

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED

AUG 1 2 10 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-1A-11 & 11-1C-5(b)

AMENDMENT TO AN EXISTING RULE: YES X NO

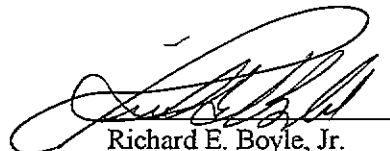
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11

TITLE OF RULE BEING AMENDED: Valuation Of Active And Reserve Coal Property For Ad
Valorem Property Tax Purposes

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Richard E. Boyle, Jr.
State Tax Commissioner

FILED

TITLE 110
LEGISLATIVE RULES
DEPARTMENT OF TAX AND REVENUE

AUG 1 2 10 PM '97

SERIES 11
VALUATION OF ACTIVE AND RESERVE COAL PROPERTY FOR
AD VALOREM PROPERTY TAX PURPOSES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 110-11.1. General.

1.1 **Scope.** -- This rule clarifies and implements State law as it relates to the appraisal at market value of active and reserve coal properties.

1.2 **Authority.** -- W. Va. Code §§ 11-1A-11 and 11-1C-5(b).

1.3 **Filing Date.** --

1.4 **Effective Date.** --

1.5 **Repeal of Former Rule.** -- This legislative rule repeals and replaces W. Va. 110 C.S.R. 11 "Valuation of Active and Reserve Coal Property for Ad Valorem Property Tax Purposes" filed July 26, 1991 and effective July 26, 1991.

§ 110-11-2. Introduction.

Coal is one of the several estates in real property which may be owned either separately or in conjunction with other estates. If coal is owned as a separate estate, either absolute, as a leasehold, or in conjunction with other estates, West Virginia property tax law requires such ownership to be listed, valued and taxed. Coal may be owned without being mined. Coal title may exist where no coal is actually present (barren), or where the coal is unmineable or mined-out. For valuation purposes this rule classifies coal property into the following categories: **Active, Reserve, Unmineable, Mined-out, Barren**

This rule proposes a newly-developed appraisal process for reserves and much of the data used to estimate appraised value will likewise be new. The Tax Commissioner shall therefore provide notices of appraised values to property owners of coal property in advance of the July 1, 1998 proposed initial assessment date. This advanced notice, which will be based upon July 1, 1997 information, is intended to ensure that the newly-developed data is as accurate as possible for individual parcels and accounts representing coal ownership.

§ 110-11-3. Definitions.

As used in this rule, and unless the context clearly requires a different meaning, the following shall have the meaning ascribed herein, and shall apply both in the singular and in the plural:

3.1 **"Active Mining Property"** means a mineable bed of coal (as defined in this Section 3) on a parcel or portion of a parcel involved in a mining operation (as defined in this Section 3). Each and every mineable bed of coal in a permitted mining operation shall be a separate Active Mining Property.

3.2 **"Adjusted property value"** means the sum of the adjusted individual coal bed values.

3.3 **"Adjusted individual coal bed value"** means the individual coal bed index (as defined in this Section 3) for each coal bed on each property, multiplied by the aggregate ratio.

3.4 **"Aggregate value"** means the total value of in-place mineable coal in the State.

3.5 **"Aggregate active value"** means the total value of Active Mining Property (as defined in Section 3 of this rule) in the State.

3.6 **"Aggregate ratio"** means aggregate reserve value divided by the aggregate reserve index.

3.7 **"Aggregate reserve value"** means the aggregate value (as defined in this Section 3) less the aggregate active value (as defined in this Section 3).

3.8 **"Aggregate reserve index"** means the sum of products of the individual property calculations as determined by the Reserve Coal Valuation Model (RCVM).

3.9 **"Annual acres mined"** means the annual production (as defined in this Section 3) divided by the product of the average thickness in feet of the coal bed being mined (as detailed in annual mining reports), multiplied by eighteen hundred (1800) tons per acre-foot, multiplied by the clean coal recovery rate (either run-of-mine or washed). See Appendix A, Formula 1, for the formula used for calculating annual acres mined.

3.10 **"Annual production"** means the production of coal from mining operations as reported by coal bed and by mine.

3.10.1 Annual production, for active mining valuation purposes, means the arithmetic mean of the annual rate of coal production of three (3) years' production for the three most recent calendar years preceding the July 1st assessment date. If production during any of the three (3) years occurred during a period of less than eleven (11) months, such production will be annualized before an annual production is calculated.

3.10.2 Annual production, for purposes of determining the aggregate value, means the arithmetic mean of the last three calendar years of the total tons of coal mined in West Virginia, as reported to the Office of Miner's Health, Safety, and Training, adjusted for coal actually mined from other states but produced through portals located in West Virginia.

3.11 **"Average coal price"** for purposes of the reserve coal valuation model, means the arithmetic mean of the sum of the last three calendar years of total FOB-source (point of sale, no transportation) values of steam coal mined in West Virginia and sold on the "spot" market as reported on FERC Form 423 to the United States Department of Energy (USDOE) and to the West Virginia Public Service Commission (WVPSC), divided by annual production (as defined in Section 3.10.2 above), expressed in dollars/ton. Average coal price can also be expressed in dollars per million BTU and is determined by dividing the arithmetic mean of the sum of coal sales (as determined immediately above), by the sum of all steam coal BTU mined in West Virginia and sold on the "spot" market as reported on FERC Form 423 to the USDOE and to the WVPSC for the three most recent calendar years preceding the July 1st assessment date, calculated for the entire state as well as by coal bed and by location.

3.12 **"Average royalty rate"** means the arithmetic mean of blended underground and surface coal royalty rates, for leases that have occurred within at least the five (5) calendar years immediately preceding the July 1st assessment date.

3.13 **"Bands of investment discount component"** means a discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

3.14 **"Barren"** means fee/mineral/coal properties where the coal rights are owned but the coal was never deposited and/or has been subsequently removed by erosion.

3.15 **"Base market location value"** means the coal price per million BTU by coal bed by location, multiplied by the royalty rate by coal bed by location.

3.16 **"BTU content"** means number of British thermal units (BTU) in one pound of dry coal.

3.17 **"BTU adjustment factor"** means the penalties or bonuses on price related to the BTU content versus market price interaction.

3.18 **"Capitalization rate"** means the rate used to convert an estimate of income into an estimate of market value. For further explanation see Section 4.1 of this rule.

3.19 **"Clean coal recovery rate"** means:

3.19.1 for active mining purposes, a decimal representing the percentage of marketable coal that is recovered, whether such coal is classified as run-of-mine-clean or washed-clean. The clean coal recovery rate must reflect the difference between calculated whole bed tonnage (tons-in-place) and mined tonnage as reported to the Office of Miner's Health, Safety and Training.

3.19.2 for reserve coal valuation purposes, a decimal representing an estimate of clean coal that may be recovered based on estimated tons-in-place, estimated mine recoveries and estimated wash recoveries based on area and coal bed information derived from taxpayer returns, other taxpayer-supplied information, publicly-available information, and other information that comes to the attention of the Commissioner.

3.20 **"Coal bed"** means all the coal and associated rock partings, if any, lying between logical and/or practical roof and floor strata.

3.21 **"Coal bed index factor"** is the sum of all reserve coal bed valuation factors, divided by three and rounded to the nearest value of 20, 40, or 80.

3.22 **"Coal in-place price"** means the price per million BTU of estimated clean and marketable coal, before mining. Coal in-place price equals coal price (as defined in this Section 3) multiplied by the average royalty rate (as defined in this Section 3).

3.23 **"Coal Price"** means the FOB-source (point of sale, no transportation) price per million BTU of clean, marketable coal.

3.24 **"Coal property transfer"** means the transfer of coal rights on properties by sale or lease.

3.25 **"Commissioner" or "Tax Commissioner"** means the Tax Commissioner for the State of West Virginia, or his or her delegate.

3.26 **"Discount component"** means a rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.

3.27 **"Environmental factor"** means an index that reflects the environmental impediments to mining, such as wild and scenic rivers, severe acid mine drainage problems, and areas designated unsuitable for mining as identified by the Division of Environmental Protection.

3.28 **"GIS"** means geographical information system, which, for purposes of this rule, is a computerized system to map and manage coal-related data.

3.29 **"Individual coal bed index"** means the preliminary derived value for a specific coal bed on a property before adjustment using the aggregate ratio.

3.30 **"Life of mining (mine life)"** means the number of years required to exhaust a coal bed.

3.30.1 In the case of appraisal of Active Mining Property, life of mining shall mean the number of years required to exhaust the coal bed at the annual production rate, to a maximum of fifteen (15) years. Fractional years will be rounded to the nearest whole number.

3.30.2 In the case of appraisal of reserves, for the calculation of aggregate value (as defined in this Section 3), life of mining means the number of years required to exhaust the total known reserves of coal in West Virginia.

3.31 **"Management rate"** means a rate reflecting a return to an investor for the management of similar investment portfolios.

3.32 **"Market interest factor"** means an index that indicates the relative coal market activity in a specified area.

3.33 **"Market mineability factor"** means an index that indicates the relative cost of mining in a specified area.

3.34 **"Metallurgical coal"** means bituminous coal that is suitable for making coke by industries that refine, smelt, and work with iron and/or steel.

3.35 **"Mineable coal bed"** means coal which is so situated that it may be mined using generally accepted mining practices and suitable equipment. Additionally, coal beds which are of a thickness less than thirty inches (30") will not be classified as mineable coal unless there is evidence to the contrary.

3.36 **"Mined-out coal bed"** means a bed of coal, or any portion thereof, which has been depleted by prior mining operations and from which no additional coal is recoverable by generally accepted mining practices and suitable equipment, unless there is evidence to the contrary.

3.37 **"Mining operation"** means an enterprise permitted by the West Virginia Office of Miner's Health Safety and Training/Office of Mining and Reclamation to engage in actively obtaining or preparing to obtain coal or its by-products from the

Tax and Revenue
Title 110
Series 11

earth's crust, including underground, surface and/or auger mines. Each mining operation may have more than one (1) area designated as "Active Mining Property," as defined in this Section 3.

3.38 **"Multiplier"** means the "Present Worth of One (1) Per Period" for the life of the mining operation (as defined in this Section 3) employing the capitalization rate determined in Section 4.1. of this rule, through application of a standard mid-year life calculation.

3.39 **"Nonliquidity rate"** means a rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.

3.40 **"Operator"** means an individual, partnership or corporation that is engaged in actively obtaining or preparing to obtain coal and/or its by-products from the earth's crust on an Active Mining Property.

3.41 **"Present value per acre"** means the present value per acre of a coal bed on a reserve property.

3.42 **"Prime coal bed"** means the thickest, previously mined, stratigraphically-highest coal bed in an area, with sufficient mineable tons to sustain mining for two (2) years in a specified area at the average rate of mining in the bed, in the general area, for the most recent three (3) calendar years.

3.43 **"Prime coal bed factor"** means an index that indicates the relative profitability of a set of coal beds in a specified area.

3.44 **"Property tax component"** means a rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.

3.45 **"Recapture component"** means a rate reflecting a provision for returning to an investor a sum of money equal to his investment.

3.46 **"Reserves"** means those beds of coal, or portions thereof, which contain mineable coal, but are not in the active mining portion (as determined in Section 4.1 of this rule) of an Active Mining Property.

3.47 **"Reserve coal valuation model"** is a computerized valuation method applied in a mass appraisal environment to estimate value of reserve coal property for ad valorem property tax purposes.

Tax and Revenue
Title 110
Series 11

3.48 **"Risk rate"** means a rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

3.49 **"Safe rate"** means a rate reflecting a return to an investor on an investment which has little, if any, likelihood of loss of principal or of loss in anticipated return on investment.

3.50 **"Steam coal"** means bituminous coal that is mineable but that is not suitable for coking by industries that refine, smelt, and work with iron and/or steel.

3.51 **"Sulfur adjustment factor"** means the penalties or bonuses on price related to the Sulfur content versus market price interaction.

3.52 **"Sulfur content"** means a decimal representing the percent of sulfur in dry coal.

3.53 **"Summation discount component"** means a discount rate expressed as the aggregate of a safe rate, risk rate, nonliquidity rate, and management rate, adjusted for inflation.

3.54 **"Thickness"** means the measurement of all coal, including any thinner coals (splits) and also rock partings seen above or below the main block of coal, that comprises part of what is generally understood to be a logical mining unit. Methods of determining thickness for valuation are described in Section 4.1 and Section 4.2.

3.55 **"Unmineable coal bed"** means coal which is not mineable as defined in this Section.

3.56 **"Volatility content"** means a decimal representing the percentage of volatile matter in dry coal.

3.57 **"Volatility factor"** means a factor that identifies coal with a volatility content sufficiently low to render it unsuitable for steam coal markets.

3.58 **"1800 tons per acre foot"** means the weight, in tons, of a relatively clean coal bed one (1) foot in thickness (Thk) and covering one (1) acre, that has an assumed specific gravity of 1.32. See Appendix A, Formula 2 for the formula for calculating "1800 tons per acre foot."

§ 110-11-4. Valuation methods.

4.1 Method for determining value of active mining property.

4.1.1 General. -- The value of Active Mining Property (as defined in Section 3 of this rule) is the value per active acre mined multiplied by the number of active acres being mined. In no case will the active per acre rate on a coal bed be less than the applicable present value per acre (as defined in Section 3 of this rule) on the coal bed.

