

FILED  
MAY 27 PM 1:49  
SECRETARY OF STATE

NOTICE OF PUBLIC COMMENT PERIOD ON PROPOSED RULE

AGENCY: State Tax Department


RULE TYPE: Emergency Legislative Rules

RULE TITLE: Procedures For When The Tax Commissioner, Pursuant To W. Va. Code § 18-9A-11(g), Orders A County Assessor Or County Commission, Or Both, To Comply With The Provisions Of West Virginia Code, Chapter 11, And W. Va. Code § 18-9A-11, Or When The Tax Commissioner Enters A County To Fix The Assessments At The Required Ratio

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED AND WILL END AT 5:00 P.M. ON JULY 10, 1987. WRITTEN COMMENTS ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

State Tax Commissioner  
State Capitol, WW-300  
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

  
Michael E. Caryl  
State Tax Commissioner

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EMERGENCY  
WEST VIRGINIA LEGISLATIVE REGULATIONS  
STATE TAX DEPARTMENT  
TITLE 110  
SERIES 3b  
(1987)

Filed: May 27, 1987

Procedures For When The Tax Commissioner, Pursuant To W. Va. Code § 18-9A-11(g), Orders A County Assessor Or County Commission, Or Both, To Comply With The Provisions Of West Virginia Code, Chapter 11, And W. Va. Code § 18-9A-11; Or When The Tax Commissioner Enters A County To fix The Assessments At The Required Ratio

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§ 110-3b-1 General.

1.1 Type of Regulations. -- These regulations are Emergency Legislative Regulations defined in W. Va. Code § 29A-3-15.

1.2 Scope. - These emergency legislative regulations provide guidelines and procedures to be followed whenever the Tax Commissioner, pursuant to West Virginia Code § 18-9A-11(g), determines that in any year a county assessor or a county commission has failed or refused to comply with the provisions of West Virginia Code § 18-9A-11 in setting the valuations of property for assessment purposes in any class or classes of property in the county, and directs the county assessor and the county commission to make such corrections in the valuations as may be necessary so that they shall comply with the requirements of Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, or the Tax Commissioner enters the county to fix the assessment at the required ratios.

1.3 Authority. - These emergency legislative regulations are issued under the authority of W. Va. Code §§ 29A-3-15, 11-1-2, and 11-1-6.

1.4 Filing Date. - These emergency legislative regulations were promulgated in accordance with W. Va. Code § 29A-3-15 and were filed in the State Register on May 27, 1987.

1.5 Effective Date. - These emergency legislative regulations became effective immediately upon their filing in the State Register, May 27, 1987.

§ 110-3b-2 Notice From the Tax Commissioner to the County Assessor and the County Commission of Improper Assessment.

2.1 Whenever the Tax Commissioner shall find from all the facts before him that a county has assessed one or more property classes in a manner inconsistent with Chapter 11 of the West Virginia Code or W. Va. Code § 18-9A-11, he shall give notice, in writing, to the county assessor and the county commission, specifying the property classes that have been improperly assessed, the nature of the defect or defects and the requirements which the county assessor or the county commission must meet to properly assess for the current tax year.

2.2 If the county's assessment is below the requirements of W. Va. Code § 18-9A-11 in one or more classes, the Tax Commissioner shall further give the levying bodies notice that they may revise their levy rates using the procedure found in Section 110-3b-9 of these regulations.

§ 110-3b-3 Notice of Order to Increase Assessments.

3.1 Whenever the Tax Commissioner shall, pursuant to W. Va. Code § 18-9A-11(g), order the county assessor or the county commission, or both, to make corrections in the assessed valuations for the year to comply with the requirements Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, he shall give notice to taxpayers by publication of the order by a Class II-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area shall be the county.

§ 110-3b-4 Review and Resubmission of the Property Books by the County Assessor.

4.1 Whenever the Tax Commissioner shall, pursuant to W. Va. Code § 18-9A-11(g), order the county assessor to make corrections in the assessed valuations for the year to comply with the requirements of Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, the assessor shall review his work, make the changes necessary to bring his books into compliance with Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, and resubmit the property books for the current year to the county commission. The assessor and his assistants shall attend the special sessions of the county commission held pursuant to the order and shall render every assistance possible in connection with the value of property assessed by them.

4.2 After the county commission completes the review of the property books, the assessor shall notify each levying body in the county of an increase in revised assessed value for one or more classes of property located within the jurisdiction of the levying body.

§ 110-3b-5 Reassessment by Tax Commissioner.

5.1 Whenever the Tax Commissioner determines that the county assessor is failing or has refused to comply with the order of the Tax Commissioner, made pursuant to West Virginia Code § 18-9A-11(g), to make such corrections in the assessed valuations for the year as may be necessary so that they comply with the requirements of Chapter 11 of the West Virginia Code and W. Va. Code

§ 18-9A-11, the Tax Commissioner may, in his discretion, take possession of the property books and fix the assessments so that the totals by class comply with Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11. The Tax Commissioner may remove the property books and any other pertinent information relating to assessed value from the county to any office of the State Tax Department.

5.2. Whenever the Tax Commissioner takes possession of the property books and fixes the assessments so that the totals by class comply with Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, he shall give the taxpayers the same notice which Section 110-3b-6 of these regulations requires the assessor to give.

§ 110-3b-6. Notice of Increased Assessment.

6.1 If the assessor, while complying with the order of the Tax Commissioner, determines that the revised assessed valuation of any item of real property is more than ten percent greater than the valuation assessed for that item in the last tax year and the increase is entered in the property books as provided in W. Va. Code § 11-3-19, the assessor shall forthwith give notice of the increase to the owner or the person controlling the property as provided in W. Va. Code § 11-3-2.

