



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Tax TITLE-SERIES: 110-42
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 110-42 Personnel Rule for the Tax Division

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: W. Va. Code §11B-1-8

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

This rule is being filed under authority of W.Va. Code 11B-1-8 (e) (recently enacted through passage of SB2003 in the 2017 second special session). This rule implements the provisions of W.Va.Code 11B-1-8 regarding special employment procedures and requirements of the Tax Division of the Department of Revenue regarding classification plans, pay plan and salary administration, applications and examination, registers, certification of eligibles, appointments, promotions, demotions and transfers, reconsideration, employment conflicts, records and reports, confidentiality, grievances and other related matters.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 12/6/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 1/5/2018

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

This rule implements the provisions set forth in W. Va. Code §11B-1-8 regarding classification plans, pay plans, open competitive examinations, promotions, layoff and recall, appointments, dismissals, demotions and other matters.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Pursuant to W. Va. Code 11B-1-8(c) (recently enacted through passage of SB 2003 in the 2017 second special session), the Tax Division of the Department of Revenue will be operated under special employment procedures and requirements, effective December 1, 2017. This means that, as of December 1, 2017, the Tax Division will not be under the jurisdiction of the Division of Personnel for certain purposes, and not subject to the rules in place that govern agencies under the jurisdiction of the Division of Personnel. In the absence of the Division of Personnel's rules, the Tax Division needs rules in place to govern personnel matters. This statutory time limitation renders the filing of this Personnel Rule for the tax Division an emergency as recognized by the provisions of W. Va. Code 29A-3-15(f). Because this change takes effect December 1, 2017, as provided in SB 2003 and rules are needed as soon as possible, an emergency legislative rule is being promulgated under the authority in W. Va. Code §11B-1-8(e).

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

There would be no revenue impact.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

There would be no revenue impact.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	56000
Personal Services	0	0	56000
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

This rule creates a need for additional Human Resources personnel within the Tax Department to determine eligibility and qualifications of applicants for Tax Department vacancies.

TITLE 110
LEGISLATIVE RULE

TAX DIVISION
DEPARTMENT OF REVENUE

SERIES 42
PERSONNEL RULE FOR THE TAX DIVISION

§110-42-1. General.

1.1. Scope. -- This rule implements the provisions set forth in W. Va. Code §11B-1-8 regarding classification plans, pay plans, open competitive examinations, promotions, layoff and recall, appointments, dismissals, demotions and other matters.

1.2. Authority. -- This rule is issued under the authority of W. Va. Code §11B-1-8.

1.3. Filing Date. -- _____

1.4. Effective Date. _____

1.5. Sunset Provision. This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

§110-42-2. Preamble.

2.1. General. -- The general purpose of the Tax Division of the Department of Revenue is to administer, collect, and enforce various tax laws of this State. To successfully meet this objective, the Division needs to attract and retain personnel of the highest ability and integrity by the establishment of a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness and no person shall be in any unlawful way favored or discriminated against with respect to any incident of state employment because of his or her political or religious opinions or affiliations or race, gender, age, disability, ancestry or national origin, or for other reason(s) explicitly provided in federal and/or state law.

2.2. Application of Rule. -- Persons employed by the Tax Division of the Department of Revenue are covered by the classified service or classified exempt service. Division of Personnel rules 143 CSR 1, 143 CSR 4, and 143 CSR 6 apply to personnel covered by the classified service or classified exempt service. Except as specifically set forth in the provisions of this rule promulgated pursuant to enactment of W.Va.Code §11B-1-8, Division of Personnel rules will continue to apply to persons employed by the Tax Division. In case of any conflict between this rule and a provision of 143 CSR 1, 1443 CSR 4, or 143 CSR 6, the provisions of this rule shall control.

§110-42-3. Definitions.

3.1. Accrual Rate. -- The grouping by the cumulative years of eligible employment which is used to determine the rate of accrual of annual leave benefits.

3.2. Accrue. -- To increase or accumulate periodically or by increment.

3.3. Administrator. -- Any person who fills a statutorily created position within or related to an agency or board (other than a board member) and who is designated by statute as the commissioner, deputy commissioner, assistant commissioner, director, chancellor, chief, executive director, executive secretary, superintendent, deputy superintendent or other administrative title, however designated.

3.4. Affiliation. -- Adoption by employees of state agencies or parts of state agencies to the classified service by action of the Legislature, executive order of the Governor with the consent of the Board and the Tax Commissioner.

3.5. Agency. -- The Tax Division of the Department of Revenue.

3.6. Allocation. -- The assignment of a position to a class by the Tax Commissioner on the basis of the duties performed and responsibilities assumed.

3.7. Appeal. -- A request made to the Tax Commissioner or the Board to reconsider a decision.

3.8. Appointing Authority. -- The Tax Commissioner who is authorized by statute to appoint employees in the classified or classified-exempt service of the Tax Division.

3.9. Appointment. -- The act of hiring an applicant for employment.

3.10. Available. -- The indication, by an eligible applicant, of the employment location and conditions under which employment would be accepted including, but not limited to, salary and starting date of employment.

3.11. Board. -- The State Personnel Board as provided for in W. Va. Code §29-6-6 whose members are appointed by the Governor with the advice and consent of the Senate.

3.12. Business Necessity. -- The reason or cause for any of a variety of personnel actions based upon the condition of the agency, in whole or in part, or specific program component(s) which may include but is not limited to lack of funds or work; abolishment of positions; material changes in mission, duties or organization; loss of budgeted, allocated or available positions; reinstatement of eligible employees returning from military duty or temporary total disability; reinstatement of an employee in compliance with a legal order; and for recall of employees previously laid off.

3.13. Certification. -- The official list of eligible applicants given to an appointing authority for filling vacancies in the classified service.

3.14. Class or Class of Positions. -- One or more positions sufficiently similar in duties, training, experience and responsibilities, as determined by class specification, that the same title, the same qualifications, and the same schedule of compensation and benefits may be equitably applied to each position in the class.

3.15. Class Specification. -- The official description of a class of position which describes the nature of work, provides examples of work performed, and knowledges, skills, and abilities, and states the generally accepted minimum qualifications required for employment.

3.16 Classification Action. -- The actions of allocation, reallocation, classification, and reclassification.

3.17. Classification Plan. -- The plan by which positions in the classified service and classified-exempt service have been allocated by class.

3.18. Classified Employee. -- An employee who occupies a position allocated to a class in the classified service.

3.19. Classified-Exempt Service. -- As established by statute, those positions which satisfy the definitions for "class" and "classify" but which are not covered under the Division of Personnel merit system standards or employment standards of the higher education governing boards.

3.20. Classified Service. -- Those positions which satisfy the definitions for "class" and "classify," and which are covered under the Division of Personnel merit system standards.

3.21. Classify. -- The process of ascertaining, analyzing, and evaluating the duties and responsibilities of positions to group the positions in classes and to determine classes utilized by the Tax Division.

3.22. Commissioner. -- The Commissioner of the Tax Division of the Department of Revenue or his or her designee.

3.23. Compensation Plan. -- The official schedule of pay rates, the range assigned to each class of positions and the salary regulations used in pay administration in the classified service.

3.24. Date and Time of Separation. -- Last date and time worked by an employee separated from employment due to dismissal, voluntary resignation, voluntary retirement, layoff, or death; the date of death of employees who die while on paid or unpaid leave; the date and time of notification by employees resigning or retiring while on military leave, or while receiving workers' compensation temporary total disability benefits as a result of a personal injury or illness received in the course of and resulting from covered employment with the State in accordance with W. Va. Code § 23-4-1, or due to disability as verified by a physician.

