PUBLIC COMMENTS AND RESPONSES

110 C.S.R. 10F

PAYMENT OF TAXES BY ELECTRONIC FUNDS TRANSFER

1. Mr. Ryan White, Esq., on behalf of his client.

Comment

The Tax Commissioner filed with the West Virginia Secretary of State a proposed amendment to legislative rule 110 CSR 10F, relating to payment of taxes by electronic funds transfer ("EFT"). Among several amendments, the proposed rule expressly expands the required tax types that are subject to mandatory EFT tax payments to include the Medical Cannabis Tax. At the same time, the proposed rule that requires medical cannabis taxpayers to make tax payments by EFT provides an exception "unless prohibited by federal or state law".

It appears that Tax attempts to address a potential conflict stemming from the federal government's regulation of drugs through the Controlled Substances Act (CSA) (21 U.S.C. § 811), which includes cannabis, and recent state law permitting medical cannabis (SB 386 from 2017).

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If Tax agrees that one likely cannot engage a commercial bank to facilitate an EFT transaction, it seems prudent for Tax to (1) expressly exclude the Medical Cannabis Tax from EFT requirements and instead propose rules and procedures for cash deposits from industry taxpayers to Tax, or (2) amend the proposed language to allow a person engaged in medical cannabis activity to remit tax liabilities due in a method other than an EFT to facilitate the collection of tax amounts due. Tax rules should not prevent state law from being effectively and timely implemented. As the proposed rule stands, it provides little or no discernible solution to the immediate needs for cannabis-related businesses with respect to payment of their state tax obligations for a program scheduled to begin July 2019.

Response

The Medical Cannabis Tax, as a component of the West Virginia Medical Cannabis Act (2017), is a tax that is appropriately included among those taxes subject to be paid by electronic funds transfer (EFT) pursuant to W. Va. Code §11-10-5t.

The express exception to required electronic payment, if such payment is prohibited by state or federal law, is clearly stated in the rule.

Rules and procedures for alternative methods of payment, if needed, will be addressed in detail in a separate legislative or emergency rule as needed.