



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Motor Vehicles

RULE TYPE: Legislative

TITLE-SERIES: 91-09

RULE NAME: Collection of Tax on the Sale of a Vehicle

CITE AUTHORITY: W.Va. Code 17A-2-9, 17A-3-4 and 11-15-3c

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

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

Yes

Joseph A Holley -- 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 91
LEGISLATIVE RULE
DIVISION OF MOTOR VEHICLES

SERIES 9
COLLECTION OF TAX ON THE SALE OF A VEHICLE

§91-9-1. General.

1.1. Scope. -- This legislative rule establishes the criteria for the collection and determination of the sales tax required to be collected prior to the issuance of a certificate of title to a vehicle, and provisions implementing the requirements of House Bill 2775 (2007 Regular Session).

1.2. Authority. -- W. Va. Code §§17A-2-9, 17A-3-4 and 11-15-3c.

1.3. Filing Date. -- ~~April 15, 2010.~~

1.4. Effective Date. -- ~~July 1, 2010.~~

1.5 Sunset Provision. -- This rule shall terminate and have no further force or effect August 1, 2027.

§91-9-2. Application and Enforcement.

2.1. Application. -- This rule applies to the calculation of tax for the titling of vehicles defined in W. Va. Code §17A et seq.

2.2. Enforcement. -- Enforcement of this rule is vested with the Commissioner of Motor Vehicles or his or her lawful designees, and where applicable the Tax Commissioner or his or her lawful designees.

§91-9-3. Determination of Tax Due Prior to Issuance of Title to a Vehicle.

3.1. An application for a certificate of title for a vehicle shall be accompanied by the amount of tax determined by the Division in accordance with the provisions of W. Va. Code §§11-15-3c, 17A-3-4 and this rule unless otherwise exempt by the provisions of W. Va. Code §§11-15-3c, 17A-3-4 or this rule.

3.2. The Division shall collect the sales tax prior to issuing a title irrespective of whether the applicant has paid a similar sales or privilege tax on the motor vehicle in any other jurisdiction except as follows:

3.2.a. A new resident establishing domicile in West Virginia is exempt from paying the tax on vehicles titled previously in the former state in his or her name in accordance with W. Va. Code §§17A-3-4(b)(14) and 11-15-3c(f)(8).

3.2.a.1. For the purposes of this rule, the term new resident may mean a person or business entity and may include applicants who may have previously resided or operated as a business entity in West Virginia; and

3.2.a.2. For the purposes of compliance with this rule by a new resident applicant, the responsibility of the County Assessor is limited to determining that the County Assessor has recorded the applicant's vehicle information in accordance with W. Va. Code §§17A-3-4(b)(14) and 11-15-3c(f)(8).

3.3. The sales tax on a new vehicle shall be determined at the rate of ~~five~~ six percent (~~5~~ 6%) of the actual purchase price or consideration as certified by the dealer and as provided by the selling dealer to the purchaser. The dealer shall collect the sales tax at the time of sale.

3.4. The sales tax on a used vehicle purchased from a dealer shall be determined at the rate of ~~five~~ six percent (~~5~~ 6%) of the actual purchase price or consideration as certified by the dealer and as provided by the selling dealer to the purchaser. The dealer shall collect the tax at the time of sale.

3.5. The sales tax on applications for title on a vehicle purchased from a dealer either in-state or out-of-state is based on the purchase price minus any applicable trade-in subject to the following:

3.5.a. The trade in vehicle must be titled in West Virginia; and

3.5.b. Rebates received after the sale is consummated do not reduce the taxable purchase price.

3.6. The sales tax on applications for title on a vehicle purchased from a person or business not licensed as a dealer by this state or another jurisdiction is assessed as follows:

3.6.a. Vehicles two model years old or less are assessed on the present fair market value as shown in the most recent edition of a nationally distributed and recognized vehicle value guide as determined by the Division regardless of a bill of sale;

3.6.b. Vehicles over two model years old are assessed on the sale price as certified by the seller and buyer on the back of the title or on a notarized bill of sale, if the purchase price is fifty percent (50%) or more of the fair market value as shown in the most recent edition of a nationally distributed and recognized vehicle value guide as determined by the Division; and

3.6.c. Vehicles over two model years old with a sale price of less than fifty percent (50%) than the fair market value as shown in the most recent edition of a nationally distributed and recognized vehicle value guide as determined by the Division are assessed on the fair market value unless accompanied by a notarized bill of sale which may be subject to verification by the Division.

3.7. The minimum taxable value of a vehicle is five hundred dollars (\$500) regardless of the indicated actual sale price on either the application for title, the back of the title or a notarized bill of sale, except as follows:

3.7.a. The minimum taxable value of vehicles that are branded reconstructed or salvage, classified as small utility trailers (Class T), motorboats less than 16 foot, welfare to work or similar type program vehicles, assembled vehicles and trailers, travel campers (Class R), and older vehicles no longer included in editions of nationally distributed and recognized vehicle value guides as determined by the division, is one hundred dollars (\$100);

3.7.b. Transactions between individuals (casual sales) characterized as “even trades” are not taxed provided that the vehicle has been previously titled in West Virginia as a taxable transaction regardless of the fair market value of either vehicle. Transactions between individuals (casual sales) involving a trade with a net difference after trade-in are assessed on the difference. The only deduction applicable to reduce the taxable value is high mileage based on a nationally distributed and recognized vehicle value guide deduction for high mileage. The Division will accept a fair market value determination based on another nationally distributed and recognized vehicle value guide if the applicant provides a copy of the other value guide; and

3.7.c. The Division will base the sales tax assessment on vehicles branded as salvage or similar brand or previously branded by West Virginia based on fifty percent (50%) of the fair market value as

determined by the most recent nationally distributed and recognized vehicle value guide used by the Division.

3.8. The sales tax does not apply to transfer of ownership without consideration such as gifts, donations, or an inheritance. The application for title for any transfer of ownership without consideration shall include a notarized affidavit on a form prescribed by the Commissioner. Both the transferor and transferee shall sign the affidavit under penalty of false swearing.

3.9. The sales tax does not apply to vehicles to be registered as Class H vehicles or Class M vehicles used in interstate commerce. The tax does not apply to Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to Class C semitrailers, full trailers, pole trailers and converter gear. However, if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle.

3.10. Any application for transfer of ownership which provides incorrect, false or fraudulent information about the consideration exchanged, subjects the applicant to the revocation, suspension and/or cancellation of any and all driver's licenses, registration plates, cards, and permits issued to the applicant in accordance with W. Va. Code §17A-2-16. Any revocation, suspension and/or cancellation remains in effect until the appropriate sales tax is remitted and all reinstatement fees are paid.