

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #4

Do Not Mark In this Box

FILED

2001 OCT -4 A 11: 23

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code § 11-16A-4

AMENDMENT TO AN EXISTING RULE: YES NO

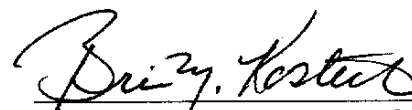
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: Pollution Control Facilities

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.



Brian M. Kastick, Secretary of Tax & Revenue

MODIFIED
TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT
SERIES 6
POLLUTION CONTROL FACILITIES

FILED

2001 OCT -4 A 11: 2

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§ 110-6-1. General.

1.1 **Scope.** -- This rule establishes general operating procedures for the tax treatment of pollution control facilities.

1.2 **Authority.** -- W. Va. Code § 11-6A-4.

1.3 **Filing Date.** --

1.4 **Effective Date.** --

§ 110-6-2. Definitions.

2.1 **"Commissioner"** means the State Tax Commissioner, or his or her delegate.

2.2 **"Coal waste"** means coal waste extracted from a gob pile located in West Virginia.

2.3 **"Coal waste disposal power project"** means an electrical generation facility designed, constructed or installed to reclaim, burn and dispose of coal wastes in compliance with applicable air and water quality standards and which meets the criteria for financing under W. Va. Code § 13-2C-21.

2.4 **"Facility" or "Pollution Control Facility"** means any personal property designed, constructed, or installed primarily for the purpose of abating or reducing water or air pollution or contamination by removing, altering, disposing, treating, storing, or dispersing the concentration of pollutants, contaminants, wastes or heat in compliance with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, the design, construction, and installation of which ~~personal property~~ was approved as a pollution control facility by the Office of Water Resources of the Department of Environmental Protection or the Office of Air Quality, as the case may be. The definition of facilities eligible for salvage tax treatment shall be strictly construed so as to include only ~~such~~ the equipment and devices ~~as that~~ are installed primarily and immediately to abate air or water pollution. These items of personal property which may coincidentally comply with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, but which are primarily installed for plant operations or are productive, will not be considered eligible for salvage tax treatment.

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2001 OCT -4 A 11: 23

FILED

2.4.1 For purposes of W. Va. Code § 11-6A-3, with the exception of intangible personal property, furniture, fixtures, inventories, materials and supplies used in the operation of the facility, all items of personal property installed at a coal waste disposal power project are considered a pollution control facility.

2.5 **"Personal Property"** means things of value, moveable and tangible, which are the subjects of ownership. This definition is found as a part of W. Va. Code § 11-5-3 and applied to all of Chapter 11.

2.6 **"Moveable"**, as used in Section 2.5 of this rule, relates to a device or piece of equipment capable of being moved from one location to another.

2.7 **"Salvage Value"** means the price for which the facility would sell in place if voluntarily offered for sale by the owner of the facility; that is to say, the scrap value of the material of an eligible facility less the cost of removal of the facility. Administratively, salvage value ~~will be~~ is five percent (5%) of the original cost.

2.8 "Wind Power Project" means an electrical generation facility designed, constructed or installed to convert wind into electrical energy.

§ 110-6-3. Statement of Pollution Control Facilities Tax Treatment.

3.1 Pollution control facilities are required for the protection and benefit of the environment and the general welfare of the public. However, pollution control facilities are considered to be nonproductive, to not add to the economic value of a business enterprise, and to have no market value after installation in excess of salvage value.

§ 110-6-4. Approval as Pollution Control Facility.

4.1 Any owner or taxpayer requesting salvage valuation for a pollution control facility under the authority of W. Va. Code § 11-6A-3 must receive approval from the appropriate state agency governing the control of air or water pollution. The approval must state that the pollution control facility subject to salvage value consideration is designed, constructed or installed primarily for the purpose of abating air or water pollution, and does abate or reduce water or air pollution in compliance with air or water quality standards prescribed under the laws of this State or the United States; Provided, That each wind turbine installed at a wind power project and each tower upon which the turbine is affixed shall be considered to be personal property that is a pollution control facility, and all of the value associated with the wind turbine and tower shall be accorded salvage value treatment. All personal property at a wind power project other than a wind turbine and

tower shall be valued at it's then current market value without regard to salvage value treatment.

§ 110-6-5. Allocation or Separation of Values.

5.1 The value of a pollution control facility first placed in operation subsequent to July 1, 1973 is, for the purpose of ad valorem taxation, considered to be its salvage value.

5.2 When allocating value to a coal waste disposal power project, the salvage value shall be accorded to a portion of the total personal property at the project. That portion shall be equal to the ratio of tons of West Virginia coal waste burned and disposed of at the project to the total tons of coal and coal waste burned and disposed of at the project during the immediately preceding calendar year.

