

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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1992 APR 15 AM 8:50
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: STATE TAX DIVISION TITLE NUMBER: 110

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 NEW RULE BEING PROPOSED: 1H

TITLE OF RULE BEING PROPOSED:

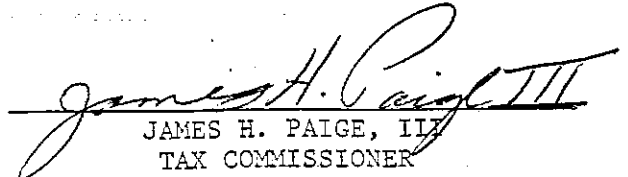
VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 1

SECTION 64-7-6(hh), PASSED ON MARCH 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: APRIL 15, 1992


JAMES H. PAIGE, III
TAX COMMISSIONER

3.10



FILED

1992 APR 15 AM 8:50

State of West Virginia
Department of Tax and Revenue

Charleston 25305

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JAMES H. PAIGE III
SECRETARY

GASTON CAPERTON
GOVERNOR

CONSENT TO FILE RULE

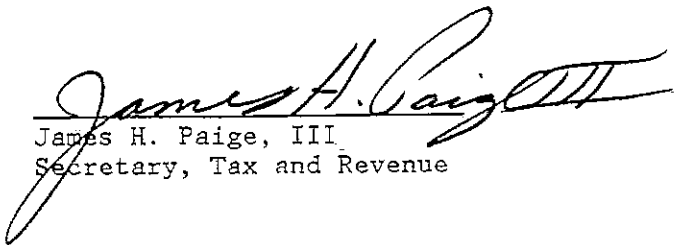
April 10, 1992

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 10th day of April, 1992.


James H. Paige, III
Secretary, Tax and Revenue

WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DIVISION
TITLE 110
SERIES 1H
APRIL 15, 1992

FILED
1992 APR 15 AM 8:50
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

§ 110-1H-1. General.

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

1.2 Scope. - These 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 15, 1992.

1.5 Effective Date. - April 15, 1992.

1.6 Citation. - These modified proposed 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
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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

Timberland Productivity Grade	Site Index	Yield Per Acre over 80 Years	
		MBF	Cords
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
100 Acres

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:

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

§ 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.)

Bill Tax Timberland 110-14

H. B. 4328

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the
Committee on the Judiciary)

A BILL to amend and reenact section six, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the state tax commissioner to promulgate legislative rules relating to the valuation of timberland and managed timberland.

Be it enacted by the Legislature of West Virginia:

That section six, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-6. Tax department.

(a) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four,

1 relating to the state tax commissioner (appraisal of property for
2 periodic statewide reappraisals for ad valorem property tax
3 purposes), are authorized with the amendments set forth below:

4 On page 8, section 11.04 (b)(2), definition of "Active Mining
5 Property," at the end of the first paragraph following the
6 period, by adding the following: "In the application of the
7 herein provided valuation formula on 'active mining property,'
8 the appropriate formula calculation will be based upon the actual
9 market to which the coal from that tract and seam is currently
10 being sold, whether it is 'metallurgical' or 'steam'."

11 On page 9, section 11.04 (b)(3), definition of "Active
12 Reserves," at the end of the subsection, following the period, by
13 adding the following: "In the application of the herein provided
14 valuation formula on 'active reserves,' the appropriate formula
15 calculation will be based upon the actual market to which the
16 coal from that tract and seam is currently being sold, whether it
17 is 'metallurgical' or 'steam'."

18 On page 11, section 11.04 (b)(11), definition of "Mineable
19 Coal," by striking the subsection and substituting in lieu
20 thereof the following: "(11) Mineable Coal. Coal which can be
21 mined under present day mining technology and economics."

22 On page 25, section 11.04 (c)(2)(C), entitled "Property Tax
23 Component," by striking the subsection and inserting in lieu
24 thereof the following: "(C) Property Tax Component -- This

1 component will be derived by multiplying the assessment rate by
2 the statewide average of tax rates on Class III property."