3.25. Day. -- Unless otherwise specified, the use of "day" means a calendar day.

3.26. Demotion. -- A change in the status of an employee from a position in one class to a position in a lower job class as measured by compensation range, minimum qualifications, or duties, or a reduction in an employee's pay to a lower rate in the compensation range assigned to the class. There are two (2) types of demotion:

3.26.1. Demotion with Prejudice. -- A disciplinary action resulting in the reduction in pay and a change in job class to a lower job class.

3.26.2. Demotion without Prejudice. -- A reduction in pay and/or a change in job class to a lower job class due to business necessity or as a result of an employee being selected for a vacant, posted position for which he or she applied.

3.27. Department. -- The Department of Revenue established in W. Va. Code § 5F-1-2.

3.28. Director. -- The Director of Personnel, as provided in W. Va. Code §29-6-7 and §29-6-9, who serves as the executive head of the Division of Personnel, or his or her designee.

3.29. Disability. -- A physical or mental impairment which substantially limits one or more of a person's major life activities, a record of such impairment, or regarded as having such an impairment.

3.30. Discretionary. -- Open to individual choice or judgment.

3.31. Dismissal. -- Involuntary separation initiated by an appointing authority ending the employer-employee relationship of a classified employee for good cause or of a classified-exempt employee with or without cause.

3.32. Division – The Tax Division of the Department of Revenue.

3.33. Division of Personnel. -- The division of the Department of Administration responsible for the system of personnel administration for the classified and classified-exempt service.

3.34. Effective Date. -- The established date on which an action takes place.

3.35. Eligible Applicant. -- An applicant accepted for a Division of Personnel examination who receives a final passing score and whose name is listed on the register established for the class of position.

3.36. Employee. -- Any person who lawfully occupies a position in an agency and who is paid a wage or salary and who has not severed the employee-employer relationship.

3.37. Examination. -- The process of assessing or measuring and evaluating the relative skills, abilities and fitness of applicants by job-related procedures. Examples include, but are not limited to: application evaluation, written test, performance test, physical agility test, interview or oral assessment, psychological or behavioral assessment, drug screening, and background evaluation. Examinations may be further defined as follows:

3.37.1. Assembled Examination. – Any assessment procedure requiring applicants to appear at a specified time and place.

3.37.2. Unassembled Examination. – An appraisal of job-related training, experience or any other job qualifications without the necessity for the applicant's personal appearance at a specified place.

3.38. Exempt Service. -- All positions specifically exempted from the classified service by statute or statutory authority.

3.39. Fitness. -- Suitability to perform all essential duties of a position by virtue of meeting the established minimum qualifications and being otherwise qualified.

3.40. Full-time Employee. -- Any employee who works the full work schedule established for the agency.

3.41. Hourly Rate. -- The total annual salary (excluding annual increment) divided by 2,080 hours for full-time permanent and temporary salaried employees or divided by the actual number of hours worked annually for part-time permanent and temporary salaried employees. For hourly employees, the hourly rate is the actual rate established by the Board.

3.42. Immediate Family. -- Consists of the parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandchildren, step-parents, step-brothers, step-sisters, stepchildren, foster children, individuals in an *in loco parentis* relationship, and individuals in a legal guardianship relationship.

3.43. Incapacity. -- An illness of or injury to an employee which temporarily prevents him or her from performing the essential duties of his or her position.

3.44. Incumbent. -- Any employee occupying a position.

3.45. Inter-Agency Transfer. -- Any transfer from one agency to another.

3.46. Intra-Agency Transfer. -- Any transfer within a single agency.

3.47. Job Abandonment. -- The absence from work under such conditions as to be synonymous with resignation.

3.48. Last Date and Time on Payroll. -- The calendar date and hour an employee's pay ceases.

3.49. Last Day of Work. -- The last calendar date and hour an employee is physically on the job.

3.50. Lateral Class Change. -- The movement of any employee from one class to another class in the same pay grade.

3.51. Layoff. -- A reduction in the number of employees resulting in involuntary separation from employment or reduction in work schedule due to business necessity.

3.52. Minimum Qualifications. -- The least experience and/or training required by the State Personnel Board for employment in a class of position and admission to an examination for that class of position.

3.53. Month. -- Any of the twelve parts into which the calendar year is divided.

3.54. Occupational Group. -- A category of job classes grouped by similarity of occupation or profession.

3.55. Open Competitive Examination. -- An examination which permits the competition of all persons who meet the publicly announced minimum requirements for a class of position.

3.56. Original Appointment. -- Initial employment of an individual into the classified service as a result of selection from a certification of names from a register established by open competitive examination or from a preference register.

3.57. Part-time Employee. -- Any person who works less than the full-time work schedule established for an agency.

3.58. Part-time Professional. -- Any classified-exempt employee engaged in professional services without administrative duties and who works no more than half the agency's full-time work schedule.

3.59. Pay Differential. -- A type of salary adjustment specifically approved by the Board to address circumstances including, but not limited to, class-wide recruitment and/or retention problems, regionally specific geographic pay disparities, apprenticeship program requirements, shift differentials for specified work periods, and temporary upgrade programs.

3.60. Pay Increment. -- The percentage increase amounts established by the State Personnel Board to implement pay practices including hiring rates, salary advancements, and pay on promotion.

3.61. Pay Plan. – A compensation schedule for the classified service consistent with merit principles.

3.62. Pay Rate. -- One of the monthly or hourly rates within the pay range proposed by the Tax Commissioner and affirmed by the State Personnel Board for each class included in the approved pay plan; the usual rate of pay. Though pay may be expressed in terms of a monthly rate, employees may be paid on a bi-weekly basis.

3.63. Pay Scale. – The official schedule of salaries for the Tax Division approved by the Personnel Board and Governor consisting of multiple pay grades with minimum and maximum rates of pay for each grade that is referred to as the salary schedule by the Division of Personnel.

3.64. Permanent Employee. -- Any classified employee who was hired from a register and who has completed the probationary period prescribed by the State Personnel Board for the job class, or any classified-exempt employee who was hired to fill a position for an unlimited period of time, notwithstanding the Tax Division's right to terminate the employee for cause or at his or her will.

3.65. Position. -- An authorized and identified group of duties and responsibilities assigned by the Tax Division requiring the full-time or part-time employment of at least one person.

3.66. Position Description. -- The document which describes the officially assigned duties, responsibilities, supervisory relationships and other pertinent information relative to a position. This document is the basic source of official information in position allocation. This document is the basic source of official information in the position allocation.

3.67. Probationary Period. -- A specified trial work period prescribed by the State Personnel Board designed to test the fitness of an employee selected from a competitive list of eligibles for the position for which an original appointment has been received.

3.68. Promotion. -- A change in the status of an employee from a position in one class to a vacant position in another class of higher rank as measured by salary range and increased level of duties and/or responsibilities.

3.69. Provisional Appointment. -- The hiring of an employee to fill a position pending the administration of an open competitive examination and the establishment of a register.

3.70. Reallocation. -- Reassignment by the Tax Commissioner of a position from one class to a different class on the basis of a significant change in the kind or level of duties and responsibilities assigned to the position.

3.71. Recall. – The re-employment from a recall list of a former permanent classified employee separated due to layoff.

3.72. Reclassification. – The revision by the Tax Commissioner of the specification of a class or class series approved by the State Personnel Board which results in a redefinition of the nature of the work performed and a reassignment of positions based on the new definition and may include a change in the title, compensation range, or minimum qualifications for the class involved.

3.73. Register. -- An official list of currently available eligible applicants for a job class ranked in the order of the final score as a result of the Division of Personnel examination for the class of position for

competitive appointment or in seniority order for preference hiring of laid-off permanent classified employees.

3.74. Reinstatement. -- A type of re-employment of a former permanent classified employee.

3.75. Resignation. -- Voluntary separation from employment, including job abandonment, by an employee.

3.76. Salary Adjustment. -- A salary change resulting from a revision of the pay plan, the reassignment of a class to a different compensation range, a Board approved pay differential, a temporary classification upgrade, a general wage increase mandated by the Legislature or the Governor, or the correction of payroll errors.

