

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

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SECRETARY OF STATE
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§11-13Z-1, et seq. and 11-10-5

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

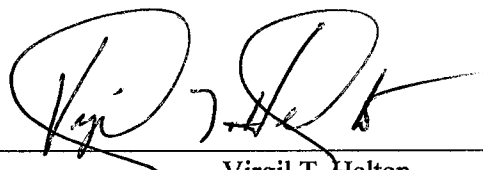
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 21D

TITLE OF RULE BEING PROPOSED: Residential Solar Energy Tax Credit

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Virgil T. Helton
Cabinet Secretary of the Department of Revenue

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 28, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Department

P.O. Box 1005.

Charleston, WV 25324

EMERGENCY RULE TITLE: 110

1. Authorizing statute(s) citation W. Va. Code §§11-13Z-1 et seq., 11-10-5

2. a. Date filed in state Register with Notice of Hearing or Public Comment Period:

June 26, 2009

b. What other notice, including advertising, did you give of the hearing:

None

c. Date of Public Haring(s) or Public Comment Period ended:

July 27, 2009 at 5:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in state Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 28, 2009

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Mark S. Morton, General Counsel for Revenue Operations

Legal Division, P.O. Box 1005, Charleston, WV 25324

Telephone: 558-5330

FAX 558-8728

MMorton@tax.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taxing of evidence and a general description of the issues to be decided.

- b. Date of hearing or comment period:

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

- d. Attach findings and determinations and reasons:

Attached

SUMMARY OF TITLE 110, SERIES 21D LEGISLATIVE RULE

The proposed rule sets forth the administrative requirements of the West Virginia Tax Department for the residential solar tax credit authorized by the West Virginia State Legislature in West Virginia Code §§11-13Z-1 *et seq.* for the purchase and installation of solar energy systems on property located in this state and used as a residence after July 1, 2009.

110 C.S.R. 21D
RESIDENTIAL SOLAR ENERGY TAX CREDIT
STATEMENT OF CIRCUMSTANCES

The West Virginia State Legislature authorized in West Virginia Code §§11-13Z-1 *et seq.* the creation of a tax credit for the purchase and installation of solar energy systems on property located in this state and used as a residence after July 1, 2009. In addition, the Legislature directed the West Virginia State Tax Commissioner to promulgate legislative rules to administer the tax credit.

Rule Title: Residential Solar Energy Tax Credit (110 CSR 21D)

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues:

Approval of this proposed rule will not increase or decrease revenue or costs.

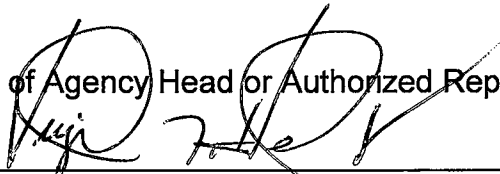
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The rule, as written, clarifies the residential solar energy tax credit provided in W. Va. Code §11-13Z et seq. added by Com. Sub. for House Bill No. 2535 (2009). The rule provides information on qualifying solar energy systems and the carryover and forfeiture of unused credit. Since the rule merely clarifies the application of previously enacted Legislation, the rule itself does not have any net fiscal impact.

Date: _____

Signature of Agency Head or Authorized Representative:



Virgil T. Helton
Cabinet Secretary of the Department of Revenue

**TITLE 110
AGENCY APPROVED
STATE TAX COMMISSION**

**SERIES 21D
RESIDENTIAL SOLAR ENERGY TAX CREDIT**

§110-21D-1. General.

1.1. Scope. -- This rule is promulgated to provide for the general administration of the Residential Solar Energy Tax Credit, W. Va. Code §§ 11-13Z-1, *et seq.*

1.2. Authority. -- W. Va. Code §§11-13Z-1, *et seq.* and 11-10-5.

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.* and 11-21-1, *et seq.*

2.2. Terms defined.

2.2.a. "Active solar heating" means a solar system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun's energy to a residence or part of a residence.

2.2.b. "Component" means a solar energy system's equipment and materials.

2.2.c. "Cost to purchase and install" means reasonable and prudent funds actually invested and expended by a taxpayer into acquiring and placing into service equipment or components of a solar energy system in a residence to operate and produce energy at the expected level for a system of its size.