4.1.2 Determination of Active Mining Property. -- The designation of Active Mining Property areas shall be determined as follows:

4.1.2.a Operator (as defined in Section 3 of this rule) may designate or assign a portion of a parcel to an Active Mining Property when only such portion is suitable for mining purposes. For purposes of determining the actual area of the Active Mining Property, all contiguous parcels or portions of parcels containing the mineable coal bed(s) that are under lease, regardless of ownership, that fall within such a mining portion, shall be included. Parcels not leased or owned (adverse), that fall within the mining portion of Active Mining Property shall have the requisite mineable bed(s) of coal valued as reserves (as defined in Section 3)

4.1.2.b Any mining operation producing coal from one coal bed will be designated as an Active Mining Property. If the mining operation is producing coal from multiple coal beds under a single permit, then each such coal bed will be designated as a separate Active Mining Property.

4.1.2.c Any mining operation producing coal from one (1) coal bed at different portals and/or high-walls under one (1) specific permit, will be designated as one (1) Active Mining Property. If the production of coal involves different mining techniques (e.g. surface/auger or underground mining method), or if mining sites are separate and generally independent, then each such site will be designated as a separate Active Mining Property.

4.1.2.d If more than one permitted mining operation is mining a given coal bed on the same land/mineral parcel, then each such mining operation is a separate Active Mining Property. Under no circumstances shall the sum of the active acres for all mining operations on each bed exceed the total parcel acres. As necessary, the Commissioner shall apportion the number of acres for each mining operation, based upon a review of relevant taxpayer and/or operator information and leases, and the respective rates of average annual production.

4.1.2.e If the permitted mining operation has not begun production by the July 1st assessment date, the mineable coal will be reported on the Annual Appraisal Report for Production of Coal and valued as reserves. Once a parcel or portion(s) of a parcel has been assigned or designated to an Active Mining Property,

Tax and Revenue
Title 110
Series 11

it shall continue to be listed on an Annual Appraisal Report until such time as the permit has been retired.

4.1.2.f If the mine ceases production before the July 1st assessment date, and there is mineable coal remaining in the coal bed, the remainder will be valued as reserves for the current tax year.

4.1.2.g The maximum active mining portion for each coal bed shall be fifteen (15) years multiplied by the annual acres mined. If the available mineable acreage of the coal bed being mined is less than the maximum amounts listed above, then the total available acreage will be considered for designation as the active mining portion.

4.1.3 Determination of Annual Production. -- Annual production (as defined in Section 3 of this rule) shall be determined as follows:

4.1.3.a An arithmetic mean will be taken of tonnage as reported by producers and verified by the Commissioner through research of West Virginia Office of Miner's Health, Safety, and Training records and/or audit-derived information, for the three most recent calendar years preceding the July 1st assessment date.

4.1.3.b If production has not occurred in either the second or third most recent years, the arithmetic mean of the available one or two years production will be used.

4.1.4 Value per active acre. -- In the application of the valuation formula to an Active Mining Property, the appropriate calculation will be based upon the actual market to which the coal from the bed is currently being sold, whether it is metallurgical and/or steam. The factors to be used for the valuation formula are: the coal thickness in feet (Thk), 1800 tons per acre foot (1800), the clean coal recovery rate (RR), the Steam Coal royalty rate, underground or surface (SRoy), the Steam Coal Market (SCM), a net present value multiplier (M) and the mine life in years (ML); and the coal thickness in feet (Thk), 1800 tons per acre foot (1800), the clean coal recovery rate (RR) the Metallurgical Coal royalty rate, underground or surface (MRoy), the Metallurgical Coal Market (MCM), a net present value multiplier (M), and the mine life in years (ML). See Appendix A, Formula 3 for the formula used to determine the value per active acre (\$/ac).

4.1.5 Thickness (ft.) -- As defined in Section 3 of this rule, thickness will be determined as follows:

4.1.5.a An arithmetic mean will be taken of thickness as reported by producers and verified by the Commissioner through review of audit-derived

Tax and Revenue
Title 110
Series 11

information, for the three most recent calendar years preceding the July 1st assessment date.

4.1.5.b If production has not occurred in either the second or third most recent years, the arithmetic mean of the available one or two years thickness will be used.

4.1.6 **1800 tons per acre foot** -- see definition in Section 3 of this rule.

4.1.7 **clean coal recovery rate.** -- See definition in Section 3 of this rule.

4.1.8 **Royalty rate.** -- For use in Formula 3, prescribed by this Section 4, the royalty rate(s) shall be determined for each of the following four (4) different types of coal mining operations.

4.1.8.1 **Underground mines, steam coal;**

4.1.8.2 **Underground mines, metallurgical coal;**

4.1.8.3 **Surface and/or auger mines, steam coal; and**

4.1.8.4 **Surface and/or auger mines, metallurgical coal.**

These royalty rates shall be established annually by the Tax Commissioner after a review of both recorded and unrecorded, willing seller-willing buyer coal property leases that have occurred in the State of West Virginia and appropriate portions of adjacent states during at least the last five (5) years prior to the July 1st assessment date, and through inspection of any other appropriate information. The Tax Commissioner will maintain a data base on royalty rates and file a preliminary survey of results in the State Register on or before July 1st of each year; will accept written public comment on the survey until August 1st of each year; and issue the final royalty rates on or before September 1st of each year. From this survey, the Tax Commissioner will select the royalty rate(s) that best typify such coal property leases. In order to convert decimal royalty rates into specific dollars per ton rates, the Tax Commissioner will separately conduct a review of West Virginia coal selling prices, and select specific selling price rate(s) based on prices best typifying activity in each appraisal year. The selected selling price(s) per ton when multiplied by the decimal royalty will result in the specific dollar per ton royalty.

4.1.9 **Steam and metallurgical coal market.** -- See discussion in Section 4.1.4 of this rule.

4.1.10 Determination of Capitalization Rate. -- For use in determining the net present value multiplier used in Formula 3, prescribed in this Section 4, a single statewide capitalization rate for coal 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 income series. The capitalization rate used to value coal will be developed considering a discount rate determined by the summation technique.

The Commissioner will conduct a survey to develop components for determining the capitalization rate annually and preliminary results will be filed in the State Register on or before July 1st of each year. Public comment on the survey will be accepted until August 1st of each year, and final results to be used will be issued on or before September 1st of each year.

4.1.10.1 Determination of discount component. -- The summation technique will be used in developing a discount component of the capitalization rate. The Commissioner will determine the sum of the safe rate, the nonliquidity rate, the risk rate, and the management rate, and subtract the inflation rate from the sum. The five subcomponents of the discount component are discussed as follows:

4.1.10.1.a 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 thirteen-week United States Treasury Bills for a period of three (3) calendar years prior to the appraisal date.

4.1.10.1.b Nonliquidity Rate. -- The nonliquidity rate will be developed through an annual survey to determine a reasonable estimate of time that coal property when exposed to the market for sale, remains on the market until 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 nonliquidity rate. For example, if it is determined that a coal property remains on the market for an average of nine months (39 weeks) before being sold, the nonliquidity rate will be derived by taking the rate on one year Treasury Bills minus the rate on thirteen-week Treasury Bills.

4.1.10.1.c Risk Rate. -- The relative degree of risk of an investment in coal property is difficult to determine from published interest rates. A survey of interest rates required on loans for acquisition and/or development of coal properties will be conducted annually and will cover a three calendar year period prior to the July 1st assessment date. Results of the survey will be compared to interest rates offered on thirteen-week United States Treasury Bills for the same three year

Tax and Revenue
Title 110
Series 11

period. The difference between the two combined with bands of investment analysis will be used as a basis to estimate the risk rate.

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

4.1.10.1.e 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 coal property is to be estimated assuming level future royalties (no inflation). Therefore, the capitalization rate must be a real rate, net of expectation of inflation. The inflation rate will be estimated through analysis of the most recent three calendar year's urban consumer price index as determined by the United States Department of Labor, Bureau of Labor Statistics.

4.1.10.2 Determination of property tax component. -- This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property. At the present time research indicates that royalty rates do not include property taxes as a component; rather, property taxes are paid by the producer as additional compensation. Thus, this component will not be used in the capitalization rate as defined in this rule unless the above described general practice of the coal industry changes.

4.1.11 Determination of value of active mining portion. -- The valuation of the active mining portion (VAMP) shall be determined by multiplying the annual acres mined (AAM), by the mine life (ML), by the value per active acre (\$/ac). See Appendix A, Formula 4, for the formula used to determine the value of the active mining portion.

4.2 Valuation of reserve coal.

4.2.1 General. -- It is recognized that the Mineral Lands Mapping Program currently in progress as a combined effort of W. Va. Department of Tax and Revenue, W. Va. University Department of Geology and Geography, W. Va. Geological and Economic Survey, and the Office of W. Va. State GIS Coordinator will in the future provide very detailed location and coal bed information for use in appraising reserve coal property in West Virginia. In the interim reserve coal shall be valued according to a **reserve coal valuation model** that takes into account the following: property location, coal bed, coal thickness, sulfur content, BTU content, volatility content, underground mine plus wash recovery rate, spot market sales of coal to power plants from West Virginia mines, royalty rates for coal leases from West Virginia and surrounding states,

previous mining history, frequency of coal property transactions, environmental considerations, conflicting property use (oil and gas production), discount rate, and time of mining. Thus at any location the reserve coal appraisal will result from the derived coal bed-specific rate for each reserve coal bed acre multiplied by the reserve coal bed acres for each such coal bed present. These various factors will interact in estimating the value of reserve coal property as follows:

4.2.2 Determination of Reserve Coal. -- The determination of reserve coal beds and quantities at any location may be made by use of: taxpayer-supplied information, publicly-available information, audit-derived information, and Geographical Information System (GIS)-derived information. The minimum valuation placed on reserve coal shall never be at less than a rate of \$ 5.00 per acre.

4.2.3 Reserve Coal Valuation Methodology

4.2.3.1 Data collection and maintenance procedures -- In order to annually appraise the value of reserve coal in the State of West Virginia the Tax Commissioner shall maintain a Geographic Information System (GIS) which includes the following data sets:

Coal Bed Maps: Coal data including indications of the areal extent, mineable extent, thickness and various quality parameters for each identified coal bed

Mine Maps: Coal Mine operation data indicating the location and other pertinent data of all reporting coal mines currently operating and as many closed mines as possible

Prices: Coal sales information indicating the source location (coal mine), destination (buyer), transportation, and FOB-source price of coal sold from mines in West Virginia

Transactions: Coal property transaction information indicating the terms and locations of leases and sales of coal properties

Royalties: Coal royalty information indicating the location and terms of coal royalty agreements

Environmental Conflicts: Information indicating the general location of potential environmental problems which could impede permitting/mining

Use Conflicts: Data reflecting oil/gas well location/density, which may affect the cost of mining

Tax and Revenue
Title 110
Series 11

Reserve Coal Property Location: Information indicating the general location of each individual taxable coal reserve property

Production: Data reflecting coal produced annually by mine and by coal bed

Capitalization rate: Market data necessary to develop a capitalization rate estimate

Current Active Mine Data: Active mine data from the Natural Resources Appraisal System

These data sets will be used to create maps and tabular data for the determination of reserve coal property value. The data sets and maps will be managed as specified in the numbered sections below:

4.2.3.2 Coal Bed Maps – The Tax Commissioner, together with the West Virginia Geological and Economic Survey, shall develop and maintain a Geographic Information System (GIS) comprised of maps and data files of all reserves in the State of West Virginia providing information concerning:

- ▶ Coal bed name
- ▶ Thickness
- ▶ BTU content
- ▶ Volatility
- ▶ Sulfur

The information will be obtained from the following sources:

Historic mining records: Division of Environmental Protection; West Virginia Department of Commerce, Labor, and Environmental Resources

Current mine permit documents and maps: West Virginia Division of Environmental Protection

Geologic data: West Virginia Geological and Economic Survey, United States Geological Survey, academic institutions, and taxpayer return information

Coal delivery records which show quantity, quality, destination, and mine source information: US Energy Information Administration, West Virginia Public Service Commission

The maps and data files created will be updated at least every second year. The maps will be interpolated from known data points using computer software containing accepted geologic and geographic interpolation procedures as determined by the Tax Commissioner. Map interpolation will be limited by the resolution of the reserve property location, and in the absence of specific location information, valuation parameters will default to District-level parameters.

4.2.3.3 Mine Maps -- The Tax Commissioner, together with the W. Va. Geological and Economic Survey shall maintain data files compatible with the Geographic Information System (GIS) which describe the location, size, and ownership of all reporting coal mines (historic and current) in the State of West Virginia, as available. These files will include but shall not be limited to the following:

- ▶ Mine location
- ▶ Mine name and permit number
- ▶ Operator name
- ▶ Annual tons mined
- ▶ coal bed(s) mined
- ▶ Thickness
- ▶ Coal quality (BTU, Ash, Sulfur, Volatility, Moisture)
- ▶ Royalty rates
- ▶ Coal sales (prices, destination, quantity and quality)

The information will be obtained from but not limited to the following sources:

Historic mining records:	West Virginia Division of Environmental Protection; Department of Commerce, Labor, and Environmental Resources; Office of Miner's Health, Safety, and Training;
Current mine permit documents and maps:	West Virginia Division of Environmental Protection
Coal delivery records which show quantity, quality, destination, and mine source information:	US Energy Information Administration, West Virginia Public Service Commission

The maps and data files created will be updated annually. The maps will be interpolated from known data points using computer software containing accepted geologic and geographic interpolation procedures as determined by the Tax Commissioner. Map interpolation will be limited by the resolution of the reserve

Tax and Revenue
Title 110
Series 11

property location, and in the absence of specific location information, valuation parameters will default to District-level parameters.

