

Form #2

FILED

JUN 2 3 12 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

\$4.00

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Valuation of Public Utility Property For Ad Valorem Property Tax Purposes

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: State Tax Commission
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>	\$	\$	\$	\$	\$
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

There should be no administrative expenses beyond that which the Legislature considered when it enacted H.B. 4713.

Rule Title: Valuation of Public Utility Property For Ad Valorem Property Tax Purposes

3. Objectives of these rules:

The primary objective of this rule is to implement the new methodology for valuation of motor carriers as required by H.B. 4713, enacted March 12, 1998. The rule also makes technical amendments to 110 C.S.R. 1M.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

The economic impact on state government should be minimal.

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

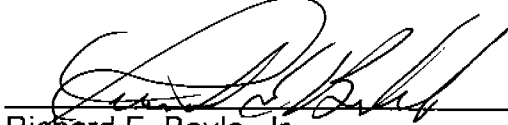
Counties that have trucks that travel in interstate commerce may lose some tax revenues as the property taxes from those trucks will be distributed based on highway mileage. However, counties will gain tax revenues from the collection of taxes from interstate carriers. The overall fiscal impact is not reasonably estimated.

C. Economic Impact on Citizens/Public at Large.

See B above.

Date: 6-1-98

Signature of Agency Head or Authorized Representative



Richard E. Boyle, Jr.
State Tax Commissioner



STATE OF WEST VIRGINIA
DEPARTMENT OF TAX AND REVENUE
TAX DIVISION

CECIL H. UNDERWOOD
Governor

ROBIN C. CAPEHART
Cabinet Secretary

RICHARD E. BOYLE, JR.
State Tax Commissioner

SUMMARY OF RULE

110 C.S.R. 1M

Valuation of Public Utility Property for
Ad Valorem Property Tax Purposes

This rule describes the methodology for determining the market value of interstate public service corporation motor vehicles subject to proportional registration. Other technical amendments are also made to the rule.



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STATEMENT OF CIRCUMSTANCES

110 C.S.R. 1M

Valuation of Public Utility Property for
Ad Valorem Property Tax Purposes

House Bill 4713, passed on March 12, 1998 and in effect from date of passage, requires the State Tax Commissioner propose a legislative rule that describes the methodology for determining the market value of interstate public service corporation motor vehicles subject to proportional registration. That requirement is accomplished through amendment to this rule. Other technical amendments are also made to this rule.

PROPOSED
TITLE 110
LEGISLATIVE RULE
STATE TAX COMMISSION

FILED

JUN 2 3 15 PM '98

SERIES 1M
VALUATION OF PUBLIC UTILITY PROPERTY
FOR AD VALOREM PROPERTY TAX PURPOSES

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 110-1M-1. General.

1.1 **Scope.** -- ~~These regulations clarify~~ This rule clarifies and implements State law as it relates to the appraisal, at market value, of property subject to taxation as public utilities; and general rules for distinguishing between operating and non-operating public utility property for ad valorem taxation purposes. ~~Because these regulations provide context modifications of relevant parts of 110 C.S.R. 1 and such regulations with context modifications were adopted by the Tax Commissioner, W. Va. Code § 11-1C-5(b) eliminates the requirement that this filing be subject to the proceeding requirements of W. Va. Code § 29A-3-1 et seq~~

1.2 **Authority.** -- W. Va. Code §§ 11-1C-5(b) and 11-6G-1.

1.3 **Filing Date.** --

1.4 **Effective Date.** --

§ 110-1M-2. Definition.

As used in ~~these regulations~~ this rule and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, ~~and shall apply in the singular or in the plural.~~

2.1 **"Bands of investment technique"** means a synthesis of capital components used in financing an investment.

2.2 **"Capitalization rate"** means a rate, used to convert an estimate of income to an estimate of market value.

