WEST VIRGINIA CODE: §11-10-5N

§11-10-5n. Payment by commercially acceptable means.

(a) Authority to receive.-- The Tax Commissioner may receive in payment for taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) any commercially acceptable means that the commissioner considers appropriate to the extent and under the conditions provided in rules proposed by the commissioner for legislative approval in accordance with article three, chapter twenty-nine-a of this code.

(b) Ultimate liability.-- If a check, money order or other method of payment, including payment by credit card, debit card or charge card received in payment of taxes or fees or tax stamps or crowns is not duly paid, or is paid and subsequently charged back to the Tax Commissioner, the person by whom the check, money order or other method of payment was tendered remains liable for payment of the tax or fee or for the tax stamps or crowns, and for all legal penalties and additions thereto, to the same extent as if the check, money order or other method of payment had not been tendered.

(c) Liability of bank and others.-- If any certified, treasurer's or cashier's check (or other guaranteed draft), any money order or any means of payment that has been guaranteed by a financial organization (such as a credit card, debit card or charge card transaction which has been guaranteed expressly by a financial organization), is received for payment of taxes or fees or tax stamps or crowns and is not duly paid, the State of West Virginia shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for:

(1) The amount of the check (or draft) upon all the assets of the financial institution on which it is drawn;

(2) The amount of the money order upon all the assets of the issuer thereof; or

(3) The guaranteed amount of any other transaction upon all assets of the institution making the guarantee; and the amount shall be paid out of the assets in preference to any other claims whatsoever against the financial institution, issuer or guaranteeing institution, except the necessary costs and expenses of administration and perfected liens that are prior in time.

(d) Charges and fees due to insufficient funds or nonpayment by financial institution.-- If any check, money order or any other commercially acceptable method of payment permitted under this article, its amendments and related rules, tendered in payment of any amount of tax or fee or tax stamps or crowns or any interest, additions to tax or penalties is not duly paid, then, in addition to any other penalties provided by law, there shall be paid as a penalty by the person who tendered the payment, regardless of its form, upon written notice and demand by the Tax Commissioner, in the same manner as tax, an amount equal to the service charge or fee which the bank or other financial institution charged the state for each

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payment returned or not duly paid to the Tax Commissioner because the account is closed, there are insufficient funds in the account, payment was stopped or payment was refused by the bank, financial institution or other entity, including the state or political subdivision thereof. Recovery of such charges and fees will apply to all methods of payment permitted under this section. The Tax Commissioner may propose rules necessary to carry out this subsection and to provide guidelines and requirements necessary to ensure uniform administrative practices statewide to effect the intent of this subsection, all in accordance with article three, chapter twenty-nine-a of this code: Provided, That for purposes of this subsection, the term "payment" includes any transaction performed at the request of the taxpayer, including claims for refund that result in a service charge or fee.

(e) Payment by other means.--

(1) Authority to prescribe rule.-- The Tax Commissioner shall propose rules for legislative approval, in accordance with article three, chapter twenty-nine-a of this code, as the Tax Commissioner considers necessary to receive payment by commercially acceptable means, including rules that:

(A) Specify which methods of payment by commercially acceptable means are acceptable;

(B) Specify when payment by those means shall be considered received;

(C) Identify types of nontax matters related to payment by those means that are to be resolved by persons ultimately liable for payment and financial intermediaries, without the involvement of the Tax Commissioner; and

(D) Ensure that tax matters shall be resolved by the Tax Commissioner, without the involvement of financial intermediaries.

(2) Obtaining services.-- The Tax Commissioner shall use the State Treasurer's contracts and system for receiving payments by credit card, debit card, charge card or any other commercially acceptable means. The Tax Commissioner may not pay any fee or provide any other consideration in obtaining these services. The State Treasurer may not pay any fee or provide any consideration for receiving payments of taxes or fees (or in payment for excise tax stamps and tax crowns) described in this section by credit card, debit card, charge card or any other commercially acceptable means, and any cost for processing the payment shall be included, in advance, in the amount of the transaction and assessed to the party making the payment.

(3) Special provisions for use of credit cards.-- If use of credit cards is accepted as a method of payment of taxes pursuant to subsection (a) of this section:

(A) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) by a person by use of a credit card shall not be subject to Section 161 of the Truth in Lending Act (15 U. S. C.§1666), or to

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any similar provisions of state law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the credit card account such as a computational error or numerical transposition in the credit card transaction or an issue as to whether the person authorized payment by use of the credit card;

(B) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) shall not be subject to Section 170 of the Truth in Lending Act (15 U. S. C.1666i), or to any similar provisions of state law;

(C) To the extent allowed under federal law, a payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns) by a person by use of a debit card shall not be subject to Section 908 of the Electronic Fund Transfer Act (15 U. S. C.1693f), or to any similar provisions of state law, if the error alleged by the person is an error relating to the underlying tax liability, rather than an error relating to the debit card account such as a computational error or numerical transposition in the debit card transaction or an issue as to whether the person authorized payment by use of the debit card;

(D) To the extent allowed under federal law, the term "creditor" under Section 103(f) of the Truth in Lending Act (15 U. S. C.§1602(f)) shall not include the Tax Commissioner with respect to credit card transactions in payment of taxes or fees collected under this article (or in payment for excise tax stamps and tax crowns); and

(E) Notwithstanding any other provisions of law to the contrary, in the case of payment made by credit card or debit card transaction of an amount owed to a person as the result of the correction of an error under Section 161 of the Truth in Lending Act (15 U. S. C.§1666) or Section 908 of the Electronic Fund Transfer Act (15 U. S. C.§1693f), the Tax Commissioner is authorized to provide such amount to such person as a credit to that person's credit card or debit card account through the applicable credit card or debit card system.

(f) Confidentiality of information.--

(1) In general.-- Except as otherwise authorized by this subsection, no person may use or disclose any information relating to credit card, debit card or charge card transactions other than for purposes directly related to the processing of the transactions or the billing or collection of amounts charged or debited pursuant thereto.

(2) Exceptions.--

(A) Credit card, debit card or charge card issuers or others acting on behalf of the issuers may also use and disclose the information for purposes directly related to servicing an issuer's accounts.

(B) Credit card, debit card or charge card issuers or others directly involved in the

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processing of credit card, debit card or charge card transactions or the billing or collection of amounts charged or debited to the credit card, debit card or charge card, may also use and disclose the information for purposes directly related to:

(I) Statistical risk and profitability assessment;

(ii) Transferring receivables, accounts or interest therein;

(iii) Auditing the account information;

(iv) Complying with federal, state or local law; and

(v) Properly authorized civil, criminal or regulatory investigation by federal, state or local authorities.

(3) Procedures.-- Use and disclosure of information under this paragraph shall be made only to the extent authorized by written procedures promulgated by the Tax Commissioner.

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