4.2.3.4 Prices – The Tax Commissioner shall maintain data files compatible with the Geographic Information System (GIS) which document the FOB-source price of coal sales throughout the State. These files will be used to create price maps. These files will include but not be limited to records and estimates of:

- ▶ Coal source: mine location, mine name
- ▶ Tons shipped per sale
- ▶ coal bed(s) mined, if listed
- ▶ Coal quality: sulfur, BTU, ash, moisture
- ▶ Transport mode
- ▶ Transport cost, if available
- ▶ Prices paid: delivered and FOB-source
- ▶ Destination

The information will be obtained from but not limited to the following sources:

Coal delivery records which show quantity, quality, destination, and mine source information:	US Energy Information Administration, West Virginia Public Service Commission
--	---

The Commissioner will use this data to create an overall FOB-source price trend map and for individual coal beds, for the state of West Virginia. The data will also be used to determine overall sulfur and BTU adjustment factors by an annual survey of the market to determine price adjustments required by major purchasers of coal, attributable to BTU and sulfur content.

The maps and data files created will be updated annually, using the most recent three (3) calendar years of published data. The maps will be interpolated from known data points using computer software containing accepted geologic and geographic interpolation procedures, as determined by the Tax Commissioner. Map interpolation will be limited by the resolution of the reserve property location, and in the absence of specific location information, valuation parameters will default to District-level parameters.

4.2.3.5 Transactions – The Tax Commissioner shall maintain data files compatible with the Geographic Information System (GIS) which describe the terms, location, size, coal bed(s), and grantor/grantee of all coal property leases, sales,

Tax and Revenue
Title 110
Series 11

and permit applications in the State of West Virginia. These transaction files will be used as:

- ▶ An indication of the location and extent of the general interest in coal beds by ascertaining the ratio of the number of transaction within a 30 square mile area surrounding a property (leases, sales, and permits) which have involved named coal beds. These data will be incorporated in the GIS.
- ▶ A subset of the lease documents will be verified by contacting the lessee and/or lessor and used to create the GIS royalty trend map.

The maps and data files created will be updated annually. The maps will be interpolated from known data points using computer software containing accepted geologic and geographic interpolation procedures, as determined by the Tax Commissioner. Map interpolation will be limited by the resolution of the reserve property location, and in the absence of specific location information, valuation parameters will default to District-level parameters.

4.2.3.6 Royalties -- The Tax Commissioner shall maintain data files compatible with the Geographic Information System (GIS) which describe the terms, location, grantor, grantee, identified coal bed(s), identified mining method, term and royalty rate(s) of leases/coal royalty agreements. Values will be maintained as a percentage per FOB-source price.

The maps and data files created will be updated annually using the most recent three (3) calendar years of information. The maps will be interpolated from known data points using computer software containing accepted geologic and geographic interpolation procedures, as determined by the Tax Commissioner. Map interpolation will be limited by the resolution of the reserve property location, and in the absence of specific location information, valuation parameters will default to District-level parameters.

4.2.3.7 Environmental Conflicts -- The Tax Commissioner shall maintain data files compatible with the Geographic Information System (GIS) which provide general information concerning environmental restrictions and impediments to mining of coal. This data will be incorporated in the GIS. Sources for this information will be:

Location of areas designated as
Unsuitable For Mining:

West Virginia Division of
Environmental Protection

Tax and Revenue
Title 110
Series 11

Location of buffer zones around land forms such as Rivers, Parks, Wild Areas, Scenic Areas, etc. :

West Virginia Division of Environmental Protection and West Virginia Geological and Economic Survey

General location of acid-bearing zones by coal bed:

West Virginia Division of Environmental Protection and West Virginia Geological and Economic Survey

Other Environmental information which may come to the attention of the Tax Commissioner

The maps and data files created will be updated when necessary, as determined by the Tax Commissioner. The maps will be interpolated from the known data points using computer software containing accepted geologic and geographic interpolation procedures, as determined by the Tax Commissioner. Map interpolation will be limited by the resolution of the reserve property location, and in the absence of specific location information, valuation parameters will default to District-level parameters.

4.2.3.8 Use conflicts – The Tax Commissioner shall maintain data files compatible with the Geographic Information System (GIS) which specify the location of all gas and oil wells in the state. This data will be used to correlate historical resource use with potential cost impediments for mining. Sources for this information will be the West Virginia Geological and Economic Survey and the West Virginia Division of Environmental Protection, Office of Oil and Gas.

The maps and data files created will be updated annually. The maps will be interpolated from known data points using computer software containing accepted geologic and geographic interpolation procedures, as determined by the Tax Commissioner. Map interpolation will be limited by the resolution of the reserve property location, and in the absence of specific location information, valuation parameters will default to District-level parameters.

4.2.3.9 Reserve property location – The Tax Commissioner shall maintain files compatible with the Geographic Information System (GIS) which describe the general location, size, and ownership of all reserve properties in the State of West Virginia. These files will include but not be limited to:

Tax and Revenue
Title 110
Series 11

- ▶ The geographic location (Latitude and Longitude of at least one point identifying the general location of the property)
Note: In the absence of an identifying location the valuation procedures will be based on identifying descriptive data such as coal bed name to obtain tax district average values for all pertinent valuation parameters. In the absence of identified coal bed names, the valuation procedures will be based on the prime coal bed (see Section 3 of this rule) for the District
- ▶ The name(s) of coal bed(s) located on the property
Note: In the absence of identified coal bed names the valuation procedures will be based on the prime coal bed (see Section 3 of this rule) for the District
- ▶ The size in acres of property
- ▶ The size in acres of each known coal bed(s)
- ▶ The fractional interest of undivided ownership, if available
- ▶ The name and address of all owners of record, if available
- ▶ Any known previous mining of any coal bed which could affect the use of the property
- ▶ Any known current or proposed mining activity affecting the property

The maps and data files created will be updated annually. The maps will be interpolated from known data points using computer software containing accepted geologic and geographic interpolation procedures, as determined by the Tax Commissioner. Map interpolation will be limited by the resolution of the reserve property location, and in the absence of specific location information, valuation parameters will default to District-level parameters.

4.2.3.10 Production Files -- The Tax Commissioner shall maintain data files compatible with the Geographic Information System (GIS) which compile the annual tons of coal produced from all reporting mines. The production files will be maintained by permit number and will be used to indicate mineability of specific coal bed(s), over- and under-mining of specific coal bed(s) and to calculate remaining tonnage. These files will be based on coal bed-specific production subsequent to 1980, and on the allocation of production/depletion from the best available information for all known (reported) mines prior to 1981. The sources for these data include but are not limited to:

- ▶ West Virginia Department of Tax and Revenue
- ▶ West Virginia Office of Miner's Health, Safety, and Training

4.2.3.11 Capitalization rate file -- The Tax Commissioner shall maintain data files containing financial and market information to be used to develop the capitalization rate estimate for coal property financing. These files shall include

Tax and Revenue
Title 110
Series 11

information enabling the development of a capitalization rate as described in Section 4.1 of this rule.

4.2.3.12 Active mine data -- The Tax Commissioner shall maintain data files reflecting information used to appraise Active Mining Property. These files shall include information enabling the valuation of Active Mining Property as described in Section 4.1 of this rule.

4.2.3.13 Reserve Property Coal Bed(s) to Be Valued -- The Tax Commissioner shall determine the name of each coal bed occurring at the reserve property location (either from property descriptive data or, in absence of specific information, by comparing the property with the GIS maps). In all cases the property data will be compared to the GIS maps and conflicts will be resolved either by revising the coal bed maps or by revising the coal bed data contained in the property record file.

4.2.3.14 Reserve Property Coal Quantity -- The Tax Commissioner shall determine the quantity of reserves by multiplying the thickness (in feet) of each coal bed at a GIS location by the areal extent of a coal bed (coal bed file) by 1800 tons per acre foot by the typical recovery rate for each coal bed at a GIS location. The reserve tonnage for each coal bed thus determined will be adjusted as follows:

Over- or Under-Mining	Percent of Subject Coal Bed Over- or Under-Mined	Percent of Subject Coal Bed Considered Mineable
Immediately Below	10 to 20 %	50 %
Immediately Below	20 to 50 %	25%
Immediately Above	20 to 50 %	75%
Immediately Above and Immediately Below	Over 10%	0 %

4.2.3.15 Clean coal recovery rate -- Using the GIS coal bed maps, the GIS historic production files, and the current mining files, the Tax Commissioner shall calculate the recovery rate for each coal bed at all mapped locations. This recovery rate will be used to determine mineable tonnage and mineable BTU.

4.2.3.16 Reserve Property Prime Coal Bed -- The Tax Commissioner shall determine the prime coal bed at a location as follows:

Tax and Revenue
Title 110
Series 11

- ▶ The stratigraphically-highest coal bed which is also the thickest of all coal beds greater than or equal to 28 inches thickness; and
- ▶ which has been or is currently being mined within the general area of the subject location; and
- ▶ which contains sufficient mineable tons to sustain mining for two (2) years in a specified area at the average rate of mining in the bed, in the general area, for the most recent three (3) calendar years.

If the property is too small (less than or equal to 10 acres) to specifically estimate a prime coal bed, then the prime coal bed will be considered to be the prime coal bed of the general area, as determined by the procedure referenced above.

4.2.3.17 Reserve Coal Bed Valuation Factors -- The Tax Commissioner shall determine a valuation factor for each coal bed at a location as follows:

4.2.3.17.a Market interest factor -- The Tax Commissioner shall assign a relative market interest factor based upon market transaction GIS maps as follows:

- ◆ Zero to six transactions per 30 square mile area factor of 80
- ◆ Seven to twelve transactions per 30 square mile area factor of 40
- ◆ more than twelve transactions per 30 square mile area factor of 20

The 30 square mile area is defined as an area bounded by a circle with a radius of 3.09 miles.

4.2.3.17.b Market mineability factor -- The Tax Commissioner shall assign a market mineability factor based upon history of mining of each coal bed as follows:

- ◆ no record of mining the coal bed (10 mile radius).....factor of 80
- ◆ mining of coal bed in area (10 mile radius) only between 1974 and 1983..
..... factor of 40
- ◆ mining of coal bed in area (10 mile radius) prior to 1974 and continuing to present factor of 20

4.2.3.17.c Prime Coal Bed factor -- The Tax Commissioner shall assign a prime coal bed factor to each coal bed occurring on a property as follows:

Tax and Revenue
Title 110
Series 11

- ◆ if a coal bed does not receive a prime coal bed designation
..... factor of 80
- ◆ if a coal bed receives prime coal bed designation factor of 20

4.2.3.17.d **Environmental factor** -- The Tax Commissioner shall assign an environmental factor to each coal bed occurring on the property as follows:

- ◆ identified environmental problem which would significantly preclude mining
..... factor of 80
- ◆ identified environmental problem which would significantly impede mining
..... factor of 40
- ◆ identified environmental problem which may affect mining
..... factor of 20
- ◆ no identified environmental problem affecting mining at a location
..... factor of 0

4.2.3.17.e **Use conflict factor** -- The Tax Commissioner shall assign a use conflict factor for each coal bed occurring on a property as follows:

- ◆ more than 10 wells per square mile factor of 80
- ◆ between 5 and 10 wells per square mile factor of 40
- ◆ less than 5 wells per square mile factor of 0

4.2.3.17.f **Volatility factor** -- The Tax Commissioner shall assign a volatility factor based on the volatility content (using the coal bed characteristics GIS maps and data files) for each coal bed occurring on the property as follows:

- ◆ volatility less than or equal to 17% factor of 80
- ◆ volatility greater than 17% factor of 0

4.2.3.17.g **Coal bed index factor** -- This factor will be assigned to each coal bed and expressed as the sum of all the factors referenced above, divided by three and rounded to the nearest value of 20, 40 or 80. This factor

will be used as the exponent "t" for each coal bed, in the present worth formula as described below.

4.2.3.18 Valuation of Individual Coal Beds per Individual Reserve Property – The factors to be used by the Tax Commissioner to determine the present value per acre of individual coal beds on individual reserve properties are as follows: coal price per million BTU (\$/mmBTU), royalty rate (Roy), BTU and sulfur adjustment factor $[1 \pm (\delta\text{BTU} + \delta\text{S})]$, current market value of one BTU $[(1/(1+I)^{t+0.5}) \times (1/10^6)]$, BTU content (BTU), two thousand lbs. per ton (2000), 1800 tons per acre foot (1800), clean coal recovery rate (RR), and thickness in feet (Thk). See Appendix A Formula 6, for the formula used in determining the present value per acre per bed (\$/ac/bed).

A narrative version of this formula is as follows:

The base market location value is the starting point of the valuation. The base market location value for a location will be determined by multiplying the coal price per million BTU for a location (\$/mmBTU) by the royalty rate (Roy) for the location.

A current market location value is then calculated for each coal bed, by multiplying the base market location value by a BTU and sulfur adjustment factor $[1 \pm (\delta\text{BTU} + \delta\text{S})]$ for each coal bed at a location.

The present value of one BTU of each coal bed at a location is then calculated by multiplying the current market location value by 1/ million ($1/10^6$), and then multiplying the resulting product by the standard mid year present worth factor calculated as $1/(1+I)^{t+0.5}$ where:

- ◆ the discount rate is "I"
 - ◆ the valuation factor is the exponent "t"
- Yielding the present value per acre of a coal bed on a property.

The present value per coal bed per property at a location is determined by:

- ▶ multiplying the present value of one BTU, by the BTU per pound of a coal bed at a location, then
- ▶ multiplying by 2000 pounds per ton, then
- ▶ multiplying by 1800 tons per acre foot, then
- ▶ multiplying by the clean coal recovery rate for the coal bed at the location, and then
- ▶ multiplying by the thickness of the coal bed at the location, and
- ▶ multiplying the present value per acre by the reserve acres of each coal bed at the location

4.2.3.19 Determination of aggregate value. -- Aggregate value of all unmined coal in West Virginia (as defined in Section 3 of this rule) shall be determined by multiplying the average coal price by, the average royalty rate by the annual production, divided by the capitalization rate (all as defined in Section 3 of this rule). See Appendix A Formula 7, for the formula used to determine the aggregate value.