3 On page 30, section 11.04 (c)(4), entitled "Valuation of
4 Mined-Out/Unmineable/Barren Coal Properties," by striking the
5 numbers "\$5.00" and inserting in lieu thereof the following:
6 "\$1.00."

7 On page 31, section 11.04 (c)(5)(B), by striking the words
8 and numbers "Five Dollars (\$5.00)" and inserting in lieu thereof
9 the following: "One Dollar (\$1.00)."

10 On page 53, section 11.05 (h) by striking the symbol and
11 figures "(\$5.00)" and inserting in lieu the following:
12 "(\$1.00)."

13 On page 73, section 11.06 (h) by striking the symbol and
14 figures "\$5.00" and inserting in lieu the following: "\$1.00."

15 On page 81, section 11.07 (e)(15)(B)(4) at the end of the
16 second sentence remove the period after the word "property" and
17 insert the words "unless the land is used for some other purpose
18 in which case it will be taxed according to its actual use."

19 On page 86, section 11.07 (k) delete all of subsection (k).

20 On page 110, section 11.08 (c)(4) by striking the symbol and
21 figures "\$5.00" and inserting in lieu thereof the following:
22 "\$1.00."

23 On page 111, section 11.08 (c)(5)(B) by striking the symbol
24 and figures "\$5.00" and inserting in lieu thereof the following:
25 "\$1.00."

1 On page 115, section 11.09 (a)(3) in the first sentence,
2 insert after the word "land" the words "excluding farmland."

3 (b) The legislative rules filed in the state register on the
4 twenty-eighth day of September, one thousand nine hundred
5 eighty-four, relating to the state tax commissioner (estimated
6 personal income tax), are authorized with the amendments set
7 forth below:

8 55.02(a)(2)(on page 182.2) line 18, after the word
9 "profession" strike the words "on his own account" and the
10 comma(,).

11 55.12(b)(1)(page 182.35) at the end of the section, change
12 the period to a comma, and add the following language: "and in
13 the case of a court appointed agent, a copy of the court order of
14 appointment is sufficient."

15 55.12(c)(page 182.36) after the word "for," strike the word
16 "erroneous."

17 (c) The legislative rules filed in the state register on the
18 twenty-eighth day of September, one thousand nine hundred
19 eighty-four, modified by the state tax commissioner to meet the
20 objections of the legislative rule-making review committee and
21 refiled in the state register on the fourteenth day of November,
22 one thousand nine hundred eighty-four, and on the twenty-first
23 day of March, one thousand nine hundred eighty-five, relating to
24 the state tax commissioner (estimated corporation net income
25 tax), are authorized.

1 (d) The legislative rules filed in the state register on the
2 twelfth day of March, one thousand nine hundred eighty-five,
3 relating to the state tax commissioner (identification and
4 appraisal of farmland subsequent to the base year of statewide
5 reappraisal), are authorized and directed to be promulgated with
6 the following amendments:

7 Title page, Subject; following the word "Farmland," insert
8 the words "and of Structures Situated Thereon."

9 Page i, Subject; following the word "Farmland," insert the
10 words "and of Structures Situated Thereon."

11 Page i, TABLE OF CONTENTS, Section 10; following the words
12 "Valuation of Farmland" add the words "and of Structures Situated
13 Thereon."

14 Page 10.1, Title; following the word "FARMLAND" insert the
15 words "AND STRUCTURES SITUATED THEREON."

16 Page 10.1, Section 10, Title; following the word "Farmland"
17 add the words "and Structures Situated Thereon."

18 Page 10.1, Section 10.01(b); following the word "farmland"
19 insert the words "and structures situated thereon."

20 Page 10.2, Section 10.02(a), first sentence; following the
21 word "farmland" insert the words "and structures situated
22 thereon."

