

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

FILED

APR 26 AM 9:34

SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: STATE TAX DIVISION

TITLE NUMBER: 110

CITE AUTHORITY: W. VA. CODE § 11-1C-5(a)(2)(B)

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES___, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 1H

TITLE OF RULE BEING FILED AS AN EMERGENCY: VALUATION OF

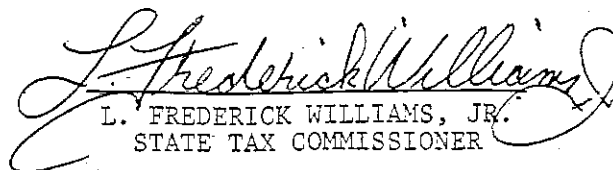
TIMBERLAND AND MANAGED TIMBERLAND

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

W. VA. CODE § 11-1C-1(c) AUTHORIZES COUNTY ASSESSORS TO PLACE ON THE PROPERTY BOOKS PROPORTIONATELY UNIFORM PERCENTAGE CHANGES IN VALUES AND TO DO SO DURING THE TWO TAX YEARS PRECEDING THE TAX YEAR BEGINNING JULY 1, 1993. SECTION 11-1C-5(a)(2)(B) REQUIRES THE TAX COMMISSIONER TO PROMULGATE ON OR BEFORE OCTOBER 1, 1991, NEW RULES RELATING TO THE VALUATION AND CLASSIFICATION OF TIMBERLAND. SECTION 11-1C-7 REQUIRES ASSESSORS TO SUBMIT FOR APPROVAL AND USE BY JULY 1, 1991, PLANS FOR THE VALUATION OF ALL PROPERTY WITHIN THEIR RESPECTIVE COUNTY. IT IS NECESSARY FOR THE RULE TO BE IN EFFECT ON JULY 1, 1991 IN ORDER TO ASSURE THE UNIFORM APPRAISAL OF TIMBERLAND WITHIN THE STATE. AS A RESULT, THE PUBLIC WELFARE WILL BE PRESERVED. A PUBLIC COMMENT PERIOD WAS HELD OCTOBER 1, 1990 THROUGH OCTOBER 31, 1990.

Use Additional Sheets If Necessary.


L. FREDERICK WILLIAMS, JR.
STATE TAX COMMISSIONER



State of West Virginia
Department of Tax and Revenue

Charleston 25305

GASTON CAPERTON
GOVERNOR

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1991 APR 26 AM 9:34

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
L. FREDERICK WILLIAMS, JR.
SECRETARY

CONSENT TO FILE RULE

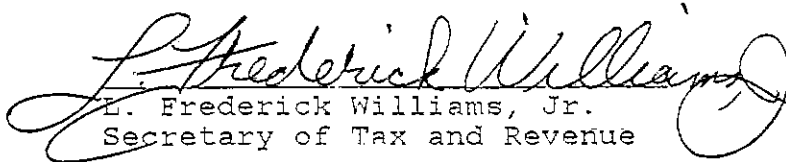
April 26, 1991

To Whom It May Concern:

Title of Rule: Valuation Of Timberland And Managed Timberland
Title Number: 110
Series Number: 1H

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 26th day of April, 1991.


L. Frederick Williams, Jr.
Secretary of Tax and Revenue

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Valuation Of Timberland And Managed Timberland

Type of Rule: X Legislative Interpretive Procedural

Agency: State Tax Division Address: State Capitol; Charleston, WV 25305

| 1. Effect of Proposed Rule | ANNUAL | | FISCAL YEAR | | |
|----------------------------|----------|----------|-------------|------|------------|
| | Increase | Decrease | Current | Next | Thereafter |
| Estimated Total Cost | \$ | \$ | \$ | \$ | \$ |
| Personal Services | -0- | -0- | -0- | -0- | -0- |
| Current Expense | -0- | -0- | -0- | -0- | -0- |
| Repairs and Alterations | -0- | -0- | -0- | -0- | -0- |
| Equipment | -0- | -0- | -0- | -0- | -0- |
| Other | -0- | -0- | -0- | -0- | -0- |

2. Explanation of above estimates:

The fiscal impact from this rule should not vary from that envisioned by the Legislature when it enacted W. Va. Code § 11-1C-1 et seq.

