



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/25/2023 12:05:57 PM

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: 110-99  
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: 110-99 Privilege Tax On Sales Of Hemp-Derived Cannabinoid and Kratom Products

**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-2-99(c), 19-12E-12 (i)(9), and 19-12F-7(i)

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 authorized by W. Va. Code §19-12E-12(i)(9), which provides: The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-1 et seq. of this code, any necessary legislative rules, including emergency rules, as the Tax Commissioner considers necessary for the efficient administration of taxes imposed by this subsection; and W. Va. Code §19-12F-7(i), which provides: The Tax Commissioner may promulgate, in accordance with the provisions of §29A-3-1 et seq. of this code, any necessary legislative rules as the Tax Commissioner necessary to the efficient administration of taxes imposed by this subsection.

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: 6/8/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/10/2023

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: Yes

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

Published on WV Tax website

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 new rule is legislatively authorized by W. Va. Code §19-12E-12(i)(9) and §19-12F-7(i), and is intended to provide needed guidance regarding procedures and administration of the excise tax on retail sales of hemp-derived cannabinoid products and kratom prod

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

This legislative rule establishes procedures for the administration of the tax on retail sales of hemp-derived cannabinoid products and kratom products.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

All monies received from the tax are to be deposited to the Agricultural Fees Fund. The legislation will not impact General Revenue Fund collections. Additional administrative costs incurred by the State Tax Department would be \$45,000 in FY2023, and \$75,000 in subsequent fiscal years.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

All monies received from the tax are to be deposited to the Agricultural Fees Fund.

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

All monies received from the tax are to be deposited to the Agricultural Fees Fund. The legislation will not impact General Revenue Fund collections. Additional administrative costs incurred by the State Tax Department would be \$45,000 in FY2023, and \$75,000 in subsequent fiscal years.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	45,000.00	75,000.00	75,000.00
<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>	45,000.00	75,000.00	75,000.00
<b>2. Estimated Total Revenues</b>	0	0	0

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

This legislative rule establishes procedures for the administration of the privilege tax on retail sales of hemp-derived cannabinoid products and kratom products. The Industrial Hemp Development Act and the Select Plant-Based Product Regulation Act:Kratom established an 11 percent privilege tax on the retail sale of these products in addition to all other applicable taxes. The tax is to be administered by the State Tax Commissioner. A return and the tax due are to be remitted on a quarterly basis on the 20th day of the month following the end of the calendar quarter. All monies received from the tax are to be deposited to the Agricultural Fees Fund. The legislation will not impact General Revenue Fund collections. Additional administrative costs incurred by the State Tax Department would be \$45,000 in FY2023, and \$75,000 in subsequent fiscal years.

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

**Yes**

**Anoop Bhasin -- 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 DIVISION**

**SERIES 99**  
**PRIVILEGE TAX ON SALES OF HEMP-DERIVED CANNABINOID AND KRATOM PRODUCTS**

**§110-99-1. General.**

1.1. Scope. -- This legislative rule establishes procedures for the administration of the tax on retail sales of hemp-derived cannabinoid products and kratom products.

1.2. Authority. -- W. Va. Code §§29A-2-99(c), 19-12E-12 (i)(9), and 19-12F-7(i).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect after August 1, 2029.

**§110-99-2. 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.*, 19-12E-1 *et seq.*, and 19-12F-1 *et seq.*

2.2. Terms defined.

2.2.1. "Hemp-derived cannabinoid" means a naturally occurring non-synthetic substance as follows:

2.2.1.a. Delta-9 tetrahydrocannabinol with a concentration level consistent with 7 U.S.C. § 5940;

2.2.1.b. Delta-8 tetrahydrocannabinol;

2.2.1.c. Delta-10 tetrahydrocannabinol;

2.2.1.d. Hexahydrocannabinol;

2.2.1.e. Tetrahydrocannabiphorol (THCp); and

2.2.1.f. Tetrahydrocannabivarin (THCv);

2.2.2. "Hemp-derived cannabinoid products" means any product containing a hemp-derived cannabinoid, whether or not the product is marketed for human consumption. Hemp-derived cannabinoid products include, but are not limited to, food, food ingredients, dietary supplements, beverages, lotions, ointments, or shampoos. Any product containing hemp-derived cannabinoids as defined above and intended for ingestion or mastication by humans in any form or concentration shall not be considered food or food ingredients for purposes of W. Va. Code §11-15-3a.

