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Emergency

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November 10, 1983

Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Manchin:

Pursuant to the provisions of Chapter 29A, Article 3 of the West Virginia Code of 1931, as amended, I hereby submit two (2) copies of Emergency Legislative Rules and Regulations promulgated by this Department relating to the filing of returns listing all property, real and personal, situated in this State on July 1, 1983, except that excepted from the listing requirements by W. Va. Code § 11-1A-5, for purposes of appraising such property during the statewide reappraisal and establishing a previously assessed value for purposes of the 10 year phase-in authorized by W. Va. Const. Art. X, § 1b, subsection D.

As required by W. Va. Code § 29A-3-15 (1982), fifteen (15) copies of these emergency rules and regulations will forthwith be delivered to the Legislative Rule Making Review Committee.

These emergency regulations take effect on November 10, 1983.

Very truly yours,

Herschel H. Rose III
State Tax Commissioner

HHR/dse

cc: Honorable Robert R. Nelson
Honorable Robert C. Chambers

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Nov. 10, 1983
Administrative Law Division





STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Herschel H. Rose III, Commissioner,
Title or Position

Tax, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- (X) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
() proposed rules and regulations superseding rules and regulations already on file;
() notice of hearing;
(X) findings and determinations; Statement of Emergency
() rules and regulations; or
() other - specify (LEGISLATIVE(X) PROCEDURAL () INTERPRETIVE () RULE

This filing pertains to

Chapter 11
Article 1A
Series 1A
Section 4, 5, 6
Page No.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 11/10/83
Administrative Law Division

- (X) proposed rules and regulations are required to go to Legislative Rule Making Committee;
() proposed rules and regulations are excluded from Legislative Rule Making Committee;

November 10, 1983

Date Submitted

Herschel H. Rose III
Signature of Person Authorizing
this Filing

EMERGENCY LEGISLATIVE
WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX DEPARTMENT

Chapter 11-1A
Series 1A
(1983)
(Filed November 10, 1983)

Subject: Listing of property for purposes of the
first statewide reappraisal as required
by W. Va. Code §§ 11-1A-4, 11-1A-5, 11-1A-6
and 11-1A-26.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11/10/83
Administrative Law Division

Effective: November 10, 1983

STATEMENT OF EMERGENCY

Whereas, W. Va. Code § 11-1A-4 (1983) requires that every person who owns property situated in this State on July 1, 1983, shall on or before on December 1, 1983, prepare a return itemizing and describing such property, whether real or personal, and file such return with the assessor of the assessment district wherein such property was located, except those returns listing property of public service businesses shall be filed with the State Tax Commissioner.

Whereas, W. Va. Code § 11-1A-4 requires that the form for this special one time return be designed by the Tax Commissioner, and shall provide a means for the orderly listing of all property not excepted from listing under the provisions of W. Va. Code § 11-1A-5 (1983).

Whereas, W. Va. Code § 11-1A-4 (1983) requires that a similar return, itemizing and listing such property, be also made, at the same time, by every person holding, possessing, or controlling property, real or personal property (tangible and intangible) as executor, administrator, guardian, trustee, receiver, agent, partner, attorney, president or accounting officer of a corporation, consignee, broker, or in any representative or fiduciary capacity.

Whereas, W. Va. Code § 11-1A-3(h) defines the term "property situated in this State" to mean:

(1) Property having legal situs in this State; or
(2) in the case of persons with a place of business located in this State and authorized to do business in this State and one or more other states of the United States or any foreign country:

(A) Any tangible property brought into this State from time to time or otherwise, deemed to have situs in this State for purposes of ad valorem property taxation, and

(B) Any intangible property held by such person, wherever evidence thereof is situated. In the case of assessment of such intangible property for ad valorem property taxation after the first statewide reappraisal only such part thereof as may be determined by applicable law or regulation to be subject to such taxation shall be deemed to be situate in this State.