3.77. Salary Advancement. -- A discretionary advancement in salary granted in recognition of the quality of job performance.

3.78. Salary Range. -- The approved monthly and annual salary for a class which includes the minimum, maximum, and intervening steps.

3.79. Salary Schedule. -- The official schedule of salaries approved by the Governor consisting of multiple pay grades with minimum and maximum rates of pay for each grade.

3.80. Tax Commissioner. -- The person appointed Tax Commissioner as provided in W. Va. Code § 11-1-1, or his or her designee.

3.81. Temporary Employment. -- Employment exempt from the classified service for a period not to exceed 1000 work hours per twelve-month period. Retirants may accept temporary full-time or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of \$20,000.

3.82. Termination. -- Separation from employment by the appointing authority as a result of the expiration of a limited term appointment or at the end of the period of need during limited term employment.

3.83. Transfer. -- The movement of an employee to a different subdivision or geographic location of the same or a different agency.

3.84. Vacancy. -- An unfilled budgetary position in the classified service to be filled by original appointment, promotion, demotion, lateral class change, transfer, or reinstatement.

3.85. Veteran. -- Any person who fulfills the requirements set forth in W. Va. Code § 6-13-1.

3.86. Veterans' Preference Points. -- An additional five (5) points added to the final passing score on an open competitive examination of any veteran as defined by this rule. An additional five (5) points are available to those veterans who also have a current and compensable service connected disability or who have received a Purple Heart award.

3.87. Work Day. -- Unless otherwise specified, the use of "work day" or "working day" means days exclusive of Saturday, Sunday, official holidays in this State, and any day in which the employee's workplace is legally closed as provided for by statute, rule, policy or practice.

3.88. Work Schedule. -- Designation of the periods of time during which work is performed.

3.89. Workweek. -- The time period of seven (7) consecutive days, beginning and ending at specified days and times, during which work is performed and work hours reported for compliance with applicable federal and state labor laws.

3.90. Year. -- Twelve (12) consecutive month period, unless otherwise specified.

§110-42-4. Classification Plans.

4.1. Preparation of Plans. -- The Tax Commissioner shall prepare, maintain, and revise a comprehensive classification plan for all positions in the classified and the classified-exempt service of the Tax Division. The plan shall be based on an investigation and analysis of the duties and responsibilities of each position. The classification plan shall include an appropriate title for each class.

4.2. Revision of Plans. -- The Tax Commissioner may request approval from the State Personnel Board to eliminate or modify existing classes of positions, or create new classes of positions.

4.3. Class Specifications.

4.3.1. A class specification is a general description of the kinds of work characteristic of positions properly allocated to that class and does not prescribe the duties of any position. It does not limit the expressed or implied authority of the Tax Division to prescribe or alter the duties of any position.

4.3.2. Class specifications are descriptive and are not restrictive. The fact that all the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated does not mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.

4.3.3. The statement of minimum qualifications expresses the lowest acceptable level of education, experience, licensure and/or professional standards generally necessary for an employee to successfully perform the required duties of positions in the job class. The use of a particular expression of qualifications, requirements, or other attributes shall not be held to exclude others not mentioned.

4.3.4. In cases of recruitment difficulties or unique position requirements, the Tax Commissioner in collaboration with the Board may use his or her discretion in interpreting minimum experience, training licensure and/or professional standards.

4.3.5. The Director shall consider class specifications as a primary source of authority for the content of examinations for the class and for the evaluation of qualifications of applicants. Supplemental job information may be used as a further basis for examinations. Provisions for the substitution of related experience, education, or other qualifications for specific education and/or experience requirements may be made in specific examination announcements for particular positions, even though these provisions are not part of the class specification.

In cases of recruitment difficulties or unique position requirements, the Tax Commissioner may use his or her discretion in interpreting minimum experience, training and/or licensure requirements and in accepting equivalent experience, training and/or licensure.

4.4. Classification of Positions. -- The Tax Commissioner has the sole authority for the classification process.

4.4.1. The Tax Commissioner shall consider the class specifications to determine the class to which any position shall be allocated, and give consideration to the general duties, specific tasks, and responsibilities required and relationship to other classes.

4.4.2. The classification of a position shall not be based upon the individual characteristics or performance level of the employee occupying the position nor upon the classification of other positions.

4.4.3. The Tax Commissioner may authorize job audits for the purpose of position classification and for maintaining the integrity of the classification system.

4.5. Position Descriptions.

4.5.1. Position description forms shall be prescribed by the Tax Commissioner.

4.5.2. The position description is an official record of the duties and responsibilities assigned to a position and shall be used by the Tax Commissioner to allocate the position to its proper class.

4.5.3. The position description shall include a current description of specific duties, responsibilities and other pertinent information about the position as assigned by the Tax Commissioner.

4.5.4. The position description shall not be construed in any way to limit the expressed or implied authority of the Tax Commissioner to prescribe or alter the duties of any position.

4.5.5. Position descriptions shall be kept current by the Tax Division for each position under its jurisdiction. When the Tax Division significantly alters the duties and responsibilities of a position, the Tax Division shall provide for a revised position description, certifying with signature its accuracy and completeness.

4.5.6. If the Tax Division initiates significant alterations in the duties and responsibilities of a position, the Tax Division will evaluate a new position description to ensure the employee remains appropriately classified. If the incumbent in the position is not satisfied with the determination of the Tax Division, they may file a request for reconsideration with the Tax Commissioner's Office within fifteen (15) working days of the change in position description and request a review of his or her position. If the employee is not satisfied with the Tax Commissioner's Office decision, he or she may file a grievance with the Public Employees Grievance Board as provided for in W. Va. Code §6C-2-1 et seq.

4.5.7. Falsification of information on position description forms may be grounds for disciplinary action.

4.6. Reclassification.

4.6.1. Upon its own initiative, or at the request of the Tax Division, the Board may reclassify positions by the creation or elimination of classes, or the revision of the definition of the work. The Tax Commissioner shall provide to the Board a current description of the duties and responsibilities assigned to each position affected.

4.6.2. The employee in the position at the time of a reclassification is entitled to continue to serve in that position, provided that the employee meets the minimum requirements. If ineligible to continue in the position, he or she may be transferred, promoted, or demoted by appropriate action in accordance with the provisions of this rule as the Tax Commissioner may determine to be applicable. In any case, in which

the incumbent is ineligible to continue in the position, and he or she is not transferred, promoted or demoted, the provisions of this rule regarding separations applies.

4.6.3. Any incumbent in a reclassified position, may file a request for reconsideration with the Tax Commissioner's Office and request a review of his or her position within fifteen (15) working days of the reclassification. If the employee is not satisfied with the Tax Commissioner's Office decision, he or she may file a grievance with the Public Employees Grievance Board as provided for in W. Va. Code §6C-2-1 et seq.

4.7. Position Reallocation. -- Whenever significant changes occur in the duties and responsibilities permanently assigned to a position, the Tax Commissioner shall reallocate the position to its proper class. The incumbent may seek a reconsideration of the decision by submitting a written request to the Tax Commissioner within fifteen (15) working days of the notification of the decision. If the employee is not satisfied with the Tax Commissioner's Office decision, he or she may file a grievance with the Public Employees Grievance Board as provided for in W. Va. Code §6C-2-1 et seq.

4.7.1. The Tax Commissioner shall not reallocate a position based on temporary changes in the duties and responsibilities assigned to the position.

4.7.2. When a position is reallocated to a different class, the incumbent shall not be considered eligible to continue in the position unless he or she meets the minimum qualifications for the classification. If ineligible to continue in the position, he or she may be transferred, promoted, or demoted by appropriate action in accordance with the provision of this rule as the Tax Commissioner may determine to be applicable. In any case in which the incumbent is ineligible to continue in the position, and he or she is not transferred, promoted or demoted, the provisions of the Division of Personnel rule regarding separations applies.