23 Page 10.3, Section 10.02(b), first sentence; following the
24 word "farmland" insert the words "and structures situated

1 thereon." Delete the words "for purposes of the statewide
2 reappraisal."

3 Page 10.3, Section 10.02(b), last sentence; following the
4 word "farmland" insert the words "and structures situated
5 thereon."

6 Page 10.8, Section 10.04(5)(B), last sentence; delete the
7 period and add "or the incapability to be adapted to alternative
8 uses."

9 Page 10.9, Section 10.04(6), first sentence; following the
10 words "land currently being used" insert the words "as part of a
11 farming operation."

12 Page 10.9, Section 10.04(6), following the last sentence; add
13 the sentence "For the purposes of this definition, 'contiguous
14 tracts' are farmlands which are in close proximity, but not
15 necessarily adjacent: Provided, That all such contiguous tracts
16 are operated as part of the same farm management plan."

17 Page 10.10, Section 10.04(8), is amended to read in its
18 entirety as follows:

19 "(8) Farm buildings. -- The term 'farm buildings' shall mean
20 structures which directly contribute to the operation of the
21 farm, and shall include tenant houses and quarters furnished farm
22 employees without rent as a part of the terms of their
23 employment."

24 Page 10.11, Section 10.04; delete the word "November" and
25 insert in lieu thereof the word "September." Delete the period

1 following the word "valuation" and add the words, "for the
2 assessment year beginning July first of each year."

3 Page 10.11, Section 10.04, insert the following subdivision;
4 "(12) Application Form: The application form required to be
5 filed with the assessor on or before September first of each year
6 shall require certification that the farm complies with criteria
7 set forth in Section 10.05(c) of these regulations, and renewal
8 applications from year to year shall be sufficient upon statement
9 certifying that no change has been made in the use of farm
10 property which would disqualify 'farm use' classification for
11 assessment purposes." Renumber the subdivisions of Section 10.04
12 following the new 10.04(12); formerly 10.04(12) through
13 10.04(28), to 10.04(13) through 10.04(29), respectively.

14 Page 10.14, Section 10.04(28) (formerly 10.04(27)); following
15 the words "woodland products" insert a comma and the words "such
16 as nuts or fruits harvested" and add a comma following the words
17 "human consumption" on Page 10.15.

18 Page 10.16, Section 10.05, subsection (a), following the
19 words "land is used for farm purposes" by striking the period and
20 inserting in lieu thereof a colon and the following: "Provided,
21 That the true and actual value of all farm used, occupied and
22 cultivated by their owners or bona fide tenants shall be arrived
23 at according to the fair and reasonable value of the property for
24 the purpose for which it is actually used regardless of what the
25 value of the property would be if used for some other purpose;

1 and that the true and actual value shall be arrived at by giving
2 consideration to the fair and reasonable income which the same
3 might be expected to earn under normal conditions in the locality
4 wherein situated, if rented: Provided, however, That nothing
5 herein shall alter the method of assessment of lands or minerals
6 owned by domestic or foreign corporations."

7 Page 10.16, Section 10.05(b), first clause; following the
8 words "following factors shall be" insert the words "indicative
9 of but not conclusive" and delete the word "considered."

10 Page 10.16, Section 10.05(b)(2); delete the period and add
11 the words "such as soil conservation, farmland preservation or
12 federal farm lending agencies."

13 Page 10.17, Section 10.05(b)(7); delete the section and
14 insert in lieu thereof the words "(7) Whether or not the farmer
15 practices 'custom farming' on the land in question."

16 Page 10.17, Section 10.05(b)(9); following the word "type"
17 add a comma and insert the word "utility."

18 Page 10.17, Section 10.05(b)(11), first sentence; following
19 the word "sales" insert the words "for nonfarm uses."

20 Page 10.17, Section 10.05(b)(12)(A); following the words
21 "part of" insert the words "or appurtenant to."

22 Page 10.17, Section 10.05(b)(12)(B); following the words
23 "contiguous to" insert the words "or operated in common with."

