



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia  
Secretary Of State

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Tax TITLE-SERIES: 110-15K

RULE TYPE: Legislative Amendment to Existing Rule: No

RULE NAME: AIRCRAFT OPERATED UNDER A FRACTIONAL OWNERSHIP PROGRAM

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

W. Va. Code §11 15-9p

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

The State Tax Department needs to clarify the requirements for the new sales tax exemption under W. Va. Code §11-15-9p before it applies to sales on September 1, 2018.

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

House Bill 4022 in the 2018 Regular Legislative Session enacted West Virginia Code §11-15-9p as a new section of code. That statute requires the Tax Commissioner to promulgate emergency rules to establish eligibility requirements for the new sales tax exemption established by this code section.

In addition, the Tax Department needs to clarify the requirements for the sales tax exemption and application process before exemption applies to sales on September 1, 2018. This deadline occurs before a new legislative rule could be promulgated on the subject matter. The Tax Department needs to comply with a time limitation established by the Code.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This rule sets forth procedures for the administration of the consumers sales and service tax and use tax exemption for certain services and tangible personal property sold for the repair, remodeling and maintenance of aircraft owned and operated under a fractional ownership program. The exemption would have minimal impact on State revenue.

B. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

n/a

C. FISCAL NOTE DETAIL:

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

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

The exemption would have minimal impact on State revenue.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

Elizabeth G Steiner--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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**TITLE 110  
EMERGENCY RULE  
STATE TAX DEPARTMENT**

**SERIES 15K  
AIRCRAFT OPERATED UNDER A FRACTIONAL OWNERSHIP PROGRAM**

**§110-15K-1. General.**

1.1. Scope. -- This legislative rule explains and clarifies administrative and procedural requirements for the consumer sales and service tax exemption for purchases of service and tangible personal property sold for the repair, remodeling and maintenance of aircraft operated under a fractional ownership program as set forth under W. Va. Code §11-15-9p.

1.2. Authority. -- W. Va. Code §11-15-9p.

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.

**§110-15K-2. Definitions.**

2.1. Terms used in this legislative rule or in the administration and enforcement of the sales tax exemption authorized by §11-15-9p of this code, and not otherwise defined in this rule or §11-15-1, *et seq.*, §11-15A-1, *et seq.*, or §11-15B-1, *et seq.* of the West Virginia Code, shall have the meanings ascribed to them in Subpart K of 14 C.F.R. 91, as amended, related to Fractional Ownership Operations.

2.2. As used in this rule:

2.2.a. "Affiliate" of a program manager means a manager that, directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another program manager. The holding of at least forty percent (40 percent) of the equity and forty percent (40 percent) of the voting power of an entity will be presumed to constitute control for purposes of determining an affiliation under this Rule.

2.2.b. "Directly used or consumed," in the context of repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts for an aircraft operated under a fractional ownership program, shall mean used or consumed in those activities which constitute an integral and essential part of such activities, as contrasted with and distinguished from those activities which are simply incidental, convenient or remote to such activities.

2.2.b.1. Sales of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts for an aircraft operated under a fractional ownership program shall include only:

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2.2.b.1.A. Machinery, tools or equipment physically incorporated into the finished aircraft operated under a fractional ownership program, or physically incorporated into the finished aircraft engine or aircraft component part on an aircraft operated under a fractional ownership program, as a result of repair, remodeling or maintenance activities;

2.2.b.1.B. Machinery, tools or equipment used exclusively for repairing, remodeling or maintaining aircraft operated under a fractional ownership program; or

2.2.b.1.C. Machinery, tools or equipment used exclusively for repairing, remodeling or maintaining aircraft operated under a fractional ownership program and aircraft that qualifies for the exemption under §11-15-9(a)(33) of the West Virginia Code.

2.2.c. A “dry-lease aircraft exchange” means an arrangement, documented by the written program agreements, under which the program aircraft are available, on an as-needed basis without crew, to each fractional owner, as provided in Subpart K of 14 C.F.R. 91, as amended.

2.2.d. A “fractional owner” or “owner” means an individual or entity that possesses a minimum fractional ownership interest in a program aircraft and that has entered into the applicable program agreements; provided, however, that in the case of the flight operations described in paragraph 2.2.g.3 of this rule, and solely for purposes of requirements pertaining to those flight operations, the fractional owner operating the aircraft will be deemed to be a fractional owner in the program managed by the affiliate.

2.2.e. A “fractional ownership interest” means the ownership of an interest or holding of a multi-year leasehold interest or a multi-year leasehold interest that is convertible into an ownership interest in a program aircraft.

2.2.f. A “fractional ownership program” means any system of aircraft ownership and exchange that consists of all of the following:

2.2.f.1. The provision of fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners;

2.2.f.2. Two or more airworthy aircraft;

2.2.f.3. One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner;

2.2.f.4. Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner;

2.2.f.5. A dry-lease aircraft exchange arrangement among all of the fractional owners; and

2.2.f.6. Multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

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2.2.g. A “fractional ownership program aircraft” or “program aircraft” means:

2.2.g.1. An aircraft in which a fractional owner has a minimal fractional ownership interest and that has been included in the dry-lease aircraft exchange pursuant to the program agreements;

2.2.g.2. An aircraft owned in whole or in part by the program manager that has been included in the dry-lease aircraft exchange and is used to supplement program operations, or

2.2.g.3. In the case of a fractional owner from one program operating an aircraft in a different fractional ownership program managed by an affiliate of the operating owner's program manager, the aircraft being operated by the fractional owner, so long as the aircraft is:

2.2.g.3.A. Included in the fractional ownership program managed by the affiliate of the operating owner's program manager, and

2.2.g.3.B. Included in the operating owner's program's dry-lease aircraft exchange pursuant to the program agreements of the operating owner's program.

