

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Commission TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-1C-5(b) and 11-6G-1

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1M

TITLE OF RULE BEING AMENDED: Valuation of Public Utility 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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS
ARE FILED WITH THE SECRETARY OF STATE.


Robin C. Capehart, Secretary of Tax and Revenue

\$4.20

MODIFIED
TITLE 110
LEGISLATIVE RULE
STATE TAX COMMISSION

2013
JAN 15 1 51 PM '99

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

§ 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 in this section, 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 vehicle, 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 rule, original cost ~~will~~ shall be used to value public utility operating property; however, when such original cost is not available, replacement cost or reproduction cost may be considered.

2.5 **"Economic enhancement"** means an increase in value of a property arising from factors such as changes in use, an easing of restrictions upon the property, assemblage, or changes in supply and demand relationships.

2.4 6 **"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 7 **"Fair market value"** means the highest price in terms of money that a ~~for~~ which 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~~ would sell if voluntarily offered for sale by the owner of the property, upon those terms as the property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if the property were sold at a forced sale.

2.6 8 **"Final assessed values"** means values established by the Board of Public Works required by W. Va. Code § 11-6-11.

2.7 9 **"Functional obsolescence"** means a loss in value of a property due to changes in style, taste, or technology.

2.10 **"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 11 **"Income approach"** means the appraisal process of discounting an estimate of future benefits into an expression of present worth.

2.9 12 **"Market data approach"** means the appraisal process of examining sales data and translating ~~such~~ the data into an estimate of present worth.

2.13 **"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 shall 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 14 **"Original cost"** means the initial cost paid for constructing or acquiring property.

2.44 15 **"Physical deterioration"** means a loss in value due to wear and tear in service.

2.16 **"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.

2.42 17 **"Public service corporation"** means business entities contemplated by the provisions of W. Va. Code § 11-6-1 et seq.

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

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

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

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

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

2.43 19 **"Rate base"** means that group of accounts or derivatives thereof of those accounts, from the Uniform System of Accounts, on which a public utility is allowed a return on investment.

2.44 20 **"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.

2.45 21 **"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.

2.46 22 **"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.

2.47 23 **"Return on investment"** means a margin of profit generally expressed as a percentage of investment capital.

2.48 24 **"Stock and debt technique"** means a process of reviewing market trading prices of securities in order to arrive at an estimate of value.

2.49 25 **"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 26 **"Uniform system of accounts"** means the most current system of accounting developed and required by state and federal regulatory bodies.

2.24 27 **"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 shall 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~~ shall 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~~ shall 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~~ shall 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~~ shall 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~~ shall 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~~ shall 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~~ shall be given primary consideration as the point on the income stream to be capitalized. The bands of investment technique ~~will~~ shall 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~~ shall consider the substitute stock and debt technique. The stock and debt technique ~~will~~ shall 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. – In certain instances, adjustments shall be made to the appraisals. If the utility holds property under operating leases which is not being assessed in another manner, the property shall be added to the utility's appraisal. The influence of working capital shall be subtracted from both the income approach and the market data approach. Consideration shall be given for the subtraction from the approaches of the contribution of any other intangible property. A subtraction shall 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 shall be correlated into a final value estimate. The income approach value will shall generally be given primary consideration in the correlation process; however, all factors and conditions pertinent to each approach shall be considered and exceptions shall be made for cause. Any functional obsolescence, economic obsolescence or economic enhancement shall 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 that 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 that 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 that 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 that 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 that 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 that 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 I Interstate railroads. — Operating property for interstate railroads shall primarily include such properties as that 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.

4.3.9 8 Intrastate railroads. — Operating property for intrastate railroads shall primarily include such properties as that 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.~~

4.3.119 Water utilities. – Operating property for water utilities shall primarily include such properties as that 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 that 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 described herein would be required to report to an agency other than that listed above in the applicable subdivision or in the event that there should be any other utilities deemed considered taxable by the Board of Public Works, operating property for such the public service corporations shall include such properties as that 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.

4.3.15.14 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 provide tentative assessments of the power units, trailers and semi-trailers owned by West Virginia based intrastate motor carriers to be used as a guide by the Board of Public Works in establishing final assessed values for property tax purposes. On or before September fifteenth, the Tax Commissioner shall issue tentative assessments to each carrier for its operating property.

5.2.1.2 West Virginia based interstate motor carriers – The Tax Commissioner shall annually provide tentative assessments of the trailers and semi-trailers owned by West Virginia based interstate motor carriers to be used as a guide by the Board of Public Works in establishing final assessed values for property tax purposes. On or before September fifteenth, the Tax Commissioner shall issue tentative assessments to each 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. The property assessment and tax collection upon interstate power units will occur at the time of registration through the International Registration Plan.