24 Page 10.18, Section 10.05, subsection (c), the first sentence
25 of which is amended in its entirety to read as follows:

1 "Qualifying farmland and the structures situated thereon shall be
2 subject to farm use valuation, with primary consideration being
3 given to the income which the property might be expected to earn,
4 in the locality wherein situate, if rented."

5 Page 10.18, Section 10.05(b)(12)(B); delete the semicolons
6 and the words "it was purchased at the same time as the tract so
7 used." Delete the period following the word "purposes" and add the
8 words "or any nonfarm use."

9 Page 10.19, Section 10.05(c)(2); following the words
10 "Provided, That no" delete the word "reason" and insert in lieu
11 thereof the words "individual event."

12 Page 10.20, Section 10.05(c)(4)(C); following the words
13 "(1,000) minimum production value" insert the words "or the small
14 farm five hundred dollars (\$500) minimum production and sale."

15 Page 10.23, Section 10.05(d)(3)(B), third sentence; following
16 the word "If" insert the words "timber from." Delete the period
17 following the word "purpose" and add the words "or is being
18 converted to farm production uses."

19 Page 10.26, Section 10.05(f)(2) is amended in its entirety to
20 read as follows:

21 "(2) Farm buildings. -- Rental value of farm buildings and
22 other improvements on the farmland shall be valued by determining
23 the replacement cost of the building or structure by usual farm
24 construction practices; and farm labor standards and subtracting
25 therefrom depreciation.¹ Both of these determinations shall be

1 made in accordance with the tax department's real property
2 appraisal manual² as filed in the state register in accordance
3 with chapter 29A of the code of West Virginia, 1931, as amended,
4 and as it relates to agricultural buildings and structures. One
5 (1) acre of land shall be assigned to all buildings as a unit
6 situate on the property, regardless of the actual acreage
7 occupied by such buildings and shall be appraised at its farm-use
8 valuation based on the highest class of farmland present on the
9 farm."

10 Page 10.28, Section 10.05(f)(3)(B)(1); following the words
11 "or more of the" insert the word "usual."

12 Page 10.28, Section 10.05(f)(3)(B)(2); following the words
13 "(50%) of the" insert the word "usual."

14 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the words
15 "(50%) or more of the" insert the word "usual."

16 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the words
17 "(50%) of the" insert the word "usual."

18 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the last
19 sentence insert the sentence "An individual employed other than
20 in farming is not an unincorporated business."

21 Page 10.35, Section 10.07, Title; following the word
22 "Farmland" insert the words "and Structures Situated Thereon."

23 Page 10.35, Section 10.07(a), first sentence; following the
24 word "farmland" insert the words "and structures situated
25 thereon."

1 Page 10.46, Subject; following the word "Farmland" insert the
2 words "and Structures Situated Thereon."

3 (e) The legislative rules filed in the state register on the
4 twenty-second day of May, one thousand nine hundred eighty-five,
5 relating to the state tax commissioner (rules governing the
6 operation of a statewide electronic data processing system
7 network, to facilitate administration of the ad valorem property
8 tax on real and personal property), are authorized.

9 (f) The legislative rules filed in the state register on the
10 twenty-sixth day of March, one thousand nine hundred eighty-six,
11 relating to the state tax commissioner (listing of interests in
12 natural resources for the first statewide reappraisal; provision
13 for penalties), are authorized.

14 (g) The legislative rules filed in the state register on the
15 twenty-sixth day of March, one thousand nine hundred eighty-six,
16 modified by the state tax commissioner to meet the objections of
17 the legislative rule-making review committee and refiled in the
18 state register on the twelfth day of February, one thousand nine
19 hundred eighty-seven, relating to the state tax commissioner
20 (review of appraisals by county commissions sitting as
21 administrative appraisal review boards), are authorized.