Whereas, W. Va. Code § 11-1A-5 excepts from the listing required by Section 4 the following:

- (1) Bank deposits,
- (2) Money,
- (3) Household goods not held or used for profit,
- (4) Personal effects not held or used for profit, and

- (5) Real property assessed and listed
upon the land books of the county
assessor for 1983 or 1984 taxes.

Whereas, W. Va. Code § 11-11A-5 (1983) defines the term "personal effects" as including "but not limited to, fire-arms, ammunition held for personal use and not for profit." The term "personal effects" is further defined in W. Va. Code § 11-3-9 (1973) to mean "only articles and items of personal property commonly worn on or about the human body, or carried by a person and normally thought to be associated with the person when not held or used for profit."

Whereas, the term "household goods" is defined in W. Va. Code § 11-3-9 (1973) to mean "only personal property and household goods, commonly found within the house and items used to care for the house and its surrounding property when not held or used for profit."

Whereas, W. Va. Code §§ 11-1A-4 and 11-1A-5, when read in pari materia, require that listing of certain intangible personal property that is exempt from ad valorem property taxation by the State of West Virginia under the United States Constitution or federal law, or both, e.g. accounts receivable without situs in this State, United States bonds and treasury bills etc. Consequently, a multistate business with a commercial domicile in another state, that does business in this State and in other states will be required to list all of its intangibles, except money and bank deposits,

regardless of their business situs and whether they may be assessed for ad valorem property taxes by this State.

Whereas, W. Va. Code §§ 11-1A-4 and 11-1A-5, when read in pari materia, require the listing of certain intangible personal property that is exempt from ad valorem property taxes pursuant to the authority of W. Va. Const. art. X, §1 as implemented by W. Va. Code § 11-3-9 (1973) and some 45 separate provisions of the West Virginia Code, e. g. bonds issued by the State of West Virginia, its political subdivisions, and its agencies.

Whereas, W. Va. Code § 11-1A-6 (1983) requires that every person who files a tax return under Chapter 11, articles 13, 21 or 24 of the West Virginia Code for the period ending on December 31, 1982, or for income received or to be received during calendar year 1983 is required to file a copy of a depreciation schedule included in a federal or state net income tax return for the taxpayer's tax year ending after May 31, 1982. If such person did not prepare a depreciation schedule for such return or elects to not disclose the schedule from the tax return, a schedule must be prepared and filed showing property on which a deduction for depreciation could be claimed against gross or adjusted gross income received or receivable in the selected year, including a brief description of such property, its basis and, to the extent that taxpayer elects, any accumulated depreciation the taxpayer could of claimed in such

year and prior years.

Whereas, W. Va. Code § 11-1A-6 (1983) is not limited in its scope to property situated within the State of West Virginia but extends to include any depreciable property owned by the person situated in another state of the United States or any foreign country.

Whereas, W. Va. Code § 11-1A-8 (1983) requires that the property required to be described and listed pursuant to W. Va. Code § 11-1A-4 and the real property entered on land books for the 1983 or 1984 tax years, be categorized and systematically inventoried for the express purpose of ascertaining what the previously assessed value for each item was or would have been as of July 1, 1983, such must be done in accordance with guidelines, standards and precedures specified by the Tax Commissioner and entered into a statewide data bank established by the Tax Commissioner for such purpose by the officer with whom the return is filed under W. Va. Code § 11-1A-4.

Whereas, the statewide electronic data processing system network for property tax administration mandated by W. Va. Code § 11-1A-21 (1983) is still in the design stage and has not been established at this time.

Whereas, W. Va. Code § 11-1A-8 (1983) requires the Tax Commissioner to provide for the receipt and permanent preservation of the information entered into the statewide data bank, no such provisions exist at this time.

Whereas, W. Va. Code § 11-1A-8(b) requires that property exempt from taxation under the provisions of W. Va. Code § 11-3-9 (except money and bank deposits and household goods and personal effects not held or used for profit) and some 44 other provisions of the West Virginia Code shall nevertheless be listed on the return required by W. Va. Code § 11-1A-4 and categorized, inventoried and entered into the statewide data bank like any other property with the exemption from assessment being confirmed or denied.

