



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Tax TITLE-SERIES: 110-13FF
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No
RULE NAME: 110-13FF Tax Credit for Providing Vehicles to Low-Income Workers

PRIMARY CONTACT

NAME: MARK S MORTON
ADDRESS: PO Box 1005
CHARLESTON, WV 25324
EMAIL: taxlegal@wv.gov
PHONE NUMBER: 304-558-5330

CITE STATUTORY AUTHORITY: W. Va. Code §29A-2-6(c) and §11-13FF-5

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:

W. Va. Code §11-13FF-5

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/22/2020

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/22/2020

COMMENTS RECEIVED: Yes

(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: Yes

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

N/A

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 legislative rule establishes the tax credit for donation of a motor vehicle to, or sale of a vehicle through a program administered by, a charitable organization that provides affordable and reliable transportation to low-income workers.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The rule was required by the statute. The intent of the statute was to encourage individuals to donate suitable vehicles to a qualified charitable organization for distribution to low-income workers in need of reliable transportation to a place of employment, or to encourage vehicle dealers to offer discounts making vehicles more affordable to low-income workers. The statute seeks to accomplish these ends by creating a tax credit as an incentive.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

The maximum amount of credits which can be issued by the State Tax Division, under this provision, for any fiscal year is \$300,000.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

Additional administrative costs incurred by the State Tax Department would be \$20,000 in FY2021 and \$5,000 in subsequent fiscal years.

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

It is hoped that the programs administered under the statute will enable low-income workers to obtain or retain employment by providing them with affordable, reliable transportation to their place of employment.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	\$20,000.00	\$5,000.00
Personal Services	0	\$5,000.00	\$5,000.00
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	\$15,000.00	0
2. Estimated Total Revenues	0	0	-300,000.00

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

The maximum amount of credits which can be issued by the State Tax Division, under this provision, for any fiscal year is \$300,000. Additional administrative costs incurred by the State Tax Department would be \$20,000 in FY2021 and \$5,000 in subsequent fiscal years.

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

Yes

Allen R Prunty -- 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.

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

SERIES 13FF
TAX CREDIT FOR PROVIDING VEHICLES TO LOW-INCOME WORKERS

§110-13FF-1. General.

1.1. Scope. -- This legislative rule establishes the tax credit for donation of a motor vehicle to, or sale of a vehicle through a program administered by, a charitable organization that provides affordable and reliable transportation to low-income workers.

1.2. Authority. -- W. Va. Code §29A-2-6(c) and §11-13FF-5.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect five years after the effective date of this rule.

§110-13FF-2. Definitions.

2.1. General Rule. -- Unless a specific definition is provided in subsection 2.2 of this section, or the context in which the term is used clearly requires a different meaning, the terms used in this rule have the definitions provided under W. Va. Code §11-10-1 et seq., 11-21-1 et seq. and 11-24-1 et seq.

2.2. Terms defined.

2.2.1. "Automobile dealership," "dealer," or "motor vehicle dealer" means a purveyor of new or used passenger vehicles licensed under the provisions of W. Va. Code §17A-6-1, et seq.

2.2.2. "Below-market loan" means a loan issued by a cooperating financial institution to a low-income worker for the purchase of a vehicle, which rate shall be substantially the same as that offered to prime borrowers, lower than the current prevailing state average rate for similar transactions, taking into consideration the credit worthiness of the borrower and the suitability of the vehicle, as determined by a qualified charitable organization, and may not include any origination fee, points, investigation fees, or other similar finance charges requiring prepayment by the purchaser.

2.2.3. "Commissioner" means the Tax Commissioner of the State of West Virginia.

2.2.4. "Consideration" means cash, goods or services given in exchange for tangible personal property.

2.2.5. "Cooperating financial institution" means a bank, West Virginia state chartered bank, West Virginia national bank, bank holding company, federal savings bank, federal savings and loan association, West Virginia state credit union, West Virginia federal credit union, Community Development Financial

Institution funded through the Riegle Community Development and Regulatory Improvement Act of 1994, or any supervised lending institution operating under a certificate of authority issued by the West Virginia Board of Banking and Financial Institutions that enters into an agreement with a qualified charitable organization to provide below-market loans to low-income workers to enable them to purchase affordable vehicles suitable for commuting to their employment, but shall not include the financing department of an automobile dealership or manufacturer.

2.2.6. "Division" means the Tax Division of the West Virginia Department of Revenue.

2.2.7. "Federal poverty level" means the amount in the U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs, issued each year in the Federal Register by the Department of Health and Human Services (HHS).

2.2.8. "Low-income worker" means a person engaging in any gainful income generating activity whose aggregate household income is 200 percent or less of the federal poverty level. For purposes of this rule, "low-income worker" may also include part-time workers, seasonal employees, contract workers, persons who are self-employed, or an unemployed person who has been offered and has accepted employment contingent on that person's obtaining suitable transportation to the place of employment.

2.2.9. "Program" means a systematic procedure administered by a qualified charitable organization for assisting low-income workers in obtaining suitable vehicles for use as transportation to a place of employment, either by providing them with a donated vehicle, or by assisting them in purchasing a vehicle in accordance with the provisions of this rule.

