

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

Form #2

Do Not Mark In This Box

2013 JUN 19 PM 2:06

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Legislative CITE AUTHORITY: West Virginia Code §§22-3-11(h)

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 PROPOSED: 29

TITLE OF RULE BEING PROPOSED: SPECIAL RECLAMATION TAX CREDIT

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 July 19th AT 5:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Mark Morton

Department of Tax and Revenue

1001 Lee Street

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature
Jason E. Pizatella, Cabinet Secretary

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**PROPOSED
TITLE 110
LEGISLATIVE RULE
TAX DEPARTMENT
SERIES 29
SPECIAL RECLAMATION TAX CREDIT
STATEMENT OF CIRCUMSTANCES**

The passage of H.B. 2352 in the 2013 Legislative Session provided a tax credit against the special reclamation tax for remediation and reclamation of mine sites upon which a bond has been forfeited. This rule provides clarification on the application of the credit, the effective date of the credit, what should be provided in an application for the credit, ineligibility for the credit, and general administration.

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: June 19, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Department, Legal Division, 1001 Lee Street, East, Charleston, WV 25324-1005 (304) 558-5330

LEGISLATIVE RULE TITLE: Special Reclamation Tax Credit

1. Authorizing statute(s) citation West Virginia Code §11-10-11c

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

 - b. What other notice, including advertising, did you give of the hearing?
None

 - c. Date of Public Hearing(s) or Public Comment Period ended:
Pending

 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.
Attached _____ No comments received _____

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

 - 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

State Tax Department - Legal Division, P.O. Box 1005, Charleston, WV

304-558-5330 (tel) 304-558-8728 (fax)

Mark.S.Morton@wv.gov

- 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 taking of evidence and a general description of the issues to be decided.

N/A

- b. Date of hearing or comment period:

N/A

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

N/A

- d. Attach findings and determinations and reasons:

Attached N/A

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Special Reclamation Tax Credit (110 CSR 29)

Rule Title: _____

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, sets forth the procedures and requirements for administration of the Special Reclamation Tax Credit as authorized by W. Va. Code §22-3-11(g)(2)(A). Since the bill merely clarifies procedures and eligibility requirements and does not increase or decrease the tax credit, approval of the Rule will have no impact on State costs and revenues.

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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Special Reclamation Tax Credit (110 CSR 29)

Rule Title: _____

Rule Title: _____

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 the Special Reclamation Tax Credit.

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.

Date: _____

Signature of Agency Head or Authorized Representative

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

SERIES 29
SPECIAL RECLAMATION TAX CREDIT

§110-29-1. General.

1.1. Scope. – This legislative rule sets forth the procedures and requirements for administration of the special reclamation tax credit as authorized by W. Va. Code §22-3-11(g)(2)(A).

1.2. Authority. – West Virginia Code §§22-3-11(h).

1.3. Filing Date. - 2013.

1.4. Effective Date. – 2013

1.5. Applicability. – The special reclamation tax credit is available to qualified operators for taxable years beginning on or after July 12, 2013.

§110-29-2. Definitions.

Unless the context in which used clearly requires a different meaning, the definitions contained in W. Va. Code §§ 22-3-3 and 38 C.S.R. 2 § 2 apply to this rule, in addition to those definitions set forth below.

2.1. "Act." – means the West Virginia Surface Coal Mining and Reclamation Act codified at W. Va. Code §22-3-1 et seq. and the rules promulgated thereunder.

2.2. "Bond forfeited mine site" means a mine site at which the Department of Environmental Protection has revoked a mine permit and forfeited the associated bond in accordance with W. Va. Code § 22-3-17(b).

2.3. "Qualified operator" means the person that obtains a permit under the Act to mine coal and perform reclamation on a bond forfeited mine site and that qualifies for the special reclamation tax credit as provided below.

2.4. The "Secretary" means the Secretary of the Department of Environmental Protection or his or her designee.

2.5. "Tax Commissioner" means the chief executive officer of the State Tax Division or his or her designee.

§110-29-3. Tax Credit Authorized; Effective Date; Administration.

3.1. Effective July 12, 2013, W. Va. Code §22-3-11 authorizes a tax credit for reclamation and remediation at bond forfeiture sites when performed to the standards of the permit and the Act.

3.2. In accordance with W. Va. Code §§22-3-11a and 23-3-11(g)(2)(C), the tax imposed by West Virginia Code §22-3-11 and the tax credit authorized thereunder are administered under W. Va. Code §11-10-1 *et seq.*

3.2.a. The tax credit authorized under W. Va. Code §22-3-11 for reclamation and remediation at bond forfeiture mine sites when performed to the standards of the permit and the Act shall first apply to a particular taxpayer for taxable years beginning on or after July 12, 2013 pursuant to the mandate of W. Va. Code § 11-10-5p:

Any amendment to any article administered under [W. Va. Code §11-10-1 *et seq.*] shall first apply to a particular taxpayer for taxable years beginning on or after the effective date of the act of the Legislature containing such amendment, as determined under article six, section thirty of the constitution of this state, unless the language of the act provides a controlling internal effective date provision.