2.2.3. "Kratom" means a psychoactive preparation that is composed of the crushed or powdered dried leaves of the mitragyna speciosa, a yellow-flowered tropical tree which contains the alkaloids mitragynine and 7-hydroxymitragynine.

2.2.4. "Kratom product" means a food product, food ingredient, dietary ingredient, dietary supplement, or beverage intended or marketed for human consumption containing any part of the leaf of the plant mitragyna speciosa. However, products containing kratom in any form or concentration shall not be considered food or food ingredients for purposes of W. Va. Code §11-15-3a. For purposes of this rule, "Kratom product" also includes kratom and any product containing kratom as an ingredient.

2.2.5. "Retailer" means a person that distributes, offers for sale, or sells hemp-derived cannabinoid products or kratom products to persons for personal consumption.

2.2.6. "Person" means a natural person, but also includes corporations, societies, associations and partnerships, and other similar legal business organizations.

2.2.7. "Commissioner" means the State Tax Commissioner, or his or her designee.

### **§110-99-3. Imposition of Tax.**

3.1. For the privilege of engaging or continuing within this state in the business of the retail sale of hemp-derived cannabinoid products, kratom or kratom products, there is levied a privilege tax.

3.2. The amount of tax imposed is 11 percent of the retail sales price of all hemp-derived products and kratom products sold during the reporting period. The tax shall not be added by the retailer as a separate charge or line item on any sales slip, invoice, receipt, other statement, or memorandum of the price paid by the purchaser.

3.3. The privilege tax is in addition to all other taxes imposed by law. Sales of hemp-derived cannabinoid and kratom products are also subject to the following taxes:

3.3.1. All retail sales of hemp-derived cannabinoid products or kratom products are also subject to the sales tax and use tax. Products designed or formulated for human consumption containing cannabinoid products or kratom products are not exempt from the consumers sales and service tax as food or food ingredients.

3.3.2. When sold as an e-cigarette liquid, hemp-derived cannabinoid substances are also subject to the e-cigarette liquids tax.

3.4. The retailer shall be liable for payment of the privilege tax on sales of hemp-derived cannabinoid

and kratom products, and any tax, additions to tax, penalties, or interest due and payable under this rule is a debt due this state and is a lien upon the real and personal property of such person.

**§110-99-4. Administration of Tax.**

4.1. Filing returns. – The retailer shall file quarterly returns showing gross revenues from all sales of hemp-derived cannabinoid or kratom products on a form prescribed by the Tax Commissioner.

4.1.1. The return shall be filed on the 20th day of the month following the end of each calendar quarter. For example, for the calendar quarter ending March 31, the return must be filed by the following April 20.

4.1.2. Returns shall be filed electronically.

4.2. Payment of tax.

4.2.1. The privilege tax on sales of hemp-derived cannabinoid and kratom products is due and payable at the time the return is filed.

4.2.2. The measure of tax shall be the gross revenues from all sales of hemp-derived cannabinoid or kratom products during the previous calendar quarter.

4.2.3. Payment of the tax shall be by electronic funds transfer, unless prohibited by federal law.

4.3. Products containing both hemp-derived cannabinoids and kratom. -- Products containing both hemp-derived cannabinoids and kratom are not subject to both the tax on hemp-derived cannabinoids products and the tax on kratom products. If a product contains both hemp-derived cannabinoids and kratom, the retailer shall treat the product as a kratom product for the purposes of this rule and pay the tax on kratom products.