4.8. Temporary Classification Upgrade. -- The Tax Commissioner may temporarily upgrade the classification of an employee temporarily performing the duties of a position in a higher pay grade due to a separation or an extended leave of absence, for a short-term project, or in an emergency situation.

4.8.1. A temporary classification upgrade, except for classes allocated to the approved hourly pay schedule, shall be for a continuous period of no less than thirty (30) days and no more than six (6) months.

4.8.2. Classified-exempt employees may only be upgraded within the classified-exempt service. A classified employee may serve in an acting capacity on a temporary basis in an exempt and/or appointive position without loss of his or her classified status.

4.8.3. The Tax Commissioner, at his or her discretion, may extend the period of a temporary classification upgrade.

4.8.4. Employees in the classified service approved for temporary upgrade to a classified position shall have attained permanent status and meet the minimum requirements for the position to which they will be temporarily upgraded.

4.9. Classification Plan for the Classified-Exempt Service. -- All positions not in the classified service are included in a classification plan known as the classified-exempt service.

4.9.1. Upon the recommendation of the Tax Commissioner, the Board shall adopt and make effective a classification plan for employees in the classified-exempt service of the Tax Division.

4.9.2. The Tax Commissioner shall report to the Board the establishment of new positions or any material changes in the duties and responsibilities of existing positions in the classified-exempt service. The Board may at any time require the Tax Commissioner to submit a statement of the duties and responsibilities of incumbents of any position in the classified-exempt service.

4.9.3. The Tax Commissioner shall allocate classified-exempt positions in the same manner as classified positions.

4.9.4. The Tax Commissioner may request names of applicants for consideration for employment in the classified-exempt service. In no event shall a classified service vacancy be filled from a certification prepared for a classified-exempt service vacancy.

4.9.5. An incumbent within the classified-exempt service in an allocated position has the right to appeal the allocation of their position to a classification. The incumbent may seek reconsideration of the decision by submitting a written request to the Tax Commissioner within fifteen (15) working days from the notification of the decision. After filing with the Tax Commissioner a written request for reconsideration, the employee shall be given a reasonable opportunity to be heard by the Tax Commissioner. If the employee is not satisfied with the Tax Commissioner's Office decision, he or she may file a grievance with the Public Employees Grievance Board as provided for in W. Va. Code §6C-2-1 et seq.

§110-42-5. Pay Plan and Salary Administration.

The following salary regulations in this section apply to classified employees.

5.1. Purpose and Intent. -- The purposes and intent of the pay plan is to attract and retain qualified employees in the classified service, the Board shall provide through the pay plan compensation based on equal pay for equal work and market rates as compared to compensation trends in other public and private sector organizations.

5.2. Preparation of the Plan. -- After consultation with the Secretary of Revenue, the Tax Commissioner and the Board shall prepare and submit to the Governor for his or her approval any revision of the pay plan. The pay plan shall include salary schedules containing multiple pay grades with minimum and maximum rates of pay for each grade and a plan of implementation. The pay plan shall also include a market rate for each grade which shall be established by the Tax Commissioner to approximate the market midpoint pay level among southeastern state governments selected by the Tax Commissioner. The Board may make periodic amendments to the pay plan in the same manner.

5.3. Adoption of the Plan. -- The plan or revised plan becomes effective only after it has been approved by the Governor. The approved pay plan constitutes the official schedule of salaries for the classified service at the Tax Division.

5.4. Implementation of Plan.

5.4.1. Assignment of Classes. -- The Tax Commissioner after approval of the Board shall assign each class of positions to an appropriate range of compensations consistent with the duties outlined in the class specification. No salary shall be approved by the Tax Commissioner unless it conforms to sound compensation practices.

5.4.2. Entry Salary. -- The entry salary for any employee shall be no less than the minimum of the compensation range for the job classification. The Tax Commissioner may authorize appointment above the minimum for an individual possessing pertinent training or experience above the minimum required for the class. The Tax Commissioner may authorize appointment at a rate above the market rate when the Tax Commissioner can substantiate severe or unusual recruiting difficulties for the job class.

5.4.3. Standard Rates of Pay. -- The pay plan provides standard compensation rates for all classes of positions in the classified service unless specifically excepted by statute or statutory authority. The salary or wage paid is determined by the compensation range to which the class of the position has been allocated. All employees, including those serving in positions on a part-time basis, shall be paid in proportion to the actual time worked.

5.4.4. Additional Pay. -- The Tax Commissioner shall make no additions to the regular salary of any employee except for authorized overtime, approved pay differentials and monetary incentives, or other statutorily required and/or authorized payments.

5.4.5. Availability of Funds. -- The Tax Commissioner and the Tax Division's fiscal officer will certify that funds for salary adjustments are available.

5.4.6. Salary Adjustments.

5.4.6.a. New Plan.

5.4.6.a.1. Upon adoption of a new pay plan by the Tax Division, the Personnel Board shall require and may approve or modify a plan of implementation which assures incumbents in the classified service receive equal treatment based on sound compensation practices.

5.4.6.a.2. An incumbent whose salary falls below the minimum rate of the new range shall have his or her salary adjusted to the new minimum.

5.4.6.a.3. An incumbent whose salary falls above the maximum rate of the new range shall maintain his or her current salary.

5.4.6.b. Pay on Reclassification.

5.4.6.b.1. When a class is reassigned by the Tax Commissioner after approval by the Personnel Board to a compensation range having a higher minimum, the salaries of those incumbents below the new minimum shall be adjusted to the new minimum. Where the salary of the incumbent coincides with a pay rate in the new range, the salary shall remain unchanged. When a class is reassigned by the Tax Commissioner after approval by the Personnel Board to a salary range having a lower minimum, the salaries of those incumbents which are within the new range shall remain unchanged. Where the salary of the incumbent is above the maximum rate of the new range, the salary shall remain unchanged.

5.4.6.b.2. The Board may approve or modify a plan of implementation on reclassification based on documented recruitment and/or retention difficulties or consideration of equal treatment in terms of pay for reclassified employees.

5.4.6.c. Pay on Position Reallocation. -- When a position is reallocated to a different class, the salary of the incumbent shall be adjusted in accordance with the provisions of this rule for promotion, demotion and lateral change.

5.4.6.d. Pay Differentials. -- The Board may approve the establishment of pay differentials to address circumstances which apply to reasonably defined groups of employees.

5.4.6.e. Separation from Employment. -- Employees whose last day of work occurs prior to the effective date of a new pay plan are not eligible for salary adjustments.

5.5. Pay on Promotion. -- When an employee is promoted, the employee's pay shall be adjusted as follows:

5.5.1. Minimum Increase. -- An employee promoted will be compensated to at least the minimum compensation range of the job classification to which he or she is promoted. An employee whose salary is within the range shall receive an increase of one (1) pay increment or a maximum established by the Tax Commissioner, except where an employee accepts a lesser increase within the compensation range to obtain the position. In no case shall any employee receive an increase which causes the employee's pay to exceed the maximum of the range except as provided in subdivision 5.5.b. of this rule.

5.5.2. Exceptions.

5.5.2.a. If the salary of an employee being promoted is at or above the maximum rate of the compensation range to which the employee is being promoted, or, if his or her salary is within one (1) pay increment, as established by the Tax Commissioner, of the maximum rate of the compensation range to which he or she is being promoted, the employee shall receive an increase of one (1) pay increment with the promotion.

5.5.2.b. If an employee has been demoted or reallocated to a class at a lower pay grade and is promoted or reallocated within the next twenty-four (24) months within the Tax Division, the following procedure shall be used when calculating pay on promotion as provided in subdivisions 5.5.a and 5.5.b of this rule: The promotional increase shall be calculated based on the compensation range of the employee's position prior to the demotion or reallocation, using the employee's current rate of pay plus any amount by which the employee's pay was reduced at the time of the demotion or reallocation. If, based on this procedure, no promotional increase is due, the employee's pay shall be increased by the amount his or her pay was reduced, if any, at the time of the demotion or reallocation.