4.2.3.20 Determination of aggregate reserve value -- The aggregate reserve value shall be determined by subtracting the aggregate active value (as defined in Section 3 of this rule) from the aggregate value as determined above.

4.2.3.21 Final Valuation Procedures -- The Tax Commissioner will determine the final value of a coal bed as follows:

- ▶ The sum of all the individual property coal bed values throughout the state is calculated to yield the aggregate reserve index. The aggregate reserve value is then divided by the aggregate reserve index yielding the aggregate ratio.
- ▶ The individual coal bed index is multiplied by the aggregate ratio, yielding the adjusted individual coal bed value.
- ▶ The total value of each individual property is determined by summing all the adjusted individual coal bed values for the property.

4.3 Valuation of unmineable coal properties. -- Unmineable coal will be valued under one of the following circumstances:

4.3.1 Parcels in which each and every coal bed is unmineable or where each bed is partially unmineable and the remaining portion is mined out, will be valued at a rate of five dollars (\$5.00) per deed acre.

4.3.2 Parcels in which an acre or more of unmineable coal coexists with mineable coal in any bed, will be valued at a rate of five dollars (\$5.00) times the amount of unmineable acreage in the bed containing the least amount of unmineable acreage.

4.4 Valuation of mined-out coal properties. Mined-out coal property will be valued under one of the following circumstances:

4.4.1 Parcels in which each and every coal bed is completely mined-out, will be valued at a rate of one dollar (\$1.00) per deed acre.

4.4.2 Parcels in which an acre or more of mined-out coal coexists with mineable coal in any bed, will be valued at a rate of one dollar (\$1.00) times the amount of mined-out acreage in the bed containing the least amount of mined-out acreage.

4.5 Valuation of barren coal properties. Barren coal properties will be valued under one of the following circumstances:

4.5.1 Parcels in which each and every coal bed is completely barren will be valued at a rate of one dollar (\$1.00) per deed acre.

4.5.2 Parcels in which an acre or more of barren coal coexists with mineable coal in any bed, will be valued at a rate of one dollar (\$1.00) times the amount of barren acreage in the bed containing the least amount of barren acreage.

4.6 Total coal appraisal. -- The total coal appraisal for any coal parcel is the sum of the value for all active acres, all reserve acres and specific categories for unmineable, mined-out, and barren acreage. The total amount of coal acres valued for any parcel shall not be less than the amount of deed acres.

4.7 Leasehold interests. -- This rule generally attributes the value of coal to the owner of the coal property. In those circumstances where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market rates, the owner may petition the Tax Commissioner to attribute a portion of the value of the coal determined by this rule to the leaseholder.

4.8 Farm Properties. -- The coal rights, that are part of a "fee" estate where the use of the surface has qualified for farm use appraisal, will be valued as described in Title 110, Series 1A, Valuation of Farmland and Structures situated thereon for Ad Valorem Property Tax Purposes.

4.9 Property reports. -- On or before September 1st of each year the producer will be required to file an Annual Appraisal Report for Production of Coal with the Tax Commissioner with acknowledgement to the coal owner(s) and the county assessor(s) of the county(s) wherein the mine is located. On or before September 16th of each year, the coal owner of any property that is part of a permitted mining operation under lease will be required to file an Annual Appraisal Return for Reserve Mineral Properties with the Tax Commissioner. Owners of other coal properties may file an Annual Appraisal Return for Reserve Mineral Properties, on or before September 16th, with the Tax Commissioner; otherwise such properties will be valued using the best available information.

4.10 Confidentiality -- All information provided by or on behalf of a natural resources property owner or by or on behalf of an owner of an interest in natural

Tax and Revenue
Title 110
Series 11

resources property to any state or county representative for use in the valuation or assessment of natural resources property or for use in the development or maintenance of a legislatively funded mineral mapping or geologic information system shall be confidential. Such information shall be exempt from disclosure under provisions of West Virginia Code section four [§ 29B-1-4], article one of chapter twenty-nine-b, and shall be kept, held, and maintained confidential except to the extent such information is needed by the state tax commissioner to defend an appraisal challenged by the owner or lessee of the natural resources property subject to the appraisal: Provided, That this section may not be construed to prohibit publication or release of information generated as part of the minerals mapping or geologic information system, whether in the form of aggregated statistics, maps, articles, reports, professional talks, or otherwise presented in accordance with generally accepted practices and in a manner so as to preclude the identification or determination of information about particular property owners.

APPENDIX A

Formula 1

$$\text{Annual Acres Mined} = \frac{\text{Annual Production}}{\text{Ave. Thickness X 1800 X Clean coal recovery rate}}$$

Formula 2

$$1800 \text{ tons/ac.ft.} = \frac{(62.4 \text{ lbs.water/ft}^3) \times (1.32 \text{ lbs.coal/1 lb.water}) \times (43,560 \text{ ft}^2/\text{acre}) \times (1 \text{ Thk})}{2000 \text{ lbs./ton}}$$

WHERE: Thk = 1 foot thickness

Formula 3

$$\$/\text{ac} = \frac{[(\text{Thk}) \times (1800) \times (\text{RR}) \times (\text{SRoy}) \times (\text{SCM}) \times (\text{M})] + [(\text{Thk}) \times (1800) \times (\text{RR}) \times (\text{MRoy}) \times (\text{MCM}) \times (\text{M})]}{\text{ML}}$$

Where: \$/ac = appraisal rate per acre

Thk = coal thickness in feet

1800 = 1800 tons per acre foot

RR = clean coal recovery rate

SRoy = steam coal royalty rate

SCM = decimal representing percent of coal sold to steam market

M = net present value multiplier

Thk = coal thickness in feet

MRoy = Metallurgical coal royalty rate

MCM = decimal representing percent coal sold to metallurgical market

ML = mine life in years

Formula 4

$$\text{VAMP} = (\text{AAM}) \times (\text{ML}) \times (\$/\text{ac})$$

Where: VAMP = value of active mining portion

AAM = annual acres mined

ML = mine life in years

Tax and Revenue
Title 110
Series 11

\$/ac = value per active acre

Formula 5

$$\text{tons} = (\text{Thk}) \times (\text{ac.}) \times (1800) \times (\text{RR})$$

Where: tons = Reserve Property Coal Quantity
Thk = Thickness in feet of a coal bed
ac. = areal extent of coal bed
1800 = 1800 tons per acre foot
RR = clean coal recovery rate

Formula 6

$$\begin{aligned} \$/\text{ac}/\text{bed} = & (\$/\text{mmBTU}) \times (\text{Roy}) \times [1 \pm (\delta\text{BTU} + \delta\text{S})] \times [(1/(1+I)^{(t+0.5)}) \times (1/10^6)] \times (\text{BTU}) \times (2000) \\ & \times (1800) \times (\text{RR}) \times (\text{Thk}) \end{aligned}$$

Where: \$/ac/bed = present value per acre of an individual coal bed on an individual property
\$/mmBTU = coal price (FOB-source) per million BTU
Roy = average royalty rate
[1 ± (δBTU + δS)] = BTU and sulfur adjustment factor
1/(1 + I)^(t+0.5) = standard mid-year present worth factor
(1/10⁶) = 1 divided by 1,000,000
BTU = BTU content of one pound of dry coal by coal bed by location
2000 = two thousand lbs. per ton
1800 = 1800 tons per acre foot
RR = clean coal recovery rate
Thk = coal bed thickness in feet

Formula 7

$$\text{Aggregate value} = \frac{(\text{Ave. Coal price}) \times (\text{Ave. Royalty rate}) \times (\text{Annual production})}{\text{Capitalization rate}}$$



STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE

CECIL H. UNDERWOOD
GOVERNOR

Charleston, West Virginia
P. O. Box 963
Charleston, WV 25324-0963
Ph. (304) 558-0211 - Fax (304) 558-2324

FILED

AUG 1 2 10 PM '97

OFFICE OF ROBIN C. CAPEHART
SECRETARY OF TAX AND REVENUE

August 1, 1997

The Honorable Mike Ross
Co-Chair
Legislative Rule-Making Review Committee
Building 1, Room 152
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0470

The Honorable Mark Hunt
Co-Chair
Legislative Rule-Making Review Committee
Building 1, Room 152
1900 Kanawha Boulevard East
Charleston, West Virginia 25305

Dear Senator Ross and Delegate Hunt:

Enclosed please find a copy of the final agency approved proposed legislative rule of the Tax Division identified as follows:

Title of Rule: Valuation of Producing and Reserve Oil and Natural
Gas for Ad Valorem Property Tax Purposes
Title No.: 110
Series No.: Series 1J

Along with this document are the documents and other information required by W. Va. Code § 29A-3-11.

Please let me know when this rule will be considered by your committee. If you or committee staff have any questions about this proposed rule or need any additional information, please contact me. You may also contact Sharon Bias, Commissioner of Banking, at 558-2294, or Dale Steager at 558-3356.

Very truly yours,

Robin C. Capehart
Secretary of Tax and Revenue



**STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE**

**CECIL H. UNDERWOOD
GOVERNOR**

**TAX DIVISION
P. O. Box 2389
Charleston, West Virginia 25328-2389**

**ROBIN C. CAPEHART
SECRETARY**

SUMMARY OF RULE

110 C.S.R. 11

**VALUATION OF ACTIVE AND RESERVE COAL PROPERTY FOR
AD VALOREM PROPERTY TAX PURPOSES**

This rule explains and clarifies the methodology used to value the active and reserve coal properties in West Virginia.



**STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE**

**CECIL H. UNDERWOOD
GOVERNOR**

**TAX DIVISION
P. O. Box 2389
Charleston, West Virginia 25328-2389**

**ROBIN C. CAPEHART
SECRETARY**

STATEMENT OF CIRCUMSTANCES

110 C.S.R. 11

**VALUATION OF ACTIVE AND RESERVE COAL PROPERTY FOR
AD VALOREM PROPERTY TAX PURPOSES**

This subject matter of this rule has been studied extensively by consultants as well as commented upon by members of the Board of Public Works. A new methodology for the valuation of active and reserve coal properties has been developed. This rule implements that methodology.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Valuation of Active and Reserve Coal Property For Ad Valorem Property Tax Purposes.

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: State Tax Division

Address: P.O. Box 1005

Charleston, WV 25324-1005

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$911,700	\$	\$911,700	\$152,800	\$ 68,000
PERSONAL SERVICES	0	0	0	\$ 46,000	\$ 48,000
CURRENT EXPENSE	\$911,700	0	\$911,700	\$ 94,800	\$ 20,000
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	\$ 12,000	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

Initial cost estimate of \$911,700 is from consultants report and will be incurred in Fiscal Year 97-98. Ongoing fiscal year costs consist of two (2) permanent positions and commensurate expenses. We estimate contractual costs of approximately \$75,000 for next fiscal year (FY 98-99) for consultants.

3. Objectives of these rules:

This rule explains the method for valuing active and reserve coal property.

Rule Title: Valuation of Active And Reserve Coal Property For Ad Valorem Property Tax Purposes.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The amendments to the rule should have no economic impact on state government.

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


The property taxes of some coal properties may increase while for other coal properties, the tax may decrease. Additionally, while there should be little variance in the total amount of property tax, there may be some shifting of amounts among the counties.

C. Economic Impact on Citizens/Public at Large.

None.

Date: July 31, 1997

Signature of Agency Head or Authorized Representative


Richard E. Boyle, Jr.
State Tax Commissioner

DATE: July 31, 1997

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: State Tax Division

LEGISLATIVE RULE TITLE: Valuation Of Active And Reserve Coal For Ad Valorem Property Tax Purposes.

1. Authorizing statute(s) citation: West Virginia Code §§ 11-1A-11 & 11-1C-5(b)

2. a. Date filed in State Register with Notice of Comment Period:

June 25, 1997

b. What other notice, including advertising, did you give of the comment period?

Available through the Internet

c. Date of public comment period: June 25, 1997 - July 25, 1997

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 31, 1997

f. Name and phone number(s) of agency person(s) to contact for additional information:

Jerry Knight - 558-3940

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A _____

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?

d. Attach findings and determinations and reasons:

Attached _____

'97 JUL 24 PM 9 43

FAX TRANSMISSIONKISS ENGINEERING CORPORATION
STATE TAX DEPT.
LEGAL DIVISION613 BURROUGHS STREET
MORGANTOWN, WV 26505
(304) 599-5840
FAX: (304) 599-5890

To: Legal Division - ATTN: Kim **Date:** July 24, 1997
Dept.: State Tax Division **Pages:** 2 including this cover
From: RANDY WILLIAMS sheet.
Subject: Public Comment - Proposed Rule 110 CSR II

COMMENTS:

IF PROBLEMS OCCUR OR IF YOU HAVE ANY QUESTIONS,
PLEASE CONTACT Mary Anne AT (304) 599-5840.

CONFIDENTIAL NOTICE: The documents accompanying this telecopy transmission contain confidential information belonging to the sender which is privileged. The information is intended only for the intended recipient. You are hereby notified that any disclosure, copying, distribution, or the taking of any information is strictly prohibited. If you have received this telecopy in error, please immediately notify us by telephone to arrange for the return of the original documents.


