

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

Form #4

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY: Legislative

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

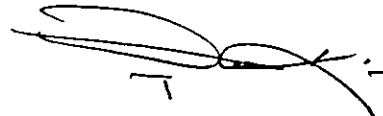
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 29

TITLE OF RULE BEING PROPOSED: SPECIAL RECLAMATION TAX CREDIT

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



Authorized Signature

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TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

2013 NOV 26 PM 5:15

SERIES 29
SPECIAL RECLAMATION TAX CREDIT

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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. -

1.4. Effective Date. –

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.

2.1. 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.

2.2. "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 under it.

2.3. "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).

2.4. "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.

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

2.6. "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 under it are administered under W. Va. Code §11-10-1 *et seq.*

3.3. 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 may only be taken against the special reclamation tax imposed under W. Va. Code §22-3-11.

3.3.a. The credit may not 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 or enters into a reclamation agreement with the Department of Environmental Protection 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. At the conclusion of each calendar year the qualified operator reclaims the bond forfeited mine site pursuant to either an Article 3 permit or a reclamation agreement, the qualified operator may apply to the Tax Commissioner for the special reclamation tax credit. Before the qualified operator can receive the tax credit, the Secretary shall certify to the Tax Commissioner the amount of reclamation work completed pursuant to the Article 3 permit or reclamation agreement and the resultant amount of credit to be granted.

4.3. 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.

4.4. 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 The qualified operator must be in good standing with the Tax Commissioner before receiving or claiming any credit. For the purposes of this rule, "good standing" means that the qualified operator has filed all required tax returns and related reports and that every tax administered under the West Virginia Tax Procedure and Administration Act imposed on the qualified operator has been provided for or paid.

5.2 A qualified operator that held an Article 3 permit for the bond forfeited mine site that was revoked by the Secretary and its bond forfeited, is not eligible for the special reclamation tax credit earned as a result of performing reclamation on the subject bond forfeited mine site.

5.3 Beginning in the year in which the Tax Commissioner issues a certification of tax credit to a qualified operator, the following rules apply:

5.3.a The qualified operator may use the credit to offset its payment of or liability for the special reclamation tax for the tax year.

5.3.b If any credit remains after application of the credit as provided in subsection 5.3.a., the remaining credit may be claimed only by any related entity, as that term is defined in W.Va. Code §11-24-3a, that engages in a unitary business, as that term is defined in W.Va. Code §11-24-3a, with the qualified operator. Provided, that the qualified operator is in good standing as provided in section 5.1. of this rule.

5.3.c If any credit remains after application of subsections 5.3.a and 5.3.b, the credit may be carried forward for use in future tax years in the same manner as provided in this subsection, until no credit is remaining.

5.3.d The credit is not refundable, it may not be carried back to a prior tax year and may not be transferred except as provided in subdivision 5.3.b. of this rule

§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 it is 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. The Tax Commissioner may deny the tax credit to a qualified operator who fails to maintain the records provided in this subsection.

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