

# WEST VIRGINIA CODE: §11B-1-8

## **§11B-1-8. Special employment procedures for Tax Division personnel.**

(a) Legislative findings and intent. —

(1) The Tax Division of the Department of Revenue has approximately one hundred vacancies. The Legislature finds that the division has long had difficulty filling positions which are essential to efficiently and effectively administering, collecting and enforcing the tax laws of this state. The Legislature finds that, to address this problem, the hiring and retention processes of the division must be streamlined to effectively and efficiently meet personnel needs while still affording applicants and employees the due process protections of classified service.

(2) The ratification of the Roads to Prosperity Amendment of 2017 to the Constitution of West Virginia will result in substantially increased funding for roads and highways in the state and the opportunity for in-state and out-of-state contractors to bid on road projects. The need to ensure that all businesses are in compliance with the tax laws of this state will exacerbate the division's staffing shortage.

(3) The purpose of this section is to allow the division to employ qualified applicants in vacant and new personnel positions within the division in a timely manner and to ensure that the division maintains an adequate workforce to effectively and fairly administer, collect and enforce the tax laws of this state.

(b) Definitions. — As used in this section:

(1) "Commissioner" means the Commissioner of the Tax Division of the Department of Revenue or his or her designee; and

(2) "Division" means the Tax Division of the Department of Revenue.

(c) Special employment procedure; requirements. — The commissioner shall implement the special merit-based application and appointment procedure authorized by the provisions of this section for all the employees of the division to ensure and provide for the selection and retention of competent and qualified personnel. The special application and employment procedure established pursuant to this section shall be effective on and after December 1, 2017, and shall be subject to the following requirements:

(1) The Division of Personnel shall provide competitive registers of eligible applicants when requested by the division to do so within five business days of receipt of the request;

(2) Any position to be filled internally shall be posted for seven calendar days before the division may select an applicant. For positions to be filled with applicants from outside of the division, the public service announcement shall be posted for not less than fourteen calendar

days;

(3) Postings shall be active for up to one year;

(4) Notwithstanding any provision of law or rule promulgated under the provisions of this code, the division may employ any person listed on the register for employment as a Tax and Revenue Auditor 1, Tax and Revenue Auditor 2, Tax and Revenue Auditor 3, Revenue Agent 1, Revenue Agent 2, Investigator 2 or Investigator 3 without regard to the person's position on the applicable register;

(5) The division shall have full authority to evaluate applicants for employment or promotion within the division to positions within the classified service and classified-exempt service. The division shall have sole authority to determine whether applicants for positions with the division meet minimum position requirements;

(6) The division shall have full authority to make classification determinations for positions within the division by using the classification system approved by the State Personnel Board. The division may independently submit to the State Personnel Board recommendations for the approval of new division classifications or the amendment of current division classifications;

(7) The division shall have full authority to exercise its discretion regarding the application of the Division of Personnel's system of compensation for positions within the classified and classified-exempt service: Provided, That application of this subdivision shall be uniform. The division may independently submit to the State Personnel Board recommendations for the approval of a special pay scale for the division's personnel;

(8) Notwithstanding any provision of the code or of any rule to the contrary, the Division of Personnel shall not be a mandatory party to any public employee grievance filed against the division. The Division of Personnel shall not be a signatory to, and may not override or otherwise challenge, the division's decisions regarding settlement terms and conditions in employee grievances or other legal proceedings;

(9) The Division of Personnel shall facilitate or perform any lawful action necessary to initiate or complete the division's employment transactions, including, but not limited to, posting positions on applicable systems, initiating public service announcements when requested by the division, and processing necessary forms;

(10) The division shall comply with all applicable record retention requirements provided by law;

(11) The division is authorized to declare any positions effectively vacant due to employee separations, which were not processed prior to the division being placed under the wvOASIS system, vacant and subject to being filled pursuant to the provisions of this section;

(12) The division shall have the flexibility to utilize all vacant position numbers when

posting to fill a vacancy and to post vacant positions utilizing multiple classifications with corresponding job descriptions when the commissioner determines it to be necessary and in the best interest of the division; and

(13) For purposes of this section, a vacancy created when an employee of the division separates or goes on terminal leave may be posted upon receipt of the notice that the employee separated or commenced such leave.

(d) Exemption from regular application and appointment requirements. — When seeking applications or making appointments pursuant to the special procedure authorized by subsection (c) of this section, the division is not required to comply with Division of Personnel procedures for seeking applications and making appointments to classified service positions as provided by the provisions of article six, chapter twenty-nine of this code or in any other provision of this code, including those procedures promulgated in procedural or legislative rules promulgated by the commissioner pursuant to article three, chapter twenty-nine-a of this code, except that this section does not exempt the division from provisions of this code, prohibiting nepotism, favoritism, discrimination or unethical practices related to appointment, or the public employee grievance system.

(e) The commissioner may promulgate emergency rules and shall propose legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code as may be necessary to implement and comply with the provisions of this section.

(f) The provisions of this section shall apply notwithstanding the provisions of article six, chapter twenty-nine of this code to the contrary.

(g) Classified employees of the division shall continue to be covered by the civil service system and may utilize any applicable public employee grievance process.