2.2.c.1. Such costs shall include expenditures for:

2.2.c.1.A. Architectural and engineering services, and designs and plans directly related to the construction or installation of the solar energy system;

2.2.c.1.B. Labor costs properly allocable to on-site preparation, assembly and original installation; and

2.2.c.1.C. Materials;

2.2.c.2. Such expenditures shall not include:

2.2.c.2.A. Any part of the purchase price which is optional, such as an extended warranty;

2.2.c.2.B. Delivery fees;

2.2.c.2.C. Discounts; rebates; refunds; or federal, state or other grants;

2.2.c.2.D. Fees for use permits or variances;

2.2.c.2.E. Interest or other finance charges;

2.2.c.2.F. Land costs;

2.2.c.2.G. Legal and court costs;

2.2.c.2.H. Operating and maintenance costs;

2.2.c.2.I. Patent search fees;

2.2.c.2.J. Repair costs;

2.2.c.2.K. Service contracts;

2.2.c.2.L. Supplemental heating equipment costs used with solar collectors.

2.2.c.2.M. Unpaid equipment or materials;

2.2.c.2.N. Unpaid labor including taxpayer's labor;

2.2.d. "Credit" means the tax credit for purchasing and installing a solar energy system qualified rehabilitated building investment authorized by W. Va. Code §§11-21-8a or 11-24-23a.

2.2.e. "Domestic water heating" means the heating of water used in a residence for bathing, clothes washing, dishwashing and other related functions.

2.2.f. "Installation" means the date in which the solar energy system is placed into service and becomes eligible for the solar energy system tax credit.

2.2.g. "OG" means operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics

defined by the SRCC in its directory. Operating guidelines shall be from the directory in effect at the date the rules are adopted.

2.2.h. "OG-100" means a rating and certification program administered by the SRCC that applies to that part of a solar energy system that is exposed to the sun and collects the sun's heat. The collectors can be used to heat water, air or other heat transfer media.

2.2.i. "OG-300" means a rating and certification program administered by the SRCC that applies to solar hot water systems and integrates results of collector tests with a performance model for the entire system and determines whether the system meets minimum standards for system durability, reliability, safety and operation.

2.2.j. "Passive solar space heating" means an energy system or building design that collects and stores solar energy received directly through south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun's energy using only convection, radiation and conduction of energy.

2.2.k. "Photovoltaic (PV)" means relating to the production of electric current at the junction of two substances exposed to light.

2.2.l. "Photovoltaic cell" means a device capable of converting sunlight directly to direct current electricity.

2.2.m. "Photovoltaic module" means a number of photovoltaic cells (usually 20 or more) that are usually mounted within a frame under a transparent glass or plastic covering to form a module.

2.2.n. "Photovoltaic panel" means a panel consisting of a collecting of solar cells capable of producing direct current (DC) electrical energy when exposed to sunlight.

2.2.o. "Photovoltaic (PV) system" means an energy system that collects or absorbs sunlight for conversion into electricity. This includes solar collectors, batteries, inverters, solar system related wiring.

2.2.p. "Placed in service" means the date when a solar energy system is ready and available to produce useable energy.

2.2.q. "Solar collector" means a solar thermal collector or photovoltaic module.

2.2.r. "Solar domestic water heating system" means an energy system that uses roof-mounted solar collectors to pre-heat incoming cold water so that on a sunny day, little or no backup water heating is needed.

2.2.s. "Solar electric system" (also called "PV" system) means an energy system that generates electricity directly from the sun using photovoltaic modules.

2.2.t. "Solar energy collector" means the solar thermal system component that absorbs solar energy for conversion into heat.

2.2.u. "Solar energy system" means a solar thermal system or photovoltaic system. The system includes all controls, tanks, pumps, heat exchangers, and other equipment used directly and exclusively for the solar energy system. The system does not include any land or structural elements of the building, such as walls and roofs, or other equipment ordinarily contained in the structure.

2.2.v. "Solar Rating and Certification Corporation (SRCC)" means an independent third-party certification entity that administers national certification and rating programs for solar energy equipment.

2.2.w. "Solar thermal system" means a system consisting of a solar energy collector with the primary purpose of converting sunlight to thermal energy and all devices and apparatus necessary to transfer and store the collected thermal energy for the purposes of heating water, space heating, or space cooling.

2.2.x. "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her designee.

2.2.y. "Tax credit" means the solar energy system state tax credit.

2.2.z. "Taxpayer" means and includes any person or entity seeking to establish entitlement to the tax credit addressed in this rule.

§110-21D-3. Overview of the Credit.