2.3 **"Commercial motor vehicle"** means a qualified motor vehicle registered under a proportional registration agreement, or a qualified motor vehicle that, except for the fact that it is engaged only in intrastate commerce, would otherwise be subject to registration under proportional registration agreements. "Commercial motor vehicle" status may, at the option of the party registering the vehicle, be conferred upon a non-qualified motor vehicle such as a vehicles, or a combination thereof, that have a gross vehicle weight of 26,000 pounds or less, that have only two axles, or are used in the transportation of charter parties.

2.3 4 **"Cost approach"** means the appraisal process in which cost of the property being valued is considered in determining an estimate of fair market value. As a general

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rule, original cost will be used to value public utility operating property; however, when such original cost is not available, replacement cost or reproduction cost may be considered.

2.4 5 **"Economic obsolescence"** means a loss in value of a property arising from factors such as changes in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

2.5 6 **"Fair market value"** means the highest price in terms of money that a property will bring in a competitive and open market, assuming that the buyer and seller are acting prudently and knowledgeably, allowing sufficient time for the sale and assuming that the price is not affected by undue stimulations.

2.6 7 **"Final assessed values"** means values established by the Board of Public Works required by W. Va. Code § 11-6-11.

2.7 8 **"Functional obsolescence"** means a loss in value of a property due to changes in style, taste, or technology.

2.9 "Gross capital cost" means the actual cost of the new or used vehicle at the time of purchase, as illustrated on the bill of sale, purchase contract, or similar document showing the purchase price of the vehicle. The cost at the time of purchase means 100% of the cost as shown on the books and records of the purchaser and includes freight, installation charges, trade-ins, federal tax allowances and any applicable credits utilized by the purchaser at the time of purchase.

2.8 10 **"Income approach"** means the appraisal process of discounting an estimate of future benefits into an expression of present worth.

2.9 11 **"Market data approach"** means the appraisal process of examining sales data and translating such data into an estimate of present worth.

2.12 "Operating property" means utility operating property used for purposes immediately connected with providing the respective utility service. The Tax Commissioner construes "purposes immediately connected with providing utility service" to be synonymous with properties considered by regulatory bodies in constructing the utility rate base for rate making purposes. The Tax Commissioner will therefore give primary consideration to whether property is included in utility operating property classification as reflected in the applicable uniform system of accounts when deciding operating non-operating property issues.

2.40 13 **"Original cost"** means the initial cost paid for constructing or acquiring property.

2.41 14 **"Physical deterioration"** means a loss in value due to wear and tear in service.

2.15 **"Proportional registration agreement"** means an agreement entered into by the West Virginia Commissioner of Motor Vehicles under the authority of West Virginia Code § 17A-2-10a.

2.16 **"Public service corporation"** means business entities contemplated by provisions of W. Va. Code § 11-6-1 et seq.

2.17 **"Qualified motor vehicle"** means a motor vehicle used, designed or maintained for the transportation of persons and property and:

2.17.1 Which is a self-propelled unit having a gross vehicle weight in excess of 26,000 pounds; or

2.17.2 Is a self-propelled unit having three or more axles, regardless of weight; or

2.17.3 Is used in combination with another vehicle, when the combined gross vehicle weight exceeds 26,000 pounds; or

2.17.4 the combined gross vehicle weight or combined registered gross vehicle weight of the two or more vehicles exceeds 26,000 pounds.

2.18 **"Rate base"** means that group of accounts or derivatives thereof, from the Uniform System of Accounts, on which a public utility is allowed a return on investment.

2.19 **"Regulation"** means ~~the process wherein fees charged for public utility services are reviewed by applicable federal and state regulatory bodies~~ oversight of public service corporations by applicable federal and state regulatory bodies.

2.20 **"Replacement cost"** means the cost, including material, labor, and overhead, that would be incurred in constructing an improvement having the same utility to its owner as the improvement in question, without necessarily reproducing exactly any particular characteristic of the property.

2.21 **"Reproduction cost"** means the cost, including material, labor, and overhead, that would be incurred in constructing an improvement having exactly the same characteristics as the improvement in question.

2.22 **"Return on investment"** means a margin of profit generally expressed as a percentage of investment capital.

