

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

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2015 NOV -9 P 4:09

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

OFFICE WEST VIRGINIA
SECRETARY OF STATE

AGENCY: State Tax Department TITLE NUMBER: 110

RULE TYPE: Procedural CITE AUTHORITY: W. Va. Code §§11-10-5 and 39A-3-2

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 10L

TITLE OF RULE BEING AMENDED: Claiming Tax Refund or Credit

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 December 10, 2015 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.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Claiming Tax Refund or Credit

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Department

Address: 1001 Lee Street, East
Charleston, WV 25301

Phone Number: (304) 558-5330 Email: Mark.S.Morton@wv.gov

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 provides information about the proper filing of claims for refunds and credits. The threshold amount for when a claim for refund or credit must be filed electronically has been raised from \$10,000 to \$25,000 beginning on or after January 1, 2016. Since the Rule does not alter the amount of refund or credit, approval of the Rule will have no impact on State costs and revenue.

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

Rule Title: Claiming Tax Refund or Credit

Rule Title: _____

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

Approvate of this Procedural 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.

N/A

Date: _____

11/4/2015

Signature of Agency Head or Authorized Representative

W. B. [Signature]

**TITLE 110
PROCEDURAL RULE
STATE TAX DEPARTMENT
SERIES 10L
CLAIMING TAX REFUND OR CREDIT
SUMMARY**

This procedural rule clarifies the procedures necessary when making a claim for refund with the state tax department under W.Va. Code §11-10-14. The rule also sets out the threshold amounts for when a claim for refund or credit should be filed and submitted electronically. The rule increases the threshold for when a taxpayer is required to file electronically. Beginning on or after January 1, 2016, any person required to file a return for tax administered under W. Va. Code §11-10-1, et seq., and who had a total annual remittance of any single tax equal to or greater than \$25,000 during the immediately preceding taxable year, shall file any claim for a tax refund or credit electronically.

**TITLE 110
PROCEDURAL RULE
STATE TAX DEPARTMENT
SERIES 10D
USE AND ACCEPTANCE OF ELECTRONIC RECORDS
STATEMENT OF CIRCUMSTANCES**

West Virginia Code §11-10-5z was amended during the 2015 Legislative session to require electronic filing for those taxpayers who had a total annual remittance during the preceding tax year in an amount of \$25,000 or more for any single tax, beginning on or after January 1, 2016; prior to the amendment, the requirement applied to those persons who had a total annual remittance for any single tax equal to or greater than \$10,000 during the immediately preceding tax year. This Rule has been amended to reflect these changes.

TITLE 110
PROCEDURAL RULE
STATE TAX DEPARTMENT

SERIES 10L
CLAIMING TAX REFUND OR CREDIT

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

§110-10L-1. General.

1.1. Scope. -- This procedural rule sets forth the practice and procedure established by the West Virginia State Tax Department for filing a claim for a refund or credit as provided in W. Va. Code §11-10-14.

1.2. Authority. -- W. Va. Code §§11-10-5 and 39A-3-2.

1.3. Filing Date. -- ~~June 27, 2014.~~

1.4. Effective Date -- ~~July 28, 2014.~~

§110-10L-2. Definitions.

For the purposes of this rule, the following terms have the meanings set forth in this section, unless a different meaning is clearly indicated by the context in which the term is used.

2.1. "Code" means the Code of West Virginia of one thousand nine hundred thirty-one, as amended.

2.2. "Commissioner" or "Tax Commissioner" means the West Virginia Tax Commissioner or his or her delegate.

2.3. "Department" or "Tax Department" means the West Virginia State Tax Department.

2.4. "Duplicate" means a claim for refund or credit of any tax administered under any tax administered under chapter eleven, article ten of the West Virginia Code covering the same period or a portion thereof that is also covered by another claim for refund or credit of the same tax, or a portion thereof.

2.5. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or any other similar capabilities or characteristics.

2.6. "Electronic filing" means filing using electronic technology such as computer modem, magnetic media, optical disk, facsimile machine, telephone or other technology approved by the Tax Commissioner, in such manner as he or she deems acceptable.

2.7. "MyTaxes" is the electronic tax system used by the West Virginia State Tax Department to assist certain taxpayers to view, file and pay State taxes online.