22 (h) The legislative rules filed in the state register on the
23 twenty-sixth day of March, one thousand nine hundred eighty-six,
24 modified by the state tax commissioner to meet the objections of
25 the legislative rule-making review committee and refiled in the

1 state register on the twelfth day of February, one thousand nine
2 hundred eighty-seven, relating to the state tax commissioner
3 (review of appraisals by a circuit court on certiorari), are
4 authorized with the following amendment:

5 On page 3, §18.3.1 is stricken in its entirety and a new
6 §18.3.1 is inserted in lieu thereof to read as follows:

7 "18.3.1 Who May Request Review. -- The property owner, Tax
8 Commissioner, protestor or intervenor may request the county
9 commission to certify the evidence and remove and return the
10 record to the circuit court of the county on a writ of
11 certiorari. Parties to the proceeding wherein review by the
12 circuit court is sought shall pay costs and fees as they are
13 incurred: Provided, That the circuit court upon rendering
14 judgment or making any order may award costs to any party in
15 accordance with the provisions of W. Va. Code §53-3-5."

16 (i) The legislative rules filed in the state register on the
17 twenty-sixth day of March, one thousand nine hundred eighty-six,
18 modified by the state tax commissioner to meet the objections of
19 the legislative rule-making review committee and refiled in the
20 state register on the twelfth day of February, one thousand nine
21 hundred eighty-seven, relating to the state tax commissioner
22 (administrative review of appraisals by the state tax
23 commissioner), are authorized.

24 (j) The legislative rules filed in the state register on the
25 eighteenth day of August, one thousand nine hundred eighty-six,

1 modified by the state tax commissioner to meet the objections of
2 the legislative rule-making review committee and refiled in the
3 state register on the twelfth day of February, one thousand nine
4 hundred eighty-seven, relating to the state tax commissioner
5 (additional review and implementation of property appraisals),
6 are authorized.

7 (k) The legislative rules filed in the state register on the
8 eleventh day of August, one thousand nine hundred eighty-six,
9 relating to the state tax commissioner (guidelines for assessors
10 to assure fair and uniform personal property values), are
11 authorized.

12 (l) The legislative rules filed in the state register on the
13 eighteenth day of August, one thousand nine hundred eighty-six,
14 modified by the state tax commissioner to meet the objections of
15 the legislative rule-making review committee and refiled in the
16 state register on the tenth day of December, one thousand nine
17 hundred eighty-six, relating to the state tax commissioner
18 (registration of transient vendors), are authorized.

19 (m) The legislative rules filed in the state register on the
20 fourth day of February, one thousand nine hundred eighty-six,
21 modified by the state tax commissioner to meet the objections of
22 the legislative rule-making review committee and refiled in the
23 state register on the fourteenth day of January, one thousand
24 nine hundred eighty-seven, relating to the state tax commissioner
25 (business and occupation tax), are authorized.

1 (n) The legislative rules filed in the state register on the
2 fourteenth day of August, one thousand nine hundred eighty-seven,
3 modified by the state tax commissioner to meet the objections of
4 the legislative rule-making review committee and refiled in the
5 state register on the fourth day of November, one thousand nine
6 hundred eighty-seven, relating to the state tax commissioner
7 (telecommunications tax), are authorized.

8 (o) The legislative rules filed in the state register on the
9 fourteenth day of August, one thousand nine hundred eighty-seven,
10 relating to the state tax commissioner (business franchise tax),
11 are authorized.

12 (p) The legislative rules filed in the state register on the
13 seventeenth day of August, one thousand nine hundred
14 eighty-seven, modified by the state tax commissioner to meet the
15 objections of the legislative rule-making review committee and
16 refiled in the state register on the twenty-second day of
17 January, one thousand nine hundred eighty-eight, relating to the
18 state tax commissioner (consumers sales and service tax and use
19 tax), are authorized.

20 (q) The legislative rules filed in the state register on the
21 fourteenth day of August, one thousand nine hundred eighty-seven,
22 modified by the state tax commissioner to meet the objections of
23 the legislative rule-making review committee and refiled in the
24 state register on the thirteenth day of January, one thousand
25 nine hundred eighty-eight, relating to the state tax commissioner

1 (appraisal of property for periodic statewide reappraisals for ad
2 valorem property tax purposes), are authorized.