3. Objectives of these rules:

To provide a proper and uniform methodology for valuing timberland and managed timberland.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

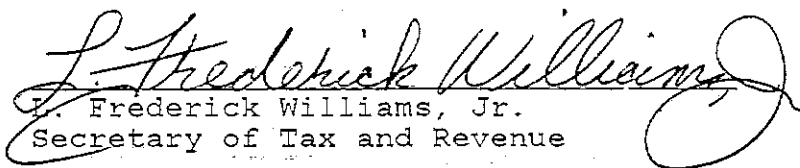
There should be a more uniform appraisal of timberlands in West Virginia, thereby resulting in more uniform tax revenues on such property. The actual economic impact cannot be determined.

C. Economic Impact on Citizens/Public at Large.

None.

Date: April 26, 1991.

Signature of Agency Head or Authorized Representative


Frederick Williams, Jr.
Secretary of Tax and Revenue

DATE: APRIL 26, 1991

TO: LEGISLATIVE RULE-MAKING COMMITTEE

FROM: L. FREDERICK WILLIAMS, JR. STATE TAX COMMISSIONER

L. Frederick Williams, Jr.

EMERGENCY RULE TITLE: VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

1. Date of filing: October 1, 1990

2. Statutory authority for promulgating the emergency rule: _____

W. Va. Code § 11-1C-5(a)(2)(B)

3. Date of filing of proposed legislative rule: December 20, 1990

4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?

No

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

All assessors are required to comply on July 1, 1991 with valuation plans filed and approved prior to July 1, 1991. Assessors cannot properly value timberlands without the use of this rule. Failure to provide uniform statewide valuation procedures will result in nonuniform valuations and cause the entire reappraisal of property to be questioned. This rule will provide necessary assistance, thereby preserving public confidence in property valuations and, as a result, preserving the public welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Additionally, W. Va. Code § 11-1C-7 requires assessors to immediately commence using the new valuation plans. This cannot occur without the use of this rule.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

N/A

FILED

EMERGENCY
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DIVISION

1991 APR 26 AM 9:34

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 110
SERIES 1H
1991

VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

Filed: April 26, 1991

§ 110-1H-1. General.

1.1 These regulations are emergency legislative regulations as defined in W. Va. Code § 29A-3-1 et seq.

1.2 Scope. - These emergency legislative regulations establish the procedure for the classification and valuation of timberland and managed timberland.

1.3 Authority. - W. Va. Code § 11-1C-5(a)(2)(B).

1.4 Filing Date. - April 26, 1991.

1.5 Effective Date. - These emergency legislative regulations are effective upon being authorized by the Legislature.

1.6 Citation. - These emergency legislative regulations may be cited as 110 C.S.R. 1H, § _____ (1991).

§ 110-1H-2. Introduction.

2.1 The appraised value of managed timberland shall be determined on the basis of the potential of the timberland to produce future net income. Potential future net income is capitalized in order to determine a present value, which is the appraised value. The ability of a stand of timber to produce wood products for sale or use depends primarily on the quality of the soil and certain topographic and climatic features, and is expressed as site index. Site index is therefore the principal criterion, influencing the appraised value of managed timberland. These factors will be reviewed annually by the Tax Commissioner for necessary updating of the method described in order to properly reflect future changes in the values of managed timberland.

2.2 The appraised value of timberland shall be determined on the basis of market comparables derived through analysis of sales prices of comparable timberland properties, but in no instance shall be less than the appraised value of similar grades of properties being utilized as managed timberland in the region.

§ 110-1H-3. Definitions. - As used in this regulation and unless the context clearly requires a different meaning, the following terms shall have the meanings ascribed herein, and shall apply in the singular or in the plural.

3.1 "Average Annual Gross Income" means the gross income per acre calculated by dividing the end-of-rotation income by eighty (80) years.

3.2 "Average Annual Net Income" means the average annual gross income per acre minus the annual management cost per acre.

3.3 "Capitalization rate" means the rate used to convert an estimate of income into an estimate of value. Details of the procedure for determining the capitalization rate are found in Section 110-1H-8 of these regulations.

3.4 "End-of-rotation income potential" means the amount of gross income per acre calculated by multiplying the end-of-rotation volume by the present stumpage price.

3.5 "Gross income" means the end-of-rotation (eighty (80) years)) gross income potential determined for each productivity class using the following formula: Average Yield (MBF and/or Cords Per Acre) x Present Average Stumpage Price = Gross Income.