5.2.1 For a project placed in service prior to March 11, 1995 at which the ratio for the calendar year ending December 31, 1994 was less than 70%, the salvage value shall be accorded to 63% of the total personal property at the project for tax years beginning after March 11, 1995, regardless of the actual ratio for any calendar year. The remaining portion of the personal property at the project, but in no event less than 25% of the total personal property at the project, ~~must~~ shall be accorded full value, that is value without reference to salvage value.

5.3 A facility will not qualify as a pollution control facility under W. Va. Code § 11-6A-5(b) if it burns coal, coal waste or fuel waste obtained from outside West Virginia after March 11, 1995.

5.4 Where the pollution control facility produces a profitable by-product or where a part of ~~such~~ the facility is required for the operation of the business without regard to the requirements of state or federal air or water quality standards, the tax commissioner shall allocate or separate that portion of value attributable to the pollution control activity. Two (2) methods have been developed whereby the Tax Commissioner may accomplish that activity:

5.4.1 Component Method.

5.4.1.1 The component method ~~will~~ shall receive primary consideration as a method of allocation or separation of values of a pollution control facility. The component method of allocation or separation of values requires the identification of the specific item or component of machinery and/or equipment which is used for the purpose of pollution abatement control but which is also an integral part of the production process and the identification of the acquisition cost of the specific item or component.

State Tax Commission
Title 110
Series 6

The component thus identified ~~will~~ shall be appraised at five percent (5%) of the acquisition cost. (For example, a conveyor belt system is used to transport fuel to a boiler to produce energy. The conveyor belt line, while not a pollution abatement control device, contains water sprays and is totally enclosed to retard dust during the transportation process. While the belt line is not a pollution abatement control device but an integral part of the production process, the dust conveyors and the water sprays are eligible pollution abatement facilities. The acquisition costs of these items eligible for salvage value treatment are readily discernible and ~~will~~ shall receive salvage value treatment.)

5.4.1.2 If an item or the cost associated with an item is not discernible, the alternative substitution method ~~would~~ shall be used.

5.4.2 Substitution Method.

5.4.2.1 When acquisition costs for eligible pollution abatement control items or components are not discernible or the items' or components' use or purpose are such an integral part of the production process that the specific use or task is not clearly ascertainable, the substitution method ~~will~~ shall be applied.

5.4.2.2 The substitution method of allocation or separation of valuation is based on the assumption that the value attributable to pollution control is the difference between the value of a similar facility which has the same utility without the pollution abatement attributes and the value of the subject property being appraised which has pollution abatement attributes. (For example, a double-walled pipe used for the transportation of a product from the manufacturing area of the plant to the loading area. A single-walled pipe or other means of transportation is required for the operation of the business whereas the cost of the double-walled pipe is twenty-five percent (25%) higher than single wall.) The additional cost of the twenty-five percent (25%) would represent the value attributable to pollution abatement control for the purposes of ad valorem taxation.

§ 110-6-6. Recommendation of Values to County Assessor.

6.1 Each county assessor ~~will~~ shall be notified by the tax commissioner before December fifteenth of any eligible facility in his or her county on the preceding July first assessment day together with the salvage value of each ~~such~~ facility. The notice ~~will~~ shall recommend that the assessor use the salvage value provided as the appraised value of the facility.

§ 110-6-7. Annual List of Eligible Facility Items.

State Tax Commission
Title 110
Series 6

7.1 The tax commissioner, annually before July tenth, ~~will~~ shall prepare a list of apparatus, equipment and components which as of that date are considered to be eligible for salvage treatment under provisions of W. Va. Code §11-6A-1 et seq. and this rule. The list shall be revised annually to include items made eligible by administrative or judicial decision subsequent to the most recent July tenth list date. This list shall be considered to be a listing of items contemplated for pollution control facility treatment as authorized in Section 4.1 of this rule.

§ 110-6-8. Administrative Remedy.

8.1 The owner of property assessed under W. Va. Code § 11-3-1 et seq., properly the subject of a determination of the applicability of Pollution Control Facilities Tax Treatment authorized under W. Va. Code § 11-6A-1 et seq., or the Assessor of the county in which the property is assessed, who claims to be aggrieved or damaged by the tax commissioner by the inclusion or exclusion of a facility or any component thereof of a facility, or an allocation of any portion ~~thereof~~ of a facility, shall appeal the action to the commissioner under the authority of W.Va. Code § 11-3-24a. Disputes concerning whether an item of personal property qualifies as a "facility" or "pollution control facility" as defined in Section 2.4 of this rule shall be considered to be matters of classification or taxability and as such are appealable under the provisions of W.Va. Code § 11-3-24a.