

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

Form #5

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2014 JUN 27 P 2:46

WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: WEST VIRGINIA STATE TAX DEPARTMENT TITLE NUMBER: 110

CITE AUTHORITY: WEST VIRGINIA CODE §11-13A-5a(c)

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 13AA

TITLE OF RULE BEING AMENDED: INFORMATION TO BE UTILIZED FOR CALCULATING THE
DISTRIBUTION OF OIL AND GAS SEVERANCE TAXES.

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: CLAIMING TAX REFUND OR CREDIT

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS JULY 28, 2014



Authorized Signature

**TITLE 110
PROCEDURAL RULE
WEST VIRGINIA STATE TAX DEPARTMENT
SERIES 13AA
INFORMATION TO BE UTILIZED FOR CALCULATING THE DISTRIBUTION OF OIL
AND GAS SEVERANCE TAXES
RESPONSE TO COMMENTS**

No comments on this rule were received during the comment period.

FILED

TITLE 110
 PROCEDURAL RULE
 WEST VIRGINIA DEPARTMENT OF TAX AND REVENUE
 STATE TAX DIVISION

2014 JUN 27 P 2:46

 COMMISSIONER
 SECRETARY OF STATE

SERIES 13AA
 INFORMATION TO BE UTILIZED FOR CALCULATING THE
 DISTRIBUTION OF OIL AND GAS SEVERANCE TAXES.

§110-13AA-1. General.

1.1. Scope. -- The purpose of this rule is to set forth the procedures to be followed by the West Virginia Department of Tax and Revenue for distributing the municipal and county shares of the oil and gas severance taxes under W. Va. Code §11-13A-5a.

1.2. Authority. -- W. Va. Code §11-13A-5a(c).

1.3. Filing Date. --

1.4. Effective Date. --

§110-13AA-2. Interpretive Note.

This procedural rule shall be read in pari materia with the Severance Tax Legislative Rule (110 C.S.R. 13A) previously promulgated by the Tax Commissioner. The definitions, policies and procedures provided in 110 C.S.R. 13A are equally applicable to this procedural rule. Should there be any inconsistency between the promulgated legislative rule and this procedural rule, the legislative rule shall control, except to the extent the legislative rule does not reflect an amendment to the Severance Tax laws which is addressed in this or another procedural rule promulgated by the Tax Commissioner as provided in W. Va. Code §29A-3-1 et seq.

§110-13AA-3. Definitions.

Where applicable, the definitions in 110 C.S.R. 13A are incorporated by reference into this rule.

§110-13AA-4. Activity For Which Information is Needed.

4.1. Effective July 1, 1996, W. Va. Code §11-13A-5a requires that 5% of the Severance Tax imposed upon the severance of oil and gas in West Virginia is to be dedicated to the use and benefit of the counties and municipalities in West Virginia. Effective July 1, 1997, the percentage is increased to 10%.

4.2. W. Va. Code §11-13A-5a requires that the funds be deposited by the West Virginia State Tax Division (hereinafter "Tax Division") from time to time into specified accounts created in the State Treasurer's Office. The Tax Division is required to deposit 75% of the dedicated funds in the "Oil and Gas County Revenue Fund," and 25% is to be deposited in the "All Counties and Municipalities Revenue Fund."

4.2.1. For purposes of this rule, "from time to time" means by October 1st of each year following the end of a taxable year, unless the Tax Commissioner determines that more data is necessary to ensure that the proper distribution is made.

4.3. In order for the funds to be properly distributed, it is necessary to determine the counties where the oil and gas was severed and the amounts of oil and gas severed in each county.

4.4. The Tax Division will treat gas and oil as having been severed in the county in which the wellhead is located where the oil and gas were first brought to the surface of the Earth.

§110-13AA-5. Information Gathering Process.

5.1. Information as to the location of wellheads and the amount of oil and gas severed by county is currently being gathered by the West Virginia Department of Environmental Protection (hereinafter "DEP") under 35 C.S.R. 4-15.1 through reports which are submitted by operators of oil and gas wells.

5.2. Because the information reported to the DEP is the information needed by the Tax Division to carry out the requirements imposed by W. Va. Code §11-13A-5a, the Tax Division will use the most recent reasonably complete oil and gas production data provided to the Tax Division by the DEP for this purpose.

5.3. The Tax Division and the DEP will mutually agree on the technical procedures to be established to facilitate the information sharing activities.

5.4. The Tax Division will utilize the most recent reasonably complete oil and gas production data provided by the DEP to calculate the share of oil and natural gas severance tax receipts to be distributed. Oil and gas production data used to calculate county and municipal shares of oil and natural gas severance tax revenues for distribution should, ideally, reflect production data, as near as possible, for the same time period as the time period over which the oil and natural gas severance tax became payable to the State. However, compilation of DEP production data will lag behind the State's receipt of oil and natural gas severance tax revenues.

5.5 No adjustment payment, supplemental payment, recapture, refund, credit or other modification may be made to an amount distributed subsequent to payment of a distribution to any county or local distributee, based on DEP production data adjustments occurring subsequent to the distribution. In no case may the Tax Division be held responsible or accountable for any issue arising out of DEP production data, statistics or reports.

§110-13AA-6. Presumptions.

6.1. For those tax returns or other reports wherein the operator fails to report separate amounts as gross proceeds for oil and separate amounts as gross proceeds for natural gas that was severed during the reporting period, the Tax Division will attempt to obtain the correct information from those operators. If the Tax Division is unable to obtain the necessary information after a reasonable effort to do so, the Tax Division will apply the presumption that gross proceeds from oil and gross proceeds from gas, respectively, from each well is consistent with the statewide average proportional production of oil and gas from all reporting wells, and

that gross receipts from the production of wells for which the operator fails to report separate amounts as gross proceeds for oil and separate amounts as gross proceeds for natural gas is consistent with the statewide average for proportional gross receipts for oil and gas respectively.

6.2. Example:

(1) A Taxpayer files an annual report with the Tax Division stating that the Taxpayer has \$1 million gross receipts from the severance of natural gas and the severance of oil. However, the Taxpayer does not state how much of the gross receipts come from each.

(2) The Tax Division contacts the Taxpayer to seek the missing information. The Taxpayer fails to report the information.

(3) The Tax Division determines that the statewide average production of oil and gas based on gross receipts, is proportionally 88% gas and 12% oil for the production year.

(4) The Tax Division will presume that the Taxpayer's gross receipts from gas and oil production are consistent with the statewide average, and will apportion the gross receipts of the Taxpayer accordingly.

$\$1,000,000 \times 88\% = \$880,000$ gross receipts from severance of natural gas

$\$1,000,000 \times 12\% = \$120,000$ gross receipts from severance of oil

The Tax Division will apportion the tax derived from the Taxpayer's remittance of severance tax accordingly.