3.6 "Management cost" means the cost determined annually by the Tax Commissioner to be the average annual cost of maintaining and protecting a producing forest. Maintenance costs may include costs of inventory, boundary survey, security, maps, and any other items as can be shown to have been necessary costs. Protection costs may include costs of protection against forest fires; harmful insect and tree diseases; costs of repair and replacement resulting from damages reported to appropriate police agencies, including all-terrain vehicles (ATV's) and other vehicular damages, and costs of replacing and replanting forest reproduction and plantations destroyed or injured by deer or other wild animals whose populations exceed the maximum carrying capacity of the site. Management costs will be determined as an average for the entire State or by regions, or by Managed Timberlands Productivity Grades and will be deducted from gross annual income per acre to obtain net annual income per acre.

3.7 "Managed Timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which has existent on it and well distributed, commercially valuable tree species of any size sufficient to comprise at least forty percent (40%) normal stocking of forest trees as shown by the following Table One and that is managed pursuant to a plan provided for in Section 110-1H-9, Valuation Application, of the Regulations. Land devoted to forest use that has been recently harvested of merchantable timber and thus is being regenerated into a new forest shall be eligible. To be qualified, the land must be growing a commercial forest crop that is physically accessible for harvesting when mature.

Table 1
Minimum Number of Trees Required Per Acre to Determine
30 Square Feet of Tree Basal Area of 40%
Stocking for Classification as Forest Land

| D.B.H. Range | D.B.H. in 2" Classes | Basal Area Per Tree | Per Acre | Per 1/5 Acre | Per 1/10 Acre |
|-----------------|-------------------------|------------------------|-------------|-----------------|------------------|
| up to 2.9"..... | Seedlings | | 400 | 80 | 40 |
| 3.0-4.9"..... | 4 | 0.0873 | 400 | 80 | 40 |
| 5.0-6.9"..... | 6 | 0.1964 | 153 | 31 | 15 |
| 7.0-8.9"..... | 8 | 0.3491 | 86 | 17 | 9 |
| 9.0-10.9"..... | 10 | 0.5454 | 55 | 11 | 6 |
| 11.0-12.9"..... | 12 | 0.7854 | 38 | 8 | 4 |
| 13.0-14.9"..... | 14 | 1.0690 | 28 | 6 | 3 |
| 15.0" + | 16 +.... | 1.3963 | 21 | 4 | 2 |

NOTE: (a) Area 1/5 acre, circle, diameter 105'4"; square 93.4" per side
(b) Area 1/10 acre; circle, diameter 74'6"; square 66'
(c) Number of seedlings present may qualify on a percentage basis;
Example, 100 seedlings would be equivalent of 7.5 square feet of
basal area (25% x 30 = 7.5)
(d) Seedlings per acre are based on total pine and hardwood stems.
Where intensive pine management is practiced a minimum of 250
well distributed loblolly or white pine seedlings will qualify.

3.8 "Owner of Timber" means any person who owns an interest in timberland, including a lessor or sublessor and an owner of a contract right to cut timber. Such owners of timber must have a right to cut timber for sale on his own account for use in his, hers, or its trade or business in order to have property rights that are subject to ad valorem property taxes.

3.9 "Site Index" means a method of measuring the productivity of a site to grow trees. It is the height that average dominant and codominant trees will attain at a given age. For ad valorem property tax purposes, it shall be the height of upland oaks at fifty (50) years of age.

3.10 "Stumpage Price" means the market value of standing trees (on the stump) prior to felling and removal, and is expressed in dollars per unit of volume (MBF or cords). For appraisal purposes, real stumpage price will be assumed to be stable over time, and shall be calculated by the Tax Commissioner from reports based upon 16 inch logs as prepared by the Division of Forestry, Department of Commerce, Labor, and Environmental Resources and other available sources. A five-year moving average shall be computed in order to minimize the effects of short-term fluctuations. Stumpage prices shall be computed for each stumpage price region in order to reflect regional differences in markets, topography, and accessibility.