2.23 **"Stock and debt technique"** means a process of reviewing market trading

prices of securities in order to arrive at an estimate of value.

2.19 ~~24~~ **"Tentative assessments"** means property valuation estimates furnished by the Tax Commissioner to the Board of Public Works in accordance with W. Va. Code § 11-6-9.

2.20 ~~25~~ **"Uniform system of accounts"** means the most current system of accounting developed and required by state and federal regulatory bodies.

2.24 ~~26~~ **"Unit rule"** means an appraisal of an integrated property as a whole without any reference to the values of its component parts.

~~2.22 **"Operating property"** means utility operating property is property used for purposes immediately connected with providing the respective utility service. The Tax Commissioner construes "purposes immediately connected with providing utility service" to be synonymous with properties considered by regulatory bodies in constructing the utility rate base for rate making purposes. The Tax Commissioner will therefore give primary consideration to whether property is included in utility operating property classification as reflected in the applicable uniform system of accounts when deciding operating non-operating property issues.~~

§ 110-1M-3. Situs.

3.1 Generally, ~~when the cost approach is used,~~ operating properties physically located in West Virginia will be considered for tax purposes; ~~however,~~

3.1.1 ~~When the income approach~~ unit method is used, the correlated unit of value shall be allocated to the State of West Virginia using operating plant data ~~after which;~~

3.1.2 Apportionment of ~~physical plant~~ property tax revenues, considering the location in the various taxing districts, will be made by the West Virginia State Auditor's Office.

§ 110-1M-4. Valuation of Operating Public Utility Property (excluding commercial motor vehicle property).

4.1 **Unit method.** -- The Tax Commissioner provides tentative assessments based on fair market value of operating property of public service corporations to be used as a guide by the Board of Public Works in establishing final assessed values for property tax purposes. In this regard the Tax Commissioner will use the "Unit Rule" where applicable in furnishing tentative valuation estimates for the Board's consideration.

4.2 Generally accepted appraisal methods. -- In determining tentative assessments the Tax Commissioner will consider, and use where applicable, three (3) generally accepted approaches to value: (A) cost, (B) income, and (C) market data. Application of these approaches will recognize the impact of regulation on the value of utility operating property where applicable.

4.2.1 Cost approach. -- Recognizing that many public service corporations are ~~predominantly~~ cost regulated, when the cost approach is used in the valuation process, original cost less applicable regulatory depreciation will be employed. ~~In applying the cost approach, the Tax Commissioner will consider three (3) types of depreciation; (a) physical deterioration, (b) functional obsolescence, and (c) economic obsolescence. For public service corporations no longer cost regulated, consideration may be given to using a depreciation method other than regulatory accounting.~~

4.2.2 Income approach. -- In developing income approach valuations, the Tax Commissioner will estimate capitalization rates considering the interrelationships of the income to be capitalized and the capitalization rate. In this regard, net operating income after taxes, but before interest expense on long-term debt, will be given primary consideration as the point on the income stream to be capitalized. The bands of investment technique will be employed in estimating appropriate capitalization rates.

4.2.3 Market data approach. -- Recognizing that a sufficient number of sales of public service corporations do not occur to enable application of the market data technique, the Tax Commissioner will consider the substitute stock and debt technique. The stock and debt technique will be used in instances where a utility class possesses actively traded stocks and bonds that enable reasonable valuation estimates to be made.

4.2.4 Adjustments. -- Prior to correlation, certain adjustments shall be made. Property held under operating leases shall be added to all three approaches. The influence of working capital will be subtracted from both the income approach and the market data approach. Consideration will be given for the subtraction from the approaches of the contribution of any other intangible property. A subtraction will only be made for intangible property having a value which is separate and distinguishable apart from the tangible property.

4.2.4 5 Correlations. -- Once generated, the various estimates of value will be correlated into a final value estimate. The income approach value will generally be given primary consideration in the correlation process; however, all factors and conditions pertinent to each approach shall be considered and exceptions will be made for cause. Any functional obsolescence, economic obsolescence or economic enhancement will be recognized through the correlation process.

