

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

Form #2

Do Not Mark In this Box
FILED
2010 JUN -3 PM 3: 35
OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Legislative CITE AUTHORITY W. Va. Code §§11-10-5s(b)(4) & 29A-3-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

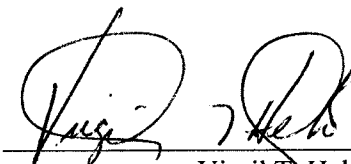
IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____ 50E

TITLE OF RULE BEING PROPOSED: Exchange of Information Agreement Between The State Tax Department
And The West Virginia Lottery

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 7/6/10 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

WEST VIRGINIA LEGISLATIVE RULE

110 C.S.R. 50E

**INTERAGENCY AGREEMENT BETWEEN
THE STATE TAX DEPARTMENT
AND
THE WEST VIRGINIA LOTTERY**

SUMMARY OF PROPOSED RULE

The proposed rule will enable the State Tax Department and the West Virginia Lottery to exchange information as set out in the Interagency Agreement. The information to be shared will enable the Tax Department and the West Virginia Lottery to facilitate premium collection, tax collection, licensure requirements and enforcement as required by Chapter 11 and articles 22, 22A, 22B, 22C and 25 of Chapter 29 of the West Virginia Code.

This rule is authorized by West Virginia Code §11-10-5s (b) (4).

**WEST VIRGINIA LEGISLATIVE RULE
110 C.S.R. 50E**

**EXCHANGE OF INFORMATION AGREEMENT BETWEEN
THE STATE TAX DEPARTMENT
AND
THE WEST VIRGINIA LOTTERY**

STATEMENT OF CIRCUMSTANCES

The State Tax Department and the West Virginia Lottery find it beneficial to enter into an exchange of information agreement for the purpose of facilitating premium collection, tax collection, licensure requirements and administering and enforcing Chapter 11 and Articles 22, 22A, 22B, 22C and 25 of Chapter 29, all of the Code of West Virginia and the rules, opinions, administrative law and case law there under. Any use of the data and information shall be in accordance with the West Virginia Tax Procedure and Administration Act, W. Va. Code § 11-10-1 *et seq.*

This rule is authorized by West Virginia Code § 11-10-5d and specifically pursuant to W. Va. Code § 11-10-5s(b)(4), subject to the confidentiality and disclosure restrictions set forth in article 10, chapter 11.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Exchange of Information Agreement between the State Tax Department and the West Virginia Lottery

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Department

Address: 1001 Lee Street

Charleston, WV 25301

Phone Number: (304) 558-5330 Email: _____

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule, as written, authorizes certain information to be exchanged pursuant to a written interagency agreement between the State Tax Department and the West Virginia Lottery.

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)
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: Exchange of Information Agreement between the State Tax Department and the West Virginia Lottery

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, authorizes certain information to be exchanged pursuant to a written interagency agreement between the State Tax Department and the West Virginia Lottery. Since the rule merely allows for the exchange of information, the rule does not have any net fiscal impact.

Date: _____

Virgil T. Helton
Cabinet Secretary of the Department of Revenue

**PROPOSED
TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT**

FILED

2010 JUN -3 PM 3: 35

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**SERIES 50E
EXCHANGE OF INFORMATION AGREEMENT BETWEEN THE
STATE TAX DEPARTMENT AND THE WEST VIRGINIA LOTTERY**

§ 110-50-1. General.

1.1 Scope. – This rule authorizes certain information to be exchanged pursuant to a written interagency agreement between the State Tax Department and the West Virginia Lottery.

1.2 Authority. – This rule is promulgated under the authority of W. Va. Code §§ 29A-1-1 *et seq.* and §11-10-5s.

1.3. Filing Date.

1.4. Effective Date.

§110-50-2. Purpose. W. Va. Code § 11-10-5s(b)(4) authorizes the West Virginia State Tax Department to promulgate legislative rules regarding a written exchange of information agreement with another State agency for the purpose of facilitating premium collection, tax collection or licensure requirements directly enforced, administered or collected by the Tax Commissioner or another agency. The purpose of this legislative rule is to comply with W. Va. Code § 11-10-5s(b)(4) in an Exchange of Information Agreement between the State Tax Department and the West Virginia Lottery.

§110-50E-3. Disclosure of Certain Information Authorized.

3.1. In accordance with W. Va. Code §11-10-5s(b)(4), the State Tax Department and the West Virginia Lottery may, in order to accomplish the purposes set forth in section two of this rule, exchange information pursuant to a written agreement specifying the type and manner of information to be exchanged and containing provisions for safe guarding any confidential information.

3.2. The State Tax Commissioner shall cause to be published in the State Register a copy of any exchange of information agreement entered into pursuant to this rule pursuant to W. Va. Code §11-10-5s(b)(4).

**INTERAGENCY AGREEMENT ON EXCHANGE OF INFORMATION BETWEEN THE
STATE TAX DEPARTMENT AND THE WEST VIRGINIA LOTTERY FOR THE
PURPOSE OF LICENSURE AND TAX COMPLIANCE**

STATEMENT OF PURPOSE

It is the intention of the parties hereto to implement a written interagency exchange of information agreement.