**KISS ENGINEERING
CORPORATION**

613 Burroughs Street • Morgantown, WV 26505

Offices (304) 599-5840 • Fax (304) 599-5890

MEMORANDUM

TO: State Tax Division
Legal Division

FROM: Randy Williams 

SUBJECT: Public Comment - Valuation of Active and Reserve
Coal Property for Ad Valorem Property Tax Purposes

Re: Proposed Rule - 110 CSR 11

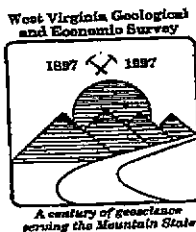
DATE: July 24, 1997

Section 4.1.84 defines Royalty Rate as having units expressed in dollars/ton (\$/ton). If dollars/ton is used in the formula expressed in Appendix A, especially Formula 6 and Formula 7, then in each the result is dimensionally nonsensical -- i.e., dollars squared (\$ x \$). The use of a decimal equivalent of a percentage royalty (e.g., 5% = .05) yields appropriate dimensions but, in the case of Formula 6, the dollars per acre per bed is so low as to be suspect. Regardless, unit dimensions for the factors in each formula need be clarified before appropriate comment can be made.

Please advise if the comment period is to be suspended or extended.

WRW/mas
via: fax (304.558.8278)

wpd/kiss/taxdiv.mem

STATE TAX DEPARTMENT
PROPERTY TAX DIVISION

97 JUL 22 PM 1:28

MEMORANDUM

From: Carl J. Smith, Associate Director, WVGS

To: Jerry Knight, Director, WV Property Tax Division

Subject: Miscellaneous Items

Date: July 18, 1997

Hi Jerry,

Attached you will find a memo from Nick Fedorko, Head of the Survey's Coal Programs, regarding amendment of WV Code Chapter 11-1A-23, Subsection b1, that pertains to confidentiality and disclosure of property tax return information. The Survey would benefit from such information during the development of the coal GIS layers. Having Property Tax and the Survey on the "same sheet of music" regards the geology of properties would go a long way to make the coal layers better and make assessments better, particularly in response to inevitable challenges. As I read 11-1A-23, I believe the amendments outlined by Nick fit in nicely. Your comments are welcome!

New Subjects:

- Also attached are our comments on proposed rule 110 CSR 11, titled "Valuation of Active and Reserve Coal Property for Ad Valorem Property Tax Purposes.
- What is the status of the Survey/Tax MOA?

Best Regards,

Carl

xc: Bureau of Commerce

Attachment 2

July 17, 1997

From: Nick Fedorko, WVGES

Review of new Tax Dept. Rules: Valuation of Active and Reserve Coal Property for Ad Valorem Property Tax Purposes, June 25, 1997

Section 4.2.3.2 p. 14 should read:

Coal Bed Maps -- The Tax Commissioner, together with the West Virginia Geological and Economic Survey, shall develop and maintain a Geographic Information System (GIS) comprised of maps and data files *for each coal bed containing resources* in the state of West Virginia *to include the following*:

Outcrop
Structural contours
Coal thickness
Percent partings
Surface, auger, and underground mined areas
Coal bed discontinuities
Heating value (BTU)
Volatile matter content
Sulfur content

The information will be obtained from but not limited to the following sources:

Historic mining records:

WV Office of Miners' Health, Safety, and Training; WV Geological and Economic Survey; US Department of Interior, Office of Surface Mining, Mine Map Repository; WV Division of Environmental Protection

Current mine maps, permit documents:

WV Department of Miners' Health, Safety, and Training; WV Division of Environmental Protection

Geologic data:

WV Geological and Economic Survey; United States Geological Survey; academic institutions; **and taxpayer information as legally released from confidentiality** [How does this impact our attempts to obtain geologic data in taxpayer returns and audits?]

[end of comments on Section 4.2.3.2]

Section 4.2.3.3 [should read] **Mine Maps and Mining Records** -- The Tax Commissioner,

together with the West Virginia Geological and Economic Survey, shall maintain data files...

Add to the list of items:

Mine map document date

The information will be obtained from but not limited to the following sources:

Historic mining records:

WV Office of Miners' Health, Safety, and Training; WV Geological and Economic Survey; US Department of Interior, Office of Surface Mining, Mine Map Repository; WV Division of Environmental Protection

Current mine maps, permit documents:

WV Department of Miners' Health, Safety, and Training; WV Division of Environmental Protection

[end of comments Section 4.2.3.3]



WEST VIRGINIA COAL ASSOCIATION

July 25, 1997

STATE TAX DEPT.
LEGAL DIVISION

'97 JUL 25 PM 3:20
6 09

Robert Hoffman, Esq.
Director, Legal Division
State Tax Division
P. O. Box 1005
Charleston, WV 25324-1005

Re: Comments of the West Virginia Coal Association
Regarding Proposed Legislative Rule Title 110,
Series II, Valuation of Active and Reserve Coal Property
for Ad Valorem Property Tax Purposes

Dear Mr. Hoffman:

On June 25, 1997, the West Virginia Department of Tax and Revenue ("Tax Department") filed proposed legislative rules, Title 110, Series II, entitled "Valuation of Active and Reserve Coal Property for Ad Valorem Property Tax Purposes" (the "Proposed Regulations"). The West Virginia Coal Association ("WVCA"), a non-profit association representing the interests of West Virginia coal producers, offers the following comments concerning the Proposed Regulations:

GENERAL COMMENTS

1. The Proposed Regulations are based in large measure on the Tax Department's effort to incorporate into legislative rules the method for valuing coal discussed in the June 1, 1997 Report prepared by the Tax Department's consultants, Jeffrey R. Kerns and Thomas F. Torries, entitled "West Virginia Reserve Coal Appraisal Methodology" (the "Report"). The Report was prepared pursuant to a settlement agreement in litigation brought against the Tax Department several years ago condemning the "comparable sales" approach to the valuation of reserve coal. The establishment of a fair, reasonable and stable method for valuing coal is an objective shared by the WVCA and, presumably, by all interested parties.

1301 Laidley Tower • Charleston, West Virginia 25301 • Telephone (304) 342-4153

WEST VIRGINIA COAL: MORE IMPORTANT THAN EVER
We've Got A Job To Do!

WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.

July 25, 1997

Page 2

2. In recent years, the property tax valuation of reserve coal by use of the "comparable sales" approach outlined in the currently applicable legislative regulations has been the object of much media coverage and litigation in West Virginia. The public and private costs of contending with the process have been substantial, the benefits uncertain. WVCA continues to support the development and implementation of a property tax valuation method that is fair and reasonable, both in terms of the aggregate value placed on the State's coal reserves and in terms of the allocation of that value between and among the State's various coal owners. The implementation of any new valuation methodology will necessarily involve significant additional costs, however, particularly at the outset. The Tax Department must plan and budget for these costs appropriately.

3. Unmined coal is difficult to value. The factors affecting the recoverability of coal in place and the possible combinations of those factors are infinite. Experts seeking to value the same parcel of coal property at the same point in time can vary widely in their estimates of market value. As a result, it bears emphasis that any mass appraisal methodology used to value coal property for property taxation purposes, including the new method adopted in the Proposed Regulations, will necessarily be inaccurate, sometimes by very large margins, in the valuation of specific parcels. Consequently, all coal property owners must have timely and detailed notice respecting the proposed valuation of their coal properties on a parcel-by-parcel basis, well in advance of implementation of any new regulations. Moreover, such notice must specifically set forth all factors impacting valuation and the manner in which those factors were used to compute value. A taxpayer should not have to guess how a property was valued or have to spend time reconstructing how the value of a particular property was determined. Property owners must also have a meaningful opportunity to provide the Tax Department with information to improve the accuracy of their property valuations prior to implementation. WVCA suggests that once notices have been provided to all property owners, the Tax Department should again solicit public comments specifically on whether any changes to the Reserve Coal Valuation Model should be made. (WVCA notes that the Proposed Regulations only add impetus to the imperative that new legislation be passed revising West Virginia's antiquated procedures for challenging property tax appraisals.)

4. As contemplated by the Proposed Regulations, the Tax Department must maintain confidentiality of taxpayer information in strict compliance with statutory requirements. Subject to that very important limitation, the Tax Department should make available the maps and data utilized for valuation under the Proposed Regulations as soon as possible. WVCA reserves the right to comment further on the Proposed Regulations after that information is made available. WVCA also notes that the Proposed Regulations contemplate use of a data base that is essentially a very preliminary substitute for a complete

WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.

July 25, 1997

Page 3

and accurate GIS system, a process likely to require many more years. The accuracy of values generated under the Proposed Regulations will necessarily be compromised at the outset, and will be subject to continuous revision as better, more complete data is acquired.

5. The property tax value of West Virginia's coal reserves has risen dramatically since the Tax Department began valuing coal in the early 1990's. West Virginia coal owners already pay significantly higher property taxes than coal owners in other states. This is a significant concern to West Virginia coal producers, who must sell their production in highly competitive national and global coal markets. Although the per ton property tax values of coal in place in West Virginia have increased sharply in recent years, the per ton prices of coal produced and sold in the open market have not increased over the past fifteen years. On an inflation adjusted basis, per ton coal prices are significantly lower today than they were fifteen years ago.

6. The Proposed Regulations represent a dramatic departure from the "comparable sales" methodology employed under the current regulations to value reserve coal. As discussed in greater detail below, although WVCA has significant problems with the Proposed Regulations as presently drafted, WVCA also believes the Proposed Regulations are conceptually more sound than the "comparable sales" method currently utilized for valuing reserve coal.

7. Although the valuation process for reserve coal has been attacked, the Tax Department's valuation of active coal has never been challenged in litigation or criticized in the media. Nevertheless, the Proposed Regulations would significantly change valuation not only for reserve coal but for active coal as well. For example, the Proposed Regulations would substantially lower the capitalization rate for valuing active coal by means of an inflation adjustment; decrease the height of coal presumed to be unminable; and increase the mine life of surface mines from five years to fifteen years, notwithstanding the fact that a mine permit issued pursuant to W.Va. Code § 22-3-8(c) is valid for only five years. Since the valuation of active coal has never been a point of controversy and has never been challenged in the past -- and since the aggregate value of coal under the Proposed Regulations will not change if the valuation of active coal under the current regulations remains unchanged -- WVCA suggests that the Proposed Regulations modify only the valuation of reserve coal and that the valuation of active coal be unchanged.

8. In comments submitted respecting the Tax Department's "Tentative Natural Reserve Property Valuation Variables" on June 16, 1997, WVCA noted that the Tax Department's proposed 1998 capitalization rate of 15.50% for the valuation of active coal was far too low. As noted there, a capitalization rate based on a risk component of at least

WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.
July 25, 1997
Page 4

20% would be appropriate for the valuation of coal property, in light of the multiple risks associated with the business. WVCA reiterates and incorporates those comments here, in relation to the capitalization rate to be used under the Proposed Regulations. We further note that a survey of banks to determine the risk component of the capitalization rate based on their lending rate on loans for the acquisition or operation of coal properties is not an appropriate measure of the risk rate for valuing coal. Banks do not take the risks of coal mining and do not loan money collateralized exclusively by coal properties or operations. In fact, banks in general do not take any significant risks in lending, and typically loan money to coal owners based on other, additional collateral. Moreover, the inflation adjustment contemplated by the Proposed Rules is inappropriate, as discussed below.

COMMENTS ON SPECIFIC PROPOSED REGULATIONS

We offer the following comment respecting specific items of the Proposed Regulations.

§ 110-11-3. Definitions.

9. Definition 3.13 "Bands of Investment Discount Component" has no relevance to the valuation methodology set forth in the Proposed Rules and should be eliminated.

10. Definition 3.19 "Clean Coal Recovery Rate" is unclear regarding the method for calculation of the recovery rate is calculated on reserve coal. WVCA requests this definition be eliminated and that the following be substituted therefor:

3.19 "Clean Coal Recovery Rate" means a decimal representing the percentage of marketable coal that is recoverable and available for sale.

3.19.1 Clean Coal Recovery Rate, for active mining valuation purposes, means a decimal representing the percentage of marketable coal that is recovered, whether such coal is classified as run-of-mine-clean or washed-clean. The Clean Coal Recovery Rate must reflect the difference between calculated coal bed tonnage (tons in place) and mined tonnage reportable to the Office of Miners Health, Safety and Training.

WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.
July 25, 1997
Page 5

3.19.2 Clean Coal Recovery Rate, for reserve valuation purposes, shall equal the product of the Areal Recovery Rate and the Plant Recovery Rate.

3.19.1.a Areal Recovery Rate is the decimal representing the percentage of the area of the coal bed which can be recovered using generally accepted mining practices and suitable equipment. For purposes of these regulations the Areal Recovery Rate shall be 0.6.

3.19.2.b Plant Recovery Rate is a decimal representing the percentage of mined coal that is expected to be available for sale after washing or other post production processing.

11. Definition 3.20 "**Coal Bed**" is defined to include all coal and associated rock partings lying between logical and/or practical roof and floor strata. WVCA believes that it is incorrect to include the thickness of rock partings within a coal bed in determining whether or not the coal bed will be considered minable under the definition at paragraph 3.38. Accordingly, WVCA suggests the insertion of the following language at the end of definition 3.20: "For the purpose of whether a coal bed is unminable under the definition of "Minaable Coal Bed" (as defined in this Section 3) the thickness of any rock partings associated with the coal bed shall not be included in the computation of bed height."

12. Definition 3.26 "**Discount Component**" has no relevance to the valuation methodology set forth in the proposed legislative rules and should be eliminated.

13. Definition 3.27 "**Economic Life Method of Recapture**" has no relevance to the valuation methodology set forth in the proposed legislative rules and should be eliminated.

14. Definition 3.33 "**Market Comparison Discount**" has no relevance to the valuation methodology set forth in the proposed legislative rules and should be eliminated.

WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.
July 25, 1997
Page 6

15. Definition 3.34 "**Market Comparison Method of Recapture**" has no relevance to the valuation methodology set forth in the proposed legislative rules and should be eliminated.