4.3 Classification of public utility and certain common carrier operating properties.

4.3.1 Electric utilities. -- Operating property for electric utilities shall primarily include such properties as are considered by the Federal Energy Regulatory Commission (FERC) as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, the most recent FERC Uniform System of Accounts prescribed for Electric Utilities shall be used.

4.3.2 Gas utilities. -- Operating property for natural gas utilities shall primarily include such properties as are considered by the Federal Energy Regulatory Commission (FERC) as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, the most recent FERC Uniform System of Accounts prescribed for Natural Gas Utilities shall be used.

4.3.3 Gas pipeline utilities. -- Operating property for natural gas utilities shall primarily include such properties as are considered by the Federal Energy Regulatory Commission (FERC) as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, the most recent FERC Uniform System of Accounts prescribed for Gas Pipeline Utilities shall be used.

4.3.4 Telephone companies. -- Operating property for telephone carriers shall primarily include such properties as are considered by the Federal Communications Commission (FCC) as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, the most recent FCC Uniform System of Accounts prescribed for Telephone Utilities shall be used.

4.3.5 Telegraph carriers. -- Operating property for telegraph carriers shall primarily include such properties as are considered by the Federal Communications Commission (FCC) as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, the most recent FCC Uniform System of Accounts prescribed for Wire-Telegraph and Ocean-Cable Carriers shall be used.

4.3.6 Airline companies. -- Operating property for air carriers shall primarily include such properties as are considered as operating property by the ~~Civil Aeronautics Board (CAB)~~ Department of Transportation. In determining which properties are properly included as operating property, the most recent CAB Uniform System of Accounts and Reports for Certified Air Carriers shall be used.

4.3.7 Interstate motor carriers. -- Operating property for interstate motor carriers shall primarily include such properties as are considered as operating property by

the Interstate Commerce Commission (ICC). In determining which properties are properly included as operating property, the most recent ICC Uniform System of Accounts for Common and Contract Motor Carriers of Passengers, and the most recent ICC Uniform System of Accounts for Class I and Class II Motor Carriers of Property shall be used.

4.3.8 7 **Interstate railroads.** -- Operating property for interstate railroads shall primarily include such properties as are considered as operating property by the ~~Interstate Commerce Commission (ICC)~~ Surface Transportation Board. In determining which properties are properly included as operating property, the most recent ICC Uniform System of Accounts for Railroad Companies shall be used.

4.3.98 **Intrastate railroads.** -- Operating property for intrastate railroads shall primarily include such properties as are considered by the West Virginia Public Service Commission as operating property. In determining which properties are properly included as operating property, the most recent Uniform System of Accounts for Railroad Companies as prescribed by the ~~Interstate Commerce Commission~~ Surface Transportation Board shall be used.

4.3.10 **Intrastate motor carriers.** -- Operating property for motor carriers shall primarily include such properties as are considered as operating property by the West Virginia Public Service Commission. In determining which properties are properly included as operating property, motor carriers shall use the most recent Uniform System of Accounts for Common and Contract Motor Carriers adopted by the PSC.

4.3.149 **Water utilities.** -- Operating property for water utilities shall primarily include such properties as are considered by the Public Service Commission as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, water utilities shall use the most recent Uniform System of Accounts of the National Association of Regulatory Utility Commissioners for Class A and B, and Class C and D water utilities.

4.3.1210 **Sewer utilities.** -- Operating property for sewer utilities shall primarily include such properties as are considered by the Public Service Commission as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, sewer utilities shall use the most recent Uniform System of Accounts of the National Association of Regulatory Utility Commissioners for Class A and B, and Class C and D sewer utilities.

4.3.1311 **Carline companies.** -- Operating property for carline companies shall include consideration of Rolling Stock used in transportation of freight or passengers.

