



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Herschel H. Rose, III, Commissioner,
Title or Position

Tax, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations; Statement of Emergency
- rules and regulations; or
- other - specify (LEGISLATIVE PROCEDURAL INTERPRETIVE RULE

This filing pertains to

Chapter 18
Article 9A
Series XVII
Section _____
Page No. _____

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SECRETARY OF STATE
THIS DATE 6/2/82
Administrative Law Division

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

June 2, 1982
Date Submitted

Herschel H. Rose III
Signature of Person Authorizing
this Filing



State Tax Department
of West Virginia
Charleston 25305

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June 2, 1982

Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Manchin:

Pursuant to the provisions of Chapter 29A, Article 3 of the West Virginia Code of 1931, as amended, I hereby submit three (3) copies of Emergency Legislative Rules and Regulations promulgated by this Department for enforcing the provisions of W. Va. Code §18-9A-11(g).

As required by W. Va. Code §29A-3-15 (1982) fifteen (15) copies of these emergency rules and regulations will forthwith be delivered to the Legislative Rule-making Review Committee.

These emergency regulations take effect on June 2, 1982.

Very truly yours,

Herschel H. Rose III
State Tax Commissioner

MII/cs

Honorable Robert R. Nelson
Honorable William E. Shingleton

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THIS DATE 6/2/82
Administrative Law Division

WEST VIRGINIA TEMPORARY ADMINISTRATION REGULATIONS

STATE TAX DEPARTMENT

Chapter 18-9A
Series XVII
(1982)

Submitted to State Register:

June 2, 1982

Effective: June 2, 1982

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STATEMENT OF EMERGENCY

Whereas, West Virginia Code § 18-9A-11(g) (1981) requires the Tax Commissioner (1) to review the valuations for assessment purposes made by the county assessor and county commission; (2) to direct the county assessor and the county commission to make such corrections in the valuation of property as may be necessary so that property in their county is assessed at its true and actual value as required by West Virginia Code § 11-3-1 (1977) and § 18-9A-11 (1981); and (3) to enter the county and fix the assessments at the required ratios. The test for determining whether property in each class is assessed at true and actual value is whether the total assessed value for each class meets the minimum requirement of being at least sixty percent (60%), but not in excess of one hundred percent (100%), of the appraised value for that class as determined by the State Tax Department. West Virginia Code § 18-9A-11(g) (1981) reads:

Whenever in any year a county assessor or a county commission shall fail or refuse to comply with the provisions of this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the state tax commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct 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 eleven of this Code and this section, and the tax commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make such corrections

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shall constitute grounds for removal from office.

Whereas, several county assessors and county commissions have failed to assess property in one or more classes for the 1982 assessment year in conformity with the requirements of West Virginia Code § 18-9A-11 (1981).

Whereas, in State ex rel. Raese v. Battle, 149 W. Va. 761, 143 S.E.2d 328 (1965), the Supreme Court of Appeals commented on the power of the Tax Commissioner to enforce the provisions of West Virginia Code § 18-9A-4, which is now codified as Section 18-9A-11(g) (1981). At page 330 (S.E.2d) of its opinion the court wrote:

The legislature has failed to specify how the tax commissioner is to proceed to carry out the duties imposed on him by [W. Va. Code, 18-9A-4].

More particularly the court wrote:

The legislature has failed to specify how the tax commissioner may perform such duties after the board of review and equalization has met and adjourned or how he may raise valuations of property for tax purposes without statutory provision for notice to the property owners. Id. at 330.

Whereas, in Pauley v. Kelly, ___ W. Va. ___, 255 S.E.2d 859 (1979), the West Virginia Supreme Court of Appeals held:

To the extent that State ex rel. Raese v. Battle, 149 W. Va. 761, 143 S.E.2d 328 (1965), states that the Tax Commissioner is without power to proceed to enforce the provisions of W. Va. Code, 18-9A-11, it is overruled. 255 S.E.2d 859, at 881.

Whereas, in Pauley v. Bailey, Circuit Court of Kanawha County, Civil Action No. 75-1268 (decided May 11, 1982) held

as conclusion of law number 48 that:

The Tax Commissioner has a clear duty to enforce the Constitution, West Virginia Code Ch. 11, Art. 1, Sec. 1. Further he must take "such action as will tend to produce full and just assessments throughout the state" West Virginia Code Ch. 11, Art. 1, Sec. 2. He has a specific duty to "order and direct a reassessment" any time the assessments are not at true and actual value in any county. West Virginia Code Ch. 11, Art. 3, Sec. 1. He has the duty to make "such corrections in the valuations" as necessary to comply with the mandates of Chapter 11 of the Code. West Virginia Code Ch. 18, Art. 9A, Sec. 11.

Whereas, the Tax Commissioner needs procedures in order to fulfill his duties under West Virginia Code § 18-9A-11(g) (1981) for the 1982 assessment year, while at the same time providing due process to all interested parties, including taxpayers whose assessments may be raised when one or more classes are put in compliance with Chapter 11 of the West Virginia Code and Section 18-9A-11 (1981).

Whereas, without the promulgation of the emergency regulations there would be substantial harm to the public interest in that the Tax Commissioner either could not enforce Chapter 11 of the West Virginia Code and Section 18-9A-11 (1981), or the county assessors, the levying bodies and the taxpayers of the affected counties would not have a published guarantee of due process.

Wherefore, the Tax Commissioner shall file the following regulations in the State Register in order that the procedures contained in these regulations shall become effective immediately

upon filing, pursuant to West Virginia Code Section 29A-3-15 (1982), so that the Tax Commissioner may use West Virginia Code Section 18-9A-11(g) (1981) for enforcement of the 1982 assessments.

