

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #5

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OF INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-10-5 & 11-21-8e(b)

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE (s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

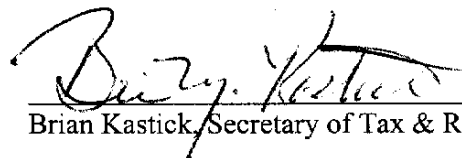
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 21C

TITLE OF RULE BEING ADOPTED: Method of Reporting the Alternative Method for Distribution
Of Qualified Rehabilitated Buildings Investment Credit

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS September 15, 2001


Brian Kastick, Secretary of Tax & Revenue

\$3.00

110 C.S.R. 21C

**METHOD OF REPORTING THE ALTERNATIVE METHOD FOR
DISTRIBUTION OF QUALIFIED REHABILITATED BUILDINGS INVESTMENT
CREDIT**

COMMENTS AND RESONSES

A public comment period commenced June 22, 2001 and ended July 31, 2001. No comments were received.

TITLE 110
PROCEDURAL RULE
STATE TAX COMMISSION

FILED

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SERIES 21C
METHOD OF REPORTING THE ALTERNATIVE METHOD FOR DISTRIBUTION OF
QUALIFIED REHABILITATED BUILDINGS INVESTMENT CREDIT

OFFICE OF THE 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.