3.1. Beginning July 2, 2009, each eligible taxpayer is authorized to annually take a tax credit against the tax imposed in West Virginia Code §11-21-1, *et seq.* for the purchase, installation and placing into service of a solar energy system on property located in this state and owned by the taxpayer and used as a residence after July 1, 2009.

3.1.a. A solar energy system is not eligible for purposes of the tax credit until it is placed in service.

3.1.b. If a taxpayer has paid for a solar energy system, but it is not yet placed into service for use during the tax year, no credit is allowed until the year in which the system is placed in service.

3.2. No taxpayer shall take a credit pursuant to W. Va. Code §§11-13Z-1, *et seq.* and this rule for a solar energy system installed and placed into service after July 1, 2013.

§110-21D-4. Requirements for Tax Credit; Application for Tax Credit.

4.1. In order for any taxpayer to take a credit under W. Va. Code §§11-13Z-1, *et seq.*, the taxpayer shall comply with the following requirements:

4.1.a. Have a personal income tax liability in West Virginia;

4.1.b. Have purchased and installed a new operating solar energy system that conforms to all applicable state and local codes, and manufacturer specifications.

4.1.b.A. The purchaser of the solar energy system must have an undivided interest in the solar energy system that has been installed.

4.1.b.B. The solar energy system must have been placed into service after July 1, 2009.

4.1.c. Own the property located in West Virginia, used as a residence after July 1, 2009, and served by the solar energy system purchased and installed by the taxpayer.

4.1.d. Apply to the West Virginia Tax Department on forms and in the manner the Tax Department may prescribe.

4.2. Any tax credit authorized under W. Va. Code §§11-13Z-1, *et seq.* and received by a taxpayer may be combined with any federal tax incentive, but it may not be combined with any other state tax incentive or credit.

§110-21D-5. Eligible Devices.

5.1. To qualify for the solar energy system tax credit, a solar energy system must:

5.1.a. Be a new and complete system. The system must be able to collect, store, convert, monitor, and distribute energy to the residence it serves;

5.1.b. Be installed in the immediate vicinity of the residence served such that the solar energy is delivered directly to the residence;

5.1.c. Be either a photovoltaic system, a solar domestic hot water system or an active solar space heating system.

5.1.c.1. For photovoltaic systems, the system must be able to generate electricity directly from sunlight and provide electricity for the home. These systems can either be "stand alone" systems that use batteries for storage of electricity or "grid interconnected" systems that allow the electric meter to spin backwards during periods where the photovoltaic system is generating more electricity than the load of the house.

5.1.c.2. For solar domestic hot water systems, the system must consist of solar collectors, pump, heat exchanger, and storage tank(s) designed to heat water.

5.1.c.3. For solar space heating systems, the system must consist of solar collectors, pump, heat exchanger, storage tank(s), and a method of distributing the heat to areas of the house that need heat.

5.2. The following devices and systems do not qualify for the credit:

5.2.a. A system or portion of a system that uses non-solar sources in its operation, with the exception of power necessary to provide for solar energy system components' incidental electricity needs;

5.2.b. A system or portion of a system that would be present if the solar energy system was not installed;

5.2.c. A system that increases an existing residence's average annual energy consumption;

5.2.d. A system that is mobile;

5.2.e. A system that is not connected to the structure or foundation of the residence which it serves;

5.2.f. A system or portion of a system that is used or replaces a system or portion of a system for which this tax credit was taken;

5.2.g. Appliances (all voltages) - refrigerators, lights, fans, televisions, etc., unless they are manufactured specifically for PV systems;

5.2.h. Conventional controls - load controllers, programmable thermostats, etc., even if they are provided (gratis or otherwise) as part of the system;

5.2.i. Conventional heating/cooling systems - air conditioners, heat pumps, evaporative coolers, furnaces, regardless of efficiency;

5.2.j. Conventional plumbing components - water softeners, drinking water systems, etc., even if they are provided (gratis or otherwise) as part of the system;

5.2.k. Conventional skylights;

5.2.l. Conventional windows and window treatments - dual-pane, low-e, shade screens, reflective and dark coatings, awnings, interior shades, drapes, and blinds;

5.2.m. Solar energy systems placed in service prior to July 2, 2009.

