



State Tax Department
of West Virginia

Charleston 25305

ARCH A. MOORE, JR.
GOVERNOR

1985 SEP 27 AM 10:35
MICHAEL E. CARYL
COMMISSIONER
FILED

NOTICE OF PROPOSED RULE MAKING
PUBLIC COMMENT PERIOD

On September 27, 1985, two (2) copies of emergency legislative regulations pertaining to W. Va. Code §§ 11-1A-4, 11-1A-5 and 11-1A-26 were filed in the State Register. These regulations relate to the listing of interests in natural resources properties for purposes of the statewide reappraisal and the provision of penalties for failure to file a return or for filing a false return.

Members of the public are invited to submit written comments on the merits of the proposed sections 4 and 25 to W. Va. Emerg. Leg. Reg. 11-1A, Ser 1A. To be considered, the written comments must be received by the Tax Commissioner on or before November 15, 1985, or bear a United States postmark dated not later than November 15, 1985. Submissions should be addressed as follows:

State Tax Commissioner
Capitol Building, WW-300
Charleston, WV 25305

A copy of the emergency regulations may be obtained by writing to the State Tax Commissioner at the above address, or by calling the Property Tax Division of the State Tax Department at 348-3940 or, toll free, 1 (800) 642-3604.

This notice of proposed rule making and concomitant public comment period is given in conformity and compliance with the provisions of W. Va. Code § 29A-3-15.

Submitted to the State Register on September 27, 1985.


Michael E. Caryl
State Tax Commissioner



State Tax Department
of West Virginia

ARCH A. MOORE, JR.
GOVERNOR

Charleston 25305

MICHAEL E. CARYL
COMMISSIONER

September 27, 1985

The Honorable Ken Hechler
Secretary of State
Capitol Building
Charleston, WV 25305

Dear Mr. Hechler:

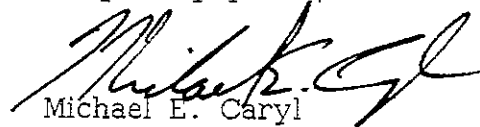
Pursuant to the provisions of Chapter 29A, Article 3, Section 29A-3-15 of the West Virginia Code of 1931, as amended, I hereby submit two (2) copies of Emergency Legislative Rules and Regulations promulgated by this Department. These Emergency Rules and Regulations relate to the listing of interests in natural resource properties on returns provided by this Department for the purposes of appraising such property interests during the statewide reappraisal, and providing penalties for those who either have not filed or have falsely answered and filed the return required by this Department.

A public comment period was held from May 17, 1985 to June 28, 1985. No comments were received. Because these rules and regulations are being refiled, a new public comment period is being scheduled.

As required by W. Va. Code § 29A-3-15 (1985), fifteen (15) copies of these emergency rules and regulations will forthwith be delivered to the Legislative Rule Making Review Committee.

These emergency rules and regulations are being refiled under the authority of W. Va. Code § 29A-3-15(d). This refileing is effective October 1, 1985.

Very truly yours,


Michael E. Caryl
State Tax Commissioner

MEC/jms
Enclosures

FILED
1985 SEP 27 AM 10:30
STATE OF WEST VIRGINIA
DEPARTMENT OF REVENUE



State Tax Department
of West Virginia

ARCH A. MOORE, JR.
GOVERNOR

Charleston 25305
September 27, 1985

MICHAEL E. CARYL
COMMISSIONER

Honorable Ken Hechler
Secretary of State
State Capitol
Charleston, WV 25305

Dear Mr. Hechler:

Attached are two (2) copies of emergency legislative regulations pertaining to W. Va. Code §§ 11-1A-4, 11-1A-5 and 11-1A-25. These regulations relate to the listing of interests in natural resources properties for purposes of the statewide reappraisal and for the provision of penalties for failure to file a return or for filing a false return.

Members of the public are invited to submit written comments on the merits of sections 4 and 25 to W. Va. Emerg. Leg. Reg. 11-1A, Series 1A. To be considered, the written comments must be received by the Tax Commissioner on or before November 15, 1985, or bear a United States postmark dated not later than November 15, 1985. Submissions should be addressed to:

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Charleston, WV 25305

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Submitted to the State Register on September 27, 1985.

Very truly yours,


Michael E. Caryl
State Tax Commissioner

MEC/jms

Attachments

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STATEMENT OF EMERGENCY

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

Whereas, under the authority of W. Va. Code §§ 11-1A-1(f) and 29A-3-15, the Tax Commissioner promulgated and on October 4, 1984 and April 3, 1985 filed in the State Register W. Va. Emerg. Leg. Reg. 11-1A, Series 1A, § 4 (1984) which provided for the listing of property interests in natural resources located under the surface.