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 fleet miles driven in the

most recent taxable year in West Virginia and the denominator of which represents the total fleet 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~~ The 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~~ are 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 deadlines.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: State Tax Commission

Subject: Valuation of Public Utility Property for Ad Valorem
Property Tax Purposes, 110CSR1M

PERTINENT DATES

Filed for public comment: June 2, 1998
Public comment period ended: July 2, 1998
Filed following public comment period: July 29, 1998
Filed LRMRC: July 29, 1998
Filed as emergency:

Fiscal Impact: \$20,580 increase

ABSTRACT

The proposed rule amends a current legislative rule. The following is a synopsis of the substantive amendments.

Section 2 defines terms. Definitions for the following terms have been added: commercial motor vehicle; economic enhancement; gross capital cost; proportional registration agreement; and qualified motor vehicle.

Section 4.2.1 relating to the cost approach to value, has been amended by deleting language requiring the Commissioner to consider 3 specific types of depreciation. It has been amended to allow the Commissioner to use a depreciation method rather than regulatory accounting for public service corporations that are no longer cost regulated.

Section 4.2.4 relating to adjustments is new. It allows the Tax Commissioner to make adjustments to the appraisals in certain instances. For example, a utility holding property under operating leases which is not being assessed in another manner will have the property added to its appraisal.

Section 4.2.5 relating to correlations has been amended to require the recognition of any functional obsolescence, economic obsolescence or economic enhancement through the correlation

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process.

Section 4.3.7 relating to interstate motor carriers has been deleted.

Section 4.3.10 relating to intrastate motor carriers has been deleted.

Section 4.3.14 is new. It provides that for public service corporations with underground gas storage and no other West Virginia property, operating property consists of only the gas stored underground.

Section 5 relating to the valuation of commercial motor vehicles is new. It classifies the operating property of West Virginia based motor carriers and interstate motor carriers. It provides that a cost approach is to be used to determine the appraised value of a commercial motor vehicle.

This section requires the Tax Commissioner to annually provide tentative assessments of the power units, trailers and semi-trailers owned by a West Virginia based intrastate motor carrier and on the trailers and semi-trailers owned by a West Virginia based interstate motor carrier. It also requires the Tax Commissioner to annually provide to the DMV, the depreciation schedule for power units of interstate motor carriers that are subject to proportional registration agreements.

This section also provides an interstate motor carrier apportionment factor to be multiplied against the appraised value of each interstate truck, road tractor and power unit registered under a proportional registration agreement.

AUTHORITY

Statutory authority: W.Va. Code, §§11-6-7b 11-6G-1 & 11-1C-5, which provide, in part, as follows:

§11-6-7b

On or before the first day of September, one thousand nine hundred ninety-eight, the tax commissioner shall propose a legislative rule for submission to the Legislature pursuant to the provisions of article three, chapter twenty-nine-a of this code, which rule

shall describe in detail the methods whereby the tax commissioner will determine the market value of the following property:

(a) Intrastate public service corporation motor vehicle businesses which may or may not be registered under a proportional registration agreement but which nonetheless is operated exclusively within the state of West Virginia.

(b) A trailer, semitrailer or road tractor operated exclusively in this state or a trailer or trailer of a West Virginia based interstate motor vehicle business registered under the provisions of section ten-a, article two, chapter seventeen-a of this code, the tax shall be determined by multiplying the appraised value by sixty percent to obtain the assessed value which shall be multiplied by the tax rate to obtain the amount of the tax.

§11-6G-1.

On or before the first day of September, one thousand nine hundred ninety-eight, the tax commissioner shall propose a legislative rule for submission to the Legislature pursuant to the provisions of article three, chapter twenty-nine-a of this code, which rule shall describe in detail the methods whereby the tax commissioner will determine the market value of the following property:

(a) Intrastate public service corporation motor vehicle businesses which may or may not be registered under a proportional registration agreement but which nonetheless is operated exclusively within the state of West Virginia.

(b) A trailer, semitrailer or road tractor operated exclusively in this state or a trailer or trailer of a West Virginia based interstate motor vehicle business registered under the provisions of section ten-a, article two, chapter seventeen-a of this code, the tax shall be determined by multiplying the

appraised value by sixty percent to obtain the assessed value which shall be multiplied by the tax rate to obtain the amount of the tax...

§11-1C-5.