2.8. "Person" includes, but is not limited to, any individual, firm, partnership, limited partnership, copartnership, joint adventure, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, and also any officer, employee or member of any of the foregoing persons who, as an officer, employee or member, is under a duty to perform or is

responsible for the performance of an act prescribed by the provisions of W. Va. Code §11-10-1, *et seq.*, and the provisions of any other article of the Code which imposes a tax administered by the Tax Commissioner.

2.9. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and that retrievable in perceivable form, and includes, but is not limited to, a message, document, tax form, tax return or other instrument that is transmitted electronically from an authorized officer or other person to the Department to meet the requirements of law or to execute an essential transaction. An informal communication will not be considered an electronic record for purposes of this rule.

2.10. "Refund" means any overpayment of State taxes, to be transferred from the State or taxing authority back to the original payer or to the person making the overpayment after the Tax Department makes the appropriate credits for any liabilities for any tax on the part of the person who made the overpayment.

2.11. "State" or "this State" means the State of West Virginia.

2.12. "Tax" or "taxes" means taxes administered under the authority of W. Va. Code §11-10-1, *et seq.* additions to tax and penalties and interest imposed with respect to those taxes.

2.13. "Tax preparer" means any person who prepares, in exchange for compensation, or who employs another person to prepare, in exchange for compensation, all or a substantial portion of any return or claim for a refund or credit for a taxpayer for any tax administered under the authority of W. Va. Code §11-10-1, *et seq.*

2.14. "Taxpayer" means any person required to file a return for, or liable for the payment of, any tax administered under W. Va. Code §11-10-1, *et seq.*

§110-10L-3. Refunds or Credits of Overpayments.

3.1. General. – The Tax Commissioner, subject to the provisions of this rule and the provisions of W. Va. Code §11-10-1, *et seq.* shall refund or apply as a credit against the taxpayer's liability for the tax for other periods, any overpayment of any tax (or fee), additions to tax, penalties or interest imposed by W. Va. Code §11-10-1, *et seq.*, or any of the other articles of Chapter 11, or of the Code, to which W. Va. Code §11-10-14 applies.

3.1.a. The refund or credit shall include any interest due the taxpayer under the provisions of W. Va. Code §11-10-17.

§110-10L-4. Method for Claiming Refunds of Tax, Credit Against Other Taxes.

4.1. No refund shall be due and no credit is allowed unless the taxpayer or assignee has timely filed a claim for a refund or a credit with the Commissioner in accordance with W.Va. §11-10-14 and this rule in such form and in such manner as the Commissioner requires.

4.1.a. Any person against whom an assessment or administrative decision has become final is not entitled to file a claim for a refund or credit of those same taxes addressed in such assessment or administrative decision.

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4.2. Any claim for a refund, or a credit, must be filed within the time limits specified in W. Va. Code §11-10-1, *et seq.*

4.2.a. Any claim for a refund or a credit not timely filed does not constitute a moral obligation of the State of West Virginia for payment.

4.3. Filing Claim for Refund. – Any person who has over paid any of the taxes imposed by the laws of this State may file a claim for refund of the applicable tax on such form and in such manner as the Commissioner may require and in accordance with W.Va. §11-10-14 and this rule.

4.4. Filing Claim for Credit – In lieu of filing a claim for a refund of the applicable tax, the taxpayer may, at his or her option and within the time limits specified in W.Va. Code §11-10-1, *et seq.*, file a claim for credit on such form and in such manner as the Commissioner may require and credit the amount of the overpayments against certain payment of other taxes due in accordance with W.Va. Code §11-10-14 and this rule.

4.4.a. This procedure may not be utilized unless the taxpayer has filed a properly completed claim for credit with the Commissioner.

4.4.a.1. A claim for credit is required each time a taxpayer seeks to utilize this procedure.

4.4.a.1.A. Any credit may be disallowed as a result of Department audits of the taxpayer's records.

4.5. A return signed by a taxpayer which shows on its face that an overpayment of the tax imposed by W. Va. Code §11-21-1, *et seq.*, §11-23-1, *et seq.* or §11-24-1, *et seq.* was made constitutes a claim for a refund or a credit.