Whereas, W. Va. Code § 11-1A-4 (1983) requires the Tax Commissioner to design the form for this special one-time return and to provide means for the orderly listing of all property not excepted from listing under the provisions of W. Va. Code 11-1A-4 (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 real and personal property (tangible and intangible) as executor, receiver, agent, partner, attorney, president or accounting officer of a corporation, consignee, broker or in any representative or fiduciary capacity.

Whereas, even though W. Va. Code § 11-1A-5 excepts from listing real property assessed and listed upon the land books of the county assessor for 1983 or 1984 taxes, it is not known whether all real property has been so assessed and listed.

Whereas, there is no statutory requirement that there be recorded all leases entered into for the purposes of exploration, development, exploitation or removal from the surface or from below the surface of the ground, coal, oil and gas, minor minerals or other natural resources.

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 (1983) and the real property entered on land books for the 1983 and 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 being done in accordance with guidelines, standards and

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

procedures specified by the Tax Commissioner and entered into a statewide data bank established by the Tax Commissioner for such purposes.

Whereas the Tax Commissioner entered into a contract with a private concern for the purpose of designing and developing the statewide data processing system network with such network becoming operational on September 20, 1985.

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 by this section, 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 an 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.

Whereas, it is imperative that in order for the statewide reappraisal to be complete, the Tax Commissioner must ask questions to assure that all natural resources, including leases to provide for the extraction of same, be listed on the return to be filed.

Whereas, the return form upon which was to be listed the interest owned or leased in natural resources was sent on or before October 15, 1984, to all prospective taxpayers by the Tax Commissioner and the return was to be returned directly to the Tax Commissioner on or before December 15, 1984.

Whereas, all persons possessing an interest in natural resources properties have not complied with the requirement of filing with the Tax Commissioner the return listing such property interests, even though such return was required to be filed on or before December 15, 1984.

Whereas, W. Va. Emerg. Leg. Reg. 11-1A, Series IA § 4 (1984) which was again filed on April 3, 1985 will lapse on October 1, 1985, unless continued in effect by this refiling under the authority of W. Va. Code § 29A-3-15(d) (1985).

Whereas, W. Va. Code §§ 11-1A-25 and 11-3-10 provide monetary penalties for refusal to answer or to falsely answer any question asked by the Tax Commissioner when such question or questions relate to the listing of real estate interests for the purpose of taxation.

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

Whereas, W. Va. Code §§ 11-1A-25 and 11-3-10, deny the taxpayer all remedies provided by law for the correction of any appraisal made by the Tax Commissioner when such appraisal is the result of the taxpayer's refusal to answer or to falsely answer any question asked by the Tax Commissioner when such question or questions relate to the listing of real estate interests for the purpose of taxation.

Whereas, the Tax Commissioner determined that an emergency exists requiring immediate promulgation of legislative regulations pertaining in general to the appraisal listing returns and in specific to those appraisal listing returns not properly filed, 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 interests in real property and the natural resources located therein 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 regulations on: property to be listed upon the appraisal return; to whom and by when the return is to be sent, to whom and by when the return is to be returned, and to assure equal and uniform taxation by providing for the filing of all returns; confidentiality of appraisal returns and the safekeeping measures to be utilized in protecting 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; and on other problems identified in this Statement of Emergency, in order to preserve and protect the integrity of the statewide reappraisal and the public's confidence therein which are essential to obtaining equal and uniform appraisal of the natural resources located in or under the real property in this State.

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RECEIVED
SUBSTANTIAL & TIME

EMERGENCY
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DEPARTMENT
Chapter 11-1A
Series IA
(1985)

Filed: September 27, 1985

Subject: Listing of interests in natural resources for purposes of the first statewide reappraisal as required by W. Va. Code §§ 11-1A-4, 11-1A-5 and 11-1A-26, and provision of penalties for failure to file the required return as authorized by W. Va. Code § 11-1A-25.

EMERGENCY
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DEPARTMENT
Chapter 11-1A
Series IA
(1985)

Subject: Appraisal of Property for Periodic Statewide Reappraisals
Listing Interests in Natural Resources

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

EMERGENCY

WEST VIRGINIA LEGISLATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-1A
Series IA
(1985)

Filed: April 3, 1985

Subject: Listing of interests in natural resources for purposes of the first statewide reappraisal as required by W. Va. Code §§ 11-1A-4, 11-1A-5 and 11-1A-26, and provision of penalties for failure to file the required return as authorized by W. Va. Code § 11-1A-25.

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 regulations provide for the listing of interests in natural resources located under the surface, such listing to be on the return issued by the Tax Commissioner, and establishing penalties for those persons who fail to file the required return by April 15, 1985.