3.11 "Stumpage Price Region" means a geographical region of the State, usually consisting of several counties, in which conditions of the timber, timber markets, topography, and accessibility are sufficiently similar to result in similar stumpage prices at any one point in time. The counties involved in each stumpage price region have been identified by the Division of Forestry, Department of Commerce, Labor, and Environmental Resources as follows:

| <u>Region 1</u> | <u>Region 2</u> | <u>Region 3</u> | <u>Region 4</u> | <u>Region 5</u> |
|-----------------|-----------------|-----------------|-----------------|-----------------|
| Brooke | Braxton | Barbour | Berkeley | Boone |
| Cabell | Calhoun | Greenbrier | Grant | Fayette |
| Hancock | Clay | Monroe | Hampshire | Kanawha |
| Jackson | Doddridge | Nicholas | Hardy | Lincoln |
| Marshall | Gilmer | Pendleton | Jefferson | Logan |
| Mason | Harrison | Pocahontas | Mineral | McDowell |
| Ohio | Lewis | Preston | Morgan | Mercer |
| Pleasants | Marion | Randolph | | Mingo |
| Putnam | Monongalia | Tucker | | Raleigh |
| Tyler | Ritchie | Upshur | | Summers |
| Wetzel | Roane | Webster | | Wayne |
| Wood | Taylor | | | Wyoming |
| | Wirt | | | |

3.12 "Timber" means and includes trees of any marketable species, whether planted or of natural growth, standing or down, located on public or privately owned land, which are suitable for commercial or industrial use.

3.13 "Timberland" means any surface real property, except farm woodlots of not less than ten contiguous acres, which is primarily in forest and which has existent on it and well distributed commercially valuable tree species of any size sufficient to comprise at least forty percent (40%) normal stocking of forest trees, as shown by Table One. Land that has been recently harvested of merchantable timber and is growing into or being planted as a new forest shall be eligible.

3.14 "Managed Timberland Productivity Grades" means timberland classified as Grade 1 (excellent to very good), Grade 2 (good to fair), or Grade 3 (poor), according to Site Index.

Table of
Timberland Productivity Grades

| <u>Timberland Productivity Grade</u> | <u>Site Index</u> | <u>Yield Per Acre over 80 Years</u> | |
|--------------------------------------|-------------------|-------------------------------------|--------------|
| | | <u>MBF</u> | <u>Cords</u> |
| Grade 1 (Excellent to very good) | 80 (75 or more) | 14.5 | 10.5 |
| Grade 2 (Good to Fair) | 70 (65 - 74) | 9.7 | 14.9 |
| Grade 3 (Poor) | 50 (less than 65) | 4.5 | 18.5 |

* Scribner rule. Source: Schnur, G. Luther. USDA Tech. Bul. No. 560. 1937. The Tax Commissioner may adopt a different timber scale and revise yields as standards of timber utilization change or as new information becomes available on timber yields of forest stands.

3.15 "Managed Timberland Productivity Maps" means those maps prepared showing the productivity class of all timberland in this State. The primary source of information for preparation of these maps shall be the Soil Survey, published by United States Department of Agriculture (USDA) Soil Conservation Service.

3.15.1 In those counties where soil surveys are not yet prepared, the best available information shall be used.

3.15.2 — For Webster and Pocahontas Counties: G.R. Trimble, Jr., "An Equation for Predicting Oak Site Index Without Measuring Soil Depth", Journal of Forestry, 62:325-327 shall be used.

3.15.3 For Wetzel, Doddridge, Braxton, Clay, and Gilmer Counties: L. R. Auchmoody and H. Clay Smith, Oak Soil-Site Relationships in Northern West Virginia. (USDA For. Serv. Res. Paper NE 434, 1979) shall be used.

3.15.4 For Wayne, Lincoln, Boone, Logan, Mingo, and McDowell Counties: Unpublished results of research at West Virginia University (1983) shall be used.

§ 110-1H-4. Managed Timber Productivity Maps. — Timber productivity maps indicating the Managed Timberland Productivity Grade of soils as Excellent to Very Good, Good to Fair, and Poor will be available for review at each county assessor's office and can be purchased from the Department of Tax and Revenue. These maps will be reviewed and updated periodically.

§ 110-1H-5. Managed Timber Productivity Grades. — Managed Timber productivity grades shall be based on site index and the ability of the site to yield timber, measured in thousands of board feet (MBF) per acre (Scribner rule) or cords per acre at the end of a rotation of eighty (80) years.