5.5.3. Additional Increase. -- The Tax Commissioner may authorize additional incremental increases established by a Board approved pay plan, to an employee being promoted if the employee has sufficient qualifications in excess of the minimum required for the new class. The employee must possess pertinent experience or an equivalent amount of pertinent training for each additional incremental increase granted. In no case shall the additional incremental increase cause the employee's pay to exceed the maximum for the compensation range.

5.6. Pay on Demotion.

5.6.1. Demotion Without Prejudice. -- The Tax Commissioner has the discretion to reduce or not reduce the pay rate of any employee who is demoted without prejudice if the employee's pay rate is within the compensation range of the job class to which the employee is demoted.

5.6.2. Demotion With Prejudice. -- The Tax Commissioner shall reduce the pay rate of an employee who is demoted with prejudice by at least one (1) pay increment as established by the Tax Commissioner and the employee's pay rate shall not exceed the maximum of the new compensation range.

5.7. Pay on Lateral Class Change. -- Any employee who receives a lateral class change shall be paid the same salary received prior to the change except in cases where the change is to an agency or job class for which the Board has approved, or the Legislature has authorized, a higher compensation range for the job class.

5.8. Pay on Reinstatement. -- The salary for an employee who is reinstated shall be established in accordance with subdivision 5.4.b. of this rule.

5.9. Salary Advancements. -- Salary advancements are limited to permanent employees and shall not exceed the increase amount established by the Tax Commissioner.

5.10. Annual Increment Increase. -- The Board may establish uniform procedures for providing an annual increment increase provided for in W. Va. Code §5-5-2.

§110-42-6. Applications and Examinations.

6.1 General— The Division of Personnel will conduct examinations and receive applications on behalf of the Tax Division. The Tax Division will follow the procedures promulgated by the Division of Personnel in matters pertaining to examinations and applications, except for the matters set forth in subdivisions 6.1.1 and 6.1.2 of this rule.

6.1.1. The Tax Division will have the authority to evaluate applicants for employment or promotion within the division to positions within the classified service and classified-exempt service.

6.1.2. The Tax Division shall have the sole authority to determine whether applicants for positions with the Division meet minimum position requirements.

§110-42-7. Registers.

7.1. Establishment of Registers.

7.1.1. Competitive Registers. -- After each examination, the Director shall prepare a register of persons applying for the position within five business days of receipt of a request from the Tax Commissioner. The names of these persons shall be placed on the register in the order of their final ratings starting with the highest.

7.1.2. Preference Registers. -- After the layoff of permanent classified employees, the Director shall prepare registers of qualified permanent classified employees who have been laid off. The names of these employees shall be arranged on the appropriate registers in order of tenure upon which the order of layoffs was based.

7.2. Duration of Registers.

7.2.1. Competitive Registers. -- The life of scores on a register shall be adequate to meet the recruitment needs of the agency. If the Director reduces the life of a register, he or she shall notify each eligible remaining on the register to this effect.

7.2.2. Preference Registers. -- A laid off permanent classified employee is eligible for employment from a preference register for no longer than one (1) year after placement on the preference register and the eligibility ceases immediately upon employment in a classified position.

7.2.3. Notice of Vacancies. -- It is the duty of the Tax Commissioner to notify the Director as far in advance as possible of vacancies which may occur in the agency. The Director is responsible for determining the adequacy of existing registers and for the establishment and maintenance of appropriate registers for all positions to be filled, exclusive of exempt positions.

7.2.4. Nullification of Register. -- The Director shall nullify a register for any of the following reasons:

7.2.4.a. Changes in the minimum qualifications or classification standards of a class of positions;

7.2.4.b. Elimination of the class for which the register was established; or,

7.2.4.c. Substantial revision of the examination used to establish the register.

7.2.5. When a register is declared null and void by the Director, he or she shall notify the affected persons of the action.

7.3. Removal of Names from Registers.

7.3.1. Competitive Registers. -- The Tax Commissioner may request the Division of Personnel remove the name of an eligible from a register for any of the causes stipulated in the subsections below:

7.3.1.a. he or she is found to lack any of the requirements established for the position/class;

7.3.1.b. he or she has a disability and is incapable of performing the essential functions of positions in the class with or without reasonable accommodation;

7.3.1.c. he or she has been convicted of a crime which has a reasonable connection to the position/class for which he or she is applying;

7.3.1.d. he or she has made a false statement or omission of material fact or has misrepresented his or her qualifications in his or her application;

7.3.1.e. he or she has previously been dismissed, or resigned in lieu of dismissal, from any public service for delinquency, misconduct, or other similar cause;

7.3.1.f. he or she has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;

7.3.1.g. he or she has directly or indirectly obtained information regarding examinations to which he or she was not entitled;

7.3.1.h. he or she has failed to submit his or her application correctly or within the prescribed time limits;

7.3.1.i. he or she has taken part in the compilation, administration, or correction of the examination.

7.3.1.j. he or she has taken the same exact examination within the prescribed re-test waiting period;

7.3.1.k. at least two (2) former employers state that they would not re-employ him or her, or otherwise indicate that his or her services as an employee were unsatisfactory;

7.3.1.l. the register from which he or she is certified is for a class for which oral skills are essential, and at least two agencies have interviewed him or her and report that he or she is not considered to be suitable for a position in the class for which he or she interviewed;

7.3.1.m. he or she is not eligible to work in the United States;

7.3.1.n. he or she fails to comply with any other reasonable requirements established by the Tax Commissioner for the position;

7.3.1.o. sufficient evidence has revealed that, if employed in the classification or position applied for, the applicant is a significant risk to the safety or security of information or persons; or,

7.3.1.p. On evidence that the eligible cannot be located. An eligible may be considered not available by the Tax Commissioner if he or she fails to reply to electronic communication [i.e., telephone or electronic mail] or a written inquiry by mail after five (5) days in addition to the time required for the transmission of the inquiry to his or her last-known address and the reply to the inquiry.;

7.3.1.q. On receipt of a statement from the eligible declining an appointment and stating that he or she no longer desires consideration for an appointment; or,

7.3.1.r. If he or she declines an offer of a probationary appointment for the class for which the register was established in a location for which he or she has declared himself or herself available.

7.3.2. Preference Registers. -- The Tax Commissioner may request that the Division of Personnel remove the name of an eligible from a preference register:

7.3.2.a. For any of the causes stipulated in subdivision 7.3.1. of this rule;

7.3.2.b. Upon appointment of the eligible to a classified position; or,

7.3.2.c. On evidence that the eligible does not meet the applicable standards of qualifications and fitness for a position.

7.3.3. The Tax Commissioner shall notify the eligible that his or her name has been removed from the register and the reasons for the removal. The applicant is responsible for updating his or her contact information or notifying the Tax Commissioner of changes.

7.3.4. Any person whose name has been removed from a register allegedly for reasons specified in this rule may appeal to the Board for reconsideration. The appeal must be filed in writing with the Tax Commissioner within fifteen (15) calendar days after the date on which notification to the applicant was sent. The appeal shall state the reasons why the applicant should not be removed from the register.

7.3.5. The Board shall review all relevant information to determine if the action appealed was taken in accordance with this rule. Within sixty (60) calendar days after a properly submitted appeal is received, the Tax Commissioner shall report the Board's decision in writing to the applicant.

7.4. Reinstatement to Register.

7.4.1. A person who has had his or her name withdrawn from a register at his or her request may have his or her name reinstated on the currently effective register for the same position class provided that the original register is still in effect and that his or her examination score is still valid. His or her rank on the register shall be determined by his or her final earned examination score.