16. Definition 3.38 "**Minable Coal Bed.**" The definition of Minable Coal Bed contained in the proposed regulations is similar to the definition of "Minable Coal" in the current regulations with two changes. First, current regulations require coal to be "of such quality so as to be commercial saleable (either as mined coal or as a recoverable reserve)" to be considered minable. Second, current regulations require coal seams to be at least thirty inches thick to be considered minable unless there is evidence to the contrary. WVCA urges the Tax Department to amend the proposed definition of Minable Coal Bed to include the requirement that coal be of such quality as to be commercially saleable. If not commercially saleable, coal is just rock. WVCA also urges that no change be made to the language of the existing regulations regarding the minable thickness of a coal seam. Many coal owners have already resolved the question of the mineability of certain seams of coal on their property with the Tax Department based on the current language, and they should not have to revisit that issue under the lowered, less precise standard suggested by the Proposed Regulations.

17. Definition 3.48 "**Recapture Component**" has no relevance to the valuation methodology set forth in the proposed legislative rules and should be eliminated.

§ 110-11-4 "Valuation Methods"

18. The second sentence of Section 4.1.1 "**General**" should be modified as follows: "In no case will the active per acre rate on a coal bed be less than the applicable reserve present value per acre (as defined in Section 3 of this rule) on the coal bed."

19. Section 4.1.2.f provides: "If the mine ceases production after January 1 but before the July 1 assessment date, and there is minable coal remaining in the coal bed, the remainder will be valued as reserves for the current tax year." If a mine ceases production between July 2 and the following December 31 any remaining coal should also be valued as reserves. Therefore, WVCA believes that the language "after January 1 but" can and should be eliminated from this provision.

20. Section 4.1.2.h is similar to the previously discussed Section 4.1.2.f but appears to require a mining operation to be shut down a full twelve months prior to the assessment date before the property ceases to be valued as active mining property. This is

WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.
July 25, 1997
Page 7

inconsistent with the law and reason and with 4.1.2.f. WVCA believes this section should be eliminated.

21. In the determination of the Capitalization Rate as provided in Section 4.1.10, a new negative adjustment has been added as Section 4.1.10.1.e to purportedly counteract the effect of inflation. The WVCA believes that this adjustment is not warranted and should be eliminated from the Capitalization Rate formula. Prior to the filing of the proposed regulations, the Tax Department has consistently valued active coal within the state using a Capitalization Rate calculation that was not inflation adjusted. There is no justification for reducing the Capitalization Rate as a result of increases in the Urban Consumer Price Index. Similar inflation rate adjustments are not made by the Tax Department when Capitalization Rates are computed with respect to the valuation of other types of property.

Moreover, the Tax Department already has the data compiled which clearly indicates that over the last fifteen years there has been no inflation with respect to either coal prices or royalty rates. If an analysis were performed to determine the actual price trends in the coal industry, adjustment to the Capitalization Rate to allow for price declines would probably be more appropriate. The WVCA believes that the inflation adjustment is inappropriate with respect to the valuation of coal and should be eliminated.

Alternatively, the Tax Department already has information compiled on coal prices and royalty rates which are the factors in the active coal valuation formula that the regulations express concern will be subject to inflation. If any inflation adjustment to the Capitalization Rate at all is appropriate, it is not by use of the Urban Consumer Price Index which has no relation to the coal industry. Such an inflation adjustment should be calculated (if at all) based on information which the Tax Department already has with respect to the inflation or deflation in actual prices paid and royalty rates charged by the coal industry.

22. Section 4.2.3.5 "Transactions." The WVCA believes that in aggregating transactions the only permit applications which should be considered transactions for purposes of this section are approved mining permits issued pursuant to W.Va. Code § 22-3-8(c). WVCA suggests that the first sentence of this section be modified to incorporate this concept. In addition, WVCA believes that in determining the number of transactions, transactions involving small properties and transactions involving undivided interests in the same piece of property should be aggregated in determining transaction frequency. Accordingly, we suggest the insertion of the following language at the end of the first sentence of this section:

WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.
July 25, 1997
Page 8

"Transactions involving less than ten acres will be aggregated with all similar transactions covering contiguous properties for purposes of determining transaction frequency. For example, the purchase of ten contiguous five acre parcels by one taxpayer from separate owners would be considered one transaction for purposes of this section. In addition, transactions involving undivided interest in the same property shall be considered one transaction for purposes of this section."

23. There are two definitions of "Prime Coal Bed" contained in the regulations. One at Section 4.2.3.16 and the other at Definition 3.45. These two definitions should be consistent. The WVCA recommends a change to Section 4.2.3.16 to accomplish this purpose. The WVCA suggests that the third bullet point which currently reads: "Which contains sufficient tonnage to realistically support mining" be amended to read as follows: "Which contains sufficient minable tons to sustain mining for two (2) years in a specified area at the average rate of mining in the bed, in the general area for the most recent three (3) calendar years."

24. The RTC and Torries and Associates' Report recommendation for valuing reserve property describes the transaction frequency criteria at subsection (e) on page 17. The Report recommends assigning a *ti* values of twenty years, forty years and eighty years where transaction frequencies are high, medium and low respectively. Section 4.2.3.17.a, "Market Interest Factor," does not adopt the consultants' Report recommendation and sets a *ti* value of zero for high transaction frequencies. This zero factor will artificially lower the *t* value of properties in areas of high transaction frequency. The WVCA recommends that Section 4.2.3.17.a be modified to provide for the assignment of a *ti* value of eighty years for areas with zero to six transactions per thirty square miles, a *ti* value of forty years for areas with seven to twelve transactions per thirty square miles, and a *ti* value of twenty years for areas with more than twelve transactions per thirty square miles. The regulations do not specify how the thirty square mile area to be referred to in making these determinations is to be calculated. The regulations should specify how this area will be determined. In addition, the regulation is unclear as to the time frame over which the Department will look to determine the number of transactions which have occurred. The time frame the Department intends to use should be specified in the regulations.

WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.
July 25, 1997
Page 9

25. Section 4.2.3.17.b **"Market Mineability Factor."** The WVCA would recommend that the following changes be made to the computation of the market mineability factor. Reserves located in areas where there is no record of prior mining of the coal bed in the area should be afforded a *ti* factor of eighty years. Where mining in the area has occurred only prior to 1990, a *ti* factor of forty years should be used and where mining of the coal bed in the area has occurred since 1990 a *ti* factor of twenty years should be used.

26. Section 4.2.3.17.d. The WVCA recommends that objective criteria be developed to replace the subjective determination regarding the assignment of *ti* values with respect to environmental factors. Alternatively, the WVCA suggests that examples of conditions where environmental problems would "significantly preclude, significantly impede or affect" mining be included in the regulations.

27. Section 4.2.3.18. It is the understanding of WVCA that the BTU and sulfur adjustment factors used in valuing reserve coal beds result in only an immaterial adjustment to the value of the coal bed. In the interest of simplicity, ease of administration and fairness, the WVCA suggests that the BTU and sulfur adjustment factor be eliminated from the formula used to compute reserve values.

28. In years in which the value of a taxpayer's property has not increased enough to require that taxpayer be provided a notice of increased valuation, the only way which a taxpayer has to review the appraisal of its property prior to February 1 is to obtain "Mineral Property Appraisal Schedule" printout from the Tax Department or from the assessor in the county in which the property is located. Because taxpayers have a right to know how their property is appraised, WVCA suggests the following provision be inserted into the regulations:

"4.11 Upon request of the property owner made before January 1 of the tax year, the Tax Department shall make available, before January 15 copies of any Mineral Property Appraisal Schedules for pick up by the taxpayer at any Tax Department office location in the state."

29. As indicated by the preceding comments, the Proposed Regulations use many criteria to establish and allocate value between the thousands of reserve coal properties in the State. However, without wide scale application of these various criteria to actual fact situations it is literally impossible to meaningfully evaluate the appropriateness or effectiveness of any given criterion as an indicator of value. Accordingly, WVCA's lack of

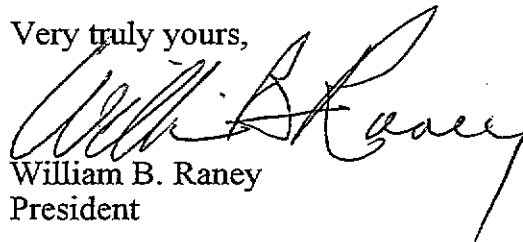
WEST VIRGINIA COAL ASSOCIATION

Robert Hoffman, Esq.
July 25, 1997
Page 10

a recommendation suggesting different criteria in a particular instance should not be taken as endorsement of criteria specified in the Proposed Regulations. As noted above, WVCA believes the Proposed Regulations are conceptually more sound than the current regulations in the valuation of reserve coal; but informed judgment regarding the effectiveness of valuation under the Proposed Regulations will have to await actual experience.

WVCA appreciates this opportunity to comment on the Proposed Regulations and respectfully urges the Tax Department to adopt WVCA's recommended changes and to incorporate them into the revised version of the regulations before submission to the Legislative Rule Making Review Committee. If you have any questions or need any additional information, we will be glad to try to accommodate.

Very truly yours,



William B. Raney
President

WBR/mb/CHASFS3:101347

PUBLIC COMMENTS AND RESPONSES

110 C.S.R. 11

VALUATION OF ACTIVE AND RESERVE COAL PROPERTY FOR AD VALOREM PROPERTY TAX PURPOSES

Following are the public comments received to the above referenced rule which were received during the Public Comment Period June 25, 1997 through July 25, 1997. The comment is stated in general with the response immediately provided thereafter.

COMMENT 1: Section 4.2.3.2 should read:

Coal Bed Maps -- The Tax Commissioner, together with the West Virginia Geological and Economic Survey, shall develop and maintain a Geographical Information System (GIS) comprised of maps and data files of all reserves ***for each coal bed containing resources*** in the State of West Virginia ***to include the following:***

- | | |
|---|---------------------------|
| ● Coal Bed Name | ● Heating value (BTU) |
| ● Thickness | ● Volatile matter content |
| ● BTU Content | ● Sulfur content |
| ● Volatility | |
| ● Sulfur | |
| ● Outcrop | |
| ● Structural contours | |
| ● Coal thickness | |
| ● Percent partings | |
| ● Surface, auger, and underground mined areas | |
| ● Coal bed discontinuities | |

The information will be obtained from but not limited to the following sources:

Historic mining records:

~~Division of Environmental Protection,~~
~~West Virginia Department of~~
~~Commerce, Labor, and Environmental~~
Resources, WV Office of Miners'
Health, Safety, and Training; WV
Geological and Economic Survey; US
Department of Interior, Office of
Surface Mining, Mine Map Repository;
WV Division of Environmental
Protection

Current mine permit
~~documents and maps:~~
maps, permit documents:

WV Department of Miners' Health,
Safety, and Training; WV Division of
Environmental Protection

Geologic data:

WV Geological and Economic Survey;
United States Geological Survey;
academic institutions; **and taxpayer
information as legally released from
confidentiality** [*How does this impact
our attempt to obtain geologic data in
taxpayer returns and audits?*]

RESPONSE:

The expansion of the coal bed map property attributes and the referenced sources of information for the attributes are consistent with the work on our Mineral Lands Mapping Program, and represent our long-range goals. Accomplishing these goals will require in excess of five (5) additional years, however, and the attributes would, therefore, not be available for use in the 1999 Tax Year. The attributes and sources reflected in the proposed Rule reflect those data and data sources currently collected by the Department's consultants. This data will be used in an interim system, until the more detailed data of the Mineral Lands mapping Program is available. The proposed Rule will be changed to reflect these referenced attributes as an interim product and expanded to reference the long-range goal for collection of the expanded attributes and additional sources.

The phrase "and taxpayer information as legally released from confidentiality" will be changed to reference "and taxpayer return information".

COMMENT 2:

Section 4.2.3.3 [should read] **Mine Maps and Mining Records --** The Tax Commissioner, ***together with the West Virginia Geological and Economic Survey,*** shall maintain data files...

RESPONSE:

The words "together with the West Virginia Geological and Economic Survey" will be added to this Section.

COMMENT 3:

The list of items in Section 4.2.3.3 should be expanded to include "Mine map document date,"; Historic mining records sources should be expanded to include West Virginia Geological and Economic Survey; and US Department of Interior, Office of Surface Mining, Mine Map Repository; and current mine permit documents and maps

should be changed to "current mine maps, permit documents; and expanded to include WV Department of Miners' Health, Safety and Training.

RESPONSE:

The expansion of data and data sources in Section 4.2.3.3 is, as with those referenced previously for Section 4.2.3.2, intended to reflect long-term goals of the Mineral Lands Mapping Program. The data and data sources referenced in Section 4.2.3.3 reflect the information available in the interim valuation model database developed by consultants. The Rule will be changed to reference the interim data, data sources and product and the long-range data goals, data sources and product.

COMMENT 4:

Section 4.1.8.4 defines Royalty Rate as having units expressed in dollars/ton (\$/ton). If dollars/ton is used in the formula expressed in Appendix A, especially Formula 6 and Formula 7, then in each the result is dimensionally nonsensical, i.e., dollars squared (\$ X \$). The use of a decimal equivalent of a percentage royalty (e.g. 5% = .05) yields appropriate dimensions but, in the case of Formula 6, the dollars per acre per bed is so low as to be suspect. Regardless, unit dimensions for the factors in each formula need to be clarified before appropriate comment can be made.

RESPONSE:

Section 4.1.8 does in fact indicate that the royalty rate for use in the Section is a rate expressed as dollars per ton. However, Section 4.1.8 states:

"For use in Formula 3, prescribed by this Section 4, the royalty rate(s) shall be determined for each of the following four (4) different types of coal mining operations."