§ 110-1H-6. Appraised Value of Managed Timberland. — The appraised value per acre of managed timberland shall be calculated by dividing average annual net income by the capitalization rate. However, the appraised value for any grade of managed timberland will not be less than \$25 per acre.

§ 110-1H-7. Procedure for Determining Value of Managed Timberland. — The following is a step-by-step procedure for determining the appraised value of managed timberland.

7.1 All managed timberland is mapped according to productivity grade (See (e)(15)0 on USCS 7.5 minutes quadrangle sheets (1" = 2000')). The West Virginia surface maps are then reduced from a scale of 1" = 400' to 1" = 2000' in order to conform to the scale of the timberland productivity maps.

7.2 Average stumpage price (5 year moving average) is determined by stumpage price reports from the Division of Forestry, Department of Commerce, Labor, and Environmental Resources, and other available sources.

7.3 End-of-rotation (80 years) gross income potential per acre is determined for each productivity grade using the following formula: Average

yield (MBF and/or cords per acre) x present average stumpage price = gross income.

7.4 Annual gross income potential per acre is determined using the following formula: Gross income potential per acre ÷ 80 years = annual gross income potential per acre.

7.5 Annual net income potential per acre is determined by deducting the annual management cost per acre from annual gross income potential per acre.

7.6 Appraised value per acre is determined by capitalizing the net annual income per acre.

7.7 A table is prepared showing value of timberland by productivity grades.

7.8 Mylar maps, or an index, are prepared showing tax parcels and timberland productivity grade.

7.9 The appraised value of the property is calculated using the maps and table of managed timberland values.

7.9.1 If a parcel contains acreage in more than one managed timberland grade and/or in other property descriptions, total parcel value will be determined on the basis of the acreages classifications. For example, a 100 acre parcel has the following characteristics:

| |
|--|
| 1 Acre in Homesite |
| 9 Acres in Pasture |
| 5 Acres in Timberland (not accessible) |
| 30 Acres in Managed Timberland Grade 1 |
| 40 Acres in Managed Timberland Grade 2 |
| 15 Acres in Managed Timberland Grade 3 |
| <u>100 Acres</u> |

Appraisal of Land =

| | | |
|-------------------------------|---|--|
| 1 Acre Homesite | X | Homesite Value |
| + 9 Acres Pasture | X | Pasture Value |
| + 5 Acres Timberland | X | Woodland Value (Assessor Assigned Rates) |
| + 30 Acres Managed Timberland | X | Grade 1 Value |
| + 40 Acres Managed Timberland | X | Grade 2 Value |
| + 15 Acres Managed Timberland | X | Grade 3 Value |

§ 110-1H-8. Capitalization Rate. - A single statewide capitalization rate for timberland will be determined annually by the Tax Commissioner through the use of generally accepted methods of determining such rates. The rate will be based on the assumption of a level, non-inflating perpetual income series. The capitalization rate used to value managed timberland will be developed considering (1) a discount rate determined by the summation technique, and (2) a property tax component.

8.1 Discount Component. - The summation technique will be used in developing a discount component of the capitalization rate. The five subcomponents of the discount rate are:

8.1.1 Safe Rate. - The safe rate will reflect a rate of return that an investor could expect on an investment of minimal risk. It will be developed through review of interest rates offered on thirty-year United States Treasury Bills for a period of five years prior to the appraisal date.

8.1.2 Illiquidity Rate. - The illiquidity rate will be developed through an annual survey to determine a reasonable estimate of time that timberland when put up for sale, remains on the market before being sold. The time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen-week Treasury Bills. The interest differential between these securities will be used to represent the illiquidity rate. For example, if it is determined that a tract of timberland remains on the market for an average of six months (26 weeks) before being sold, the illiquidity rate will be derived by taking the rate on 26-week Treasury Bills minus the rate on 13-week Treasury Bills.

8.1.3 Risk Rate. - The relative degree risk of an investment in timberland is difficult to determine from published interest rates. Since farm investments closely approximate timberland investments in terms of risk, the risk rate for timberland will be developed from an annual survey of interest rates on loans for acquisition and/or development of timberland in conjunction with farmland. The survey will cover a five-year period prior to the appraisal date. Results of the survey will be compared to interest rates offered on thirty-year United States Treasury Bills for the same five-year period. The difference between the two combined with bands of investment analysis will be used as a basis to estimate the risk rate.