Section 1.03

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 April 3, 1985.

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. Emeg. Leg. Reg. 11-1A, Series IA, § _____, page _____ (1985).

Section 4. Identification of Property to be Appraised;
Persons Required to Make Returns.

4.01 General. -- The form designed or designated and provided by the Tax Commissioner shall be utilized for the orderly listing of all freehold interests in subsurface natural resources in West Virginia for the purpose of the first statewide reappraisal.

4.02 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) "Subsurface natural resources" means both known deposits of coal, oil, natural gas and minor minerals located below the surface of the earth and those deposits for which mining and/or drilling permits have been obtained.

Section 4.03

(c) "Tax Commissioner" is the State Tax Commissioner of West Virginia or his designate, and the mailing address for the Tax Commissioner's office is P.O. Box 2389, Charleston, WV 25328.

4.03 Due Date of Return. -- On or before October 15, 1984, the Tax Commissioner shall mail to all prospective taxpayers the tax return to be utilized for the listing of freehold interests in all real property having subsurface natural resources. Every person who on July 1, 1983, owned, held, possessed or controlled a freehold interest in real property containing subsurface natural resources shall prepare and file on or before December 15, 1984, the return itemizing and describing such property. If required by the Tax Commissioner, a supplemental appraisal return shall be filed within thirty days after written demand therefore is mailed, postage prepaid to the last known address of the person who owned, held, possessed or controlled a freehold interest in the above stated property. All returns required by this section to be filed shall be filed directly with the Tax Commissioner.

Section 4.04

4.04 Persons Required to File Return.

(a) The return required is a written list of questions which the Tax Commissioner may ask of taxpayers under the authority of W. Va. Code § 11-3-10 (1983) and which is described in the foregoing section 4.03, and it shall be filed by every person who on July 1, 1984, owned a freehold interest in subsurface natural resources, such persons among other means being determined as those who as of July 1, 1983, had applied for or had been granted mining and/or drilling permits through the Department of Natural Resources or the Department of Mines. Additionally, the return shall be filed by every person who held, possessed or controlled a freehold interest in subsurface natural resources on July 1, 1983, as:

- (1) executor;
- (2) administrator;
- (3) guardian;
- (4) trustee;
- (5) receiver;

Section 4.04

- (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 such an interest in any representative or fiduciary capacity.

(b) The return required by the Tax Commissioner under the authority of W. Va. Code § 11-3-10 (1983) and described in the foregoing section 4.03 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

Section 4.04

under a disability who is unable to make a return, by a duly authorized agent, 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 such 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 in possession of or holds title to all or substantially all of the property or business of a corporation, whether or not such property

Section 4.04

or business is being operated, such receiver, trustee, or assignee shall make the 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 property of a married person who is absent from the State, the return shall be made by his or her spouse.

Section 25. Failure To List Property, Etc.; Collec-
 tion of Penalties and Forfeitures.

25.01. In General. -- Any person whose duty it is to list any freehold interest in subsurface natural resources for the purpose of appraisal shall forfeit not less than \$25.00 nor more than \$100.00 if such person shall have:

- (a) Refused to furnish a proper list,
- (b) Refused to list within the time required by law and within thirty (30) days after written demand therefore,
- (c) Refused to answer any question asked by the assessor or the tax commissioner,
- (d) Answered falsely any question asked by the assessor or the tax commissioner, or
- (e) Refused to deliver any other statement required by law.

25.02. Additional Penalties. -- In addition to the foregoing statutory penalties, if such person shall have failed to properly file the return by April 15, 1985, a true list of all interests in natural resources which should be appraised:

- (a) The tax commissioner shall forthwith

Section 25.02

proceed to appraise the value of such interest or interests;

- (b) The person shall forfeit one percent (1%) of the value of the interest or interests not returned or otherwise taxed in this state; and,
- (c) The person shall be denied all remedy provided by law for the correction of any appraisal made by the tax commissioner.

25.03. Apportionment of Funds Collected. -- The sheriff shall apportion among all taxing units entitled to the funds all funds collected: Provided, such apportionment shall be in proportion to the rates of taxation for each such levying unit for the year in which the judgment was obtained bears to the sum of the rates of all.

25.04. Lien Preference. -- A judgment recovered under W. Va. Code § 11-1A-25 and pursuant to article two, chapter eleven A of this code shall be a lien in preference to any other lien, from the time of service of notice, and it shall be a lien upon all real estate and personal property of the defaulting taxpayer, regardless of when acquired.

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

EMERGENCY LEGISLATIVE
WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-1A
Series IA
(1985)

Subject: Natural Resources Property Tax Return

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