Section 4.1, as the Rule indicates, provides the "method for determining value of active mining properties." Formula 3 is an active mining property formula for determining the value per active mining acre. Dollars per ton is the proper unit measure of a royalty rate in Section 4.2, "*Valuation of Reserve Coal*", and therefore, the royalty rate referenced in Section 4.1.8 would not be applicable to either Formulas 6 or 7. Rather, the royalty rate referenced in Section 4.2.3.6 expressed as a percentage of selling price, which for use in the formulas is expressed as a decimal equivalent, would be the appropriate unit for Formulas 6 and 7. This number, as you have indicated, "yields appropriate dimensions". I am not sure of why your application of Formula 6 when expressing royalty as a decimal equivalent yielded, as you indicate, low dollars per acre per bed. I would suggest that you contact our Special Properties Section at

telephone number (304) 558-3940 to discuss the calculations in more detail. Our review of the formula does not yield similar results.

COMMENT 5: Please advise if the comment period is to be suspended or extended.

RESPONSE: The Department does not plan on suspending or extending the public comment period for 110 CSR 11. The Department plans to file the proposed Rule with adjustments resulting from public comment, with the Legislative Rule Making and Review Committee on or before August 1, 1997, for use in the 1999 Tax Year.

COMMENT 6: The Proposed Regulations are based in large measure on the Tax Department's effort to incorporate into legislative rules the method for valuing coal discussed in the June 1, 1997 Report prepared by the Tax Department's consultants, Jeffrey R. Kern and Thomas F. Torries, entitled "West Virginia Coal Appraisal Methodology" (the "Report"). The Report was prepared pursuant to a settlement agreement in litigation brought against the Tax Department several years ago condemning the "comparable sales" approach to the valuation of reserve coal. The establishment of a fair, reasonable and stable method for valuing coal is an objective shared by the WVCA and, presumably, by all interested parties.

RESPONSE: The comments of the WVCA are noted.

COMMENT 7: In recent years, the property tax valuation of reserve coal by use of the "comparable sales" approach outlined in the currently applicable legislative regulations has been the object of much media coverage and litigation in West Virginia. The public and private costs of contending with the process have been substantial, the benefits uncertain. WVCA continues to support the development and implementation of a property tax valuation method that is fair and reasonable, both in terms of the aggregate value placed on the State's coal reserves and in terms of the allocation of that value between and among the State's various coal owners. The implementation of any new valuation methodology will necessarily involve significant additional costs, however, particularly at the outset. The Tax Department must plan and budget for these costs appropriately.

RESPONSE: Your attention is directed to Appendix B, "*Fiscal Note For Proposed Rule*".

COMMENT 8: Unmined coal is difficult to value. The factors affecting the recoverability of coal in place and the possible combinations of those

factors are infinite. Experts seeking to value the same parcel of coal property at the same point in time can vary widely in their estimates of market value. As a result, it bears emphasis that any mass appraisal methodology used to value coal property for property taxation purposes, including the new method adopted in the Proposed Regulations, will necessarily be inaccurate, sometimes by very large margins, in the valuation of specific parcels. Consequently, all coal property owners must have timely and detailed notice respecting the proposed valuation of their coal properties on a parcel-by-parcel basis, well in advance of implementation of any new regulations. Moreover, such notice must specifically set forth all factors impacting valuation and the manner in which those factors were used to compute value. A taxpayer should not have to guess how a property was valued or have to spend time reconstructing how the value of a particular property was determined. Property owners must also have a meaningful opportunity to provide the Tax Department with information to improve the accuracy of their property valuations prior to implementation. WVCA suggests that once notices have been provided to all property owners, the Tax Department should again solicit public comments specifically on whether any changes to the reserve Coal Valuation Model should be made. (WVCA notes that the Proposed Regulations only add impetus to the imperative that new legislation be passed revising West Virginia's antiquated procedures for challenging property tax appraisals.)

RESPONSE:

Your attention is directed to Section 2 of the proposed Rule.

COMMENT 9:

As contemplated by the Proposed Regulations, the Tax Department must maintain confidentiality of taxpayer information in strict compliance with statutory requirements. Subject to that very important limitation, the Tax Department should make available the maps and data utilized for valuation under the Proposed Regulations as soon as possible. WVCA reserves the right to comment further on the Proposed Regulations contemplate use of a data base that is essentially a very preliminary substitute for a complete and accurate GIS system, a process likely to require many more years. The accuracy of values generated under the Proposed Regulations will necessarily be compromised at the outset, and will be subject to continuous revision as better, more complete data is acquired.

RESPONSE:

To the extent that information concerning the newly developed data base is public information, it will be made available to the public, at the cost of reproduction, as soon as data transfer to the Department is complete and the Department has the ability to reproduce the requested information.

COMMENT 10:

The property tax value of West Virginia's coal reserves has risen dramatically since the Tax Department began valuing coal in the early 1990's. West Virginia coal owners already pay significantly higher property taxes than coal owners in other states. This is a significant concern to West Virginia coal producers, who must sell their production in highly competitive national and global coal markets. Although the per ton property tax values of coal in place in West Virginia have increased sharply in recent years, the per ton prices of coal produced and sold in the open market have not increased over the past fifteen years. On an inflation adjusted basis, per ton coal prices are significantly lower today than they were fifteen years ago.

RESPONSE:

The comments of the WVCA are noted.

COMMENT 11:

The Proposed Regulations represent a dramatic departure from the "comparable sales" methodology employed under the current regulations to value reserve coal. As discussed in greater detail below, although WVCA has significant problems with the Proposed Regulations as presently drafted, WVCA also believes the Proposed Regulations are conceptually more sound than the "comparable sales" method currently utilized for valuing reserve coal.

RESPONSE:

The comments of the WVCA are noted.

COMMENT 12:

Although the valuation process for reserve coal has been attacked, the Tax Department's valuation of active coal has never been challenged in litigation or criticized in the media. Nevertheless, the Proposed Regulations would significantly change valuation not only for reserve coal but for active coal as well. For example, the Proposed Regulations would substantially lower the capitalization rate for valuing active coal by means of an inflation adjustment; decrease the height of coal presumed to be unminable; and increase the mine life of surface mines from five years to fifteen years, notwithstanding the fact that a mine permit issued pursuant to W. Va. Code § 22-3-8(c) is valid for only five years. Since the valuation of active coal has never been a point of controversy and has never been challenged in the past – and since the aggregate value of coal under the Proposed Regulations will not change if the valuation of active coal under the current regulations remains unchanged -- WVCA suggests that the Proposed Regulations modify only the valuation of reserve coal and that the valuation of active coal be unchanged.

RESPONSE:

The proposed modifications to active coal properties in the area of the determination of the capitalization rate contemplate an adjustment for inflation as recommended in consultants' report. This adjustment

is necessary to ensure that the aggregate value of coal properties reflects market value and that the apportionment of the aggregate value to active and reserve coal properties is accomplished in as accurate a fashion as possible. The increase in the maximum mine life for surface properties from five to fifteen years is compatible with deep mines and recognizes that certain surface properties do, in fact, contain sufficient coal reserves to sustain production for a period of fifteen years. It is only in those instances where a property has sufficient reserves to sustain production for a fifteen year period that this modification will have an effect. The effect, however, will be an accurate reflection of available coal reserves on the property.

It should also be noted that active coal valuations have been the subject of litigation in past years. The recommended modifications to the active coal valuation process are necessary to make the values of active properties more reflective of market value.

COMMENT 13:

In comments submitted respecting the Tax Department's "Tentative Natural Reserve Property Valuation Variables" on June 16, 1997, WVCA noted that the Tax Department's proposed 1998 capitalization rate of 15.50% for the valuation of active coal was far too low. As noted there, a capitalization rate based on a risk component of at least 20% would be appropriate for the valuation of coal property, in light of the multiple risks associated with the business. WVCA reiterates and incorporates those comments here, in relation to the capitalization rate to be used under the Proposed Regulations. We further note that a survey of banks to determine the risk component of the capitalization rate based on their lending rate on loans for the acquisition or operation of coal properties is not an appropriate measure of the risk rate for valuing coal. Banks do not take the risks of coal mining and do not loan money collateralized exclusively by coal properties or operations. In fact, banks in general do not take any significant risks in lending, and typically loan money to coal owners based on other, additional collateral. Moreover, the inflation adjustment contemplated by the Proposed Rules is inappropriate, as discussed below.

RESPONSE:

The Rule is intended to provide a process with application of the process to be the subject of annual public comment subsequent to the annual filing in the State Register of valuation variables.

COMMENT 14:

Definition 3.13 "**Bands of Investment Discount Component**" has no relevance to the valuation methodology set forth in the Proposed Rules and should be eliminated.

RESPONSE:

The Department makes an adjustment to the capitalization rate to convert the rate to a pre-tax income series rate. This adjustment requires the splitting of the capital structure to debt and equity, thus, "bands of investment" analysis.

COMMENT 15:

Definition 3.19 "**Clean Coal Recovery Rate**" is unclear regarding the method for calculation of the recovery rate is calculated on reserve coal. WVCA requests this definition be eliminated and that the following be substituted therefor:

3.19 "**Clean Coal Recovery Rate**" means a decimal representing the percentage of marketable coal that is recoverable and available for sale.

3.19.1 Clean Coal Recovery Rate, for active mining valuation purposes, means a decimal representing the percentage of marketable coal that is recovered, whether such coal is classified as run-of-mine-clean or washed-clean. The Clean Coal Recovery Rate must reflect the difference between calculated coal bed tonnage (tons in place) and mined tonnage reportable to the Office of Miners Health, Safety and Training.

3.19.2 Clean Coal Recovery Rate, for reserve valuation purposes, shall equal the product of the Areal Recovery Rate and the Plant Recovery Rate.

3.19. 1. a Areal Recovery Rate is the decimal representing the percentage of the area of the coal bed which can be recovered using generally accepted mining practices and suitable equipment. For purposes of these regulations the Areal Recovery Rate shall be 0.6.

3.19.2.b Plant Recovery Rate is a decimal representing the percentage of mined coal that is expected to be available for sale after washing or other post production processing.

RESPONSE:

It is unclear to the Department exactly what is meant by "is unclear regarding the method for calculation of the recovery rate is calculated on reserve coal".

Definition 3.19 "Clean Coal Recovery Rate" seems fairly straight-forward. It is assumed that the average operator will be able to calculate tons-in-place of a "coal bed" as defined in 3.20. Depending on the method of mining, actual mining recovery will vary. Surface mines will commonly recover between 80% and 90% of the tons-in-place. Depending on the break-out of partings and/or sales/contract requirements, this coal may be sold as-is (run of mine) or may require washing. Underground mines will commonly recover between 45% and 65% of the tons-in-place and the coal almost always will require washing. Thus, the clean coal recovery rate will reflect clean tons as reported to OMHST divided by tons-in-place and may vary, on producing returns, from 90% to 25%, depending on type of mining, bed impurities, prep plan efficiency, etc.

The essential difference between the definition (3.19) "clean coal recovery rate" and the functional (4.2.3.15) clean coal recovery rate for reserves is that the former is arrived at by dividing a measured quantity by an estimated quantity, whereas the latter will use estimated quantities throughout although it is contemplated that actual recoveries experienced at mines/prep plants will be part of the estimation process as well as information solicited from taxpayers and publicly available information. The Department agrees that there should be separate sub-definitions for active mining purposes and reserve coal valuation purposes and the Rule will be modified to accommodate same.

COMMENT 16:

Definition 3.20 "Coal Bed" is defined to include all coal and associated rock partings lying between logical and/or practical roof and floor strata. WVCA believes that it is incorrect to include the thickness of rock partings within a coal bed in determining whether or not the coal bed will be considered minable under the definition at paragraph 3.38. Accordingly, WVCA suggests the insertion of the following language at the end of definition 3.20: "For the purpose of whether a coal bed is unminable under the definition of "Minaable Coal Bed" (as defined in this Section 3) the thickness of any rock partings associated with the coal bed shall not be included in the computation of bed height."

RESPONSE:

One of the more important factors in determining when and how a coal bed can and will be mined is the required equipment. The lower practical thickness limit for readily-available continuous miners appears to be around 30 inches, although thinner coal can be mined with the same equipment and considerably thinner coal is being mined with more specialized and more expensive continuous miners and short wall plows. Engineers who put together a mine plan must

take into account the rock partings in the coal mining unit (roof to floor) because this material has to be handled; that is mined, belted/hailed out, trucked and washed. The Rule cannot ignore a material that has to be mined and is accounted for as non-coal in the clean coal recovery rate whether under 3.19 or 4.2.3.15. Thus, the Department does not agree with the WVCA's suggestion to not include rock partings "in the computation of bed height".

COMMENT 17: Definition 3.26 "**Discount Component**" has no relevance to the valuation methodology set forth in the proposed legislative rules and should be eliminated.

RESPONSE: A capitalization rate is a rate used to convert an estimate of future benefit into an estimate of present worth. There are three (3) major components of a capitalization rate. These are: a discount component, a recapture component and a property tax component. A definition for all three (3) components is, therefore, appropriately included in the Rule.

COMMENT 18: Definition 3.27 "**Economic Life Method of Recapture**" has no relevance to the valuation methodology set forth in the proposed legislative rules and should be eliminated.

RESPONSE: The definition of "Economic Life Method of Recapture" contained in Section 3.27 will be deleted from the Rule.

COMMENT 19: Definition 3.33 "**Market Comparison Discount**" has no relevance to the valuation methodology set forth in the proposed legislative rules and should be eliminated.

RESPONSE: The definition of "Market Comparison Discount" contained in Section 3.33 will be deleted from the Rule.

COMMENT 20: Definition 3.34 "**Market Comparison Method of Recapture**" has no relevance to the valuation methodology set forth in the proposed legislative rules and should be eliminated.

RESPONSE: The definition of "Market Comparison Method of Recapture" contained in Section 3.34 will be deleted from the Rule.