The Tax Commissioner and the Director of the West Virginia Lottery are responsible for providing information that assures compliance with the limited video lottery licensee residency requirement established in the definition set forth in West Virginia Code § 29-22B-327, and that assures the proper taxation of revenues generated by those licensees. This Agreement provides the basis for achieving those objectives and for describing the general nature of the actions to be taken in accordance with that objective. To facilitate those objectives, the administrators of the respective agencies, acting under authority vested in or delegated to them, will consult from time to time regarding their respective enforcement programs, problems and information needs and will establish mutually agreeable programs for exchanging information and providing mutual assistance as provided hereinafter. This Agreement constitutes the authorization provided by West Virginia Code § 11-10-5s(b)(4) to request and receive the information maintained by the respective agencies pursuant thereto.

SPECIFIC AGREEMENTS

In furtherance of the above-stated purposes, the parties agree as follows:

1. Upon written request, the Tax Commissioner shall provide to the Director of the West Virginia Lottery the residency status, as determined by the filing status on the West Virginia personal income tax return, for individuals who apply or who have been awarded limited video lottery retailer and operator licenses under the Limited Video Lottery Act, West Virginia Code §29-22B-101 *et seq.* The provision of this status confirmation does not include the revealing of the actual tax returns of an individual, which is prohibited by West Virginia Code § 11-10-5d.
2. The Director of the West Virginia Lottery agrees to transmit, convey or communicate the following information to the Tax Department:
 - a. The name and identifying information of the limited video lottery machine owners;
 - b. The physical location of any and all gaming machines included in the licensure;

- c. The number of machines licensed or otherwise at each location;
 - d. The revenue dollars periodically derived from each machine over such time period or periods as the parties may agree;
 - e. The amount paid out per machine;
 - f. Identification of the person or persons responsible for paying winnings to players for each machine; and
 - g. Any tax information or information tending to show a possible violation of the tax code disclosed, discovered or determined pursuant to any investigation or audit by the West Virginia Lottery of any person or entity subject to regulation by the Lottery Commission pursuant to West Virginia Code articles 22, 22A, 22B, 22C and 25 of chapter 29 or subject to reporting or filing requirements under any provision of Chapter 11 of the West Virginia Code.
3. Mutually acceptable techniques and methods of information sharing will be developed when and as required by the appropriate officials of the respective agencies, within the overall objectives of providing the most useful data and the least unnecessary additional expense and interruption of operations.
 4. Each party agrees to take all appropriate steps to protect from unauthorized disclosure the information obtained pursuant to this Agreement and to maintain a current list of those personnel who have been designated to have the records access authority agreed to herein. No party shall be obligated to furnish information to personnel who are not so designated. Upon the occurrence of any change in employment, position, duties, or other relevant matters which affect the right or authority of any employee or officer to request or receive information under the Agreement, the Tax Commissioner or the Director of the West Virginia Lottery, as appropriate, shall promptly give notice of such fact to the other party. Nothing contained herein shall be construed to prevent the use of information obtained by virtue of this Agreement by non-designated personnel of either party, for official purposes only, after such information has been received by the designated personnel of that party. However, such non-designated personnel shall be apprised of the need to protect the confidentiality of such information and of the criminal sanctions provided by West Virginia Code § 11-10-5d for unauthorized disclosures of tax return information.
 5. Under no circumstances shall confidential information received by either party from the Internal Revenue Service or identifying a confidential informant or which could seriously impair any civil or criminal investigation, be exchanged under this Agreement.

6. All information, irrespective of type or form, shall be used solely for the purpose stated above and shall not be made public or used except to the extent and in the manner permitted by applicable statutes, rules, regulations and this Agreement. Each agency will promptly provide notice to the other agency of any additions or changes that may affect use of the information addressed in this agreement in such statutes, rules and regulations as they occur.
7. This agreement may be modified or terminated at the discretion of either the Tax Commissioner or the Director of the West Virginia Lottery due to changes in statutes and regulations or whenever such action is deemed appropriate. Each agency shall provide prompt written notification to the other agency prior to making any unilateral modification or termination.
8. If for any reason one party is unable to comply with any one or more of the terms of this Agreement, the parties shall mutually agree on the extent to which this Agreement shall continue in effect or, in the absence of such mutual agreement, this Agreement shall become null and void in its entirety with respect to that party, with prejudice to any action previously taken hereunder and without affecting the Agreement with respect to the other party.
9. Neither party to this Agreement shall charge the other for costs incurred in information exchange activities under this Agreement, unless mutually agreed in writing as an addendum to this Agreement.
10. This Agreement becomes effective between the agencies immediately upon signing by both the State Tax Commissioner and the Director of the West Virginia Lottery Commission, and remains effective unless and until changed or terminated as provided herein.
11. Each of the undersigned hereby states and represents that he is authorized to enter into this Agreement and to furnish the information and assistance contemplated hereby, and that the fulfillment of his obligations hereunder will not violate any provision of State or federal law, including, without limitation, provisions respecting confidentiality of information.

This agreement is hereby approved and ratified by the undersigned:

State Tax Commissioner

Date

Director of the West Virginia Lottery

Date