: P.O. Box 1005
Charleston, WV 25324-1005

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$minimal	\$ 0	\$ 0	\$minimal	\$minimal
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

Any additional expense in administering this rule will be minimal. The alternative credit sharing arrangements will likely result in greater levels of participation in the credit program and some acceleration of tax credit benefits. The change will result in a minimal decrease in General Revenue Fund collections.

Rule Title: Method of Reporting the Alternative Method for Distribution of Qualified
Rehabilitated Buildings Investment Credit

3. Objectives of these rules:

To provide an alternative method for distribution of credit as required by W. Va. Code § 11-21-8e(b).

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There would be a minimal decrease in General Revenue Fund collections from the rule.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

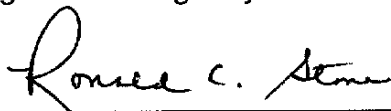
There should be no economic impact resulting from the rule.

C. Economic Impact on Citizens/Public at Large.

Some taxpayers would be able to reduce their Personal Income Tax liability as a result of the alternative credit sharing arrangements.

Date:

Signature of Agency Head or Authorized Representative



Ronald C. Stone, Acting State Tax Commissioner

110 C.S.R. 21C
METHOD OF REPORTING THE ALTERNATIVE METHOD FOR
DISTRIBUTION OF QUALIFIED REHABILITATED BUILDINGS
INVESTMENT CREDIT

STATEMENT OF CIRCUMSTANCES

Senate Bill 174, enacted during the 2001 Regular Legislative Session, amended W. Va. Code §§ 11-21-8e and 11-24-23g, relating to how the qualified rehabilitated buildings investment credit is to be taken against Personal Income Tax and Corporation Net Income Tax. The amendment requires that this rule be promulgated in order to provide an alternative method of distributing the credit to owners of certain entities such as partnerships which are unable to claim the credit because they are not subject to income tax.

110 C.S.R. 21C
METHOD OF REPORTING THE ALTERNATIVE METHOD FOR
DISTRIBUTION OF QUALIFIED REHABILITATED BUILDINGS
INVESTMENT CREDIT

RULE SUMMARY

The rule provides that an alternative method to the pro rata method may be used for allocating qualified rehabilitated buildings investment credit to be allowed against Personal income Tax under W. Va. Code § 11-21-8a or Corporation Net Income Tax under W. Va. Code § 11-24-23a for situations when investment property eligible for credit is owned by pass-through entities such as partnerships or multiple owner groups. Such entities are not subject to income tax and thus are unable to claim the credit, which may only be claimed against income tax. The rule also defines various terms used therein.

TITLE 110
PROCEDURAL RULE
STATE TAX COMMISSION

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SERIES 21C
METHOD OF REPORTING THE ALTERNATIVE METHOD FOR DISTRIBUTION OF
QUALIFIED REHABILITATED BUILDINGS INVESTMENT CREDIT
DELOISE WEST VIRGINIA
SECRETARY OF STATE

§ 110-21C-1. General.

1.1 **Scope.** -- This rule provides the method of reporting the alternative method for distribution of qualified rehabilitated buildings investment credit that is required by W. Va. Code § 11-21-8e(b), as amended by Senate Bill No. 174 (2001 Regular Session), effective July 1, 2001, for taxable years beginning on or after January 1, 2001, as well as procedures for implementing other changes made to the credit by Senate Bill No. 174.

1.2 **Authority.** -- W. Va. Code § 11-21-8e(b).

1.3 **Filing Date.** --

1.4 **Effective Date.** --

§ 110-21C-2. Definitions.

2.1 **General Rule.** -- Unless a specific definition is provided in subsection 2.2 of this section, or the context in which the term is used clearly requires a different meaning, the terms used in this rule have the definitions provided under W. Va. Code §§ 11-10-1 et seq., 11-21-1 et seq. and 11-24-1 et seq.

2.2 **Terms defined.**

2.2.1 **"C corporation"** means a corporation which is not an S corporation for federal income tax purposes.

2.2.2 **"Corporation"** means any entity taxed as a corporation for federal income tax purposes.

2.2.3 **"Credit"** means the tax credit for qualified rehabilitated building investment authorized by W. Va. Code §§ 11-21-8a or 11-24-23a.

2.2.4 **"General partnership"** means a partnership other than a "limited partnership" as defined in this subsection.

2.2.5 **"General partner"** means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and is named in the certificate of limited partnership as a general partner;

2.2.6 **"Limited liability company"** means a limited liability company or foreign limited liability as defined in W. Va. Code § 31B-1-101 which is taxable as a partnership, and includes a professional limited liability company as defined in W. Va. Code § 31B-13-1301.