COMMENT 21: Definition 3.38 "**Minable Coal Bed.**" The definition of Minable Coal Bed contained in the proposed regulations is similar to the definition of "Minable Coal" in the current regulations with two changes. First, current regulations require coal to be "of such quality so as to be commercial saleable (either as mined coal or as a recoverable

reserve)" to be considered minable. Second, current regulations require coal seams to be at least thirty inches thick to be considered minable unless there is evidence to the contrary. WVCA urges the Tax Department to amend the proposed definition of Minal Coal Bed to include the requirement that coal be of such quality as to be commercially saleable. If not commercially saleable, coal is just rock. WVCA also urges that no change be made to the language of the existing regulations regarding the minable thickness of a coal seam. Many coal owners have already resolved the question of the mineability of certain seams of coal on their property with the Tax Department based on the current language, and they should not have to revisit that issue under the lowered, less precise standard suggested by the Proposed Regulations.

RESPONSE:

The definition of Minal Coal that was contained in Legislative Rule prior to 1987 contained a provision that coal should be of such quality as to be commercially saleable. Property owners were taking the position that coal on certain properties was for various reasons, usually cost/benefit, not commercially saleable at a profit, therefore, unmineable and valued at the unmineable rate of \$5 per acre. However, these same properties were being exposed to the market and sold as reserve coal at hundreds of dollars per acre. Accordingly, the definition was changed by deleting the concept of "commercially mineable" so as to close this definition "loop-hole".

The Department considers "reserves" to have value as being eventually mined. Several times in the history of coal mining in West Virginia and surrounding states all of the "commercially mineable" coal has been "exhausted" only to have economic situations change and previously "unmineable" coal become commercial. The proposed Rule clearly recognizes that much of the "reserves" in the State have a very small present value while recognizing the likelihood that they will be mined.

Upon further reflection and consultation with consultants, the Department agrees that the threshold of 30 inches, not 28 inches, should be used to identify coal as unmineable unless information to the contrary is available. Property owners may have coal property with thickness in excess of 30 inches classified as unmineable but documentation demonstrating unmineability must be provided.

COMMENT 22:

Definition 3.48 "Recapture Component" has no relevance to the valuation methodology set forth in the proposed legislative rules and should be eliminated.

RESPONSE: See response to Comment #12.

COMMENT 23: The second sentence of Section 4. 1.1 "**General**" should be modified as follows: "In no case will the active per acre rate on a coal bed be less than the applicable reserve present value per acre (as defined in Section 3 of this rule) on the coal bed."

RESPONSE: "Present value per acre" and not "reserve present value per acre" is defined in Section 3.44. The definition will be changed, however, to read, "Present value per acre" means the present value per acre of a coal bed on a reserve property.

COMMENT 24: Section 4.1.2.f provides: "If the mine ceases production after January 1 but before the July 1 assessment date, and there is minable coal remaining in the coal bed, the remainder will be valued as reserves for the current tax year." If a mine ceases production between July 2 and the following December 31 any remaining coal should also be valued as reserves. Therefore, WVCA believes that the language "after January 1 but" can and should be eliminated from this provision.

RESPONSE: Section 4.1.2.f will be modified to read as follows: If the mine ceases production before the July 1st assessment date, and there is mineable coal remaining in the coal bed, the remainder will be valued as reserves for the current tax year.

COMMENT 25: Section 4.1.2.h is similar to the previously discussed Section 4.1.2.f but appears to require a mining operation to be shut down a full twelve months prior to the assessment date before the property ceases to be valued as active mining property. This is inconsistent with the law and reason and with 4.1.2.f. WVCA believes this section should be eliminated.

RESPONSE: Section 4.1.2.h will be deleted as the change in Section 4.1.2.f in response to Comment 19 above renders the section unnecessary.

COMMENT 26: In the determination of the Capitalization Rate as provided in Section 4.1.10, a new negative adjustment has been added as Section 4.1.10.1.e to purportedly counteract the effect of inflation. The WVCA believes that this adjustment is not warranted and should be eliminated from the Capitalization Rate formula. Prior to the filing of the proposed regulations, the Tax Department has consistently valued active coal within the state using a Capitalization Rate calculation that was not inflation adjusted. There is no justification for reducing the Capitalization Rate as a result of increases in the Urban

Consumer Price Index. Similar inflation rate adjustments are not made by the Tax Department when Capitalization Rates are computed with respect to the valuation of other types of property.

Moreover, the Tax Department already has the data compiled which clearly indicates that over the last fifteen years there has been no inflation with respect to either coal prices or royalty rates. If an analysis were performed to determine the actual price trends in the coal industry, adjustment to the Capitalization Rate to allow for price declines would probably be more appropriate. The WVCA believes that the inflation adjustment is inappropriate with respect to the valuation of coal and should be eliminated.

Alternatively, the Tax Department already has information compiled on coal prices and royalty rates which are the factors in the active coal valuation formula that the regulations express concern will be subject to inflation. If any inflation adjustment to the Capitalization Rate at all is appropriate, it is not by use of the Urban Consumer Price Index which has no relation to the coal industry. Such an inflation adjustment should be calculated (if at all) based on information which the Tax Department already has with respect to the inflation or deflation in actual prices paid and royalty rates charged by the coal industry.

RESPONSE:

The inflation rate adjustment in the capitalization rate is appropriate because the market in general adjusts anticipated rates of return on investment for inflation. The income to which the rate is applied is, as the Coal Association has correctly suggested, a non-inflating income series. It is inappropriate to apply a capitalization rate with anticipation of inflation to a non-inflating income series. Thus, the Department has recommended an adjustment to the capitalization rate to remove the effect of inflation on the rate. The Department is proposing that capitalization rates for not only the coal market but the timber, oil and gas, and other producing natural resources markets should be adjusted for market anticipated inflation.

COMMENT 27:

Section 4.2.3.5 "**Transactions.**" The WVCA believes that in aggregating transactions the only permit applications which should be considered transactions for purposes of this section are approved mining permits issued pursuant to W. V. Code § 22-3-8(c). WVCA suggests that the first sentence of this section be modified to incorporate this concept. In addition, WVCA believes that in determining the number of transactions, transactions involving small properties and transactions involving undivided interests in the same piece of property should be aggregated in determining transaction

frequency. Accordingly, we suggest the insertion of the following language at the end of the first sentence of this section:

"Transactions involving less than ten acres will be aggregated with all similar transactions covering contiguous properties for purposes of determining transaction frequency. For example, the purchase of ten contiguous five acre parcels by one taxpayer from separate owners would be considered one transaction for purposes of this section. In addition, transactions involving undivided interest in the same property shall be considered one transaction for purposes of this section."

RESPONSE:

All of the items suggested by the WVCA have been considered during the development of the Rule. The intent of the "Transaction Factor" is to provide an estimate of the interest in a particular coal seam in a specific area or region. The number of applications and the number of individual sales provide an indicator of general demonstrable interest in reserve coal. In contrast, a count of the number of large sales and the number of approved mining permits tends to provide an indication of immediate future mining intentions. The intention of this section of the Rule is to estimate the overall market interest in reserves, both long and short-term, by seam, by geographic area, or by seam and geographic area. Review of all separate transactions better satisfies this intended objective. Although the Department agrees that multiple individual interests on the same property should be aggregated into a single sale, this will not require any amendments to the rule.

COMMENT 28:

There are two definitions of "Prime Coal Bed" contained in the regulations. One at Section 4.2.3.16 and the other at Definition 3.45. These two definitions should be consistent. The WVCA recommends a change to Section 4.2.3.16 to accomplish this purpose. The WVCA suggests that the third bullet point which currently reads: "Which contains sufficient tonnage to realistically support mining" be amended to read as follows: "Which contains sufficient minable tons to sustain mining for two (2) years in a specified area at the average rate of mining in the bed, in the general area for the most recent three (3) calendar years."

RESPONSE:

The definition for prime coal bed is contained in section 3.45. A discussion of the determination of prime coal bed is contained in Section 4.2.3.16. The definition in Section 3.45 and the discussion

of application of the process in Section 4.2.3.16 are consistent. However, the third bullet point in Section 4.2.3.16 will be changed to read "which contains mineable tonnage sufficient to sustain mining for two (2) years in a specified area at the average rate of mining in the bed in the general area for the most recent three (3) calendar years."

COMMENT 29:

The RTC and Torries and Associates' Report recommendation for valuing reserve property describes the transaction frequency criteria at subsection (e) on page 17. The Report recommends assigning a *ti* values of twenty years, forty years and eighty years where transaction frequencies are high, medium and low respectively. Section 4.2.3.17.a, "**Market Interest Factor,**" does not adopt the consultants' Report recommendation and sets a *ti* value of zero for high transaction frequencies. This zero factor will artificially lower the *t* value of properties in areas of high transaction frequency. The WVCA recommends that Section 4.2.3. 17.a be modified to provide for the assignment of a *ti* value of eighty years for areas with zero to six transactions per thirty square miles, a *ti* value of forty years for areas with seven to twelve transactions per thirty square miles, and a *ti* value of twenty years for areas with more than twelve transactions per thirty square miles. The regulations do not specify how the thirty square mile area to be referred to in making these determinations is to be calculated. The regulations should specify how this area will be determined. In addition, the regulation is unclear as to the time frame over which the Department will look to determine the number of transactions which have occurred. The time frame the Department intends to use should be specified in the regulations.

RESPONSE:

The WVCA's comments concerning Section 4.2.3.17.a are noted. The regulations should read as follows:

1. Zero to six transactions per 30 square mile area factor of 80
2. Seven to twelve transactions per 30 square mile area factor of 40
3. More than twelve transactions per 30 square mile area factor of 20

The 30 square mile area is defined as an area bounded by a circle with a radius of 3.09 miles.

COMMENT 30:

Section 4.2.3.17.b "**Market Mineability Factor.**" The WVCA would recommend that the following changes be made to the computation of the market mineability factor. Reserves located in areas where there is no record of prior mining of the coal bed in the area should be afforded a *ti* factor of eighty years. Where mining in the area has occurred only prior to 1990, a *ti* factor of forty years should be used

and where mining of the coal bed in the area has occurred since 1990 a *ti* factor of twenty years should be used.

RESPONSE:

The Rule as currently proposed considered information gained on the mineability of coal as indicated by interest in coal fields and properties during the coal "boom" years of 1974 to 1983. The Department believes this information is valuable in that it indicates areas in which coal mining was considered under the most favorable of economic situations. It is reasonable to conclude that if coal was not mined in an area during these "boom" years, then it is less likely that coal will be mined in these areas under more competitive conditions. Conversely, coal mined during the "boom" years indicates that mining could happen again at some time in the future. Therefore, coal mining activity during the "boom" years should be included in the appraisal process. The suggestion of the WVCA that the year 1990 be the threshold between *ti* of 40 and *ti* of 20 has merit in its simplicity, but there is less rationale for arbitrarily using the year 1990 rather than a defined rational period such as the coal "boom" years.

COMMENT 31:

Section 4.2.3.17.d. The WVCA recommends that objective criteria be developed to replace the subjective determination regarding the assignment of *ti* values with respect to environmental factors. Alternatively, the WVCA suggests that examples of conditions where environmental problems would "significantly preclude, significantly impede or affect" mining be included in the regulations.

RESPONSE:

The Department agrees in principle, but there is presently no known method to satisfactorily define a full suite of environmental factors necessary to determine *ti*. The appraisal model is designed to include specific environmental exclusions on an area by area or case by case basis as they are identified and placed into the GIS data base. It is more desirable to have the model to be self correcting in an additive fashion rather than to incorrectly assume an array of ill chosen environmental conditions.

COMMENT 32:

Section 4.2.3.18. It is the understanding of WVCA that the BTU and sulfur adjustment factors used in valuing reserve coal beds result in only an immaterial adjustment to the value of the coal bed. In the interest of simplicity, ease of administration and fairness, the WVCA suggests that the BTU and sulfur adjustment factor be eliminated from the formula used to compute reserve values.

RESPONSE:

The Department agrees that BTU and sulfur premiums and penalties result in minor adjustments to the total value of the coal bed. However, these adjustments must be considered in the valuation

process to prevent legal challenge and to satisfy critics of the valuation process that all factors are being considered.

COMMENT 33:

In years in which the value of a taxpayer's property has not increased enough to require that taxpayer be provided a notice of increased valuation, the only way which a taxpayer has to review the appraisal of its property prior to February 1 is to obtain "Mineral Property Appraisal Schedule" printout from the Tax Department or from the assessor in the county in which the property is located. Because taxpayers have a right to know how their property is appraised, WVCA suggests the following provision be inserted into the regulations:

"4.11 Upon request of the property owner made before January 1 of the tax year, the Tax Department shall make available, before January 15 copies of any Mineral Property Appraisal Schedules for pick up by the taxpayer at any Tax Department office location in the state."

RESPONSE:

The notice provisions contained in current property tax law are available to the owners of coal properties. The Department is not supportive of a notification process that would favor one taxpayer as a class over another. The issue of notification should be addressed in general property tax law and changes should apply with equal force to all taxpayers.

COMMENT 34:

As indicated by the preceding comments, the Proposed Regulations use many criteria to establish and allocate value between the thousands of reserve coal properties in the State. However, without wide scale application of these various criteria to actual fact situations it is literally impossible to meaningfully evaluate the appropriateness or effectiveness of any given criterion as an indicator of value. Accordingly, WVCA's lack of a recommendation suggesting different criteria in a particular instance should not be taken as endorsement of criteria specified in the Proposed Regulations. As noted above, WVCA believes the Proposed Regulations are conceptually more sound than the current regulations in the valuation of reserve coal; but informed judgment regarding the effectiveness of valuation under the Proposed Regulations will have to await actual experience.

RESPONSE:

The comments of the WVCA are noted.