7.4.2. Reinstatement to a register as provided for in the previous subdivision is subject to the following conditions:

7.4.2.a. The person petitioning the reinstatement shall make his or her request to the Tax Commissioner in writing and shall furnish whatever information the Tax Commissioner may require.

7.4.2.b. No person may be reinstated to a register who does not satisfy the current minimum qualifications for the position class for which the register is maintained. The Tax Commissioner may require that he or she pass an appropriate examination in the case of position classes requiring special skills.

7.4.2.c. No person may be reinstated to a register from which he or she has been disqualified under subsections 7.3, or 8.2. of this rule.

§110-42-8. Certification of Eligibles.

8.1. Request for Certification. -- If a vacancy occurs in any position in the agency or if new positions are established and new employees are needed, requisitions shall be submitted by the Tax Division to the Director in the manner prescribed by the Director. This requisition shall state the number of positions to be filled in each class, identifying each class title and all other pertinent information.

8.2. Certification Methods.

8.2.1. Nothing in this subdivision shall be construed as altering the exhaustion point of a register as described in subdivision 7.2.1. of this rule.

8.2.1.a. Upon receipt of a requisition, the Director shall first certify and submit the names of all available eligibles from the appropriate preference register. If no appropriate preference register exists or there are no available qualified eligibles on the appropriate preference register, then the Director shall submit the names of any persons applying for the class of position. The Tax Division shall have the sole authority to determine whether applicants for position with the Division meet minimum position requirements.

8.2.1.b. If the competitive register established as a result of an examination for a specific class of position is exhausted, the Director may certify names from the register, or registers, most appropriate.

8.2.1.c. Appointments may be made from a certification anytime within six months of the date of the certification. Six months after the date of the certification, the certification shall be null and void.

8.2.2. If an eligible receives a probationary or permanent appointment, the appointment constitutes for its duration, a waiver of his or her right to certification from any other register on which his or her name appears for a class of position, the salary of which is either equal to or lower than that salary covered by his or her appointment, unless he or she requests in writing that his or her name be retained for certification from the register or registers. If a laid-off permanent classified state employee receives a probationary or

permanent appointment to a classified position, that employee is no longer eligible for appointment from any preference register. The name of each employee whose name appears on a register for a class of position with a higher salary range than the salary range of his or her present class of position shall be certified and submitted by the Director and given consideration by the Tax Division for the higher class of position if his or her name is reached.

8.2.3. If in the exercise of his or her choice provided under subsection 9.2 of this rule the Tax Division passes over the name of an eligible on a competitive register in connection with three (3) separate appointments he or she has made from the register, written request may be made of the Director that the name of the eligible be omitted from any subsequent certification of the same agency from the same competitive register for a period of no less than one year from the date of the request. The name of the eligible shall thereafter not be certified to the Tax Division from that register for future vacancies in that class of position, or from subsequent registers established for that class of position. If, after that one (1) year period, the eligible is again certified for the same class of position, and passed over in connection with one appointment, the agency may again request that the name of the eligible be omitted from any subsequent certification as stated above.

8.2.4. An eligible may be considered not available by the Tax Commissioner if he or she fails to reply to electronic communication [i.e., telephone or electronic mail] or a written inquiry by mail after five (5) days in addition to the time required for the transmission of the inquiry to his or her last-known address and the reply to the inquiry.

8.3. Selective Certification. -- Any certification may limit consideration to only those individuals who possess specific qualifications determined to be essential for performance of the duties of a specific position.

8.3.1. If a specific position requires special qualifications that are not common to all positions in that class, the Tax Division may request that certification be limited to candidates possessing those qualifications. Eligibles shall have adequate opportunity for special qualification consideration. The specific criteria for the restriction of certification shall be based on the duties of the position as verified by job analysis or by an official position description and written justification.

8.3.2. The Director may approve a request for selective certification by gender if the Tax Division provides written justification which clearly shows that only persons of the required gender can perform the duties of the position and the Director has conferred with the Human Rights Commission.

8.3.3. The Tax Commissioner may limit certification to candidates available to work at the location of the job. The Tax Commissioner may further limit certification geographically when the duties of the position require rapid response to unscheduled emergencies during off duty hours. The Tax Commissioner shall provide the Director written justification of any geographic selective certification based on essential duties of the position. The Tax Commissioner shall establish the boundaries of the acceptable geographic areas based on the specific location and demands of the job. The Tax Commissioner shall consider candidates living outside the boundary if they are willing to relocate to the area.

8.3.4. Except for preference certifications, the Tax Commissioner may determine, for certain unskilled or semiskilled job classes for which no previous education, training, or experience is required, that eligibles may be selected for certification by lot. In those cases, all eligibles shall have equal opportunity for certification. No rank order shall be established for the register. Selection for certification by lot will be determined as vacancy requests are received. Once the certification has been made for a particular vacancy, a new certification shall not be issued for the same class and location for sixty (60) days. The employing agency shall offer opportunities for interviews to candidates in the order in which they

appear on the certification. It is the responsibility of the employing agency to insure, to the extent practicable, that appointments from the certifications are made based on job-related merit and fitness.

8.4. Corrections of Errors.

8.4.1. In the event that a name is certified in error and the error is discovered before a personnel transaction has been finalized and one of the named applicants is notified that he or she is appointed, the Tax Commissioner shall withdraw the erroneous certification and make a correct certification. If a certification is to fill more than one position, the Tax Commissioner shall withdraw only that portion of it pertaining to positions for which applicants have not been notified that they are appointed. The Tax Commissioner shall only make conditional offers of employment to applicants until such time as the personnel transaction to appoint has received all necessary approvals.

8.4.2. In the event a name is certified in error and the error is discovered after one of the named applicants is notified that he or she is appointed but prior to the effective date of the appointment and the applicant is not disqualified for any reason provided in Section 7.3 of this rule other than not meeting minimum qualifications, the Tax Commissioner shall withdraw the certification and the appointment as in subdivision 8.4.a. of this subsection unless the applicant provides verification to the Tax Commissioner that:

8.4.2.a. Acceptance of the appointment caused the named applicant to change his or her place of residence; or,

8.4.2.b. Acceptance of the appointment caused the named applicant to resign from a position that cannot be regained.

8.4.3. In the event a name is certified in error and the error is discovered after the effective date of the appointment of one of the named applicants or the certification could not be withdrawn for reasons provided in subparagraphs 8.4.2.a. and 8.4.2.b., the appointment shall continue. Provided, the applicant or employee is not disqualified for any reason specified in Section 7.3 of this rule other than not meeting minimum qualification and it has been determined by the Tax Commissioner that there is no undue risk in the applicant performing the duties. If the applicant or employee is not qualified to perform the duties of the position, the Tax Commissioner shall assign the applicant to a vacant position for which he or she meets the minimum qualifications, in the same location and agency for which he or she was certified and at the same salary. If continued employment or alternative assignment is deemed inappropriate by the Tax Commissioner, the provisions of the Division of Personnel rule regarding separations shall apply.

§110-42-9. Appointments.

9.1. Original Appointments.

9.1.1. The Tax Division shall make all original appointments to classified positions in accordance with this rule. The Tax Division shall select for each position first from the eligibles on an appropriate preference register. Upon exhaustion of the preference register, the Tax Division shall select for each position from the register certified by the Division of Personnel. The Tax Division may exclude the names of those eligibles who failed to answer or who declined appointment or of those eligibles to whom the Tax Division offers an objection in writing to the Director based on Subsection 7.3 of this rule.

9.1.2. Notwithstanding subdivision 9.1.1. of this rule or any provision of law or rule promulgated under the provisions of the West Virginia State Code, the Tax Division may employ any person listed on the register for employment as a Tax and Revenue Auditor 1, Tax and Revenue Auditor 2, Tax and Revenue

Auditor 3, Revenue Agent 1, Revenue Agent 2, Investigator 2 or Investigator 3 without regard to the person's position on the applicable register.