Whereas, the stated intention of the Legislature in enacting W. Va. Code § 11-1A-8 was to provide a mechanism for determining the previously assessed value of property as that term used in W. Va. Const. art. 10, §1b, subsection D, so that such previously assessed value may be compared with the assessed value of such property following the first statewide reappraisal to determine whether there is a resulting increase to be allocated over a period of 10 years in equal installments annually, as required by the Constitution, that mechanism also requires the listing of property that is and will continue to be exempt from ad valorem property taxes regardless of its use.

Whereas, W. Va. Code § 11-1A-23 (1983) specifies that property tax returns and return information filed or supplied pursuant to articles 1A, 3, 4, 5 or 6, Chapter 11 of the West Virginia Code, "shall be confidential and except as authorized in this section [11-1A-23] no officer or employee

of the State Tax Department, county assessors, county commissions and the board of public works shall disclose any return or return information obtained by him...in any matter in connection with his service as such officer, member or employee," excepted from this confidentiality provision is the itemized description of property listed pursuant to W. Va. Code §§ 11-1A-4, 11-1A-6 and 11-1A-26. This exception is to allow any person to ascertain that all property subject to assessment has been subject to appraisal during the first statewide reappraisal. Nevertheless, confidentiality is retained with respect to the following, unless the appraised or assessed value thereof is challenged before the county commission or in circuit court.

(1) Public disclosure of the specific description of burglar alarms and other similar security systems held by any person. A general disclosure appears to be required.

(2) Public disclosure of the specific description of stock, bonds or other personal property held by a natural person, except motor vehicles and other tangible property utilized publically. Such property held by a corporation or other entity would be public.

(3) Public disclosure of any information claimed by any taxpayer to constitute a trade secret or confidential patent information. The term "trade

secret" is not defined.

Whereas, W. Va. Code § 11-1A-23 requires appraisal returns and the information contained therein to be kept secure and confidential, nevertheless such provisions are less than adequate, or may be perceived by the public to be less than adequate, to insure that all persons who own, hold, possess or control real property or personal property (tangible and intangible) are treated alike, and to prevent the use of return information for purposes other than property tax administration.

Whereas, W. Va. Code § 11-1A-23 appears to make the intangibles of natural persons exempt from public disclosure but permits or requires disclosure of intangibles owned, held, possessed or controlled by other persons, such provision may possibly be in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Whereas, the provisions of W. Va. Code §§ 11-1A-4, 11-1A-5 and 11-1A-6 may be construed to require disclosure of information not necessary or instrumental to equal and uniform administration of the ad valorem property tax, such required disclosure may violate a person's rights under the Fourth and Fifth Amendments to the United States Constitution.

Whereas, administration of W. Va. Code §§ 11-1A-4, 11-1A-5, 11-1A-6, 11-1A-8 and 11-1A-23 in accordance with

the provisions thereof may possibly be in violation of the Constitution or laws of the United States, the Tax Commissioner, county assessors and county sheriffs may be sued and held personally liable for violation of federal law under 42 U.S.C. § 1983.

Whereas, W. Va. Code § 11-1A-25 (1983) provides that if any person, firm or corporation, including public service corporations, whose duty it is by law to list any real estate or personal property for appraisal shall refuse to furnish a proper list thereof, or refuse to list within the time required by law and within 30 days after written demand therefor; or if any person, firm or corporation, including public service corporations, shall refuse to answer or answer falsely any questions asked by the assessor or the Tax Commissioner, or shall refuse to delivery any other statement required by law, he, she or it shall (1) forfeit not less than twenty-five nor more than one hundred dollars and (2) be denied all remedy provided by law for correction of any appraisal made by the Tax Commissioner. Additionally, if any person, firm or corporation, including a public service corporation, that is required to make a return of property for appraisal under W. Va. Code § 11-1A-4 fails to return a true list of all property not exempt from listing under W. Va. Code § 11-1A-5, then, in addition to all other penalties provided by law, he, she or it shall forfeit 1% of the value of the property not returned and not otherwise

taxed in the State.