3 (r) The legislative rules filed in the state register on the
4 fourteenth day of August, one thousand nine hundred eighty-seven,
5 modified by the state tax commissioner to meet the objections of
6 the legislative rule-making review committee and refiled in the
7 state register on the twelfth day of January, one thousand nine
8 hundred eighty-eight, relating to the state tax commissioner
9 (severance tax), are authorized.

10 (s) The legislative rules filed in the state register on the
11 second day of September, one thousand nine hundred eighty-eight,
12 modified by the state tax commissioner to meet the objections of
13 the legislative rule-making review committee and refiled in the
14 state register on the twenty-fourth day of February, one thousand
15 nine hundred eighty-nine, relating to the state tax commissioner
16 (solid waste assessment fee), are authorized.

17 (t) The legislative rules filed in the state register on the
18 twelfth day of August, one thousand nine hundred eighty-eight,
19 modified by the state tax commissioner to meet the objections of
20 the legislative rule-making review committee and refiled in the
21 state register on the twenty-first day of September, one thousand
22 nine hundred eighty-eight, relating to the state tax commissioner
23 (electronic data processing system network for property tax
24 administration), are authorized.

1 (u) The legislative rules filed in the state register on the
2 nineteenth day of September, one thousand nine hundred
3 eighty-eight, modified by the state tax commissioner to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the twenty-fourth day of
6 February, one thousand nine hundred eighty-nine, relating to the
7 state tax commissioner (exemption of property from ad valorem
8 property taxation), are authorized.

9 (v) The legislative rules filed in the state register on the
10 sixteenth day of September, one thousand nine hundred
11 eighty-eight, modified by the state tax commissioner to meet the
12 objections of the legislative rule-making review committee and
13 refiled in the state register on the thirteenth day of January,
14 one thousand nine hundred eighty-nine, relating to the state tax
15 commissioner (consumers sales and service tax and use tax), are
16 authorized.

17 (w) The legislative rules filed in the state register on the
18 twenty-third day of June, one thousand nine hundred eighty-nine,
19 relating to the state tax department (personal income tax), are
20 authorized.

21 (x) The legislative rules filed in the state register on the
22 twenty-ninth day of June, one thousand nine hundred eighty-nine,
23 relating to the state tax department (severance tax), are
24 authorized.

1 (y) The legislative rules filed in the state register on the
2 fourth day of August, one thousand nine hundred eighty-nine,
3 modified by the state tax department to meet the objections of
4 the legislative rule-making review committee and refiled in the
5 state register on the eleventh day of December, one thousand nine
6 hundred eighty-nine, relating to the state tax department (solid
7 waste assessment fee), are authorized.

8 (z) The legislative rules filed in the state register on the
9 fourteenth day of August, one thousand nine hundred eighty-nine,
10 modified by the department of tax and revenue to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the twelfth day of December, one
13 thousand nine hundred eighty-nine, relating to the department of
14 tax and revenue (business franchise tax), are authorized.

15 (aa) The legislative rules filed in the state register on the
16 eleventh day of August, one thousand nine hundred eighty-nine,
17 modified by the department of tax and revenue to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the eleventh day of December,
20 one thousand nine hundred eighty-nine, relating to the department
21 of tax and revenue (business and occupation tax), are authorized.

22 (bb) The legislative rules filed in the state register on the
23 fourteenth day of August, one thousand nine hundred eighty-nine,
24 modified by the department of tax and revenue to meet the
25 objections of the legislative rule-making review committee and

1 refiled in the state register on the nineteenth day of January,
2 one thousand nine hundred ninety, relating to the department of
3 tax and revenue (consumers sales and service tax and use tax),
4 are authorized with the amendments set forth below:

5 On page eight, Section 2.28, after the word "as" by inserting
6 the words "art, science,."

7 On pages eight and nine, Section 2.28.1, after the word
8 "intellectual" by deleting the word "or" and inserting in lieu
9 thereof the words "physical and."