9.1.3. In selecting persons from among those certified, the Tax Division shall give due consideration, based on job related criteria, to all available eligibles and may examine their applications and reports of investigations and may interview them. Final selection shall be reported in writing by the Tax Division to the Director and shall include a statement by the Tax Division or his or her designee certifying that the person charged with making the selection: complied with the requirements of this subdivision; did not make the selection based on favoritism shown or patronage granted; and, considered all available eligibles for the position.

9.1.4. If the eligible selected declines the appointment, the Tax Division shall transmit evidence of declination and other data to the Director for the permanent record. The Tax Division may consider an eligible as having declined appointment if the eligible fails to reply to electronic communication [i.e., telephone or electronic mail] or a written inquiry by mail after five (5) days in addition to the time allowed for transmission of the letter to his or her last-known address and return of reply. If an eligible accepts an appointment but fails to present himself or herself for duty at the time and place specified without giving reasons for the delay satisfactory to the Tax Division, he or she shall be considered to have declined the appointment.

9.2. Provisional Appointments.

9.2.1. If there are urgent reasons for filling a position and there is no appropriate preference register and there are fewer than three available eligibles on the competitive register established as a result of an examination for the position, and no other appropriate register exists, the Tax Division may submit to the Division of Personnel the name of a person to fill the position pending examination and establishment of a register. If that person's qualifications have been certified by the Tax Commissioner as meeting the minimum qualifications as to training and experience for the position, that person may be provisionally appointed to fill the existing vacancy until an appropriate register is established and appointment made from the register. The position must be classified and minimum qualifications established for the position in accordance with this rule before provisional appointments may be made. No provisional appointment shall be continued for more than 6 months from the date of appointment, nor shall successive provisional appointments of the same person be permitted, nor shall a position be filled by repeated provisional appointments.

9.2.2. Time spent on a leave of absence without pay shall not extend the period of a provisional appointment.

9.3. Temporary Employment. -- The Tax Division may employ individuals for a limited period of time not to exceed 1000 hours in any twelve-month period in accordance with the provisions of this rule and W. Va. Code §29-6-1 et seq. Individuals employed under the provisions of this subsection are exempt from the classified service.

9.4. Posting of Job Openings. -- Whenever a job opening occurs in the classified service, the Tax Division shall post a notice within the building, facility or work area and throughout the agency that candidates will be considered to fill the job opening. Posting of job openings using electronic or other communications media shall satisfy the requirement to post a notice provided that the Tax Division makes regular and convenient access to the media used available to each classified employee in the agency, or otherwise provides notice to each classified employee in the agency. Any position filled internally shall be posted for seven calendar days before the Tax Division may select an applicant. For positions to be filled with applicants from outside of the Tax Division, the public service announcement shall be posted for not

less than fourteen calendar days. The notice shall state that a job opening has occurred, describe the duties to be performed, and the class to be used to fill the job opening.

9.4.1. The term “job opening” refers to any vacancy to be filled by original appointment, promotion, demotion, lateral class change, reinstatement, or transfer, except any vacancy filled as a result of an employee exercising his or her bumping rights.

9.4.2. The Tax Division is authorized to declare any positions effectively vacant due to employee separation, which were not processed prior to the division being placed under the wvOASIS system, vacant and subject to being filled.

9.4.3. The Tax Division shall have the flexibility to utilize all vacant position numbers when posting to fill a vacancy and to post vacant positions utilizing multiple classifications with corresponding job descriptions when the Tax Commissioner determines it to be necessary and in the best interest of the Division.

9.4.4. A vacancy created when an employee of the Tax Division separates or goes on terminal leave may be posted upon receipt of the notice that the employee separated or commenced such leave.

9.4.5. The posting notice shall include a description of the duties to be performed by the person selected, the minimum qualifications for the position, the job class to be used in filling the job opening, the salary level or range that will be considered, the full-time equivalent for the position, and the job location.

9.4.6. An established closing date shall allow sufficient time to ensure that the job vacancy circulation has been posted throughout the agency for a minimum of seven (7) days. The naming of an individual to fill the position is the appointment and is not altered by the fact that the individual will not assume the duties until a later date. Therefore, the Tax Division shall not make an appointment to a position prior to the closing date as listed on the posting. The Tax Division may accept applications after the closing date; however, all applications received on or prior to any established cut-off date must be accepted and considered.

9.4.7. The Tax Division shall give due consideration to those employees who apply and are eligible for the posted vacancy.

9.4.8. If a posted vacancy is not filled within twelve (12) months of the established closing date, the Tax Division will re-post the vacancy prior to an appointment to the vacant position.

9.4.9. The vacancy posting requirements in this subdivision shall apply to all classified position vacancies except vacancies filled as a result of employees exercising bumping rights, demotions with prejudice and/or transfers for cause.

9.4.10. If an individual selected for a posted vacancy refuses the offer of employment, fails to report to work, or resigns or otherwise separates from employment within the first two pay periods of employment, the Tax Division is not required to repost the vacancy prior to making another appointment to the position provided that the appointment is made within sixty (60) days of the separation and the appointment is made from the pool of eligible applicants from which the first employee was hired. This time period supersedes the twelve-month limitation specified in subdivision 9.4.8. of this subsection.

§110-42-10. Promotions, Demotions and Transfers.

10.1. Method of Making Promotions.

10.1.1. In filling vacancies, the Tax Commissioner shall make an effort to achieve a balance between promotion from within the classified service and the introduction into the classified service of qualified new employees. Whenever practical and in the best interest of the Tax Division, the Tax Commissioner may fill a vacancy by promotion, after consideration of the eligible permanent employees in the Tax Division or in the classified service based on demonstrated capacity and quality and length of service.

10.1.2. The Tax Commissioner will make the determination whether a candidate for promotion possesses the qualifications for the position as set forth in the specifications for the class of position for which he or she is a candidate, and the Tax Commissioner may require the candidate to qualify for the new position by a promotional competitive or non-competitive examination administered by the Director.

10.2. Promotion by Competitive Examination.

10.2.1. If it is determined by the Tax Commissioner to fill vacancies in a particular class of position by promotion by competitive examination, the examination shall be given under the direction of the Director. To be eligible for promotion, an employee must, at the time the promotion is effective, have permanent status and must meet the minimum qualifications as to training and experience for the class of position as determined by the Tax Commissioner.

10.2.2. The Director shall place the names of all employees who apply on a promotional register for the class of position in order of their examination ratings.

10.2.3. If a promotional and an original register exist, the Director shall certify the same number of names from each register in accordance with Section 8 of this rule. The Tax Commissioner may make his or her selection from the names submitted from either register.

10.3. Promotion by Noncompetitive Examination. -- If it is determined by the Tax Commissioner to fill a vacancy by a non-competitive promotional examination, an employee proposed for promotion shall be examined in accordance with subsection 10.2 of this rule by the Tax Commissioner to determine if he or she meets the minimum qualification as to training and experience for the class of position.

10.4. Demotions. -- The Tax Commissioner may demote an employee with or without prejudice and may demote a probationary employee. The Tax Commissioner shall file the reasons for the demotion and the reply, if any with the Director. Prior to the effective date of the demotion, the Tax Commissioner shall:

10.4.1. Meet with the employee in a predetermination conference and advise the employee of the contemplated demotion, if the conference is not required when the demotion is requested by the employee, voluntarily and without duress, such as to accept a posted position for which the employee has applied;

10.4.2. Give the employee oral notice confirmed in writing within three (3) working days, or written notice of the specific reason or reasons for the demotion; and

10.4.3. Give the employee a minimum of fifteen (15) days' notice of the demotion to allow the employee a reasonable time to reply to the demotion in writing, or upon request to appear personally and reply to the Tax Commissioner. Provided, that the fifteen (15) days' notice is not required when the demotion is requested by the employee, voluntarily and without duress, such as to accept a posted position for which the employee has applied.