Whereas, the penalties for failure to list property for reappraisal, for refusal to answer or truthfully answer any question asked by the Tax Commissioner or county assessor and for refusal to deliver any other statements required by law are quite severe, the public needs to be educated that a forfeiture of 1% will be imposed and collected from the market value of all property not returned for appraisal and not exempted from the requirement to list even when the property is exempt from assessment of ad valorem property taxes but not from the requirement to list for appraisal by W. Va. Code § 11-1A-5.

Whereas, W. Va. Code § 11-1A-26 (1983) requires that each incorporated company (foreign or domestic) owning property subject to taxation in this State shall include with the return required by W. Va. Code § 11-1A-4 a list of the following items, which are also required by W. Va. Code § 11-3-12 for assessment purposes:

- (a) The amount of capital authorized to be employed by;
- (b) The amount of cash capital paid on each share of stock;
- (c) The amount of credits and investments other than its own capital stock held by it on July 1, 1983, with its true and actual value, meaning its market value on said date. W. Va. Code § 11-1A-3(i);

(d) The quantity, location and value of all its real estate, in the tax districts, in which it is located;

(e) The kinds, quantity and value of all of its tangible property in each tax district in which it is located.

Whereas, there was and is insufficient time to design, print and distribute an appraisal listing return for property situated in this State on July 1, 1983, and to educate the public about the purpose for the return, why it is needed and how it will be used, the Tax Commissioner determined that forms filed with county assessors and the Tax Commissioner listing property for assessment of 1984 ad valorem property taxes shall be utilized for purposes of the statewide reappraisal until a supplemental appraisal return is issued and the public has been educated about its purpose and use.

Whereas, there is a need to coordinate the design of the appraisal return with the rule for valuing certain species of property during the statewide reappraisal which was required to be filed in the State Register on or before September 1, 1983, and will not be effective for any purpose until after enactment of an act by the Legislature authorizing its promulgation as a legislative rule, with the penalty for failure to list property for purpose of the appraisal. The public needs to know with certainty exactly what it is to

list and what need not be listed.

Whereas, the Tax Commissioner determined that an emergency exists requiring immediate promulgation of legislative regulations pertaining to the appraisal listing return in order to comply with the time limitations prescribed by W. Va. Code § 11-1A-4, and to prevent substantial harm to the public interest.

Wherefore, the Tax Commissioner determined that it was and is in the best interest of persons owning, holding, possessing or controlling real property and personal property (tangible and intangible) and of this State for the following emergency regulations to be filed in the State Register, in order that the provisions thereof become effective immediately upon filing, as provided in W. Va. Code § 29A-3-15, so that the Tax Commissioner may promulgate legislative regulations on: confidentiality of appraisal returns and the safekeeping measures assessors must take to protect that confidentiality; application of the forfeiture penalty and other penalties provided by law for failing to file an appraisal return or for failure to file a complete appraisal return; property that must be included in the appraisal return and that which may be omitted because it is not subject to assessment regardless of who owns it; exemption of property from assessment based on its use; methods and procedures for valuing property; and on other problems identified in this statement of emergency, in order to

State Tax Department
Leg. Reg. 11-1A
Series 1A

preserve and protect the integrity of the statewide reap-
praisal and the public's confidence therein which are es-
sential to obtaining equal and uniform appraisal of all
property, both real and personal, tangible and intangible,
based on its 1983 market value.

EMERGENCY LEGISLATIVE
WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-1A
Series 1A
(1983)

(Filed November 10, 1983)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 11/10/83
Administrative Law Division

Subject: Listing of property for purposes of the
first statewide reappraisal as required
by W. Va. Code §§ 11-1A-4, 11-1A-5, 11-1A-6
and 11-1A-26.

Section 1. General.

1.01. Type of Regulations. -- These are emergency
legislative regulations as defined in W. Va. Code §§ 29A-1-2(d)
and 29A-3-15.