8.1.4 Management Rate. - The management rate represents the cost of managing the investment, not the cost of managing the timberland. The management rate will be developed through a survey of investment firms to identify annual charges for the management of investment portfolios.

8.1.5 Inflation Rate (negative). - Nominal interest rates, including the "safe rate" mentioned above, are higher than real rates by an amount representing expectation of future inflation. However, net annual income from timberland is to be estimated assuming level future prices (no inflation). Therefore, the capitalization rate must be a real rate, net of expectation of inflation.

8.1.6 In determining the discount component of the capitalization rate, the Tax Commissioner will take the sum of the safe rate, the illiquidity rate, the risk rate, and the management rate, and will deduct from this sum the inflation rate.

8.2 Property Tax Component. - The property tax component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property. The property tax component will be added to the discount rate component to determine the capitalization rate for the managed timberland valuation.

§ 110-1H-9. Valuation Application. - In order to qualify under the provisions of this rule for managed timberland valuation purposes, the owner(s) of the timberland must on or before the first day of July enter into a contract with the Division of Forestry, West Virginia Department of Commerce, Labor, and Environmental Resources and will state that the real estate is being used in a planned program of timber management and erosion control practices intended to enhance the growth of commercially desirable species through generally accepted silvicultural practices and the use of Best Management Practices, as specified in the West Virginia Forest Practice Standards and the West Virginia Nonpoint Source Management Program. This contract shall be assigned with the sale of the land when the land is sold to be used for managed timberland. On or before September 1, the owner(s) will certify, by notarized document, (a) a commitment to maintain and protect timberland certified as managed timberland, by documenting land-use objectives to include resource management and soil and water protection; or (b) by submitting a plan prepared by a professional forester and attesting to follow it. In either event, the following information shall be provided:

9.1 County, district, map, parcel number, and deed book acreage and actual surveyed acreage, if available, for each parcel that is to be valued as managed timberland.

9.2 The amount of acreage in each parcel that should be classified as managed timberland. For those properties where managed timberland acreage is different than deed acreage, a map identifying location of managed timberland acreage is required.

9.3 Signature from timber management forester acknowledging that the property is being managed in accordance with the Best Management Practices for forestry as outlined in the West Virginia Forest Practice Standards and the Best Management Practices for water quality as outlined in the West Virginia Nonpoint Source Management Program.

9.4 The Division of Forestry, Department of Commerce, Labor and Environmental Resources shall on or before October 1 of each year, provide the State Tax Department a copy of such certifications and reports and provide a list of those properties certified as managed timberland and those denied certification.

§ 110-1H-10. Summary of Method of Determining Appraised Value. - The formula to be used in determining the appraised value of property categorized as managed timberland is as follows:

$$\text{Appraised Value Per Acre} = \frac{\text{Total Yield per acre} \times \text{stumpage price}}{80 \text{ Years}} - \frac{\text{Management Cost Per Acre}}{\text{Capitalization Rate}}$$

§ 110-1H-11. Appraised Value of Timberland. - The appraised value per acre of timberland shall be determined based upon market comparable.

§ 110-1H-12. Valuation of Less Than 10 Acres. - A parcel, or contiguous parcels, of timberland totalling less than ten (10) acres shall not be considered to be managed timberland and shall be valued as timberland based upon

market comparables, without considering the productivity capacity of the site for timber yield.

§ 110-1H-13. Valuation of Farm Wood Lots. - Farm wood lots and the parts of a farm which are in timber shall be included in the valuation of farm property under W. Va. Code § 11-1A-10, except when the timberland is a separate parcel or tract entered in the land books, and except when the primary use of the farmland is in commercial forestry or the growing of timber for commercial purposes. See W. Va. Code § 11-1A-3(f).

§ 110-1H-14. Timberland Improvements. - Improvements such as roads and service buildings that are a required (usual) part of timber management operations shall not be subject to an additional market value appraisal over and above the appraisal of the managed timberland. Improvements that are not a necessary part of the timber management operations, such as dwellings, cottages, hunting camps, and other recreational facilities, and associated real estate shall be subject to additional market value appraisals.

§ 110-1H-15. Classification of Timberland and Managed Timberland.