10.5. Lateral Class Change. -- The Tax Commissioner may move a permanent employee from a position in one class to a vacant position in another class in the same compensation range if the employee is found by the Tax Commissioner to qualify for the vacant position.

10.6 Transfers.

10.6.1. Subject to the posting requirements provided in subsection 9.4. of this rule, the Tax Commissioner may transfer a permanent employee from a position in one organizational subdivision of the Tax Division to a position in another organizational subdivision of the same or another agency at any time. In the case of inter-agency transfers, the Tax Commissioner shall transfer all hours of accumulated annual and sick leave and all service credit with the employee. Transfer within the classified service, without a break in service, shall not be considered a resignation.

10.6.2. The Tax Commissioner shall report all inter and intra-agency transfers within a class to the Director on appropriate forms at the time of the transfer. The Director shall approve transfers to comparable classes prior to the transfers and shall require that the employee meet the minimum qualifications of the new classes.

§110-42-11. Reconsideration.

11.1. General. -- Any applicant or employee may request that the Tax Commissioner reconsider a decision which directly affects the applicant or employee. Unless otherwise specified in this rule, the request must be submitted in writing within fifteen (15) days of the applicant's or employee's notification of the decision. Within thirty (30) days of receipt of the applicant's or employee's request for reconsideration, the Tax Commissioner shall notify the applicant or employee of his or her decision.

§110-42-12. Employment Conflicts.

12.1. Other Employment and Certain Volunteer Activity. -- No employee shall hold other public office, have conflicting employment, or participate in conflicting volunteer activity while in the classified service. Determination of the conflict shall be made jointly by the Tax Division and the Board, or may be specifically delegated by the Board to the Tax Division, who shall consider whether the other employment or volunteer activity: (1) will be in conflict with the interests of the Tax Division; (2) will interfere with the performance of the employee's official duties; (3) will use or appear to use information obtained in connection with official duties which is not generally available to the public; or, (4) may reasonably be regarded as official action.

12.2. Nepotism. -- The Tax Commissioner shall not influence or attempt to influence the employment or working conditions of his or her immediate family. It is the responsibility of the Tax Commissioner to administer the employment of relatives of any agency employee in a consistent and impartial manner.

12.3. No employee shall directly supervise a member of his or her immediate family. This prohibition includes reviewing, auditing or evaluating work or taking part in discussions or making recommendations concerning employment, assignment, compensation, discipline or related matters. If an individual, through marriage, adoption, etc. is placed in a prohibited business relationship with a member of his or her immediate family, the situation shall be resolved within thirty (30) calendar days. Resolution may be made by transfer, reassignment, resignation, dismissal, etc. of one of the involved employees or by other accommodation which protects the interests of the public.

§110-42-13. Records and Reports.

13.1. Agency and Division of Personnel Records. – The Tax Division shall comply with all applicable record retention requirements provided by law and shall establish and maintain a personnel record for each employee, showing the employee's name, title, organizational unit, salary, changes in status, performance evaluations, and such other personnel information as may be considered pertinent. The Division of Personnel is not the custodian of records for agency employee personnel files. The Director shall maintain applications for examination for at least one (1) year after the date of the application. All personnel records shall be open to the inspection of the Board but shall otherwise be held confidential by the tax Division and the Director in accordance with Section 20 of this rule. A complete and accurate copy of the employee's personnel file shall be provided by the previous employer upon inter-departmental transfer or other appointment of the employee by another agency.

13.2. Legislature Access. -- Neither this section nor any other provision of this rule shall interfere with the right of the Legislature, its committees, administrative units and staff to have access to agency personnel records under the common law, or pursuant to the provisions of W. Va. Code §§4-2-5, 4-3-4, 4-5-3, 4-10-5, or any other statutory provision giving a legislative agency or subunit access to records of a state or classified agency. The Legislature, its committees, administrative units and staff having access to these records shall maintain the confidentiality of the records, to the extent reasonably possible.

§110-42-14. Confidentiality.

14.1. General. -- The business of the Tax Division shall be conducted in such a manner as to ensure the privacy rights of all applicants and employees, in accordance with W. Va. Code §§29B-1-1 et seq., the State Freedom of Information Act and 5A-8-1et seq., the Public Records Management and Preservation Act. Applicant and employee residential addresses and phone numbers, applicant and employee medical information, and other information which the Tax Commissioner, or the Director may deem confidential shall be maintained under strictest confidentiality and released only upon proper written authorization of the applicant or employee or by order of a court of competent jurisdiction.

§110-42-15. Duties of State Officers; Legal Proceedings to Secure Compliance; Penalties.

15.1. Duties of the Tax Commissioner. -- Pursuant to W. Va. Code §29-6-12, the Tax Commissioner shall comply with and aid in all proper ways in carrying out the provisions of W. Va. Code §29-6-1 et seq., and the rules and orders promulgated thereunder except as set forth in W. Va. Code §11B-1-8 and this rule. The Tax Commissioner shall furnish any records or information which the Director or the Board may request for any purpose of W. Va. Code §29-6-1 et seq. except as provided in W.Va. Code §11B-1-8. The Tax Commissioner shall comply with all rules, policies and orders of the Director or the Board and shall not increase nor diminish any benefits afforded any classified employee by the rules or orders except as set forth in W. Va. Code §11B-1-8.

15.2. Exemption from Regular Application and Appointment Requirements. – When seeking applications or making appointments pursuant to the special procedure authorized by West Virginia Code §11B-1-8(c), the Tax Division is not required to comply with the Division of Personnel procedures for seeking applications and making appointments to classified service positions as provided by the provision of article six, chapter twenty-nine of this code or in any other provision of the West Virginia Code, including those procedures promulgated in procedural or legislative rules promulgated by the Director pursuant to article three, chapter twenty-nine-a of the West Virginia Code, except as provided in this rule, and the Tax Division is not exempted from provisions of the West Virginia Code prohibiting nepotism, favoritism, discrimination or unethical practices related to appointment, or the public employee grievance system.

§110-42-16. Grievance Procedure.

16.1. General. -- An employee hired for permanent employment with the Tax Division may file a grievance with the Public Employees Grievance Board as provided for in W. Va. Code §6C-2-1 et seq.

16.2. Parties to Grievance. --The Division of Personnel shall not be a mandatory party to any public employee grievance filed against the Tax Division. The Division of Personnel shall not be a signatory to, and may not override or otherwise challenge, the Tax Division's decisions regarding settlement terms and conditions in employee grievances or other legal proceedings.

§110-42-17. Training and Development.

17.1. Tax Division Responsibilities. -- The Tax Division is responsible for providing functional training to employees of the agency based upon the agency's needs and resources and the employee's needs and capabilities. Selection of employees for training and development shall ensure equal opportunity and shall not discriminate on the basis of race, sex, age, religion, national origin, political affiliation, disability or for other reason(s) explicitly prohibited by federal and/or State law.

§110-42-18. Employee Representative Organization Bulletin Boards.

18.1. General. -- A bulletin board of a limited size shall be provided for posting notices of employee representative organizations. The bulletin boards shall be placed in convenient and generally accessible locations in all workplaces where the members of the organizations are employed. Provisions shall be made for separate bulletin boards for each employee representative organization. The cost of the bulletin boards shall be assumed by the requesting employee or the employee's representative organization. The boards shall be used exclusively by the employee representative organization and for organization purposes only.

§110-42-19. Authority of the Board.

19.1 General. --Upon request of the Tax Division, the Board is authorized to establish by formal action programs and projects for a maximum of one (1) year outside of the provisions of this rule, including, but not limited to, programs or projects designed to respond to public disaster or emergency.

§110-42-20. Amendments.

20.1. General. -- If and when it appears desirable in the interests of good administration, the Tax Commissioner, after public notice and public hearing and legislative approval, may amend the rules as it becomes necessary.