4.6. The Commissioner and the taxpayer may enter into a written agreement to extend the period within which the taxpayer may file a claim for a refund or a credit. The period of extension shall not exceed two years. The two year period of extension may be extended by additional periods not in excess of two years each by written agreement prior to the expiration of the extension period.

§110-10L-5. Electronic Filing Required For Certain Claims.

5.1. Unless otherwise specifically required by the Commissioner, claims for refunds or credits for taxes (or fees), additions to tax, penalties or interest imposed by W. Va. Code §11-10-1, *et seq.*, or any of the other articles of Chapter 11, or of the Code, to which W. Va. Code §11-10-14 applies shall be filed electronically, in accordance with 110 CSR 10D and this rule. The Commissioner shall determine which claims shall be filed and submitted electronically, based on the following threshold amounts:

5.1.a. Beginning on or after January 1, 2009, any person required to file a return for a tax administered under the provisions of W.Va. Code §11-10-1, *et seq.* and who had a total annual remittance of any single tax equal to or greater than \$100,000 during the immediately preceding taxable year, shall file any claim for a tax refund or credit electronically using MyTaxes available on the Department's website.

5.1.b. Beginning on or after January 1, 2013, any person required to file a return for a tax administered under the provisions of W.Va. Code §11-10-1, *et seq.* and who had a total annual remittance

of any single tax equal to or greater than \$50,000 during the immediately preceding taxable year, shall file any claim for a tax refund or credit electronically using MyTaxes available on the Department's website;

5.1.c. Beginning on or after January 1, 2014, any person required to file a return for a tax administered under the provisions of W.Va. Code §11-10-1, *et seq.* and who had a total annual remittance of any single tax equal to or greater than \$25,000 during the immediately preceding taxable year, shall file any claim for a tax refund or credit electronically using MyTaxes available on the Department's website;

5.1.d. Beginning on or after January 1, 2015, any person required to file a return for a tax administered under the provisions of W.Va. Code §11-10-1, *et seq.* and who had a total annual remittance of any single tax equal to or greater than \$10,000 during the immediately preceding taxable year, shall file any claim for a tax refund or credit electronically using MyTaxes available on the Department's website;

5.1.e. Beginning on or after January 1, 2016, any person required to file a return for a tax administered under the provisions of W.Va. Code §11-10-1, *et seq.* and who had a total annual remittance of any single tax equal to or greater than \$25,000 during the immediately preceding taxable year, shall file any claim for a tax refund or credit electronically using MyTaxes available on the Department's website;

5.1.e.f. Any person required to file a return for a tax administered under the provisions of W.Va. Code §11-10-1, *et seq.* and who had a total annual remittance of any single tax during the immediately preceding taxable year equal to or less than \$9,999 during the immediately preceding taxable year ~~the threshold amount listed for that year~~ is not required to, but may, file a claim for a tax refund or credit electronically with the Commissioner.

5.2. The Commissioner shall designate those Department forms for asserting or exercising a claim for a refund or a credit that will be accepted for filing electronically.

5.3. Taxpayers will have access to the designated forms through the Department website.

5.4. The Commissioner has the authority to waive the requirements for filing electronically upon finding that the taxpayer or tax preparer is technically unable to comply. The taxpayer or tax preparer shall request a waiver in writing and clearly demonstrate the nature of the technical inability. The Commissioner shall respond to the request for a waiver within 45 days of receipt. The Waiver Request Form will be signed under penalty of perjury and be in a form as prescribed by the Tax Commissioner.

§110-10L-6. Documents Supporting Claim for Refund or Credit.

6.1 Any person asserting or exercising a claim for a refund or a credit shall file such records or documents as the Commissioner may require proving or verifying the taxpayer's right and entitlement to such refund or credit. The Commissioner may inspect or examine the records or documents of a taxpayer or any other person to verify the truth and accuracy of any report or return or to ascertain whether the tax has been paid.

