WEST VIRGINIA
SECRETARY OF STATE
NATALIE TENNANT
ADMINISTRATIVE LAW DIVISION

Form #2

FILED

Do Not Mark In this Box

2010 AUG -9 AM 10: 56

SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Interpretive CITE AUTHORITY W. Va. Code §§11-10-5 and 11-10-5e

AMENDMENT TO AN EXISTING RULE: YES X NO ________

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 27

TITLE OF RULE BEING AMENDED: Service of Notice

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ________

TITLE OF RULE BEING PROPOSED: ________

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 September 9, 2010 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.

Virgil T. Helton
Cabinet Secretary of the Department of Revenue

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Service of Notice

Type of Rule: ____ Legislative __X__ Interpretive ____ Procedural

Agency: State Tax Department

Address: 1001 Lee Street

Charleston, WV 25301

Phone Number: (304) 558-5330 Email: John.E.Montgomery@wv.gov

Fiscal Note Summary

This rule, as written, provides guidance relative to the service of notice and other documents. The amendment to this rule authorizes an optional method where service may be made electronically.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	$0	$0	$0
Personal Services	$0	$0	$0
Current Expenses	$0	$0	$0
Repairs & Alterations	$0	$0	$0
Assets	$0	$0	$0
Other	$0	$0	$0
2. Estimated Total Revenues	$0	$0	$0

Rule Title: Service of Notice

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 interpretive 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, authorizes service of notices and other legal documents to be accomplished electronically. While this will reduce mailing costs, the overall effect will be negligible.

Date: 8/4/10

Virgil T. Helton
Cabinet Secretary of the Department of Revenue

TITLE 110
INTERPRETIVE RULE
STATE TAX DEPARTMENT

SERIES 27
SERVICE OF NOTICE

§110-27-1. General.

1.1. Scope. -- This rule sets forth the interpretation, practice and procedure established by the West Virginia State Tax Department concerning service of notice, electronically or by certified mail, of particular assessments, notices, statements of account or other Tax Department documents administered under Chapter 11, Article 10 of the West Virginia Code.

1.2. Authority. -- W. Va. Code §§11-10-5 and 11-10-5e.

1.3. Filing Date. --

1.4. Effective Date. --

§110-27-2. Service of Notice.

2.1. Subject to Service Rules. The following Tax Department Documents are subject to the service of notice requirements outlined in this rule.

2.1.1. Notice of Assessments. All notices of assessments shall be subject to the notice requirements of this rule.

2.1.2. Certain Business Registration Certificate Documents. All denials, revocations, and refusals to renew a Business Registration Certificate shall be subject to the notice requirements of this rule.

2.1.3. Certain Refund Documents. All denials of refunds, denials of interest, denials of claims for refund, and rejections of refund shall be subject to the notice requirements of this rule.

2.1.4. Amended Return Not Processed. All notices of Amended Returns that are not processed shall be subject to the notice requirements of this rule.

2.1.5. Other Required Documents. All documents required by the United States, or any agency, authority, commission or instrumentality of the United States, to be sent by certified mail shall be subject to the notice requirements of this rule to the extent this rule is in compliance with such requirements.

2.2. Method of Service. All documents outlined in Section 2.1 of these regulations shall be served upon the taxpayer by personal or substituted service or by certified mail, unless such mail is refused or not claimed, upon which it may be served by regular mail. Each of these methods of service may be used at the discretion of the Tax Department and have no preference over the other method of service.

2.2.1. Service by personal or substituted service shall be valid if made by any method authorized by Rule 4 of the West Virginia Rules of Civil Procedure.

2.2.2. Service by certified mail shall be valid if accepted by the taxpayer, or if addressed to and mailed to the taxpayers usual place of business or usual place of abode or last known address on record with the Tax Department and accepted by any agent, officer, partner, employee, spouse, parent, stepparent, or child of the taxpayer over the age of eighteen.

2.2.2.1. Any document addressed and mailed in the above manner and accepted by any person shall be presumed to be accepted by such person unless proven otherwise by the taxpayer.

2.2.2.2. Any document addressed in the above manner, and which is refused or not claimed may then be served by regular mail if such notice is subsequently mailed by first class mail, postage prepaid, to the same address; and date of posting in the United States mail shall be the date of service.

2.3. Optional Method of Service. In lieu of the method of service of notice provided in Section 2.2 of this rule, the person to be audited may agree in writing to have all documents outlined in Section 2.1 of this rule served electronically.

2.3.1. To facilitate the electronic service of the various notices described in this rule, the Tax Department shall develop a secure paperless audit source web site.

2.3.1.1. The Tax Department shall develop and provide to the Taxpayer appropriate written instructions to assist the Taxpayer in using the secure paperless audit source web site.

2.3.2. Prior to the electronic service of any documents, the person to be audited and the authorized representative of the Tax Department shall sign the State Tax Department Agreement Consenting to Service of Notice of Tax Audit(s) Documents by Electronic Service.

2.3.3. At the time the person to be audited signs the State Tax Department Agreement Consenting to Service of Notice of Tax Audit(s) Documents by Electronic Service, the person to be audited shall provide to the Tax Department representative the name, title, telephone number and e-mail address of the individual or individuals authorized to receive all electronic communications.

2.3.4. The 60 day period for appealing the assessment, or amended or supplemental assessment, provided in West Virginia Code § 11-10-8 shall commence on the day immediately following the day that the audit clerk by e-mail notifies the person designated in section 2.3.3 of this rule that the audit is complete, and that the work papers are on the web site and ready to be downloaded.

110 C.S.R. 27

SERVICE OF NOTICE

SUMMARY OF PROPOSED RULE

The rule provides the method of serving different legal documents related to the administration of the taxes administered by the State Tax Department. The proposed amendment to the rule authorizes documents to be served electronically.

WEST VIRGINIA INTERPRETIVE RULE

110 C.S.R. 27

SERVICE OF NOTICE

STATEMENT OF CIRCUMSTANCES

As a result of the increasing use of delivering documents electronically, taxpayers are more often expecting the service of notice and other documents to occur electronically. The amendments to the rule are designed to satisfy those expectations. The amendments should contribute to more efficient activities involved in the administration of the taxes for which the State Tax Department is responsible.