3.2.b. W. Va. Code §22-3-11(i) states that:

(i) This special reclamation tax shall be collected by the State Tax Commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code [WV Code article 12B, chapter 11] is collected

Emphasis added.

3.2.c. W. Va. Code §11-12B-4(a) specifies the applicable tax year as follows:

(a) *General rule.*

For purposes of the tax imposed by this article [the minimum severance tax imposed by article 12B, chapter 11], a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

3.2.d. Therefore, in accordance with the mandates of W. Va. Code §§22-3-11(i) and 11-12B-4(a), the special reclamation tax credit shall first apply to a particular taxpayer for the first taxable year (as determined for federal income tax purposes) beginning on or after July 12, 2013.

3.3. The tax credit is taken only against the special reclamation tax imposed under W. Va. Code §22-3-11.

3.3.a. The credit cannot be applied to offset any other tax.

§110-29- 4. Application for and Amount of Tax Credit.

4.1. If an operator applies for an Article 3 permit for a bond forfeited mine site, the Secretary shall certify to the Tax Commissioner the project costs, as shown in the records of the Secretary, that would have been spent from the Special Reclamation Fund and the Special Reclamation Water Trust Fund on the subject bond forfeited mine site.

4.2. Only after the qualified operator obtains phase three bond release from the Secretary on the subject bond forfeited mine site, the qualified operator may apply to the Tax Commissioner for the special reclamation tax credit.

4.3. Upon the phase three bond release of the subject bond forfeited mine site, the Secretary shall certify to the Tax Commissioner the phase three bond release and date thereof.

4.4. The amount of tax credit granted to the qualified operator shall be determined using the project costs the Secretary previously certified to the Tax Commissioner for the subject bond forfeited mine site.

4.5. The application for the tax credit by the authorized operator will be on a form approved by the Tax Commissioner and filed at the same time and manner as the special reclamation tax.

§110-26-5. Ineligibility for Tax Credit; Limitation of Tax Credit.

5.1. If the qualified operator's Article 3 permit for the bond forfeited mine site is revoked by the Secretary and its bond forfeited, it shall not be eligible for the special reclamation tax credit, regardless of the amount of reclamation, if any, it had performed on the subject bond forfeited mine site prior to its own permit revocation and bond forfeiture.

5.2. The qualified operator must be in good standing with the Tax Commissioner before receiving any credit. Being in good standing means the qualified operator has:

5.2.a. Paid all taxes due and owing in full;

5.2.b. Paid any and all tax related interest and penalties in full, if any; and

5.2.c. Filed all required tax related reports.

5.2.d. Timely filed all tax related reports due for the current tax period.

5.3. Credit will not be applied to offset the payment of or liability for the special reclamation tax while the qualified operator is not in good standing with the Tax Commissioner.

5.4. The credit is not refundable.

5.5. There is no carry back of the credit.

5.6. The credit may be claimed only by the qualified operator.

5.6.a. The credit is nontransferable.

5.6.b. The credit cannot be applied to the special reclamation tax of any parent or subsidiary of the qualified operator; any related person or entity; or any partnership related to the qualified operator; or any member or the controlled group of which the operator is a member.

§110-29-6. General Procedure and Administration.

6.1. Requirements to Claim the Tax Credit. -- To claim a tax credit, the qualified operator shall comply with The Act and this rule and shall timely provide complete and accurate forms, returns, schedules and other information required by the Tax Commissioner or the Secretary.

6.2. Applicability of Various Tax Laws. -- Application of this credit and eligibility for this credit shall not affect or abrogate application of the provisions of the Act; and the following articles of chapter eleven of the Code of West Virginia: Article 10, "The West Virginia Tax Procedure and Administration Act;" Article 12, "Business Registration Tax;" Article 12B, "Minimum Severance Tax," Article 13A, "Severance and Business Privilege Tax Act;" Article 13V, "Workers' Compensation Debt Reduction Act;" Article 21, "Personal Income Tax;" Article 24, "Corporation Net Income Tax," and rules issued pursuant to those statutes, with respect to any qualified operator to the extent that they may be subject to the provisions of those laws.

6.3. Maintenance of Records. A qualified operator shall maintain the records required to verify the validity of its eligibility for the tax credit and the accuracy of the amount of the tax credit claimed. Failure to do so may result in denial of the tax credit.

6.4. The qualified operator is subject to audit by the Tax Commissioner or his or her designee.