6.2. Beginning on or after February 15, 2014, any person filing a claim for refund of Consumers Sales and Service Tax or Use Tax, is required to provide the following information on the applicable form:

Vendor name

Invoice date

Invoice number

Exempt item description

Invoice amount

West Virginia sales tax paid

Municipal sales tax paid

Municipality name

6.2.a. Beginning on or after February 15, 2014, any person required to electronically file a claim for refund of Consumers Sales and Service Tax or Use Tax, in accordance with 110 CSR 10D and section 5.1 of this rule, shall do so in electronic spreadsheet format. The spreadsheet must contain all of the information required and listed in section 6.2 of this rule in individual fields.

6.2.a.1. A claim for refund form is not complete if all of the information required to be entered on the applicable form is not provided. Absent specific authorization by the Tax Commissioner for use of a specified sampling process, information provided on the claim for refund form using a sampling process is not acceptable and shall be considered incomplete.

6.2.a.2. A claim for refund form, required to be electronically filed in electronic spreadsheet format, is not complete unless it is submitted in electronic spreadsheet format,

6.2.a.3. A claim for refund that is not complete is deemed not to be filed.

6.3. Under the investigative, and tax administration powers granted to the Tax Commissioner under W. Va. Code §11-10-1 *et seq.*, and the subpoena powers granted to the Tax Commissioner under W. Va. Code §11-10-5b, the Commissioner has the power to examine witnesses under oath. If any witness shall fail or refuse at the request of the Commissioner to grant access to the documents or records requested by the Commissioner, the Commissioner may issue a subpoena or subpoena duces tecum to such party to appear before the Commissioner, at a place designated, on a day fixed. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the subpoena or subpoena duces tecum shall be enforced in accordance with the requirements of W. Va. Code §11-10-5b.

§110-10L-7. Overlapping, Conflicting, Redundant, Partially Redundant, Duplicate or Incomplete Claims Or Claims Covering the Same Period Or the Same Tax Or the Same Transactions.

7.1. Overlapping, conflicting, redundant, partially redundant, incomplete or duplicate claims are invalid.

7.1.a. Initial filings -- The processing of a currently pending claim for refund or credit that has been submitted but not yet approved will cease or not be implemented and will be treated as an incomplete and inaccurate claim not properly filed upon the receipt of a subsequently filed claim for refund or credit for or from the same Taxpayer for the same tax period or part of the same tax period, or for the same transactions as those covered by the subsequently submitted claim or claims.

7.1.b. Subsequent filings -- The processing of one or more claims for refund or credit submitted subsequent to the submission of a currently pending claim for refund or credit will be treated as

incomplete and inaccurate claims, not properly filed if the subsequent claim, or claims, for refund or credit are for or from the same Taxpayer for the same tax period or part of the same tax period, or for the same transactions as those covered by the previously submitted claim.

7.1.c. Processing for all overlapping, conflicting, redundant, partially redundant, incomplete or duplicate claims shall cease. Such claims may be denied by the Tax Commissioner as incomplete or inaccurate, or both. The entity or entities submitting such claims, upon such denial, and at the election of the taxpayer, may refile one comprehensive claim covering the periods and transactions to be covered, and resolving and eliminating all overlapping, conflicting, redundant, partially redundant incomplete, inaccurate or duplicate claims. This provision may not be interpreted to allow or authorize any filing, refiling or submission of any claim for refund or credit for any period outside of the statute of limitations, or any filing, refiling or submission of any claim for refund or credit that is otherwise not lawful.

7.1.d. Neither this rule nor this section of this rule shall be interpreted to preclude, abrogate or impede the imposition of interest, penalties, additions to tax and criminal penalties, as applicable, which may be lawfully assessed or imposed in the case of any untimely, overlapping, conflicting, redundant, partially redundant, incomplete, inaccurate or duplicate claim, or any false, fraudulent, or otherwise unlawful claim.

7.2. If any claim has been approved, and a later claim is determined by the Commissioner to cover the same period or a portion thereof that is contained in any claim previously submitted for a refund or credit, the Tax Commissioner may require additional documentation to substantiate claims for refund or credit.

7.3. The ninety-day determination period set forth in W. Va. Code §11-10-14 will not apply to a claim for a refund or credit which has been determined by the Commissioner to duplicate a claim previously submitted, or that is otherwise an overlapping, conflicting, redundant, or partially redundant or incomplete claim.