2.2.10. "Program participant" means a low-income worker who has applied for, and been approved to receive, assistance from a qualified charitable organization to obtain a vehicle suitable for use as transportation to a place of employment.

2.2.11. "Program value" of a donated vehicle shall be the fair market value of that vehicle as determined by the qualified charitable organization, based on the retail values shown in a nationally accepted used car guide, and the suitability of the vehicle for the program, taking into consideration the condition of the vehicle, and allowing for the cost of any needed repairs to the vehicle.

2.2.12. "Qualified charitable organization" means an organization which meets all of the following criteria:

2.2.12.a. The organization is recognized by the Internal Revenue Service as exempt from federal income taxation under Title 26, Section 501(c)(3) of the United States Code, as amended;

2.2.12.b. The organization is registered as a soliciting charity with the West Virginia Secretary of State under the West Virginia Solicitation of Charitable Funds Act;

2.2.12.c. The organization operates a program that provides the following services:

2.2.12.c.1. Provides low-income workers with donated vehicles for commuting purposes for no consideration or at a cost affordable to the worker.

2.2.12.c.2. Assists low-income workers in obtaining affordable below-market financing from cooperating financial institutions to purchase vehicles for commuting to their place of employment.

2.2.12.c.3. Provides financial training, counselling and assistance to low-income workers to assist them in obtaining a suitable vehicle for commuting to their employment at no cost, or at a cost that is affordable to the worker.

2.2.13. "Vehicle" or "passenger motor vehicle" means any automobile, truck, van or other motor vehicle that is suitable for use as a means of transporting a worker to his or her place of employment, as determined by a qualified charitable organization under this rule.

§110-13FF-3. Amount of Credit; limitation on aggregate credit amount.

3.1. Credit allowed -- There is a credit allowed against the tax imposed by §11-21-1, et seq., or §11-24-1, et seq., of the West Virginia Code for:

3.1.1. A taxpayer who donates a vehicle to a qualified charitable organization to provide reliable affordable transportation for a low-income worker to commute to his or her employment; or

3.1.2. A dealer in new or used motor vehicles who sells a vehicle at a reduced price to a low-income worker through a program administered by a qualified charitable organization.

3.2. Amount of credit allowed -- The credit allowed under this rule shall be the lesser of \$2,000; or

3.2.1. In the case of a vehicle donated by an individual, 50 percent of the program value of the vehicle;

3.2.2. In the case of a vehicle sold by a dealer, 50 percent of the difference between the program value of the vehicle and the reduced sales price.

3.3. The credit allowed under this rule must be applied against the taxpayer's tax liability for the year in which:

3.3.1. In the case of a donation to a qualified charitable organization, the year the vehicle is donated to the organization;

3.3.2. In the case of a sale by a dealer, the year title to the vehicle is transferred to the new owner.

3.4. If any credit remains after the application of the credit against the taxpayer's tax liability for any taxable year, that amount shall be forfeited. No carry-over to a future tax year, or carry-back to a prior tax year, is allowed for any unused portion of the credit.

3.5. The credit allowed under this rule is not refundable.

3.6. The credit allowed under this rule may not be transferred.

§110-13FF-4. Consumers Sales Tax.

The consumers sales tax on the donation or sale of a motor vehicle under this rule shall be applied in accordance with the provisions of 91 C.S.R. 9, Collection of Sales Tax on the Sale of a Vehicle.

§110-13FF-5. Licensing of motor vehicle dealers.

5.1. A qualified charitable organization which accepts donations of vehicles for distribution to low-income workers is required to be licensed as a motor vehicle dealer under the provisions of W. Va. Code §17A-6-1, et seq.

5.2. A dealer in new or used motor vehicles claiming a credit under this rule must be licensed in accordance with the provisions of W. Va. Code §17A-6-1, et seq.

§110-13FF-6. Aggregate amount of credits allowed.

6.1. The amount of tax credits which may be issued by the State Tax Division under this rule shall not exceed \$300,000 in the aggregate for any fiscal year.

6.2. Credits shall be allocated in the order in which the donation forms are received by the State Tax Division. In the event that multiple applications for the credit are received on the same date, available funds will be allocated first to donations by individuals.

§110-13FF-7. Claiming the credit.

7.1. Any taxpayer or dealer in new or used vehicles claiming a credit under this rule shall file the following form with the return for the tax against which the credit is being claimed.

7.2. The form shall be completed and the information contained therein verified by the qualified charitable organization at the time the vehicle is donated or sold.

7.3. The following form shall be used:

[name of qualified charitable organization] hereby certifies that the taxpayer named herein is eligible for the credit allowed under W. Va. Code §11-13FF-1, et seq., in an amount not to exceed \$ _____ for the sale or donation of the vehicle identified below.

Address of qualified charitable organization:

Taxpayer Identification Number of qualified charitable organization:

Vehicle make, model, and year:

Vehicle Identification Number (VIN):

Name of Taxpayer or Seller:

Physical address of Taxpayer or Seller:

Taxpayer identification number:

Program value of vehicle:

\$ _____

Maximum amount of credit authorized:

\$ _____

Donor's Certification:

By signing below, I certify that I have donated the above-referenced vehicle to the qualified charitable organization identified herein for no consideration.