4.3.1412 **Reorganization of regulatory bodies.** -- In the event that there

should be a reorganization of federal or state regulatory bodies, and any of the above public service corporations would be required to report to an agency other than that listed above or in the event that there should be any other utilities deemed taxable by the Board of Public Works; operating property for such public service corporations shall include such properties as would be considered as operating by the appropriate state or federal regulatory body in the prescribed Uniform System of Accounts.

4.3.13 **Underground gas storage companies.** – For public service corporations with underground gas storage and no other West Virginia property, operating property shall consist of only the gas stored underground.

4.3.14 **Exceptions.** – Circumstances may arise where properties may be considered operating by the appropriate regulatory body but a portion of the property may be devoted to non-utility use. The Tax Commissioner may in these instances where deemed appropriate classify a portion of the property as non-operating and require that the non-operating portion so determined be assessed by the county assessor. In these instances adjustment to the public utility appraisal will be made to remove from the West Virginia unit values a proportionate value for such non-operating property.

§ 110-1M-5. Valuation of Commercial Motor Vehicles.

5.1 Classification of motor carrier operating property.

5.1.1 **West Virginia based motor carrier** – Operating property shall include every trailer, semi-trailer or power unit as a commercial motor vehicle used exclusively in this State or a trailer or semi-trailer of a West Virginia based interstate commercial motor vehicle business.

5.1.2 **Interstate motor carrier** – Operating property shall include each power unit used as a interstate commercial motor vehicle registered under a proportional registration agreement.

5.2 **Appraisal method.** – A cost approach shall be used to determine the appraised value of a commercial motor vehicle. The gross capital cost of the commercial motor vehicle shall be multiplied by a percentage factor representing the remainder of the vehicle's value after depreciation. Separate depreciation schedules shall be developed annually for power units and trailers.

5.2.1 West Virginia based carriers.

5.2.1.1 **West Virginia based intrastate motor carriers** – The Tax

Commissioner shall annually appraise and assess the power units, trailers and semi-trailers owned by West Virginia based intrastate motor carriers. On or before September fifteenth, the Tax Commissioner shall issue tentative assessments to each such carrier for its operating property.

5.2.1.2 West Virginia based interstate motor carriers – The Tax Commissioner shall annually appraise and assess the trailers and semi-trailers owned by West Virginia based interstate motor carriers. On or before September fifteenth, the Tax Commissioner shall issue tentative assessments to each such carrier for its operating property.

5.2.2 Interstate motor carriers. The Tax Commissioner shall annually provide the depreciation schedule for power units to the West Virginia Commissioner of Motor Vehicles for use in assessing power units subject to proportional registration agreements.

5.3 Interstate Motor Carrier Apportionment Factor – For each interstate truck, road tractor and power unit registered under a proportional registration agreement, the appraised value, as determined under Subsection 5.1 of this rule, shall be multiplied by an apportionment factor the numerator of which represents the total miles driven in the most recent taxable year in West Virginia and the denominator of which represents the total miles driven in the most recent taxable year everywhere; the mileage amounts shall be the mileage amounts as reported to the West Virginia Division of Motor Vehicles.

§ 110-1M-5 6. Taxpayer Returns For All Public Utility Property Except Commercial Motor Vehicles.

5.1 6.1 The Tax Commissioner shall print taxpayer return forms. Such forms shall be distributed to taxpayers for completion and return.

5.2 6.2 To assure equality and uniformity in administration, no assessor or taxpayer shall substitute or supplement any other form for the Tax Commissioner's prescribed returns, without the prior approval of the Tax Commissioner. All such approvals granted by the Tax Commissioner prior to the effective date of this rule is hereby withdrawn.

5.3 6.3 All taxpayers shall prepare one (1) copy of the appropriate property tax return and file it with the Tax Commissioner.

5.4 6.4 Public utility and common carrier property tax returns shall be filed no later than May 1st of each year.

5.5 ~~The Tax Commissioner, for good cause shown, may grant an extension of filing~~

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deadlines:

§ 110-1M-7. Severability.

7.1 If any provision of this rule or the application of this rule to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provisions to other persons or circumstances shall not be affected by the holding.