TEMPORARY
WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 18-9A
Series XVII
(1982)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 6/2/82
Administrative Law Division

Subject: Procedures and guidelines for when the Tax Commissioner, pursuant to West Virginia Code § 18-9A-11(g) (1981), orders a county assessor or county commission, or both, to comply with the provisions of Chapter 11 of the West Virginia Code and Section 18-9A-11, and when the Tax Commissioner enters a county to fix the assessments at the required ratio.

Section 1. General.

1.01. Type of regulations. -- These regulations are "legislative rules" as West Virginia Code § 29A-1-2(d) (1982) defines the term.

1.02. Scope. -- These regulations provide guidelines and procedures to be followed whenever the Tax Commissioner, pursuant to West Virginia Code § 18-9A-11(g) (1981), 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 (1981) 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 Section 18-9A-11, and the Tax Commissioner enters the county to fix the assessments at the required ratios.

1.03. Authority. -- These temporary emergency regulations are issued under the authority of West Virginia Code § 29A-3-15 (1982), § 11-1-2 (1933), and § 11-1-6 (1957).

1.04. Filing date. -- These temporary emergency regulations were promulgated in accordance with West Virginia Code § 29A-3-15 (1982) and were filed in the State Register on June 2, 1982.

1.05. Effective date. -- These temporary emergency regulations became effective immediately upon their filing in the State Register, West Virginia Code § 29A-3-15(a) (1982), and shall be effective for 180 days after filing in the State Register, as provided in West Virginia Code § 29A-3-15(a) (1982). The Tax Department may extend the effective period in accordance with the provisions of West Virginia Code § 29A-3-15(b) (1982).

Section 2. Notice from the Tax Commissioner to the County Assessor and the County Commission of Improper Assessment.

2.01. 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 § 18-9A-11 (1981), 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.

2.02. If the county's assessment is below the requirements of Section 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 9 of these regulations.

Section 3. Notice of Order to Increase Assessments.

3.01. Whenever the Tax Commissioner shall, pursuant to West Virginia Code § 18-9A-11(g) (1981), 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 Section 18-9A-11 (1981), he shall give notice to taxpayers by publication of the order by a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the West Virginia Code, and the publication area shall be the county.

Section 4. Review and Resubmission of the Property Books by the County Assessor.

4.01. Whenever the Tax Commissioner shall, pursuant to West Virginia Code § 18-9A-11(g) (1981), 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 Section 18-9A-11 (1981), 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 Section 18-9A-11 (1981), 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.

4.02. 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.

Section 5. Reassessment by Tax Commissioner.

5.01. 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) (1981), 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 Section 18-9A-11 (1981) or if the Tax Commissioner determines that time is of the essence, he shall take possession of the property books and shall fix the assessments so that the totals by class comply with Chapter 11 of the West Virginia Code and Section 18-9A-11 (1981). 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.

5.02. 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 Section 18-9A-11 (1981), he shall give the taxpayers the same notice which Section 6 of these regulations requires the assessor to give.

Section 6. Notice of Increased Assessment.

6.01. 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 West Virginia Code § 11-3-19 (1967), the assessor shall give notice of the increase to the owner or the person controlling the property as provided in West Virginia Code § 11-3-2 (1961).

6.02. 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.

6.03. 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 article three, chapter fifty-nine of the West Virginia Code, and the publication area shall be the county.

Section 7. Review by County Commission.

7.01. Pursuant to West Virginia Code § 7-1-5 (1980), 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 . . .

7.02. A county commission is authorized by West Virginia Code § 7-1-2 (1923) 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 § 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.

7.03. 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 article three, chapter fifty-nine of the West Virginia Code, and the publication area shall be the county. The expense of publication shall be paid out of the county treasury.

7.04. 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 inadvertant 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 Section 18-9A-11 (1981).

7.05. 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 West Virginia Code § 11-3-27 (1939) by publishing as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the West Virginia Code, and the publication area shall be the county.

7.06. No assessment shall be increased over and above the revised assessments determined by the assessor or the Tax Commissioner 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 the increase. Service upon the property owner shall be sufficient, or upon his agent or attorney in person, or if sent by registered mail to such property owner, his agent, or attorney, at the last know place of abode. If he be 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 article three, chapter fifty-nine of the West Virginia Code, and the publication area shall be the county. The publication date shall be at least five days prior to the increase.

7.07. 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 article three, chapter fifty-nine of the West Virginia Code, 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 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.

7.08. 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 Section 18-9A-11 (1981). If the county commission should refuse to sign the statement for any reason, the Tax Commissioner or a person he designates shall, pursuant to § 18-9A-11, perform any act required of the county commission by Chapter 11 of the West Virginia Code. Then, the property books shall be delivered to the assessor for extension of

the levies or if the levies have already been extended, the property books shall be delivered to the sheriff.

Section 8. Grounds for Removal From Office.

8.01. Failure or refusal of the county assessor or county commission to comply with the provisions of Chapter 11 of the West Virginia Code and Section 18-9A-11 (1981) constitute grounds for removal from office.

Section 9. Revision of Levy Rates.

9.01. 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:

(a) 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

(b) An order of the Tax Commissioner, pursuant to West Virginia Code § 18-9A-11(g) (1981), increased the assessed valuation totals for one or more classes of property located within the jurisdiction of the levying body.

9.02. Upon rescission, 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.

9.03. The revised levy rates shall be in the same proportion as the maximums authorized by law under West Virginia Code §§ 11-8-10a (1961), 11-8-12a (1961) and 11-8-14a (1961).

9.04. 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 article three, chapter fifty-nine of the West Virginia Code and the publication area shall be the county.

9.05. 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.

Section 10. Appeal to Circuit Court.

10.01. 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 West Virginia Code § 11-3-27 (1939).

Section 11. Payment of Costs.

11.01. 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 Section 18-9A-11 (1981).

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