1.02. Scope. -- These emergency legislative regula-
tions provide that the lists of property filed by taxpayers
for purpose of assessment of 1984 ad valorem property taxes
shall be deemed to be the return required by W. Va. Code
§ 11-1A-4 to be filed on or before December 1, 1983, until
such time as a supplemental return is issued by the Tax
Commissioner.

1.03. Authority. -- These emergency legislative
regulations are issued under the authority of W. Va. Code
§§ 11-1A-1(f) and 29A-3-15.

1.04. Filing Date. -- These emergency legislative
regulations were promulgated and filed in the State Register
on November 10, 1983.

Section 1.05

1.05. Effective Date. -- These emergency legislative regulations take effect immediately upon their filing in the State Register, and are effective for a period of 180 days thereafter. Their life may be extended for a period of an additional 180 days upon compliance with the provisions of W. Va. Code 29A-3-15.

1.06 Citation. -- These emergency legislative regulations may be cited as: W. Va. Emerg. Leg. Reg. 11-1A, Series IA, § _____, page _____ (November 10, 1983).

Section 4.01

Section 4. Identification of Property To Be Appraised;
Persons Required to Make Return.

4.01. General. -- A form for the orderly listing of all property for purposes of the statewide reappraisal except that excepted from the requirement to be listed under the provisions of W. Va. Code § 11-1A-5 (1983), is to be designed by the Tax Commissioner: Provided, that until such time as a supplemental appraisal return is issued, following the promulgation of permanent rules and regulations on these supplemental returns, the forms prepared (or authorized to be used) by the Tax Commissioner, pursuant to W. Va. Code § 11-1-6 (1957), for the listing of property for assessment of 1984 ad valorem property taxes shall be used in lieu of a new and different separate return.

4.02. Due Date of Return. -- Every person who owns, holds, possesses or controls real property or personal property (tangible or intangible) situated in this State on July 1, 1983, shall prepare and file a return itemizing and describing such property on or before December 1, 1983: Provided, That the timely filing of a return listing property for assessment of 1984 ad valorem property taxes shall be deemed to be in compliance with said December 1, 1983 date. A supplemental appraisal return shall be filed within thirty days after written demand therefor is mailed, postage

Section 4.03

prepaid to the last known address of the person who owns, holds, possesses or controls, real property or personal property (tangible or intangible) situated in this State on July 1, 1983.

4.03. Persons Required to File Return.

(a) The return required by W. Va. Code § 11-1A-4 (1983) shall be filed by every person who owns property which was situated in this State on July 1, 1983. Additionally, the return shall be filed by every person holding, possessing or controlling real or personal property as:

- (1) executor,
- (2) administrator,
- (3) guardian,
- (4) trustee,
- (5) receiver,
- (6) agent,
- (7) partner,
- (8) attorney,
- (9) president or accounting officer of
a corporation,
- (10) consignee,
- (11) broker, or
- (12) any other person who holds, possesses or
controls real or personal property in

Section 4.03

any representative or fiduciary capacity.

(b) The return required by W. Va. Code § 11-1A-4 (1983) shall be made and the information furnished:

(1) With respect to an individual who is deceased, by his or her executor, administrator, or other person charged with the property of such decedent;

(2) With respect to a person under a disability who is unable to make a return, by a duly authorized agent, committee, guardian, fiduciary or other person charged with the care of the person or property of such individual: Provided, That this subdivision shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual;

(3) With respect to a case where a receiver, trustee in bankruptcy, or assignee by order of a court of competent jurisdiction, by operation of law or otherwise, has possession of or holds title to all or substantially all of the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the

Section 4.04

return for such corporation in the same manner and form as corporations are required to make such returns;

(4) With respect to property of an estate or a trust, the return shall be made by the fiduciary thereof; and

(5) With respect to the property of a married person who is absent from the State, the return shall be made by his or her spouse.