2.2.7 "**Limited liability partnership**" means a "registered limited liability partnership" or "foreign limited liability partnership" as defined in W. Va. Code § 47B-1-1.

2.2.8 "**Limited partner**" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;

2.2.9 "**Limited partnership**" means a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners;

2.2.10 "**Multiple owners of property**" or "**owners**" means persons (other than shareholders of a C corporation) having an ownership interest in a qualified rehabilitated building who are eligible to claim the credit for qualified rehabilitated buildings investment.

2.2.11 "**Member**" means a member of a limited liability company.

2.2.12 "**Partner**" means a member of a partnership, including a limited partner or a general partner of a limited partnership.

2.2.13 "**Partnership**" means a partnership as defined in Section 761 of the Internal Revenue Code of 1986, as amended, and includes a general partnership, a limited partnership, and a limited liability partnership.

2.2.14 "**Partnership agreement**" means any valid agreement, written or oral, of the partners as to the affairs of a partnership and the conduct of its business;

2.2.15 "**Partnership interest**" means a partner's share of the profits and losses of a partnership and the right to receive distributions of partnership assets;

2.2.16 "**Shareholder**" means a shareholder of an S corporation, and does not include a shareholder of a C corporation.

2.2.17 "**S corporation**" means a small business corporation for which a valid election under subchapter S of the Internal Revenue Code is in effect for the taxable period. All other corporations are C corporations.

§ 110-21C-3. Methods for Certain Entities to Distribute Credit.

3.1 S corporations, partnerships, limited liability companies and other unincorporated groups such as multiple owners of property which would otherwise be eligible for the credit are not directly subject to income tax and thus are not able to claim the credit because they have no income tax against which to apply the credit. However, their shareholders, partners, members, and owners who are subject to income tax may be able to apply the credit to their income tax liability.

3.2 Unless an S corporation, partnership, limited liability company or other unincorporated group not subject to income tax elects the alternative distribution method set forth in subsection 3.3 of this rule, it shall allocate the qualified rehabilitated buildings investment credit allowed under W. Va. Code §§ 11-21-8a or 11-24-23a by using the pro rata method.

3.2.1 Under the pro rata method, the credit shall be allocated to the shareholders, members, partners or owners, as the case may be, either in proportion to their ownership interest in the S corporation, partnership, limited liability company or other unincorporated group, or using the same ratio used to divide profits and losses of the group.

3.3 If the group elects not to use the pro rata method of distribution, it may use an alternative method of its own devising, upon approval in writing by all of the shareholders, members, partners or owners and by the Tax Commissioner. The alternative method shall be in writing and shall describe how the credit is to be allocated in sufficient detail that the persons claiming the credit will be able to determine the amount of credit which they are entitled to claim when filing their return. Taxpayers claiming the credit shall file a written copy of the method with the credit Schedule RBIC which is filed with their income tax return.

3.4 No loss of credit shall occur as a result of a change in the type of entity by which a taxpayer conducts its business.

§ 110-21C-4. Sale, Assignment or Other Transfer of Credit.

4.1 Pursuant to W. Va. Code § 11-24-23g, a Corporation Net Income Tax taxpayer granted credit pursuant to W. Va. Code § 11-24-23a may sell, assign or otherwise transfer some or all of its credit to another taxpayer, which may apply that credit to its Corporation Net Income Tax liability even though it would not be eligible for the credit pursuant to W. Va. Code § 11-24-23a.

4.1.1 Corporation Net Income Tax taxpayers not eligible for credit to be granted to them pursuant to W. Va. Code § 11-24-23a may not sell, assign or transfer any credit sold, assigned or transferred to them.

4.2 Personal Income Tax taxpayers eligible for credit to be granted pursuant to W. Va. Code § 11-21-8a are not authorized to sell, assign or transfer their credit to another taxpayer.

4.3 In the tax year in which credit is sold, assigned or otherwise transferred, the successor to the credit is entitled to claim all of the credit for that tax year and any subsequent tax year for which credit is available if both the transferor and the successor agree to that method in writing. Otherwise, in the absence of a statutory method of prorating transferred credit, pursuant to Brockway Glass Company v. Caryl, 183 W. Va. 122, 394 S.E.2d 524 (1990), if a taxpayer transfers credit in the absence of an agreement, the transferor is entitled to all of the credit for the year of the transfer, and the successor is entitled only to the remaining amount of credit for each year subsequent to the year of sale.