6.2 The county assessor must give the notice at least five days prior to the special session at which the county commission meets for the purpose of review of the revised assessments for the tax year and advise the person assessed or the person controlling the property of his right to appear and seek an adjustment with respect to classification and taxability of property resulting from a clerical error, or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake growing out of negligence or the exercise of poor judgment. The notice shall be made by first class United States postage mailed to the address of the person assessed or the person controlling the property for payment of tax on the item in the previous year.

6.3 Where the valuation in any one or more classes generally increase, then, in lieu of notice by first class mail, the notice shall be by publication by a Class I-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area shall be the county.

§ 110-3b-7. Review by County Commission.

7.1 Pursuant to W. Va. Code § 7-1-5, county commissions have the duty to:

review and equalize the assessments made by the assessors;  
to inspect and review the lists of property, both real and  
personal, made up by the assessor and his deputies for  
taxable purposes. . . .

7.2 A county commission is authorized by W. Va. Code § 7-1-2 to hold special sessions "whenever the public interest may require it." Whenever the Tax Commissioner shall order the county assessor or the county commission to correct the valuation of property pursuant to W. Va. Code § 18-9A-11(g), the county commission shall hold a special session to perform their duties in compliance with the order of the Tax Commissioner.

7.3 The clerk of the county commission shall publish notice of the time, place and general purpose of the special session of the county commission meeting as a Class I-O legal advertisement in compliance with the provisions of W. Va. Code § 53-3-1 et seq., and the publication area shall be the county. The expense of publication shall be paid out of the county treasury.

7.4 The county commission shall meet in special session for the purpose of reviewing the revised assessment made by the assessor or the Tax Commissioner. The county commission shall correct all errors with respect to classification and taxability of property resulting from a clerical error, or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake growing out of negligence or the exercise of poor judgment, and they shall cause to be done whatever is necessary to make the valuation comply with the provisions of West Virginia Code Chapter 11 and W. Va. Code § 18-9A-11.

7.5 Should the county commission fail or refuse to meet in special session to review the revised assessment, the Tax Commissioner shall notify the taxpayers of their rights under W. Va. Code § 11-3-27 by publishing as a Class II-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area shall be the county.

7.6 No assessment shall be increased over and above the revised assessments without giving the property owner at least five days' notice, in writing and signed by the president of the commission, of the intention to make such increase. Service shall be sufficient if made upon the property owner, or upon his agent or attorney in person, or if sent by registered mail to such property owner, his agent or attorney, at their respective last known place of abode. If the taxpayer, his agent or attorney, is not found and have no known place of abode, then notice shall be published as a Class I-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area shall be the county. The publication date shall be at least five days prior to final action making the increase.

7.7 When it is desired to increase the entire valuation in any one district by a general increase, notice shall be given by publication thereof as a Class I-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area for such publication shall be the county. The date of the last publication shall be at least five days prior to final action making the increase in valuation. When an increase is made, the same valuation shall not again be changed unless notice is again given as provided in this section.

7.8 After the county commission completes the review of the property books, a majority of the commission shall sign a statement that it is the completed assessment of the county for the year, and that the assessment complies with the provisions of Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11. If the county commission should refuse to sign the statement for any reason, the Tax Commissioner or a person he designates shall, pursuant to W. Va. Code § 18-9A-11, perform any act required of the county commission by Chapter 11 of the West Virginia Code. The property books shall then be delivered to the assessor for extension of the levies, or if the levies have already been extended based on the revised assessments, the property books shall then be delivered to the sheriff.

§ 110-3b-8 Grounds for Removal from Office.

8.1 Failure or refusal of the county assessor or county commission to comply with the provisions of Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11 constitute grounds for removal from office.

§ 110-3b-9 Revision of Levy Rates.

9.1 Each levying body in the county has the power in special session within forty (40) days after the levying body fixed the rates of levy on each class of property on the third Tuesday in April to rescind its levy order because of a material change of fact under the following conditions:

9.1.1 The levying body had based its levy rates for the current tax year on the assessed valuation totals for each class of property which the assessor had furnished to them as required by law; and

9.1.2 An order of the Tax Commissioner, made pursuant to W. Va. Code § 18-9A-11(g), required the increase of assessed valuation totals for one or more classes of property located within the jurisdiction of the levying body.

9.2 If a reduction in a levy rate is deemed appropriate, the levying body shall fix its regular or special levy rates, or both, at lesser rates. The lesser rates shall generate the same amount of revenue, within practicable limits, as was originally estimated when it fixed its levy rates on the third Tuesday in April.

9.3 The revised levy rates shall be in the same proportion as the maximums authorized by law under W. Va. Code §§ 11-8-10a, 11-8-12A and 11-8-14a.

9.4 At least five days prior to any such special session, the levying body shall give notice by a Class I-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq. and the publication area shall be the county.



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9.5 Once the levy rates are so revised, the levying bodies shall proceed to amend all documents that the law required be made and filed once the levy rates were fixed on the third Tuesday in April.

§ 110-3b-10 Appeal to Circuit Court.

10.1 An appeal may be taken to the Circuit Court for the county pursuant to the provisions of West Virginia Code § 58-3-1 et seq. within four months after the county commission enters its order under W. Va. Code § 11-3-27.

§ 110-3b-11 Payment of Costs.

11.1 The county commission shall pay all costs incurred by the Tax Commissioner in directing the county assessor and the county commission to make corrections in the valuations or in entering the county and fixing the assessments so that the totals by class comply with West Virginia Code Chapter 11 and W. Va. Code § 18-9A-11.

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