Seller's Certification

By signing below, the seller of the above vehicle certifies that, having made a diligent search, it finds that the vehicle:

- Has passed a West Virginia safety inspection;
- Has not been reported as stolen and not recovered;
- Has informed the program participant whether the vehicle is subject to any unperformed safety recalls;
- Has not been reported as a total loss as the result of an accident;
- Has not been flood-damaged;
- Has not been junked or salvaged;

and that the vehicle is suitable to provide safe and reliable transport for commuting to employment.

Certification of qualified charitable organization:

By signing below, the authorized representative of the qualified charitable organization named above certifies that the organization has given no consideration in exchange for the donated vehicle, or, in the case of a sold vehicle, that the organization has not received any consideration from the seller of the vehicle. The date of donation is _____.

Signature of donor or seller:

Date of signature:

Authorized signature of certifying Qualified Charitable Organization:

Date of signature:

7.4. Dealer Warranty. -- The fair market value of the vehicle and not the sales price shall be used to determine the applicability of §46A-6-107a(a)(3)(A) to any vehicle the sale of which qualifies for a tax credit as provided by this rule.

§110-13FF-8. Participation in program.

8.1. To participate in a program operated by a qualified charitable organization, a person must submit an application containing the following information:

8.1.1. The applicant's name;

8.1.2. The applicant's physical home address;

8.1.3. Verification of applicant's employment;

8.1.4. Verification that the applicant's aggregate household income is 200 percent or less of the federal poverty level;

8.1.5. Confirmation that the applicant holds a valid West Virginia driver's license;

8.1.6. Certification of the applicant's need for a vehicle for transportation to a place of employment.

8.2. Any of the following items may be used as verification of the applicant's employment:

8.2.1. A current paystub from the applicant's employer;

8.2.2. The applicant's most recent W-2 form, showing the name of the applicant's employer;

8.2.3. The applicant's most recent IRS form 1099, showing the name of the payor;

8.2.4. A letter from the applicant's employer, indicating that the applicant is currently employed;

8.2.5. A copy of the applicant's federal and state income tax returns, showing that the applicant is self-employed.

8.3. A newly employed person, or a person whose employment is contingent on obtaining suitable transportation, may qualify for participation in a program by providing a letter from that person's prospective employer, verifying that the applicant has been offered, and has accepted, employment, stating the date that person's employment will begin.

8.4. To verify the aggregate household income of the applicant, the qualified charitable organization may require the applicant to provide copies of the most recent West Virginia personal income tax returns of the applicant and all members of the applicant's household.

§110-13FF-9. Suitability of vehicles.

9.1. The suitability of a vehicle for use in the program shall be determined by the qualified charitable

organization, based on the following criteria:

9.1.1. The vehicle must be in good, safe, reliable working condition, as determined by the qualified charitable organization or can be repaired to be so by the qualified charitable organization or its agents;

9.1.2. The vehicle must be determined by the qualified charitable organization to be affordable to the program participant.

§110-13FF-10. Duties of the qualified charitable organization.

10.1. The qualified charitable organization operating a program for distribution of vehicles under this rule shall assist program participants by:

10.1.1. Providing, for no consideration, or at a price below the fair market value and affordable to the program participant, a suitable vehicle from the qualified charitable organization's stock or inventory of donated vehicles; or

10.1.2. If the participant chooses to purchase a vehicle deemed suitable by the qualified charitable organization through a dealer, the qualified charitable organization shall:

10.1.2.a. Guide the program participant in locating a suitable vehicle for purchase within the statewide new or used car market;

10.1.2.b. Negotiate with and on behalf of the program participant as necessary to obtain a suitable vehicle at a price determined to be affordable to the program participant by the qualified charitable organization;

10.1.2.c. Negotiate with and on behalf of the program participant as necessary to obtain below-market financing from a cooperating financial institution for the purchase of a vehicle determined to be suitable for the program participant by the qualified charitable organization.

10.2. Qualified charitable organizations shall enter into agreements with cooperating financial institutions to provide below-market financing for the purchase of suitable vehicles for program participants.

10.3. A qualified charitable organization, or any of its officers, employees, or volunteers shall neither solicit nor accept any payment, direct or indirect, from a cooperating financial institution or a new or used car dealer for acting as an intermediary in assisting a program participant in obtaining a suitable vehicle, or financing for the purchase thereof.

§110-13FF-11. Penalties.

11.1. Any qualified charitable organization, cooperating financial institution, or new or used car dealer who violates the provisions of this rule shall be barred from all future participation in any program authorized under the provisions of W. Va. Code §11-13FF-1, et seq., or this rule.

11.2. Any attempt to defraud the State of West Virginia by claiming a credit to which the taxpayer is not entitled under W. Va. Code §11-13FF-1, et seq., or this rule, by knowingly falsifying any information or certification required by this rule, may, at the Commissioner's discretion, be referred to the prosecuting attorney of any county of this State for investigation and possible criminal prosecution.