5.2.n. Fans - ceiling, window, attic, interior;

- 5.2.o. Insulation (includes "outsulation") and radiant barrier;
- 5.2.p. Misting systems;
- 5.2.q. Paint - ceramic, reflective roof coatings;
- 5.2.r. Passive solar hot-water system;
- 5.2.s. Passive solar space-heating system;
- 5.2.t. Passive solar space-cooling system;
- 5.2.u. Solar energy cars;
- 5.2.v. Solar greenhouses;
- 5.2.w. Solar pool collectors;
- 5.2.x. Standard backup heating systems;
- 5.2.y. The addition of a new component part or ancillary equipment to an existing system;
- 5.2.z. Used solar energy components or systems;
- 5.2.aa. Vegetation - shade trees, shrubs, grass; or
- 5.2.bb. Weather stripping, caulking;

§110-21D-6. Component and Installation Certification

6.1. All installations of solar energy systems must be performed by a contractor duly licensed by and in good standing with the West Virginia Contractors Licensing Board.

6.2. No tax credit shall be allowed for solar energy systems unless the system complies with the following:

6.2.a. Solar thermal systems - all installations of solar thermal systems must meet or exceed the 2003 edition, International Building Code, Sixth Printing, the 2005 edition, National Electric Code, any code(s) adopted by the county and municipality in which the system is located, and manufacturer specifications.

6.2.b. All solar water heating systems must be OG-300 certified by the Solar Rating and Certification Corporation (SCRR). All solar collectors which make up the solar water heating system must be OG-100 certified by the SCRR. All Energy Star® solar water heaters qualify for the

tax credit.

6.2.c. Solar photovoltaic systems - all installations of solar photovoltaic systems must meet or exceed the 2003 edition, International Building Code, Sixth Printing, the 2005 edition, National Electric Code, any code(s) adopted by the county and municipality in which the system is located, and manufacturer specifications.

§110-21D-7. Documentation.

7.1. The taxpayer is required to maintain documentation to substantiate that the system meets the required criteria and to substantiate the cost of the system. Failure to provide the documentation may result in denial of the credit to the taxpayer.

7.2. A taxpayer is not required to attach a SCRR certification to the return on which the credit is claimed, but should maintain it to document eligibility of the solar energy system for the credit.

§110-21D-8. General Procedure and Administration.

8.1. To claim this credit, a taxpayer must comply with the provisions of W. Va. Code §§11-13Z-1 *et seq.* and this rule, and must timely provide complete and accurate forms, schedules and other information required by the Tax Commissioner.

8.2. When applying for this credit, a taxpayer is also subject to the provisions of W. Va. Code §§11-21-1 *et seq.* (personal income tax) and rules issued pursuant to those statutes, as well as to the provisions of W. Va. Code §§11-10-1 *et seq.* (Procedure and Administration) which provide for administration of those taxes.

8.3. The credit may be claimed only by one taxpayer for a given period of time. However, a husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return if the provisions of this rule are met.

8.4. The Tax Commissioner may disqualify in whole or in part any expenditure from eligibility for the tax credit if it appears that the economic substance of an expenditure or transaction constitutes self dealing or is an expenditure or investment primarily directed to or received by the purchaser, or by a related person related to the purchaser.

§110-21D-9. Carryover Credit; Carryback Prohibited; Non-Refundable; Forfeiture.

9.1. If the amount of the tax credit allowed under W. Va. Code §11-13Z-1, *et seq.* in any taxable year exceeds the taxpayer's liability imposed under W. Va. Code §§11-21-1, *et seq.* for that taxable year, the excess may be carried over and applied as a credit against the tax liability of the taxpayer pursuant to the provisions of W. Va. Code §§11-21-1, *et seq.* for succeeding taxable years until the earlier of the following:

9.1.a. Four taxable years have elapsed; or

9.1.b. The full amount of the excess tax credit is used.

9.2. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

9.3. Application of the credit allowed under W. Va. Code §11-13Z-1 *et seq.* in combination with all other applicable tax credits, exemptions and deductions shall in no even reduce the tax liability below zero, and shall in no circumstances be applied as a refundable tax credit, or result in a refundable tax credit.

9.4. If any unused credit remains after July 1, 2014, the amount thereof is forfeited.

§110-21D-10. Sale, Assignment or Other Transfer of Credit.

10.1. Taxpayers eligible for credit under W. Va. Code §§11-13Z-1 *et seq.* are not authorized to sell, assign or transfer their credit to another taxpayer.

§110-21D-11. Burden of Proof.

11.1. The burden of proving eligibility for a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.