2.2.h. “Fractional ownership program management services” or “program management services” mean administrative and aviation support services furnished in accordance with the applicable requirements of Subpart K of 14 C.F.R. 91, as amended, or provided by the program manager on behalf of the fractional owners, including, but not limited to:

2.2.h.1. Establishment and implementation of program safety guidelines;

2.2.h.2. Employment, furnishing, or contracting of pilots and other crewmembers;

2.2.h.3. Training and qualification of pilots and other crewmembers and personnel;

2.2.h.4. Scheduling and coordination of the program aircraft and crews;

2.2.h.5. Maintenance of program aircraft;

2.2.h.6. Satisfaction of recordkeeping requirements;

2.2.h.7. Development and use of a program operations manual and procedures; and

2.2.h.8. Application for and maintenance of management specifications and other authorizations and approvals.

2.2.i. A “minimum fractional ownership interest” means:

2.2.i.1. A fractional ownership interest equal to, or greater than, one-sixteenth (1/16) of at least one subsonic, fixed-wing or powered-lift program aircraft; or

2.2.i.2. A fractional ownership interest equal to, or greater than, one-thirty-second (1/32) of at least one rotorcraft program aircraft.

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2.2.j. "Person" includes any state, and its political subdivisions or an agency of either, the State of West Virginia and its political subdivisions or an agency of either, and any individual, firm, partnership, joint venture, joint stock company, the government of the United States and its agencies, any public or private corporation, municipal corporation, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of others, or any other group or combination acting as a unit, and the plural as well as the singular number of the entities here enumerated.

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

### **§110-15K-3. Exemption from the Consumer Sales and Service Tax.**

3.1. The following sales are exempt from the consumer sales and service tax:

3.1.a. Sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated under a fractional ownership program;

3.1.b. Sales of aircraft repair, remodeling and maintenance services when the services are to an engine or other component part of an aircraft operated under a fractional ownership program;

3.1.c. Sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft operated under a fractional ownership program, as part of the repair, remodeling or maintenance service; and

3.1.d. Sales of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts for an aircraft operated under a fractional ownership program, or used exclusively in combination with the purposes specified in §11-15-9p(a) and the purposes specified in §11-15-9(a)(33) of this code.

3.2. This exemption applies to sales made on and after September 1, 2018.

### **§110-15K-4. Exemption from Use Tax**

Tangible personal property or services are exempt from use tax where (a) the gross receipts from the sale of the personal property or services are exempt from the sales tax by the terms of §11-15-1, *et seq.*, of the West Virginia Code, and (b) the property or services are being used for the purpose for which it is exempted from the use tax imposed under W. Va. Code §11-15A-1, *et seq.*

### **§110-15K-5. Claiming the Exemption.**

5.1. Any person having a right or claim to the exemption set forth in this rule may claim the exemption by:

5.1.a. First paying to the vendor the tax imposed by this article and then applying to the Tax Commissioner for a refund or credit; or

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5.1.b. Providing to the vendor his or her West Virginia direct pay permit number, as provided in §11-15-9d and §11-15a-3d of the West Virginia Code and W. Va. Code State R. §110-15-9c; or

5.1.c. A person having a right or claim to the exemption set forth in this Rule may, in lieu of paying the sales tax and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner. The Tax Commissioner finds that the requirement that permission to execute such a certificate be granted specifically upon application of the Tax Commissioner is unnecessary, and thereby generally grants permission to execute such a certificate.

5.2. Any person having a right or claim to the exemption set forth in this rule may apply for a refund or credit under subdivision 5.1.a., by timely filing a claim for refund or credit of the consumers sales and service tax or the use tax overpayments on such form and in such manner as the Tax Commissioner may require and in accordance with the requirements of §11-10-1, *et seq.* and §11-15-1, *et seq.* of the West Virginia Code and W. Va. Code State R. §110-15-1, *et seq.*, and W. Va. Code State R. §110-10L-1, *et seq.*

5.3. Any person having a right or claim to the exemption set forth in this rule may use an exemption certificate as set forth under subdivision 5.1.c., as follows:

5.3.a. To purchase tangible personal property or services using an exemption certificate, a person must:

5.3.a.1. Apply for and obtain a valid West Virginia Business Registration Certificate; and

5.3.a.2. Properly complete an Exemption Certificate, in the form required by the Tax Commissioner, and present it to the vendor or retailer.

5.3.b. If the steps under subdivision 4.3.a. have been completed, the person claiming the exemption has applied for and received permission to use an exemption certificate under subdivision 4.1.c.

5.3.b.1. If the Tax Commissioner believes that the exemption certificate was incomplete, deficient or otherwise erroneous, or that the taxpayer was not entitled to claim the exemption for any reason, the Tax Commissioner may proceed to investigate and determine or estimate the tax liability and make an assessment therefor as permitted under W. Va. Code §11-10-1, *et seq.*

5.3.b.2. In order that the Tax Department may verify the taxable and nontaxable sales upon audit, a taxpayer claiming an exemption under this rule must retain the appropriate books and records supporting its claim for exemption for at least three (3) years, or for so long as the taxable period remains open for assessment or refund, whichever is greater.

5.3.c. In order that the Tax Department may verify a vendor's or a retailer's taxable and nontaxable sales upon audit, it is necessary that such persons retain executed exemption certificates and other appropriate books and records for at least three (3) years or for so long as the taxable period remains open for assessment or refund whichever is greater. An exemption certificate, to be valid, must be given by the vendee and accepted by the vendor at the time of the sale and not thereafter. If a vendor lists nontaxable sales or services for which he has no exemption certificates or material purchase certificate, the Tax Department will presume such sales were taxable and make an assessment of tax against the vendor.