4.04. Definitions. -- For the purpose of Article 1A, Chapter 11 of the West Virginia Code, the following terms shall have the meaning ascribed herein unless the context in which the term is used clearly requires another meaning.

(a) "Person" means and includes individuals as well as corporations, societies, associations and partnerships. See W. Va. Code § 2-2-10(i) (1973), defining generally terms used in the West Virginia Code.

(b) "Property situated in this State" means and includes:

- (1) Property having legal situs in this State; or
- (2) In the case of person with a place of business located in this State and authorized to do business in this State and one or more other

Section 4.04

states of the United States or any foreign
country:

- (A) Any tangible property brought into this State from time to time or otherwise deemed to have situs in this State for purposes of ad valorem property taxation, and
- (B) Any intangible property held by such person, wherever evidence thereof is situate.

Section 5.01

Section 5. Property Excepted From Listing For Appraisal.

5.01. General. -- All real property and all personal property, both tangible and intangible, situated in this State on July 1, 1983 is required to be listed for appraisal by the provisions of W. Va. Code § 11-1A-4 (1983), by every person owning, holding, possessing or controlling such property, except the following species of property:

- (a) Bank deposits;
- (b) Money;
- (c) Household goods not held or used for profit;
- (d) Personal effects not held or used for profit; and
- (e) Real property assessed and listed upon the the land books for 1983 or 1984 ad valorem property taxes.

Any property not falling within one of these five (5) specific exemptions must be listed, even if it is otherwise exempt from West Virginia ad valorem property taxes.

5.02. Definitions. -- For the purpose of Article 1A, Chapter 11 of the West Virginia Code, the following terms shall have the meanings ascribed herein unless the context in which the term is used clearly requires another meaning.

Section 5.02

(a) "Household goods" means only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property. See W. Va. Code § 11-3-9 (1973).

(b) "Personal effects" means only articles and items of personal property commonly worn on or about the human body, or carried by a person and normally thought to be associated with the person. See W. Va. Code § 11-3-9 (1973). "Personal effects" also includes firearms and ammunition held for personal use and not for profit. See W. Va. Code § 11-1A-5 (1983).

(c) "Money" means and includes cash, personal and business checks, cashiers' checks, certified checks, postal money orders, travelers' checks, express checks, bank credit card (Master Card, Visa, etc.) sales drafts or sales slips held by a merchant or other party for deposit with a bank, and other items commonly thought of and understood to be money. It does not include notes, bonds, bills and accounts receivable, stock and any other similar intangible personal property. See 48 Op. Att'y. Gen. 63 (1959); W. Va. Code §§ 11-5-3 (1961), defining "personal property" and 11-8-5 (1961), classifying property for ad valorem property taxation.

(d) "Bank deposits" means a deposit of money with any person engaged in the business of banking. It includes

Section 5.02

money on deposit in a checking, time, interest or savings account and certificates of deposit (including money market certificates and All Savers Certificates). The term "person engaged in the business of banking" means and includes banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the West Virginia Commissioner of Banking, the Federal Reserve Board or the United States Comptroller of the Currency.

Section 6.01

Section 6. Supplemental Information.

6.01. General. -- Every person required to file a West Virginia business and occupation tax, corporation net income tax or personal income tax return for the period ending December 31, 1982, or for income received during the 1983 calendar year, is required by W. Va. Code § 11-1A-6 to either:

- (1) file a copy of a depreciation schedule in a federal or State tax income return for a taxable year ending after May 31, 1982; or
- (2) prepare and file a schedule showing property on which a deduction for depreciation could be claimed against gross or adjusted gross income received or receivable in the selected year, including a brief description of such property, its basis and, to the extent the taxpayer elects, any accumulated depreciation the taxpayer could have claimed in such year and prior years.

6.02. Date Due. -- The information required by W. Va. Code § 11-1A-6 (1983) shall be filed at the same time and as part of the supplemental appraisal return required to be filed under Section 4.02 of these regulations, unless the Tax Commissioner requires that it be filed at some other time.



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