10 On page nine, Section 2.28.2, by deleting the words "or
11 instruction."

12 On page nine, Section 2.28.2, after the word "training" by
13 adding the word "or."

14 On page nine, Section 2.28.2, by deleting the words "or any
15 portion of a school curriculum classified as physical education."

16 On page nine, by deleting all of Section 2.28.2.1.

17 On page nine, Section 2.28.2.2, by deleting the section
18 number.

19 On page nine, Section 2.28.2.2, by deleting the words "or
20 instruction."

21 On page nine, Section 2.28.2.2, after the word "training" by
22 adding the word "or."

23 On page nine, Section 2.28.2.2, after the word "conditioning"
24 by inserting a period and striking the remainder of the sentence.

1 On page one hundred twelve, Section 59.2, after the words
2 "sales of the service of cremation" by adding the words "sales on
3 perpetual care trust fund deposits."

4 And,

5 On page one hundred twenty-eight, Section 91.2, after the
6 words "include food" by inserting the following: ", as defined
7 in section 2.30 of this rule,."

8 (cc) The legislative rules filed in the state register on the
9 eleventh day of August, one thousand nine hundred eighty-nine,
10 modified by the department of tax and revenue to meet the
11 objections of the legislative rule-making review committee and
12 refiled in the state register on the eleventh day of December,
13 one thousand nine hundred eighty-nine, relating to the department
14 of tax and revenue (motor carrier road tax), are authorized.

15 (dd) The legislative rules filed in the state register on the
16 eleventh day of August, one thousand nine hundred eighty-nine,
17 modified by the department of tax and revenue to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the eleventh day of December,
20 one thousand nine hundred eighty-nine, relating to the department
21 of tax and revenue (gasoline and special fuel excise tax), are
22 authorized.

23 (ee) The legislative rules filed in the state register on the
24 eleventh day of August, one thousand nine hundred eighty-nine,
25 modified by the department of tax and revenue to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the eleventh day of December,
3 one thousand nine hundred eighty-nine, relating to the department
4 of tax and revenue (corporation net income tax), are authorized.

5 (ff) The legislative rules filed in the state register on the
6 eleventh day of August, one thousand nine hundred eighty-nine,
7 modified by the department of tax and revenue to meet the
8 objections of the legislative rule-making review committee and
9 refiled in the state register on the eleventh day of December,
10 one thousand nine hundred eighty-nine, relating to the department
11 of tax and revenue (soft drinks tax), are authorized.

12 (gg) The legislative rules filed in the state register on the
13 twenty-first day of February, one thousand nine hundred ninety-
14 one, relating to the state tax commissioner (business investment
15 and jobs expansion tax credit, corporations headquarters
16 relocation tax credit, and small business tax credit), are
17 authorized.

18 (hh) The legislative rules filed in the state register on the
19 twentieth day of December, one thousand nine hundred ninety,
20 modified by the state tax commissioner to meet the objections of
21 the legislative rule-making review committee and refiled in the
22 state register on the twenty-sixth day of April, one thousand
23 nine hundred ninety-one, relating to the state tax commissioner
24 (valuation of timberland and managed timberland) are authorized.

25

1 . . . NOTE: The purpose of this bill is to authorize the State Tax
2 Commissioner to promulgate legislative rules relating to the
3 valuation of timberland and managed timberland.

4
5 Strike-throughs indicate language that would be stricken from
6 the present law, and underscoring indicates new language that
7 would be added.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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(Plus all the volunteer
help we can get)

TO: John Montgomery

AGENCY: State Tax Department

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: January 13, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1H TITLE: 110 State Tax Department

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: John Montgomery

TITLE OF PERSON SIGNING: Attorney

DATE: 1-25-93

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.