

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #7

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FILED
1987 JUL 10 PM 2:19
STATE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: TAX DEPARTMENT TITLE NUMBER: 110

CITE AUTHORITY: W.VA. CODE §§ 29A-3-15 and 11-10-5

EMERGENCY 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 RULE BEING FILED AS AN EMERGENCY: 23

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

BUSINESS FRANCHISE TAX

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

THE BUSINESS FRANCHISE TAX BECAME EFFECTIVE JULY 1, 1987. BECAUSE IT IS A COMPLETELY NEW TAX, EMERGENCY REGULATIONS ARE NECESSARY TO ASSURE TAXPAYER COMPLIANCE AND PREVENT TAXPAYER CONFUSION.

Use Additional Sheets If Necessary.


MICHAEL E. CARYL
STATE TAX COMMISSIONER

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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Special Assistant

(Plus all the volunteer
help we can get)

August 21, 1987

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Tax Department

RULE: New Series 23, Business Franchise Tax

DATE FILED AS AN EMERGENCY RULE: July 10, 1987

DECISION NO. 19-87

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 21, 1987
ADMINISTRATIVE LAW DIVISION

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

DECISION

Emergency Rule Decision (ERD 19-87)

AGENCY: Tax Department
RULE: New Series 23, Business Franchise Tax
FILED AS AN EMERGENCY RULE: July 10, 1987

- par. 1 The Tax Department has filed as an emergency rule amendments to the above titled new Series 23.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Tax Department has filed this emergency rule with supporting documents with the Secretary of State on July 10, 1987, and with the LRMRC on July 10, 1987.

par. 7 It is the determination of the Secretary of State that the Tax Department has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §11-10-5 reads in part §11-10-5. *General power; regulations and forms.*

The tax commissioner shall administer and enforce each tax to which this article applies and, in connection therewith, shall prescribe all necessary forms. The tax commissioner may make all needful rules and regulations for the taxes to which this article applies as provided in the State Administrative Procedures Act in chapter twenty-nine-a (§29A-1-1 et seq.) of this code: Provided, That all rules and regulations of the tax commissioner presently in effect on the effective date of this article (July 1, 1986) shall remain in full force and effect until amended or repealed by the tax commissioner in the manner prescribed by law.

par. 9 It is the determination of the Secretary of State that the Tax Department has not exceeded its statutory authority in the promulgation of these emergency rules.

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

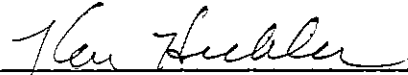
par. 12 The facts and circumstances as presented by the Tax Department are as follows:

The Business Franchise Tax became effective July 1, 1987. Because it is a completely new tax, emergency regulations are necessary to assure taxpayer compliance and prevent taxpayer confusion.

par. 13 It is the decision of the Secretary of State that this proposal by the Tax Department is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Tax Department; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 14

This decision shall be cited as Emergency Rule Decision 19-87 or ERD 19-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Tax Department, the Attorney General and the Legislative Rule Making Review Committee.



KEN HECHLER
SECRETARY OF STATE

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE Aug 21, 1987

Entered

ADMINISTRATIVE LAW DIVISION