15.1 Managed Timberland. - For property to qualify for managed timberland valuation, the owner of the property must enter into a contract with the Division of Forestry to use the real estate in a planned program of multiple purpose forest management, including erosion control, during timbering operations, as specified in the West Virginia Forest Practices Standards and the West Virginia Silvicultural Nonpoint Source Management Program. (See Section 9 of this rule). Multipurpose forest management contemplates the periodic selection of timber on the property for harvesting as an integral part of silvicultural management practices. Such silvicultural manipulation subjects the property to periodic commercial use that may have an effect on the property's classification for property tax purposes. Therefore, in recognition of such silvicultural manipulation, the following guidelines will be observed when classifying managed timberland for property tax purposes.

15.1.1 Property containing managed timberland, which may have been taxed as Class II property prior to the managed timberland application, will be taxed as Class III or Class IV property depending upon location. That portion of the property that is not included as part of the managed timberland portion may be taxed as Class II property upon approval of a request for segregation contemplated under provisions of West Virginia Code § 11-4-18.

15.1.2 Property containing managed timberland, which may have been taxed as Class III or Class IV property prior to the managed timberland application, will be taxed as Class III or Class IV property depending upon location.

15.2 Timberland. - Timberland shall be taxed as Class II, Class III, or Class IV property in accordance with provisions of West Virginia Code § 11-8-5. In order for timberland to be taxed as Class II property, the timberland must be used and occupied by the owner **exclusively** for residential purposes. (This section does not apply to farm woodlots - See § 110-1H-13.)

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

May 3, 1991

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE May 3, 1991
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Tax Division

RULE: New Rule, Series 1H, Valuation of Timberland and Managed Timberland

DATE RULE FILED AS AN EMERGENCY RULE: April 26, 1991

DECISION NO. 18-91

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature of Ken Hechler in cursive script, written over a horizontal line.
KEN HECHLER
Secretary of State

KEN HECHLER
Secretary of State

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DECISION

EMERGENCY RULE DECISION (ERD 18-91)

AGENCY: State Tax Division

RULE: New Rule, Series 1H, Valuation of Timberland and
Managed Timberland

FILED AS AN EMERGENCY RULE: April 26, 1991

- par. 1 The State Tax Division has filed the above amendments as an emergency.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a(a))].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Tax Department filed this emergency rule with supporting documents with the Secretary of State April 26, 1991 and with the LRMRC April 26, 1991.

par. 7 It is the determination of the Secretary of State that the Tax Division has complied with the procedural requirements of WV Code 29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code 11-1C-5(a)(2)(B) reads:

As to managed timberland as defined in 11-1C-2 of this article, the tax commissioner shall provide a method to appraise such property where it is situated in the state, which shall be a valuation based on its use and productive potential as managed timberland, which may be accorded special valuation as forestlands as authorized by section fifty-three, article six of the Constitution of West Virginia: Provided, That timberland that does not qualify for identification as managed timberland shall be valued at market value: Provided, however, That the tax commissioner may not implement any rules or regulations in title one hundred ten, which relate to valuation or classification of timberland: Provided, further, That on or before the first day of October, one thousand nine hundred ninety, the tax commissioner shall, in accordance with 29A-1-1 et seq. of this code promulgate new rules relating to the valuation and classification of timberland.

par. 9 It is the determination of the Secretary of State that the Tax Division has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Tax Division are as follows:

W. Va. Code 11-1C-1(c) authorizes county assessors to place on the property books proportionately uniform percentage changes in values and to do so during the two tax years preceding the tax year beginning July 1, 1993. Section 11-1C-5(a)(2)(B)

tax year beginning July 1, 1993. Section 11-1C-5(a)(2)(B) requires the Tax Commissioner to promulgate on or before October 1, 1991, new rules relating to the valuation and classification of timberland. Section 11-1C-7 requires assessors to submit for approval and use by July 1, 1991, plans for the valuation of all property within their respective counties. It is necessary for the rule to be in effect on July 1, 1991 in order to assure the uniform appraisal of timberland within the state. As a result, the public welfare will be preserved. A public comment period was held October 1, 1990 through October 31, 1990.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in 29A-3-15(g). . . "time limitation."

par. 14 This decision shall be cited as Emergency Rule Decision 18-91 or ERD 18-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Tax Division, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

Entered 1 THIS DATE May 3, 1991
ADMINISTRATIVE LAW DIVISION