(a) In addition to the powers and duties of the tax commissioner in other provisions of this article and this code, the tax commissioner shall have the power and duty to:

...(2) Determine the methods of valuation for both real and personal property in accordance with the following:

...(D) As to public utility property, the tax commissioner shall prescribe appropriate methods for the appraisal of the various types of property subject to taxation as public utilities and the types of property which are to be included in the operating property of a public utility and thereby not subject to taxation by the county assessor. Only parcels or other property, or portions thereof, which are an integral part of the public utility's function as a utility shall be included as operating property and assessed by the board of public works under provisions of article six of this chapter;

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

The State Tax Commission received numerous written comments objecting to the proposed changes in the rule relating to the valuation of public utility property. The Commission, in its response to comments, stated that the changes do not reflect a change in policy, but provides more specific information on the process. The Committee will need to determine the reasonableness of these changes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.



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WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF THE CLERK OF THE WEST VIRGINIA LEGISLATURE
SECRETARY OF STATE

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January 12, 1999

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Jeff Amburgy
State Tax Commission
Capitol Complex
Building 1, Room 400-W

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Valuation of Public Utility Property for Ad Valorem Property Tax Purposes, 110CSR1M**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed _____
 - (b) as modified by the agency _____
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. _____
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. _____
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. ✓

The Committee felt that the amendments were not purely technical, and the public had not been given sufficient notice of the proposed amendments.

Amendment to 110CSR1M

Strike all the proposed amendments not relating to motor carriers.

116 eight, authorized under the authority of section seven-b, article
117 six, section one, article six-g, and section five, article one-c,
118 chapter eleven of this code, modified by the state tax commis-
119 sioner to meet the objections of the legislative rule-making
120 review committee and refiled in the state register on the
121 fifteenth day of January, one thousand nine hundred ninety-
122 nine, relating to the state tax commissioner (valuation of public
123 utility property for ad valorem property tax purposes, 110 CSR
124 1M), is authorized with the amendment set forth below:

125 On page two, by striking-out all of subsection 2.5;

126 On page two, by striking-out all of subsection 2.7 and
127 inserting in lieu thereof a new subsection 2.7 to read as follows:

128 “§2.7 **“Fair market value”** means the highest price in
129 terms of money that a property will bring in a competitive and
130 open market, assuming that the buyer and seller are acting
131 prudently and knowledgeably, allowing sufficient time for the
132 sale and assuming that the price is not affected by undue
133 stimulations.”;

134 On page four, subsection 3.1, after the word “generally,” by
135 inserting the words “when the cost approach is used,”;

136 On page four, subsection 3.1, after the word “purposes,” by
137 striking-out the period and inserting in lieu thereof a colon and
138 the word “however,”;

139 On page four, by striking-out all of subdivision 3.1.1, and
140 inserting in lieu thereof new subdivision 3.1.1 to read as
141 follows:

142 “ 3.1.1 When the income approach is used, the unit of value
143 shall be allocated to the state of West Virginia using operating
144 plant data after which;”

145 On page five, subdivision 3.1.2, by striking-out the word
146 “property” and inserting in lieu thereof the words “physical
147 plant”;

148 On page five, by striking-out all of subdivision 4.2.1 and
149 inserting in lieu thereof a new subdivision 4.2.1 to read as
150 follows:

151 **“4.2.1 Cost approach.** — Recognizing that public service
152 corporations are predominantly cost regulated, when the cost
153 approach is used in the valuation process, original cost less
154 applicable depreciation shall be employed. In applying the cost
155 approach, the tax commissioner shall consider three (3) types
156 of depreciation; (a) physical deterioration, (b) functional
157 obsolescence, and (c) economic obsolescence.”;

158 On page five, subdivision 4.2.2 after the word “interest” by
159 striking-out the word “expense” and inserting in lieu thereof
160 “on long-term debt”;

161 On page six, by striking-out all of subdivision 4.2.4;

162 On page six, subdivision 4.2.5 after the word “process” by
163 changing the colon to a period and by striking-out the remain-
164 der of the subdivision;

165 On page eight, by striking-out all of subdivision 4.3.13;

166 And,

167 On page ten, by adding the new subsection 6.5 to read as
168 follows:

169 “The tax commissioner, for good cause shown, may grant
170 an extension of filing deadlines.”

171 (j) The legislative rule filed in the state register on the
172 thirty-first day of July, one thousand nine hundred ninety-eight,
173 authorized under the authority of sections three hundred one
174 and three hundred three, article six-f, chapter forty-six-a of this
175 code, modified by the department of tax and revenue to meet
176 the objections of the legislative rule-making review committee
177 and refiled in the state register on the twelfth day of January,
178 one thousand nine hundred ninety-nine, relating to the depart-
179 ment of tax and revenue (registration of telemarketers, 119 CSR
180 301), is authorized.

§64-7-3. Insurance commissioner.

1 (a) The legislative rule filed in the state register on the
2 thirtieth day of July, one thousand nine hundred ninety-eight,
3 authorized under the authority of section ten, article two,