4.3.1. If a product contains both hemp-derived cannabinoids and kratom and is subject to tax on kratom, the retailer shall treat the product as a kratom product for the purposes of this rule and pay the tax on kratom products. Example: Gummies contain both Delta-9 and kratom. Because the gummies are for human consumption, they are subject to tax on kratom products. The retailer should report and pay the privilege tax as a kratom product.

4.3.2. If the product contains both hemp-derived cannabinoids and kratom, but is not subject to the tax on kratom, then the retailer may treat the product as a hemp-derived cannabinoid product. Example: A lotion contains both Delta-9 and kratom. Because the lotion is not for human consumption, it is not subject to the tax on kratom products. The retailer should report and pay the privilege tax.

**§110-99-5. Record-Keeping Requirement.**

5.1. The retailer shall keep and maintain records sufficient to allow verification of the information reported on returns. On audit, the retailer must be able to provide invoices, sales contracts, and bills of receipt documenting:

5.1.1. Vendor name;

5.1.2. Invoice date;

5.1.3. Invoice number;

5.1.4. Item description;

5.1.5. Invoice amount; and

5.1.6. Amount of hemp-derived cannabinoid or kratom tax paid.

5.2. The Tax Commissioner has the authority to inspect or examine the records, books and papers, and any inventories of hemp-derived cannabinoid products or kratom products kept on the premises of the retailer to verify the truth and accuracy of any return or report filed by the retailer to ascertain whether all applicable taxes are being properly paid.

5.3. A retailer must retain the 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.

**§110-99-6. Violations and Penalties.**

6.1. Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in §11-10-1 et seq., of this code applies to the tax on hemp-derived cannabinoid products and the tax on kratom products authorized under §19-12E-1 et seq., and §19-12F-1 et seq., of this code, except as otherwise expressly provided in this article, with like effect as if that act were applicable only to the taxes authorized by §19-12E-1 et seq., and §19-12F-1 et seq., of this code and were set forth *in extenso* in this article.

6.2. Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in §11-9-1 et seq., of this code applies to the tax on hemp-derived cannabinoid products and the tax on kratom products authorized under §19-12E-1 et seq., and §19-12F-1 et seq., of this code with like effect as if that act were applicable only to the taxes authorized by §19-12E-1 et seq., and §19-12F-1 et seq., of this code and were set forth *in extenso* in this article.

6.3. Failure to pay tax or file return. – Any person required to pay the privilege tax on sales of hemp-derived cannabinoid and kratom products, or to file any return or report, who willfully fails to pay the tax, or willfully fails to file the return or report, more than 30 days after the date the tax is required to be paid, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$2,500. Each failure to pay tax, or file a return or report, more than 30 days after its due date for any tax period is a separate offense under this section and punishable accordingly. However, 30 days prior to instituting criminal proceedings, the Tax Commissioner shall give the person written notice of any failure to pay a tax or to file a return or report. Notice shall be served on the person by certified mail or by personal service.

6.4. Failure to maintain records. – Any person who willfully fails to maintain any records, or supply any information, in the manner required by this rule is guilty of a misdemeanor and, upon conviction

thereof, shall be fined not less than \$100 nor more than \$1,000 or imprisoned in jail not more than six months, or both fined and imprisoned.

6.5. Attempt to evade tax. – If any person: (1) knowingly files a false or fraudulent return, report or other document under any provision of this rule; or (2) willfully delivers or discloses to the Tax Commissioner any list, return, account, statement, record or other document known by him or her to be fraudulent or false as to any material matter with the intent of obtaining or assisting another person in obtaining any credit, refund, deduction, exemption or reduction in tax not otherwise permitted by law; or (3) willfully attempts in any other manner to evade any tax imposed by this rule or the payment thereof, is guilty of a felony and, notwithstanding any other provision of the code, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$10,000 or imprisoned in a correctional facility not less than one nor more than three years or, in the discretion of the court, be confined in jail not more than one year, or both fined and imprisoned.